S. HRG. 110–329

# *Senate Hearings*

***Before the Committee on Appropriations***

# Commerce, Justice, Science, and Related Agencies Appropriations

***Fiscal Year*** 2008

110*th* CONGRESS, FIRST SESSION

**H.R. 3093/S. 1745**

DEPARTMENT OF COMMERCE
DEPARTMENT OF JUSTICE
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
NATIONAL AERONAUTICS AND SPACE ADMINISTRATION
NATIONAL SCIENCE FOUNDATION
NONDEPARTMENTAL WITNESSES

# Commerce, Justice, Science, and Related Agencies Appropriations, 2008 (H.R. 3093/S. 1745)

S. HRG. 110–329

# COMMERCE, JUSTICE, SCIENCE, AND RELATED AGENCIES APPROPRIATIONS FOR FISCAL YEAR 2008

## HEARINGS

BEFORE A

SUBCOMMITTEE OF THE

COMMITTEE ON APPROPRIATIONS

UNITED STATES SENATE

ONE HUNDRED TENTH CONGRESS

FIRST SESSION

ON

## H.R. 3093/S. 1745

AN ACT MAKING APPROPRIATIONS FOR THE DEPARTMENTS OF COMMERCE AND JUSTICE, SCIENCE, AND RELATED AGENCIES FOR THE FISCAL YEAR ENDING SEPTEMBER 30, 2008, AND FOR OTHER PURPOSES

**Department of Commerce**
**Department of Justice**
**Equal Employment Opportunity Commission**
**National Aeronautics and Space Administration**
**National Science Foundation**
**Nondepartmental Witnesses**

Printed for the use of the Committee on Appropriations

Available via the World Wide Web: http://www.gpoaccess.gov/congress/index.html

U.S. GOVERNMENT PRINTING OFFICE

33–908 PDF WASHINGTON : 2008

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512–1800; DC area (202) 512–1800
Fax: (202) 512–2104 Mail: Stop IDCC, Washington, DC 20402–0001

## COMMITTEE ON APPROPRIATIONS

ROBERT C. BYRD, West Virginia, *Chairman*

DANIEL K. INOUYE, Hawaii
PATRICK J. LEAHY, Vermont
TOM HARKIN, Iowa
BARBARA A. MIKULSKI, Maryland
HERB KOHL, Wisconsin
PATTY MURRAY, Washington
BYRON L. DORGAN, North Dakota
DIANNE FEINSTEIN, California
RICHARD J. DURBIN, Illinois
TIM JOHNSON, South Dakota
MARY L. LANDRIEU, Louisiana
JACK REED, Rhode Island
FRANK R. LAUTENBERG, New Jersey
BEN NELSON, Nebraska

THAD COCHRAN, Mississippi
TED STEVENS, Alaska
ARLEN SPECTER, Pennsylvania
PETE V. DOMENICI, New Mexico
CHRISTOPHER S. BOND, Missouri
MITCH McCONNELL, Kentucky
RICHARD C. SHELBY, Alabama
JUDD GREGG, New Hampshire
ROBERT F. BENNETT, Utah
LARRY CRAIG, Idaho
KAY BAILEY HUTCHISON, Texas
SAM BROWNBACK, Kansas
WAYNE ALLARD, Colorado
LAMAR ALEXANDER, Tennessee

CHARLES KIEFFER, *Staff Director*
BRUCE EVANS, *Minority Staff Director*

---

### SUBCOMMITTEE ON COMMERCE, JUSTICE, SCIENCE, AND RELATED AGENCIES

BARBARA A. MIKULSKI, Maryland, *Chairman*

DANIEL K. INOUYE, Hawaii
PATRICK J. LEAHY, Vermont
HERB KOHL, Wisconsin
TOM HARKIN, Iowa
BYRON L. DORGAN, North Dakota
DIANNE FEINSTEIN, California
JACK REED, Rhode Island
FRANK R. LAUTENBERG, New Jersey
ROBERT C. BYRD, West Virginia *(ex officio)*

RICHARD C. SHELBY, Alabama
JUDD GREGG, New Hampshire
TED STEVENS, Alaska
PETE V. DOMENICI, New Mexico
MITCH McCONNELL, Kentucky
KAY BAILEY HUTCHISON, Texas
SAM BROWNBACK, Kansas
LAMAR ALEXANDER, Tennessee
THAD COCHRAN, Mississippi *(ex officio)*

*Professional Staff*
GABRIELLE BATKIN
ERIN CORCORAN
KEVIN KIMBALL
DOUGLAS DISRUD
ART CAMERON *(Minority)*
ALLEN CUTLER *(Minority)*
GOODLOE SUTTON *(Minority)*
AUGUSTA WILSON *(Minority)*

*Administrative Support*
ROBERT RICH

# CONTENTS

THURSDAY, MARCH 1, 2007


| | Page |
|---|---|
| Department of Commerce: | |
| Office of the Secretary | 1 |
| National Institute of Standards and Technology | 32 |
| U.S. Patent and Trademark Office | 40 |


THURSDAY, MARCH 8, 2007


| | |
|---|---|
| Department of Commerce: National Oceanic and Atmospheric Administration | 117 |
| National Science Foundation | 131 |


THURSDAY, MARCH 15, 2007


| | |
|---|---|
| National Aeronautics and Space Administration | 161 |


THURSDAY, APRIL 19, 2007


| | |
|---|---|
| Department of Justice: | |
| Bureau of Alcohol, Tobacco, Firearms and Explosives | 197 |
| Drug Enforcement Administration | 209 |
| United States Marshals Service | 226 |


THURSDAY, APRIL 26, 2007


| | |
|---|---|
| Department of Justice: Federal Bureau of Investigation | 295 |


THURSDAY, MAY 3, 2007


| | |
|---|---|
| Equal Employment Opportunity Commission | 343 |
| Nondepartmental Witnesses | 381 |

# COMMERCE, JUSTICE, SCIENCE, AND RELATED AGENCIES APPROPRIATIONS FOR FISCAL YEAR 2008

**THURSDAY, MARCH 1, 2007**

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

The subcommittee met at 10 a.m., in room SD–192, Dirksen Senate Office Building, Hon. Barbara A. Mikulski (chairman) presiding.

Present: Senators Mikulski, Kohl, Reed, Shelby, and Alexander.

## DEPARTMENT OF COMMERCE

### OFFICE OF THE SECRETARY

**STATEMENT OF THE HONORABLE CARLOS M. GUTIERREZ, SECRETARY**

OPENING STATEMENT OF SENATOR BARBARA A. MIKULSKI

Senator MIKULSKI. Good morning, the Subcommittee on Commerce, Justice, Science, and Related Agencies will come to order. This is the first time in 13 years that I assume the chair of this subcommittee, and it's a great honor, and it's a bit of an emotional moment.

In 1994, the power transferred to the other party, and in those 13 years, much has changed. Our economy has certainly changed, the challenges to our country have certainly changed, the jurisdiction and scope of this subcommittee has expanded.

The one thing that will not change, is the enduring spirit of bipartisanship that has always been characteristic of this subcommittee, working as I did at VA/HUD, with Senator Bond, and last year with my esteemed colleague, Senator Shelby. We see ourselves as a partnership, on promoting what is right, and so this sense of cordiality, consultation, and civility will continue to be an enduring principle of this subcommittee.

Just to outline a few of the priorities for this year, this subcommittee will focus on innovation, security, and accountability. When I look at the agencies in our jurisdiction, I see tremendous opportunities to promote innovation that creates jobs in our own country, makes our community more secure, while assuring accountability for the stewardship of the taxpayers.

The funding that this subcommittee puts in the Federal checkbook, must meet the mission and mandate of each agency, and

make a down payment on its priorities. The Commerce, Justice, Science Subcommittee is the innovation subcommittee. If America is going to be more competitive, we need to focus on funding and policies to develop new technologies, that lead to new products and new industries that create new jobs.

It is not the role of this subcommittee to pick winners and losers. We are not an industry-controlled society. But it is to provide the basic and applied research that results in these new products and technology, and our agencies set the policies that will make sure that we have an innovation-friendly government.

Over the next several weeks, we will initially focus on innovation. Then we will go to both Federal Bureau of Investigation (FBI) and law enforcement to focus on security. Underlying in all of the hearings will be questions related to accountability, and our stewardship of taxpayers dollars.

We're looking at the National Science Foundation (NSF) that funds promising research and cultivates the next generation of science and engineers, particularly at the graduate level. The National Institute of Standards and Technology (NIST), that we're going to hear from later today, that funds new technologies, to make us more competitive. And, by the way, they win Nobel Prizes, too.

The science at the National Aeronautics and Space Administration (NASA) and the National Oceanic and Atmospheric Administration (NOAA) help us better understand our planet and provides the scientific building blocks for innovation. Nothing gets kids more interested in science, like exploration and discovery in outer space, and the inner space in the ocean.

We want to make sure, though, this—we have an innovation-friendly government. NIST sets measurements and standards that the private sector can rely on, and the world counts on. The U.S. Patent and Trademark Office protects our intellectual property, and the International Trade Administration (ITA) enforces our trade agreements.

We also will be focusing on security, but that's for another day. This subcommittee will also be looking at accountability in terms of the expenditure of taxpayers dollars, and to make sure that, whether it's waste, or abuse, or poor performance, will not be tolerated. But today, we're going to kick off our innovation hearing with the Secretary of the Commerce Department, a long-advocate for America's role in international trade, promoting competitiveness, and encouraging innovation and technology.

Later on, in the second panel, we'll be hearing from the Director of the National Institute of Standards and Technology and also the Director of the Patent Office.

Today, I will want to know how the budget meets the Department of Commerce mission to foster, serve, and promote the Nation's economy, which is a little bit rockin' and rollin' today, but again, you know, we're a country of institutions, and innovation. I want to know how the budget will promote the mission, and how the Commerce Department will improve accountability.

In the accountability areas, the three flashing lights we have are, the NOAA satellite program, also some issues that—the Patent Of-

fice, that I will raise from there, and also the managing of the 2010 census.

But, today, we're very pleased to have the Secretary of Commerce, we want to hear what he has to say, we've enjoyed such a cordial relationship. He has been the President's link to the business community here, and to the growing international markets. So, we welcome him, and with that statement, I turn to my colleague, ranking member and, essentially, vice chairman, Senator Shelby.

STATEMENT OF SENATOR RICHARD C. SHELBY

Senator SHELBY. Thank you, Senator Mikulski.

As Senator Mikulski said, we've worked extremely well together, sharing many of the same goals and the expectations of the agencies that we oversee. We go back to our House days on the Energy and Commerce Committee, seems like yesterday, but it was more than that, I think Senator Mikulski would note.

But I'm—Senator Mikulski, I'm pleased to serve beside you, once again on this subcommittee. I served as chairman, and now I serve as ranking, and you as chairman. Perhaps that'll change someday, but until it does change, we'll be working together either way.

Today, I also welcome the Secretary of Commerce before the subcommittee as well as Dr. Jeffrey and Mr. Dudas. I look forward to learning more about how the 2008 budget request will improve the Department of Commerce, many important activities. The Nation, Mr. Secretary, relies heavily on the Department of Commerce that you head up, to maintain America's competitiveness within today's foreign marketplace, and to promote and to expand our international trade agreements.

Through the programs of the Department of Commerce, the country is able to maintain high technical standards, as well as staying on the cutting edge of scientific research, all of which are fundamental, Mr. Secretary, to our Nation's leadership in the global market. You know this well.

Overall, the Department of Commerce's budget request for 2008 is $6.5 billion. This is an increase of $90.4 million from the funding level provided in the joint resolution for fiscal year 2007.

Mr. Secretary, at this time, I want to also compliment you on how well your Department, through NOAA, continue to perform along the gulf coast in the wake of the devastating 2005 hurricane season. Last year, the committee appropriated $150 million in emergency supplemental funding through the Department to aid recovery efforts, which you needed. A portion of these funds went toward locating—and removing—marine debris deposited by the hurricanes. Fishing snags, and navigational hazards that halted maritime commerce, and pose a threat to the fishing industry of being removed.

I've seen the images of salvage wreckage, which include fuel storage tanks, large trees, and even sunken barges. NOAA, with the help of partner agencies, is quickly and efficiently clearing obstructed shipping channels and fishing grounds, making the area safer, which is vital to the economies of Mississippi, Louisiana, and of course, my State of Alabama.

I share Senator Mikulski's expectations for the Department of Commerce, particularly her emphasis on accountability. We have to be accountable. We will continue to monitor how the Department strengthens, and improves computer security to protect sensitive agency information, and we will continue our scrutiny on cost overruns and schedule delays which negatively impact NOAA's satellite program.

The Department's request includes $1.2 billion for the Census Bureau, which—with nearly one-half of these funds directed toward the anticipation of the 2000 census—all comes under your jurisdiction.

The decennial census, and the comprehensive collection of other surveys makes the Census Bureau a provider of fundamental data to Federal, State, and local governments, financial markets, and the public. These data sets are collected from a wide variety of sources, including businesses and citizens. Public trust, Mr. Secretary, in the security and confidentiality of this information is absolutely critical to the accuracy and the validity of the vital statistics published by your agency.

There have been recent problems with the Department of Commerce and other Government agencies, of not having adequate security measures in place to protect personal data. Less than 3 weeks ago, in my home State, Birmingham, Alabama, the Alabama—the Veterans Administration's employee laptop was stolen, it's all been in the news. It contained hundreds of thousands of records of personal information belonging to veterans. This is not under your jurisdiction, I know, but this is an incident, and that's unacceptable.

I cannot emphasize how critical it is that the data be secure. The Census relies upon information from people divulging this data, and public trust in the security and confidentiality of the information being provided is absolutely crucial to the accuracy and validity of the vital statistics published by your agencies.

The Department must never lose sight of the duty to protect the information it collects. I'm pleased to see the American Competitiveness Initiative, or ACI, has continued to receive support from the administration, through the National Institute of Standards and Technology budget request. ACI will keep the competitive edge that our Nation expects in the world economy through research and innovation, by focusing on the ingenuity of our people, and tying our capabilities to policies that will keep us at the forefront of scientific and technical advancement for generations to come.

The collaboration of NIST and industry and academia is an excellent example of how this country can take advantage of these resources, and remain competitive in an increasingly challenging world. I believe that such collaboration can be seen in my home State of Alabama. NIST working with the University of Alabama at Birmingham is in early developmental stages for standards in research related to medical devices, for example. Such collaborations combine the expertise of our world-class research universities, with the needs of our Nation, and the end result is innovation and creative problem solving.

I look forward to Dr. Jeffrey's testimony on how the work in NIST will continue to ensure the Nation's competitive edge.

Mr. Secretary, I will also be interested in your comments about the rationale to exclude NOAA from ACI, something that I believe is a mistake. It seems logical to me that NOAA's vast research capabilities be utilized in these efforts. The strength of America's economy rests on our ability to innovate and to use the latest in technology, to solve the problems of today and preserve our economic and scientific leadership in the future.

Certainly the activities of both NIST and NOAA will work to keep the Nation competitive, and inspire the next generation of scientists and researchers. I hope to learn more today, from Mr. Dudas, about how the U.S. Patent and Trademark Office intends to further protect American businesses in 2008 from theft and piracy.

Intellectual property rights and its associated enforcement, continue to have an important impact on international trade, and the U.S. economy. Intellectual property-based industries in this country are one of the largest exporters in the global economy, as you know.

Protecting the value of these rights is critical if we, as a Nation, are to continue being a world leader in innovation. Piracy of those rights costs the American economy and the American workers tens of billions of dollars each year.

Mr. Secretary, we look forward to your testimony, and we appreciate your appearance here today.

Senator MIKULSKI. Thank you very much, Senator Shelby.

Just in terms of the rules of the subcommittee, we're going to recognize people in their order of arrival. And, if they have opening statements, we will put them in the record, or we ask that they incorporate them in their early questions, so we can move to the Secretary, and move to your questions.

Mr. Secretary, would you proceed, and then we'll go to questions?

Mr. GUTIERREZ. Thank you.

Madam Chairman, and Senator Shelby and members of the subcommittee, I'm pleased to present President Bush's fiscal 2008 $6.55 billion budget request for the Commerce Department. With your permission, I'd like to briefly discuss some key elements of our budget and programs, and submit my written testimony for the record.

We believe this is a very disciplined budget. It is focused on the best use of taxpayer resources to advance America's economic and innovative leadership in an increasingly competitive world. So, we've had to make some choices regarding where we allocate the increases, and where we focus our time.

Among the highlights of the increases are, $338 million for the Census Bureau to ramp up for 2010, and reevaluate data collection programs; $69 million for the National Institute of Standards and Technology to implement the second year of the President's American competitiveness initiative, and $123 million for NOAA administration—for NOAA to fund high-priority oceans projects.

Every agency in the Commerce Department is charged with the same critical mission—to promote American innovation and competitiveness, to create economic opportunities, and to improve the lives of the American people.

I'd like to do something a little different this time, Madam Chairman, and that is to illustrate how Commerce agencies are fulfilling the mandate by developing, protecting, promoting, and strategically using innovative technologies, such as the global position system (GPS). I brought some examples here to show how new technology can be transferred to different bureaus within the agency, and I think it's also representative of how one technology for one given industry can be used in many industries around the country.

As you know, the global positioning system technology is now so advanced, the device is as small as this cell phone. I actually have a GPS incorporated into the cell phone. GPS has multiple applications—the technology is used by governments, businesses, and individuals.

The world's first atomic clock, which is the key innovation that enables GPS to work, was invented by scientists at the National Institute of Standards and Technology. This digital clock here, which is always exactly on time, contains technology that synchronizes with the NIST atomic clock. Its timing is extremely accurate, and it can adjust automatically for changes in daylight savings time.

NIST is now pioneering new approaches to atomic timekeeping, such as the chip-scale atomic clock. We expect that chip-scale atomic clocks will soon be used in GPS receivers, cell phones, and other portable electronic devices, to greatly improve performance.

Last year alone, the U.S. Patent and Trademark Office issued over 800 GPS-related patents. The Census Bureau is adopting GPS technology to collect street coordinates, and create a more accurate database for field personnel. It will be incorporating GPS-equipped handheld computers like this one into data collection operations during the 2010 census, to improve productivity, and reduce errors. Just as a matter of illustrating how advanced this is, in my previous role, our sales force had laptop computers, but they were very heavy, and very cumbersome. I find it today, it's actually quite light and very easy to hold up, so we continue to make great advances in this technology.

Senator MIKULSKI. Excuse me, Mr. Secretary, that's what the census takers are going to have?

Mr. GUTIERREZ. Yes.

Senator MIKULSKI. So everything will—go ahead.

Mr. GUTIERREZ. That's right. Whatever doesn't get sent through the mail, will be followed up using this handheld device. To get into it, they actually use their thumb, that protects the device from anyone else wanting to use it.

Senator MIKULSKI. Could you, tell us then, what are the security measures? Because, we're not America's snoop, we're America's census takers.

Mr. GUTIERREZ. Right.

Senator MIKULSKI. How would it protect personal information?

Mr. GUTIERREZ. Yes. This essentially will have a password and probably the most accurate device, which is a thumbprint for the specific enumerator.

And if you'd like, I'll pass this onto you so you can take a look, why don't you just go ahead and give it to them. Thank you.

Additionally, NOAA has created a network of GPS-tracking stations that makes available to the public minute measurements that are used to establish real estate boundaries, position bridges and roads, and do other geo-spatial work.

The International Trade Administration (ITA) is working to remove trade barriers to increase export sales of innovative U.S. GPS technology, with NOAA and the National Telecommunications and Information Administration (NTIA). ITA is also taking the lead to ensure a level playing field for U.S. GPS manufacturers, as Europe enters the satellite navigation market.

The Bureau of Industry and Security continues to monitor and control dual-use GPS technology, and export sales, to protect our national security while ensuring that America's GPS industry has access to open markets.

Measuring the impact of our economy, of innovative R&D, and technologies like GPS to reflect new, 21st century realities, is now the subject of research by our Economics and Statistics Administration (ESA), in coordination with the private sector. This is an example of how we're thinking about technology, and an example of what we believe is success, to develop one technology that can be transferred quickly across many industries, so we can get the benefit across our economy.

Madam Chairman, I use this GPS example to tell the story of the Commerce Department commitment to providing America's industries and workers with the services and tools needed to continue to make this the most competitive country in the world.

The President's fiscal 2008 budget request for the Department is reflective of this commitment and more importantly, this commitment is behind where we have made decisions to allocate budget funds. It is carefully targeted to programs necessary to maintain our competitive edge in this very intense economy.

PREPARED STATEMENT

I look forward to working with you to achieve this important goal, I thank you for giving me this opportunity to discuss the President's budget, and the role of the Commerce Department in advancing our Nation's economic strength. I feel very privileged to be able to represent the Department and the President at this very critical time in our history, and I'd be pleased to hear your comments and take any questions, thank you.

[The statement follows:]

PREPARED STATEMENT OF HON. CARLOS M. GUTIERREZ

Madam Chairman and members of the subcommittee, I am pleased to appear before you today to present the President's budget request for the Department of Commerce. Our request of $6.55 billion in discretionary funds reflects a balance between the administration's commitment to promote and sustain economic growth, and the need to restrain discretionary Federal spending. Enactment of this budget will enable the Department to continue to support the innovative and entrepreneurial spirit of America and increase our competitiveness in the international marketplace.

The President's fiscal year 2008 budget request of $3.82 billion for the National Oceanic and Atmospheric Administration (NOAA) reflects the administration's commitment to environmental stewardship. NOAA encompasses the National Weather Service, which provides critical observations, forecasts and warnings; the National Environmental Satellite, Data and Information Service, which provides timely global environmental satellite data; the National Marine Fisheries Service, which provides stewardship of the Nation's living marine resources and their habitat; the Na-

tional Ocean Service, which measures and predicts coastal and ocean phenomena; the Office of Oceanic and Atmospheric Research, which provides research for understanding weather, climate, and ocean and coastal resources; and the Office of Marine and Aviation Operations, which operates a variety of aircraft and ships providing specialized support for NOAA's environmental and scientific missions.

This budget request includes increases of $123 million for projects that will advance ocean science and research, protect and restore sensitive marine and coastal areas and ensure sustainable use of ocean resources. These initiatives will further the administration's commitment to make our oceans, coasts and Great Lakes cleaner, healthier and more productive, as reflected in the U.S. Ocean Action Plan and creation of a Cabinet-level Committee on Ocean Policy.

The increases for ocean science and research include $20 million to implement the Ocean Research Priorities Plan, $16 million to support the Integrated Ocean Observing System, and $8 million to define the outer limits of the U.S. extended continental shelf.

The increases to protect and restore coastal and marine areas include $8 million for management of the newly-designated Northwestern Hawaiian Islands Marine National Monument, $10 million for restoration of nearly 1,000 miles of habitat for the endangered Atlantic salmon in the Penobscot River watershed, $15 million for the Coastal and Estuarine Land Conservation Program, and $5 million for the implementation of coastal resource priorities identified by the Gulf Coast States.

The increases for ensuring sustainable use of ocean resources include $20 million to improve fishery management, including $6.5 million to implement the newly-reauthorized Magnuson-Stevens Act. An additional $3 million will support development of offshore aquaculture, for which the administration has proposed legislation to establish clear regulatory authority and permitting processes.

The President's fiscal year 2008 budget also continues support for development and acquisition of geostationary and polar-orbiting weather satellites, for climate research programs, and for high priority weather forecasting endeavors including improvements to hurricane modeling and tsunami warning systems.

The Economics and Statistics Administration (ESA) promotes the understanding of the U.S. economy and its competitive position. Under ESA's umbrella, the Bureau of Economic Analysis (BEA) provides key objective data, including the Gross Domestic Product, on the Nation's economic condition in a timely and cost-effective manner. The President's fiscal year 2008 budget requests $85 million for ESA Headquarters and BEA to provide statistics that are critical to public and private sector decision-making. This request includes an increase of $2 million to measure the impact of research and development along with other knowledge-based activities on economic growth.

ESA's Census Bureau is the leading source of quality data regarding the Nation's population and economy, and the President's fiscal year 2008 budget requests $1.23 billion in discretionary funds for the Census Bureau. This includes a program increase of $325 million for Periodic Censuses and Programs. Of this increase, the largest component is $281 million to continue reengineering the 2010 Decennial Census to reduce operational risk, to improve accuracy and relevance of data, and to contain total costs and provide for the 2008 Census Dress Rehearsal. Another program addition includes $43 million to support collecting and processing data from the 2007 Economic Census. Also included is an $8.1 million initiative to provide quarterly and annual coverage of all 12 service sectors, matching the coverage of the quinquennial Economic Census. This will greatly improve understanding and tracking of economic developments in the service sector, which currently accounts for 55 percent of Gross Domestic Product.

The International Trade Administration (ITA) supports U.S. commercial interests at home and abroad by strengthening the competitiveness of American industries and workers, promoting international trade, opening foreign markets to U.S. businesses, and ensuring compliance with domestic and international trade laws and agreements. The President's fiscal year 2008 budget requests $412 million for ITA to serve its goals, including an increase of $1.3 million for monitoring and enforcement of compliance with Free Trade Agreements, concluding the Doha Round of World Trade Organization (WTO) negotiations and reducing market access barriers through relevant WTO committees.

The Economic Development Administration (EDA) supports America's regions in their growth and success in the worldwide economy. The President's fiscal year 2008 budget requests $203 million for EDA to carry out its mission effectively.

The Bureau of Industry and Security (BIS) regulates the export of sensitive goods and technologies to protect the security of the United States. The President's fiscal year 2008 budget requests $79 million to enable BIS to effectively carry out this mission. This request reflects greater efficiencies from the consolidation of adminis-

trative services and increased use of information technology in handling export applications, resulting in savings of $1.5 million from the President's fiscal year 2007 request adjusted for inflation.

The Minority Business Development Agency (MBDA) focuses on accelerating the competitiveness and growth of minority-owned businesses by assisting with economic opportunities and capital access. The President's fiscal year 2008 budget requests $29 million to support MBDA's programs and expand the availability of services to minority business enterprises.

The President's fiscal year 2008 budget request of $641 million for the National Institute of Standards and Technology (NIST), a part of the Technology Administration (TA), will advance measurement science, standards, and technology. NIST's activities provide key support for the administration's American Competitiveness Initiative. This budget request includes a $69 million increase for NIST laboratories, National Research Facilities, and Construction and Major Renovations. Of these funds, $47 million are proposed to support critical improvements to NIST's research laboratories in Boulder, Colorado and the NIST Center for Neutron Research in Gaithersburg, Maryland, while $22 million are proposed to support research programs in nanotechnology, quantum information science, climate change measurements and standards, disaster-resilience of structures and earthquake hazard reduction.

The Under Secretary for Technology (TA/US) currently provides policy guidance to the Secretary of Commerce and the Technology Administration's component agencies (NIST and NTIS). Technology plays a critical role across every sector of the economy, and the promotion of technology in advancing America's competitiveness has become an integrated part of the mission across the bureaus of the Department. In keeping with this evolution, the President's fiscal year 2008 budget proposes to modernize the Department's approach to technology policy by elevating those activities to the secretarial level. This modernization includes the appointment of a senior advisor in the Department's Office of Policy and Strategic Planning who will chair a Department-wide Technology Council to coordinate technology policy activities across the Department in lieu of a stand-alone Technology Administration. The request of $1.6 million provides resources for the orderly transition of TA/US to the new coordinated structure.

The National Technical Information Service (NTIS) collects and preserves scientific, technical, engineering and other business-related information from Federal and international sources and disseminates it to the American business and industrial research community. NTIS operates a revolving fund for the payment of all expenses incurred and does not receive appropriated funds.

For the National Telecommunications and Information Administration (NTIA), the President's fiscal year 2008 budget request includes $19 million in discretionary budget authority. During fiscal year 2008, NTIA estimates obligating $534 million from the Digital Television Transition and Public Safety Fund to support several programs created by the Deficit Reduction Act of 2005, most notably $426 million for the Digital-to-Analog Television Converter Box Program. Following enactment of the Call Home Act of 2006, up to $1 billion will be awarded in fiscal year 2007 to qualified applicants in the Public Safety Interoperable Communications Grant program, though outlays will continue over several fiscal years.

Furthering the mission to promote the research, development, and application of new technologies by protecting inventors' rights to their intellectual property through the issuance of patents, the President's fiscal year 2008 budget requests $1.9 billion in spending authority for the U.S. Patent and Trademark Office (USPTO). The USPTO will use these funds to reduce application processing time and increase the quality of its products and services. This includes $36 million to hire new examiners to improve processing times and increase the quality of its services. Consistent with prior years, the administration proposes to fund the USPTO budget exclusively through offsetting fee collections. Fee collections for fiscal year 2008 are projected to cover the proposed increases.

The USPTO, the National Intellectual Property Law Enforcement Coordination Council (NIPLECC), and ITA participate in the Strategy Targeting Organized Piracy (STOP!) initiative's goal of ending trade in counterfeit goods. This initiative places additional intellectual property experts in high priority markets, trains foreign government officials in intellectual property protection, and educates foreign publics about the importance of intellectual property. STOP! also provides resources for harmonizing patent laws, and for supporting the negotiation of intellectual property sections of free trade agreements.

Today, I would like to show how diverse components of the Department contribute to innovation and competitiveness. Many people see the Department of Commerce as a conglomerate with diverse and distinct missions. While the Department's bu-

reaus encompass broad, but distinct, areas of the American economy, their core mission is U.S. competitiveness.

Innovation is essential to competing globally and enhancing our quality of life. This is increasingly important as political and technological changes open access to the global economy—creating both new markets and increased competition. The Department of Commerce is well positioned to help America address this challenge.

There are many areas across the Department where we are working on different aspects of competitiveness. Technological innovation is one of this Nation's most significant competitive advantages. The Department promotes and protects technological innovation through the efforts of its bureaus. A prime example is Global Positioning System (GPS) technology. Highly accurate timekeeping is a crucial element of GPS. The Department's National Institute of Standards and Technology (NIST) invented the core GPS timekeeping technology—the world's first atomic clock—in 1949 and continues to make significant improvements in its accuracy.

GPS is made up of more than two dozen satellites in medium Earth orbit, which transmit signals that allow GPS receivers to determine location, speed and direction. Since the launch of the first experimental satellite in 1978, GPS has become a vital tool to governments, businesses, and private citizens worldwide. Its navigation capabilities are indispensable not only to the airline and shipping industries, but also to many Americans who now have personal GPS devices that they use in their cars, on bikes, and while camping and hiking.

As the timekeeping technology improves, so do the navigation capabilities of GPS, expanding its uses into more areas. Currently, NIST operates the world's best standard atomic clock, NIST–F1, with an accuracy equivalent to about one second in 70 million years. NIST scientists are developing new atomic clocks that will soon be accurate to one second in many billions of years. NIST also is pioneering new approaches to atomic timekeeping such as the chip-scale atomic clock, which could dramatically improve GPS receiver performance and impact many other technologies.

In addition to developing technologies underlying GPS, the Department, through the United States Patent and Trade Office (USPTO), protects individual and corporate inventors of GPS technology. In exchange for this protection, inventors are required to share information about their inventions, allowing others to build upon them and create further innovations. Taking GPS as an example of how well the patent system encourages innovation, the USPTO issued over 800 GPS-related patents in 2006 alone.

The Department, through the USPTO, also helps protect both GPS manufacturers and the public by registering trademarks. Manufacturers rely on trademark protection received from registering their trademarks with the USPTO to prevent others from marketing products under their good names. The public relies on trademarks as an assurance of the quality and source of the products they purchase.

The Department understands that GPS and other technological innovations are critical to making the U.S. more globally competitive. As such, the International Trade Administration (ITA) works closely with the United States Trade Representative to develop Free Trade Agreements (FTA) that will eliminate duties on GPS receivers and transmitters in all FTA countries. This will expand opportunities for U.S. businesses, allowing them to export these GPS technologies to FTA countries duty-free. ITA, along with NOAA and NTIA, is also taking the lead in trade discussions with Europe to maintain a level playing field as Europe's upcoming Galileo system enters the satellite navigation market.

Additionally, ITA's U.S. Commercial Service assisted iSECUREtrac Corp, based in Omaha, Nebraska, with a contract for the sale and installation of the first ever state-of-the-art Canadian-based GPS host monitoring system capable of serving the mission critical offender monitoring requirements of every Canadian Province.

As trade barriers are reduced and technology transfer becomes more seamless across the globe, GPS technology is increasingly disseminated worldwide for both civilian and military use. The Department's Bureau of Industry and Security (BIS) oversees and implements regulations that clearly distinguish between military and civilian GPS user equipment to foster economic growth in the U.S. GPS manufacturing industry while protecting U.S. national security. These regulations define, identify, and distinguish military receivers, encryption devices, and GPS components with missile or certain defined airborne applications from their civilian counterparts. These controls have helped accelerate U.S. industry's exports to foreign GPS markets and have enabled the U.S. GPS manufacturing industry to retain a large share of those markets.

Prior to September 1991, most GPS user equipment shipped abroad required individual validated licenses to ensure compliance with U.S. export control regulations. Under current regulations, civilian GPS receivers, other satellite equipment, and as-

sociated telecommunication equipment are allowed to be shipped, with certain restrictions, to most destinations without a license. However, BIS has implemented stringent regulatory controls to prevent transfer of GPS equipment to terrorist-supporting countries, as well as to those end users known to be involved in proliferation activities. These export license applications are closely scrutinized and vetted in an interagency review process coordinated by BIS.

Beyond making GPS work better, helping facilitate the success of U.S. businesses in the global marketplace, and ensuring that the global spread of GPS technology will not endanger our national security, the Department utilizes advances in technology to significantly improve how we conduct business—making our processes more efficient. For example, the Census Bureau launched a reengineering effort in preparation for the 2010 Decennial Census that centered on using technology to improve processes and keep down overall lifecycle costs. GPS technology is critical to the success of this effort. The first step involves collecting the GPS coordinates of streets, county by county, across the Nation. This multi-year effort will be completed in 2008, giving the Census Bureau an accurate database for the country. This database, the Topologically Integrated Geographic Encoding and Referencing system (TIGER), will then allow personnel operating in the field to know their relative position—a critical aspect of finding the right housing unit.

GPS-equipped handheld computers (HHCs) will be used for data collection in several major field operations during the 2010 Decennial Census. During the address canvassing operation, the HHCs will be used to record GPS coordinates for every structure, including newly identified addresses. Later, using GPS, the HHCs will enable staff to conduct data collection for the non-response follow-up operation, allow for the removal of late mail returns, and record daily payroll for all census enumerators. The use of GPS technology will result in improved productivity and reduced errors.

The Economics and Statistics Administration is building measures of innovation in the economy generated by such technological advancements as the GPS-equipped HHCs. Similarly, the Bureau of Economic Analysis is refining its ability to measure the impact of research and development on the economy.

In addition, NOAA uses GPS to navigate its fleet of ships; enforce fishery boundaries in open waters to prevent overfishing; survey the Nation's coastlines, waterways, and airport approaches; and make improved weather forecasts. NOAA also provides a public service to the Nation known as the National Continuously Operating Reference Station (CORS) network. The CORS network consists of over a thousand GPS tracking stations that enable users to refine GPS measurements down to the centimeter level, which is particularly important for measuring real estate boundaries, positioning bridges and roads, and doing other geospatial work.

CONCLUSION

The Department of Commerce's development, promotion, and advancement of GPS technology demonstrates how the Department successfully encourages innovation to create economic growth without sacrificing our national safety. It also illustrates that Commerce is a diverse group of agencies, with varied expertise and differing needs, all engaged in a common commitment to keep the United States at the global forefront of competitiveness and innovation. This is the way we at the Department do business every day—working together, across disciplines, making real, positive, and sustained impacts on the American economy.

The President's fiscal year 2008 budget effectively meets those needs, while exercising the fiscal restraint necessary to sustain our economic prosperity. I look forward to working with the committee to keep our Nation's economy growing and strong, and to promote and preserve the American people's entrepreneurial spirit.

Senator MIKULSKI. Well, thank you very much, Mr. Secretary for that informative conversation and also bringing us in the real-world capability. And, of course, it would involve the Patent Office as well, because while people invent it, we gotta protect it, so others don't steal it.

But, let me get right to the heart of my questions. As we look at the President's budget request of $6.5 billion, about one-half is in NOAA, and about one-third is in the Patent Office, the Patent Office about $1.9 billion—we'll round it off and say $2 billion—and there were other related agencies.

PROMOTING INNOVATION

Let's go to your promotion of innovation, you meaning Commerce, and not you personally. How do you see, given that you have the major agencies of NIST, NOAA, the Patents and some other related agencies—where is it in your operation that says, we've got to promote innovation, and I'm going to stand sentry over it to make sure we're coming up with the kind of research ideas, and then as industry does what it does—which is invent—we protect them. Do you have a one-stop shop? How does this work?

Mr. GUTIERREZ. Stepping back, the way we're thinking about it, is our whole economy is really a partnership between the private sector, the public sector, and academia. The private sector does about two-thirds of all the research and development (R&D) spending in the country, and that R&D in the private sector is very focused on the development side.

The Government does about one-third, and of that one-third, its primary focus is on the "R," the research side. We tend to do projects that are very long term in nature, that the private sector sometimes does not have the time or the resources, or the competitive environment to be able to take the time to look out 10 or 15 years.

As we work on our technologies, we have to ensure that there's a customer on the other end. And that customer, of course, is the private sector. Dr. Jeffrey, I hope, will be talking about members of the private sector that work inside of NIST. And every time we open up a project in NIST, it starts out with members of the private sector who are interested in the developments of that project.

As part of our overall system, we have to have a patent and trademark operation that responds to increasing demands of businesses, and increasing demands to be responsive to issue patents, and to issue trademarks and copyrights. In essence, we participate in the creation of the innovation, we coordinate very closely with the private sector, and then we enable that innovation by having an efficient Patent and Trademark Office. I would say innovation is embedded in every one of our bureaus.

Senator MIKULSKI. But you have a coordinating council?

Mr. GUTIERREZ. Yes, we do.

Senator MIKULSKI. That you chair?

Mr. GUTIERREZ. This is a new Technology Policy Council, as well as an Innovation Metrics Advisory Council, which we've just started.

Senator MIKULSKI. Yeah, I've read about it in Technology News, I actually read these things. It's great.

Mr. GUTIERREZ. We just had our first meeting, too.

PATENT AND TRADEMARK OFFICE REMEDIATION PLAN

Senator MIKULSKI. Well, in—first of all, I think, I know Senator Shelby wants to talk about NOAA and why it wasn't in the President's competitive agenda, but I'm going to take up the issue of intellectual property, and then come back to NOAA and its satellites.

When I read the inspector general's report of the commerce, it talked about the major challenges of the Department, and it said it was making improvement. But one of the things that it raises

is the fact that we have to ensure that the Patent Office uses its authorities and flexibilities to achieve better results—and I would say money, too, because that goes with it.

In the last 5 years, under Senator Gregg, Senator Hollings, and Senator Shelby, and now me—we've increased Patent Office by 50 percent. And you're close to $2 billion. Yet, there continues to be reports about the management issues, and I know we'll hear about it more in the testimony—the lack of effective strategies to communicate and collaborate with examiners, of course, the production quotas, which is the tremendous backlog, and the lack of ongoing technical training for examiners. I won't go through every item, but I commend to you the GAO report, and also the major challenges.

Now, we want to hear from Mr. Dudas about this. I would like to have a remediation plan. And I'd like to have it from Mr. Dudas, as the Chief Executive in the agency, but I would also ask that you personally review that remediation plan, and get back to us in about 45 days. So, that when we do this year's appropriation, it is about money, it is about management, it is about leadership, and it's about protecting our ideas.

So, if we could have a specific remediation plan that goes along with this, I think we would go a long way.

Mr. GUTIERREZ. Yes, Madam Chairwoman, we will do that, and we will have a plan ready for your review. I think that's an excellent idea.

[The information follows:]

USPTO REPORT "THE PATH TO THE FUTURE, THE NEXT STEPS"

*April 2007*

EXECUTIVE SUMMARY

Fiscal year 2006 was a record-breaking year for the USPTO. Our 8,500 employees had the highest production, highest hiring, highest usage of electronic filing and electronic processing, highest number of examiners working from home and lowest error rate in history. While this is a source of pride, we all recognize that even more can and must be done. Below is a list of initiatives that are either in place, being piloted for implementation, or are planned for implementation as permanent improvements.

MEASURES IN PLACE

*Pendency/Productivity*

The USPTO has built a performance-based culture.

Hiring 1,200 new patent examiners per year (fiscal year 2006–2012).

Improved Training for new patent examiners in a university-style environment.

Accelerated Examination—a guaranteed complete patent examination in 12 months.

Increased overtime authorization levels and a home office laptop program to increase morale and encourage productivity.

Electronic Processing from start to finish.

Work Sharing with foreign patent offices to decrease U.S. examiners' workload.

Flat Goal pilot program to allow examiners more flexibility and an opportunity to earn increased bonuses for increased productivity.

Early Interviews between applicants and examiners—speeds the process by focusing issues and minimizing misunderstandings.

*Human Resources*

Aggressive and Expanded Recruitment efforts targeting able candidates likely to succeed in an individualized, production-oriented environment.

Higher Pay: Special pay rate for examiners; bonuses for higher production and quality; recruitment bonuses; and retention bonuses.

Teleworking: The USPTO has the gold standard for federal teleworking. More than a thousand patent and trademark examiners are working from home with hundreds more added each year.

Increased and better communication with employees through management training, employee training and communication initiatives.

MEASURES PROPOSED

Applicant Quality Submissions aid and hasten examiner reviews.

Public Review of published applications.

Public Quality Submissions allow the public to comment on pending applications with more prior art, which results in quicker, higher quality examiner reviews.

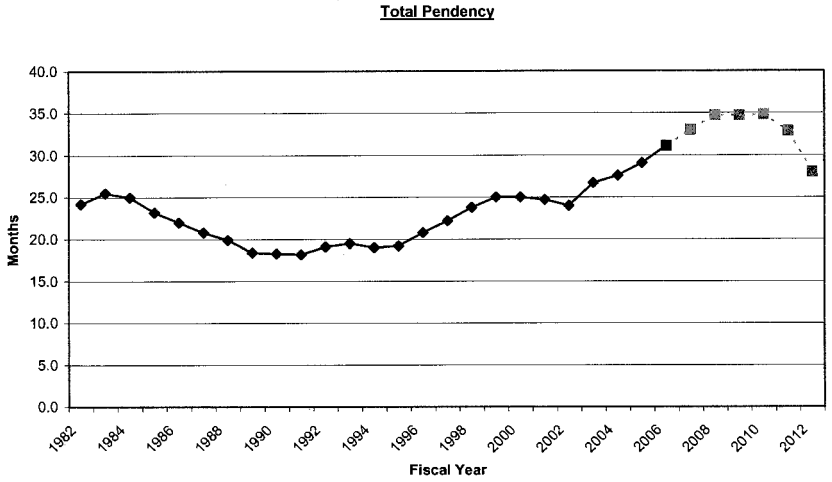
National Workforce so USPTO employees may "work from anywhere" in the United States.

Alternative approaches to examination.

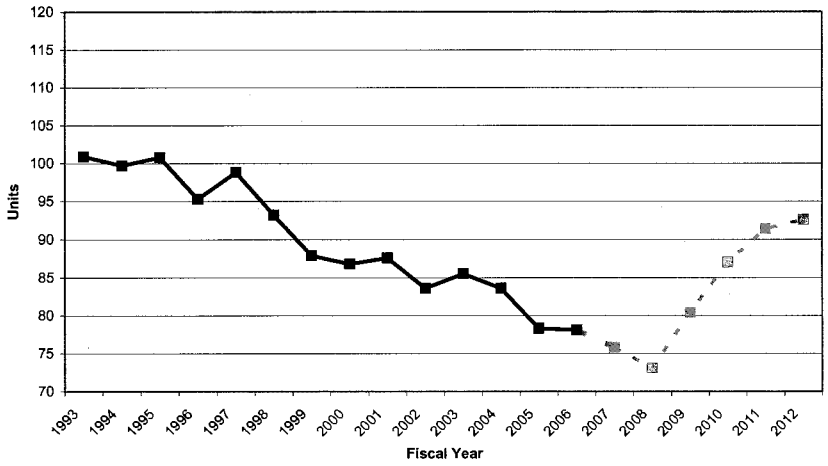
University certification program to prepare students for examiner jobs at USPTO.

The charts below illustrate the impact on the Pendency, Productivity, and Quality measures if the Proposed Applicant Quality Submissions are executed:

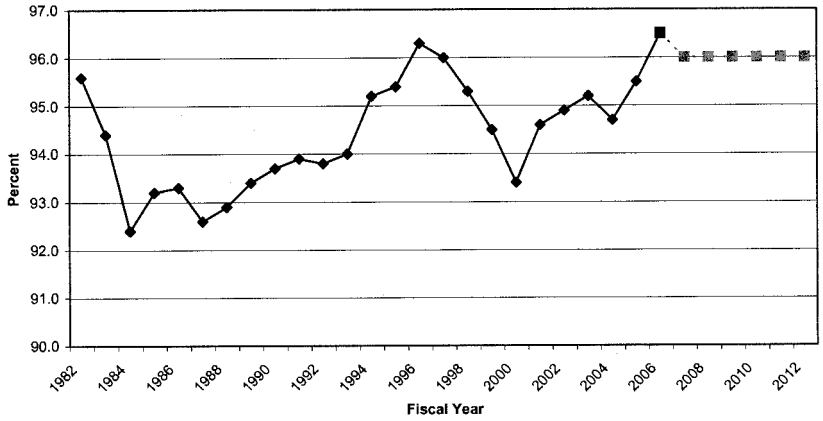
| Fiscal year | Pendency | Productivity | Quality |
|---|---|---|---|
| 2007 | 33.0 | 75.8 | 96.0 |
| 2008 | 34.7 | 73.1 | 96.0 |
| 2009 | 34.7 | 80.4 | 96.0 |
| 2010 | 34.8 | 87.0 | 96.0 |
| 2011 | 32.9 | 91.4 | 96.0 |
| 2012 | 28.0 | 92.6 | 96.0 |

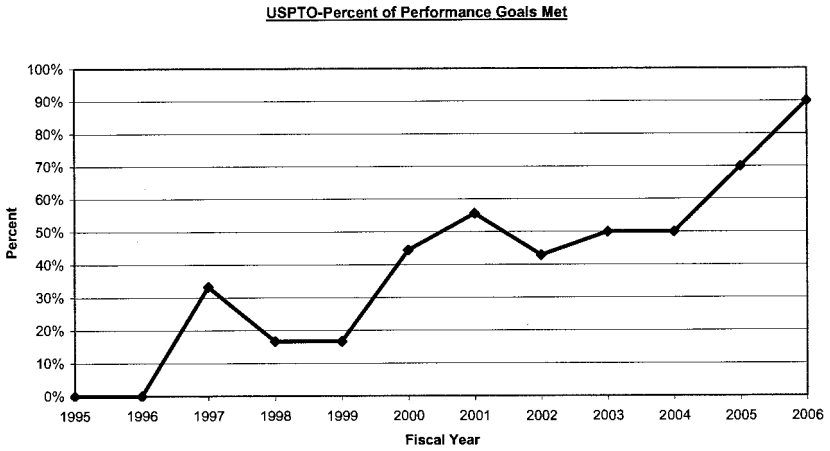


**Productivity**




**Quality**






As the chart above illustrates, in fiscal year 2006 the USPTO met 90 percent of the performance goals established pursuant to the Government Performance and Results Act of 1993 (GPRA), providing its best record to date for achieving important measures of performance and results.

This report lists and discusses our ongoing, planned, and envisioned initiatives intended to address the challenges facing the USPTO in terms of patent pendency, patent application backlog, and the effective recruitment, training and retention of patent examiners.

ADDRESSING PATENT PENDENCY AND APPLICATION BACKLOG

*Hiring Patent Examiners*

With full access to our collected fees, the USPTO hired a record 1,218 patent examiners in fiscal year 2006, exceeding our hiring goal by more than 200 examiners. The USPTO plans to hire 1,200 patent professionals a year in fiscal year 2007 through fiscal year 2012 for a gross total of at least 8,400 patent examiner new hires by end of year fiscal year 2012. After attrition, USPTO staffing increased by 683 in 2006 and will increase by 3,900 over 2006–2012.

While hiring a sufficiently qualified and productive patent corps is a critical factor in controlling pendency and reducing backlog, we recognize that hiring alone is simply not enough. Supplemental initiatives, including fuller participation by patent applicants as described below, will help us attain our long-term strategic goal of reducing patent pendency from the current 33 months to 28 months for final disposition, by 2012.

*Full Access to Fees*

We are thankful that the subcommittee and your House colleagues have ensured that our current fee schedule remains in effect for fiscal year 2007. We are also pleased that the fiscal year 2008 budget request gives the USPTO full access to the $1.9 billion in fees we expect to collect. This is the fourth consecutive year that the President's budget recommends full access to collected fees, and the USPTO appreciates the continued Congressional support for that funding level.

The Administration is considering for submission to Congress draft legislation that will make permanent our current fee schedule. We look forward to working with the subcommittee toward enactment of appropriate legislation.

Full access to user fees is needed to allow the USPTO to continue its successful model of disciplined focus on real measures that enhance quality and increase production, increase hiring and training, promote electronic filing and processing, provide telework opportunities for our employees, and improve intellectual property protection and enforcement domestically and abroad.

Full access permits us to finance the initiatives—particularly initiatives requiring long-term planning and commitment—necessary to providing and maintaining reliable, functioning systems. Without Congressional support, we would not be able to function in a business-like manner and achieve these results.

*Electronic Filing and Processing*

The USPTO continues to promote electronic filing and processing of patent applications as a means of reducing paper-based inefficiencies. Patents implemented the Electronic Filing System-Web (EFS-Web), a user-friendly, Internet-based patent application and document submission program. Prior to fiscal year 2006, less than 2 percent of patent applications were filed electronically. After working with the public and introducing the much-improved EFS-Web system in late 2006, a total of 14 percent of patent applications were filed electronically in 2006—with more than one-third being filed electronically in the last month of fiscal year 2006. We anticipate that electronic submission of new applications will grow to more than 50 percent in fiscal year 2007. We will work with our stakeholders to further promote electronic filing and interaction with patent applicants.

We are developing the electronic Patent File Wrapper (PFW) that in conjunction with current Patent Automated Information Systems will allow for a fully automated, text-driven patent application processing system.

Operating in today's wired world requires that the USPTO have full electronic processing that is safe, secure and continually available to employees, applicants and stakeholders. We will continue to work toward that goal.

*Innovative Processing*

The USPTO is developing and reviewing a variety of innovative patent processing initiatives including a new offering for the public called "Accelerated Examination." Under this program, which began August 26, 2006, any applicant who wants or needs quick turnaround can obtain a patent determination within 12 months. In exchange for this quick turnaround, applicants must file a complete application, agree to interviews and accelerated response periods, must file and prosecute their application electronically and must provide more information about the invention to the USPTO in the form of a prior art examination support document. The first application to be completed under this program was filed on September 29, 2006, and the patent issued on March 13, 2007 (less than 6 months from date of filing).

The USPTO is also cooperating in a pilot program involving peer review of patent applications. Up to 250 applications, assigned to Technology Center 2100, which examines computer-related technologies, will voluntarily be placed, by the applicants, on a non-USPTO web site for an expanded and public review by a peer group of patent users, attorneys and academics. The pilot group of applications will include applications filed by small entity filers. The public group will determine and submit to the USPTO what they consider the best available and relevant prior art. The pilot will test whether this peer review can effectively identify prior art that might not otherwise be found by our examiners during the typical examination process. We will also make an evaluation as to whether this process results in measurable examination timesavings and quality improvements.

We will continue to collaboratively work with our stakeholders to determine if there is some combination of examination alternatives to the current one-size-fits-all filing and examination process that would better meet applicants' needs while providing a more efficient use of USPTO examination resources.

The USPTO, with the help of its Congressionally mandated Patent Public Advisory Committee (PPAC), is reaching out to the intellectual property community to seek their input on improvements to the patent system in all areas including, but not limited to, examination, prosecution, enforcement and levels of patenting. Through the PPAC, we anticipate an open dialogue with patent stakeholders and the public as to what the Office needs to do to best protect and encourage innovation in America. We are open to all possibilities from minor improvements to a dramatic overhaul of patent protection, if necessary. We are looking at a wide variety of alternative examination products from those needing statutory changes to those that can be implemented immediately under our existing authorities. We look forward to working with the Congress and the public to develop these possible alternative examination products that effectively and fairly balance the needs of the Office and the interests of the intellectual property community to provide a system that allows for maximum enforceability.

Our long-term strategic goal is to reduce patent pendency from the current level of 33 months to 28 months for final disposition, by 2012. Metrics include reduction of the initial waiting time for patent applications (first-action pendency) in our most backlogged Technology Centers and successful implementation of various initiatives (such as Accelerated Examination) that ensure goal achievement by 2012.

The USPTO is both implementing initiatives and exploring strategies that will reduce the backlog of unexamined patent applications and improve the timeliness of a patent examination.

*Applicant Quality Submissions*

By shining the light inward on the USPTO, we have had the opportunity to improve our system and offer applicants new alternatives. As policymakers, we must also analyze how the patent system can be improved from the outside in. Perhaps the most important element of ensuring that patent examinations are of the highest quality and completed as efficiently as possible is what the applicant files.

The patent applicant has the most knowledge, the most opportunity, and the most to gain by providing the USPTO with the best possible information about his or her invention. Unfortunately, in many cases, applicants have expressed strong concerns about providing the USPTO with information about their applications. In some cases, applicants simply do not want to provide important information for fear that it will limit the scope of the patent they may receive (though such a limitation would be right under the facts and the law) or do not want to do the work associated with better defining their inventions. In some other cases, applicants or their attorneys recognize that providing information improves quality and timeliness but fear that the legal system unfairly punishes them with draconian penalties for innocently omitting information. The theory is that if one provides information, he or she must do so perfectly or potentially lose the patent; whereas, a failure to share any information carries no consequences.

Quality absolutely begins with the application. Nobody knows more about the invention than the applicant. In the Accelerated Examination Program—where the first patent issued in less than six months—the applicant is required to submit to an interview and to provide a search and a support document. Our limited experience with this initiative is that both applicants and examiners believe that more written and oral information from applicants improves quality and timeliness.

We would like to take the success of this model of applicant quality submissions to lower pendency, raise productivity and increase quality in all patent examinations. To that end, we believe that applicants should be given every opportunity and responsibility to provide more and better information to examiners about their inventions. For such a program to be successful, policymakers must work to ensure that more and better information does not become burdensome. Policymakers would also need to consider how the current doctrine of inequitable conduct may discourage applicants from fully and fairly sharing relevant information with the USPTO.

*Rule Making and Examination Reform*

We believe that to effectively address and control pendency, and reduce backlog, the USPTO needs to receive more and better-focused information from applicants themselves and from the public at large. The USPTO has proposed and will propose regulations and administrative changes governing submission of patent applications that will enable our examiners to make more efficient and informed patentability determinations.

First, we have proposed limiting the number of continuing applications and continued examination requests to provide an incentive for applicants to focus their initial patent applications on their inventive contributions. Second, we have proposed to limit the number of claims that are initially examined in order to provide an incentive to focus the examination process. The first and second proposals have optional procedures which continue to provide an applicant flexibility where the applicant may need additional continuing applications or initially examined claims upon a showing of that need or by shouldering additional responsibilities. Numerous comments have been received in response to these proposals and are being carefully considered prior to promulgation of any final rule. In parallel, we have proposed revisions to our information disclosure requirements to focus our limited examination resources on prior art that is most relevant to the examination process. Additionally, we are considering a new practice change to require applicants to conduct a pre-examination search and provide to the Office prior to examination a report on why they believe that they are entitled to the claims presented in view of the information discovered during that search.

Our hope is to achieve examination reform that creates better-focused examination and enhances information exchange between applicant and examiner. We look forward to working with the public and Congress to develop an enhanced examination system that effectively and fairly balances the needs of the Office and the interests of patent applicants, interested third parties and the general public.

*Public Quality Submissions*

While the USPTO currently has a procedure for submission of prior art after publication, which allows submission by third parties within two months of publication, the procedure does not allow explanations or other information about the patents or publications, absent express written consent of the applicant.

We look forward to working with Congress to develop a submission procedure that effectively and fairly balances the interests of the patent applicant, interested third parties and the general public.

We are also looking to provide assistance to the open source community in their development of an open source database to provide examiners with potential prior art.

*Work Sharing*

The USPTO continues to work with the world's major intellectual property offices to study, review and implement work-sharing efforts that promote examination efficiencies in each participating office. The USPTO launched a trial cooperation program with the Japan Patent Office (JPO) last summer to leverage fast-track patent examination procedures already available in both offices to obtain corresponding patents faster and more efficiently. It also permits each office to benefit from work previously done by the other office, in turn reducing examination workload and improving patent quality.

This program is a significant first step in cooperative efforts to support United States and Japanese industries in their global patent prosecution activities and represents the first concrete implementation of a work-sharing arrangement between the USPTO and the JPO.

The USPTO continues to have informal discussions on expanding the work-sharing program to other intellectual property offices, mainly in Australia, the United Kingdom, and Canada. The USPTO will continue its efforts in expanding this program and will develop a coordinated approach among the offices in order to streamline practices and procedures.

ADDRESSING RECRUITMENT, TRAINING AND RETENTION CHALLENGES

*Making USPTO an "Employer of Choice"*

Continuing to attract and retain the finest public servants is a growing challenge. Our employees are at the heart and soul of our intellectual property system, and we need to do everything we possibly can to ensure they have an environment of trust, respect and opportunity.

The USPTO has developed and implemented a variety of workplace-friendly, family-friendly initiatives that have earned the USPTO recognition by Business Week magazine as one of the best places in America to launch a career and to round out one's career. The USPTO has also been lauded by Families magazine as one of the best places in the Washington area to work if you have a family. We will expand and improve our workplace offerings and attributes to promote the USPTO's image as an "employer of choice."

*Recruitment*

The USPTO's recruitment efforts are strong and nationwide in scope. Planning efforts have culminated in targeted TV, print, radio and Internet banner advertising, and developing a brand image, "Examine the Possibilities". Additionally, in 2004, the USPTO increased career and job fair participation and, in 2006, participated in over 180 events throughout the country. Also, in 2006, a recruitment incentive (up to $9,900 per year for four years) was offered to computer and electrical engineers.

A pre-employment compatibility assessment tool has been developed and is in use for all examiners applying through USA Staffing.

We are exploring partnerships with universities to offer intellectual property courses to science and engineering students, develop an internship program, and train students in intellectual property to create a ready pool of potential examiner candidates.

*Internal Communication*

Consistent with recommendations made by the Government Accountability Office in 2005, the USPTO has implemented a wide variety of initiatives to address communication issues, including a pilot program for an Office of Internal Communications in October 2006.

The Commissioner for Patents and Deputy Commissioners host regular Town Hall meetings with employees at all levels throughout the Patent organization. First line supervisors are required to hold regular employee meetings and are held accountable through their performance plans. In 2005, monthly meetings were instituted with Patent management, Administration management and patent union representatives, as well as quarterly Joint Labor Management meetings.

In 2006, we also had the first ever Management Conference for all of the USPTO's managers, numbering over 500 employees. For two days, our managers attended

sessions and collaborated on best practices of how to manage the highly skilled and dedicated workforce at the USPTO.

On November 1, 2006, the USPTO held an agency-wide celebration event where management thanked and praised employees for their efforts in making 2006 a record-breaking year.

*Training and Development*

In fiscal year 2006, the USPTO implemented a university approach to training new examiners. The university method provides training to new examiners in a classroom setting for eight months, rather than using the traditional one-on-one training model. This allows us to deliver intensive training to the newly hired examiners, leaving more experienced examiners and supervisors to focus on quality examination and reducing the backlog. In fiscal year 2006, 123 examiners completed the university's eight-month program. So far in fiscal year 2007, a total of 303 new examiners completed the training, with an additional 451 examiners slated to graduate by the end of the fiscal year. To date, 871 patent examiners are either in the Patent Academy or have completed the eight-month program.

Patent examiner training programs have been enhanced to include eight hours of technical training. We will work to enhance the skill sets of examiners authorized to train others by providing formal training to all personnel who are responsible for training new examiners and reviewing their work.

Sixty-six patent examiners currently participate in USPTO's law school tuition reimbursement program, with tuition assistance up to 24 credits per fiscal year. In addition, tuition assistance up to $5,000 per examiner per fiscal year is available for technical courses.

*Pay and Retention*

Last year, 60 percent of all patent examiners exceeded their goals in production and received a bonus for exceeding those goals. We are proud of their achievements. The average total compensation package (salary plus bonuses) for patent examiners is $99,000. While the U.S. Government's average pay grade is at the GS–8 level, the average at the USPTO is GS–11.

All patent examiners received a 7 percent special pay rate increase in November 2006, making their total special pay rate a 10 percent increase.

The USPTO expects to increase productivity in patents by offering examiners more opportunities to determine when and how they do their work, and achieve higher bonuses. The USPTO is piloting a voluntary flat goal program for patent examiners that builds upon the successful system in Trademarks and moves production away from an hourly-based system. Highlights of the program include awards of up to $5,000 per quarter; flexibility in where work is done; and a predetermined amount of work based on grade and docket.

In 2006, USPTO management submitted proposals to patent union representatives for a new collective bargaining agreement that would replace a previous agreement negotiated in 1986. Proposals include enhanced patent examining monetary awards as well as a stand-alone quality award.

Because more experienced examiners naturally are able to review cases faster, and in a more accurate manner, the USPTO has implemented a program of recruitment bonuses to hire and retain the talented engineers and scientists we need to examine our increasingly complex applications. We are reviewing other possible programs to help us compete with industry for professionals in the "hot" technology sectors. We want to be an "employer of choice" to the pool of tech professionals.

The USPTO's fiscal year 2006 attrition rate was 10.6 percent—lower than comparable industry averages and a significant improvement over comparable past years. However, we believe we can further improve upon that number. The USPTO is reviewing additional incentive programs to recruit, retain and reward top performers. We will continue to become more flexible to enable us to attract and retain those top performers.

*USPTO Telework—the "Gold Standard"*

As we hire over 1,200 patent examiners a year, much of our human capital focus is on recruitment, retention, a balancing of work/life issues, less commuter time and more productivity, and the need to more efficiently manage our space.

In fiscal year 2006, a pioneer group of 500 patent examiners participated in the newly implemented Patent Hoteling Program (PHP). The PHP was developed using the very successful Trademarks telework program model. PHP is a voluntary program and provides patent examiners the ability to work from home with complete on-line access to USPTO resources. We will add 500 more examiners to the hoteling program each year for the next several years. The goal of the hoteling program is to change the boundaries of the old workplace patterns allowing for decreased com-

mute time, a more efficient use of office space, and even a more balanced lifestyle for our employees. This all translates into increased employee productivity and satisfaction, as well as higher employee retention.

Patents is also piloting a work-at-home program for technical support staff.

On a more long-term basis, we hope to create a workplace where an examiner can be successful from anywhere. In this regard, three possibilities are being investigated: (1) expanding the successful Patents Hoteling Program (PHP) in such a way as to create a more nationwide workforce; (2) creating remote or regional offices, or brick and mortar presences, in different locations across the country, selected upon a variety of factors such as where pockets of technology may be concentrated or there is increased access to a suitable workforce for hire; and (3) a storefront approach which, in a sense, is a hybrid of possibilities (1) and (2). The storefront approach would potentially provide a small-scale brick and mortar presence, or node, which could then act as a support center for employees participating in an expanded hoteling program.

With respect to expanding the current PHP program to create a truly nationwide workforce, the Office is currently engaged in conversation with Congress, OPM and GSA about addressing the present requirement that hoteling employees physically report into the Office at least one hour per week to maintain the Office as their official duty station. Round-trip commuting to the official duty station for an hour plus, which is the current requirement, results in a very unproductive day. A modification of this requirement would permit hoteling employees to relocate to geographic locations at further distances from the Office, thus enhancing the Office's ability to reach out to high quality talent pools and those individuals not interested in living in or financially unable to live in the Washington, D.C. metropolitan area. If the one-hour duty station requirement was lifted and USPTO was allowed a pilot or demonstration program, we would expect many retired patent examiners would consider working half-time or under the flat goal program. A further expansion on the second possibility (2) is that we might build, even locally, telework sites to provide employees with a brick and mortar presence to which to report, but one which may reduce or eliminate a great deal of their commuting time. The Office is open to all of these possibilities, or any combination thereof, as ways in which to better attract new employees, retain existing employees, and actively participate in e-government initiatives.

*Retirees*

The USPTO takes advantage of the knowledge and skills of retirees who have left the USPTO. The opportunities where this pool of candidates can help us are tremendous. While some retirees have returned as rehired annuitants, many opted to work for companies who have contracted with the USPTO in the areas of examiner training in the Patent Training Academy, help-desk service for our customers in our Inventors Assistance Center, and examiner recruiting. This has allowed the agency to free up valuable examiner resources to focus on patent examining.

The flexible work arrangements that the USPTO provides are very attractive and accommodating to retirees' schedules. Also, we expect that our vision of a truly nationwide workforce will include opportunities for USPTO retirees—including possible half-time or flat goal programs for retirees. The BusinessWeek recognition of the USPTO as one of the best places in America to round out one's career should allow us to recruit retirees from other industries as well.

CONCLUSION

This report has offered a comprehensive review of what has been done, what is in the process of being done, and what can still be done to further strengthen the patent system in the United States. While the Administration is committed to pursuing and improving upon its management initiatives and record level achievements in hiring, quality and production, electronic tools and teleworking, some of the key solutions to reduce pendency and optimize productivity and quality will require Congressional action.

Senator MIKULSKI. And then we can match performance with money.

Mr. GUTIERREZ. Yes.

Senator MIKULSKI. It will be your plan?

Mr. GUTIERREZ. Yes.

Senator MIKULSKI. Senator Shelby.

GROSS DOMESTIC PRODUCT REVISION

Senator SHELBY. Thank you, Madam Chairman.

Mr. Secretary, I understand—excuse me—that the announced quarterly gross domestic product (GDP) for the country contained a relatively large revision, we are all familiar with this, one-half of 1 percent downward from the amount estimated in January of this year. Such a revision has only occurred seven times in the last 30 years. While rare, this type of revision has impact on markets, and anticipate less volatility in the data released from the Bureau of Economic Analysis.

What procedure does the economic—Bureau of Economic Analysis—have to help lessen the odds that similar revisions will occur again in the future? Or will not occur?

Mr. GUTIERREZ. Yes, sir. Thank you.

Senator SHELBY. In other words, I know it's—you don't have all of the data and you're pushed to get it out.

Mr. GUTIERREZ. Right.

Senator SHELBY. And you revise it with more accurate data.

Mr. GUTIERREZ. Yes. Obviously it's a very complex set of sources that we have to be able to consolidate this one GDP number. I would say the one area that stood out as impacting that was the service industry. We know that we still have to make progress to be able to measure services, as well as we can measure manufacturing. We actually have $8 million in our 2008 budget to be able to measure all service industries. We're not covering all services today.

If I had to point to one thing, and there are many things, Senator Shelby, if I had to point to one thing that threw us off in that quarter, it was the service number. I think we can get better, and we need to get better, at measuring services, given that they're over two-thirds of our economy.

Senator SHELBY. You know, the Federal Reserve does a lot of measuring of our economy. Do you have an interoperable connection to the Federal Reserve on this? On the way you measure production and everything? You feed them things.

Mr. GUTIERREZ. Yes, sir.

Senator SHELBY. I thought you did.

Mr. GUTIERREZ. Yes, sir. We work very closely with them, with the Office of Economic Advisors, with Treasury and with Labor.

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION'S EXCLUSION FROM AMERICAN COMPETITIVENESS INITIATIVE

Senator SHELBY. NOAA. Last year, Mr. Secretary, the President designated a National Institute of Standards and Technology, the National Science Foundation (NSF), and the Department of Energy's Office of Science as part of the American Competitive Initiative Act. However, NOAA was noticeably excluded from this program, and that's troubling. To me, NOAA stands out as an international leader in marine and atmospheric science, and as a cornerstone of our Nation's research community.

NOAA's education and outreach activities appear to fall directly in line with ACI's educational goals. Given NOAA's diverse research—you're very familiar with it—and innovative technology,

why was this agency not recognized as a candidate for the ACI Program, and does the Department intend to endorse NOAA in the future to become an ACI Program?

Mr. GUTIERREZ. Thank you, Senator. I think that's an excellent question.

Technically, it's not under the umbrella of the ACI, but we think about NOAA as very much part of our competitive advantage.

Senator SHELBY. I know that Senator Alexander is very involved in the competitiveness issue.

Mr. GUTIERREZ. We do think about it as our competitive edge. We believe that the management of our coastal marine resources is a competitive advantage, as we look at the rest of the world, and how they do it. It may not be under the ACI umbrella, but we think about it as very much a part of our competitive advantage.

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, NATIONAL POLAR ORBITING OPERATIONAL ENVIRONMENTAL SATELLITE SYSTEM

Senator SHELBY. I hope you can get it under there, we'll have to see what happens.

NOAA, again. Last year, the national polar orbiting operational environmental satellite system—pronounce it, what, NPOESS program—was scrutinized for its mismanagement and lack of oversight. Now that the Nunn-McCurdy process has subsided, I feel that the Departments of Defense and Commerce have genuinely strived to regain control of the program, hopefully.

I'm still dismayed with the revised program plan. When I compare the new goals with the program's original prospects, I see that we've lost two of the six satellites, and 4 of the 13 sensors package, while adding 4 years of delay. Not to mention, a cost increase of $4.1 billion. Why are we spending more money, perhaps, to receive an inferior product? And how have the ramifications for this particular program impacted the rest of your Department's overall acquisition and procurement activities, and to ensure that the taxpayers do not see a situation like this again? I know, it's a big-ticket item.

Mr. GUTIERREZ. It is, Senator. And, I appreciate the question, this is a very important topic. Twenty-five percent is a tremendous overrun. Just so that you know, I have met with the chief executive officers (CEO) of Lockheed Martin and of Northrop Grumman as soon as we heard about this. I'd say two big things contributes to the overrun. One is the process of evaluating these bids. Too often, I think, we go to the lowest bid, and not necessarily understanding that that supplier can come back and increase the amount after we have approved it.

Senator SHELBY. It's not a good way to do business.

Mr. GUTIERREZ. It's not.

Senator SHELBY. You were the CEO of a large company.

Mr. GUTIERREZ. Absolutely. I used to have to go to my board for a 10 percent overrun. And, it was a very bad day, so this is a very bad day.

Senator SHELBY. Twenty-five percent overrun is——

Mr. GUTIERREZ. Twenty-five percent.

Senator SHELBY [continuing]. Should be a wake-up call.

Mr. GUTIERREZ. It's 25 percent, and as you say, the scope of what we thought we were getting has been reduced. We're getting less than what we thought we were buying at the beginning. It is absolutely not acceptable. A lot of it also goes to our processes. This is Air Force, NOAA and NASA working together. Too often, we have a handoff of individual project timelines to the other agency. We need to have someone managing the whole process. I think there's a lot that we can be doing, and we are doing. I get a briefing on this probably once a week from my Deputy, who is all over this. And we still have to stay very close, because I don't want to have another situation where I come back to you and say that the project is off course again. I can assure you that this is one of the items that rarely does the day go by that I don't think about this.

Senator SHELBY. If you put your background in business to this program, and other programs, you'll meet the accountability standard that Senator Mikulski talked about earlier.

Mr. GUTIERREZ. Yes, Senator.

Senator SHELBY. Thank you, Madam Chairwoman.

Senator MIKULSKI. I'm going to associate myself with the line of questioning of Senator Shelby. We're in absolute agreement on the fact that this has to be fixed.

Senator Reed, Senator Alexander came first—I would like to turn to call upon Senator Alexander, noting that he has been truly one of the leaders in our bipartisan effort to create a framework for innovation, and implementing the National Academy of Science report, "Rising Above the Gathering Storm." We're really happy to have him on the subcommittee.

AUGUSTINE REPORT ON IMMIGRATION

Senator ALEXANDER. Well, thank you Madam Chairman, and Senator Shelby. I'm glad to be here with you, especially because of that interest, and I want to thank Senator Mikulski—there was no more enthusiastic supporter for the Augustine report, and the work that we have done over the last 2 years than she has been.

And, Mr. Secretary, I want to ask you a question about competitiveness—and this also relates to some work the chairman's done over time.

At the Oak Ridge National Laboratory, which has led our effort to help the United States capture the worldwide lead in computing, it has the largest new materials machine in the world, it's the world's largest energy laboratory, the top three people there all have green cards. Fifty of the 100 American Nobel Prize winners in physics are immigrants, or are foreign-born. We have more than 500,000 foreign students at our colleges, universities—all of these people are helping create this incredible standard of living we have in this country, creating jobs for us.

Now, when the Senate passed the immigration bill, which you are very much a part of these days, I know, from talking with you—we seemed to have a consensus that we ought to do what the Augustine report, the National Academy's report describes as, "instituting new skills-based preferential immigration options." In other words, we've got 500,000 or 1 million people coming into this country legally every year, we may have that many illegally, if we secure the borders, that means we'll have 1 million or more people

coming in every year, and I believe there's a consensus in the Senate that we ought to—that we ought to make sure that we make it easier for us to in-source brain power. We outsource jobs, we can in-source brain power.

And, there were three provisions in the Senate-passed immigration bill to help do that, improving visa processing, giving a green card to doctorates, to foreign students who received their doctorates in science, technology, engineering, math, and if they had jobs, increasing the H1B visas for those sorts of people coming to our country. I think Senator Gregg also may have gotten onto the bill a provision that took a part of the visas that are in the lottery and made those more available.

But, what I would like to do is ask you to comment on that, and to encourage you—since I know you're working on immigration, that with your background—both as a business leader, and someone who's, who I've heard speak eloquently about the importance of immigration to our country, and who understands it very, very, very, very well. I wonder if you can think of more ways, as we deal with immigration this year—more ways for us to institute skills-based preferences for people coming to our country that will increase our brain power advantage, which creates new jobs.

Mr. GUTIERREZ. Yes, Senator, I think there's broad agreement on this. Many of the scientists who are driving Chinese innovations, and Chinese industries, as well as Indian industries were educated in the United States. We are giving these foreign scientists the best education you can get in the world, and then because they can't stay here, they have to go back home and compete against our companies.

We have about 80,000 higher learning students from India and about 60,000 from China. Essentially, our quota just will not absorb all of them. So, the challenge here is to expand the quota, and be willing to give more green cards, and more residency status to these graduates. This is part of our comprehensive reform, this is the high-skilled portion of it that we don't talk that much about, but is perhaps just as important as anything else.

Senator ALEXANDER. Well, and, I guess the point of my question is, is to encourage you in it. Because, I know you're going to be in the middle of these debates and discussions, and I don't think it lacks for support in the Senate. We're for it, but we need some more creative ideas about how to do it. Sometimes ideas fail around here for lack of the idea.

So, if you can suggest two or three other ways in the next few months that we could beef up whatever immigration bill passes, I'll bet you'd get a lot of support for that, and we need to do something about the provision in the law that makes a future Nobel Prize winner—American Nobel Prize winner—who starts out being born in India, today we make that person swear, before they come over here to get their graduate degree, that they're going home, when, in fact, it's in our interest for them to stay here. And, as we know, Chinese and Indian universities are now recruiting, back to their own universities, the best Chinese, Indian professors to help beef up their competitiveness efforts.

Mr. GUTIERREZ. If I could add something, because I think you're touching on something very important.

If we go back to, say, the last 50 years, some of our best scientists came to our country during World War II from Europe and they contributed immensely. We have the ability to bring the best brains in the world today, and we just can't let more time go by, because they want to do it, we can do it, there's no excuse for not doing it. So, I appreciate your leadership on this.

Senator ALEXANDER. Thank you, Madam Chairman. And, if I may say, Madam Chairman, I think if we put our minds to it, and we're creative, we could to any immigration bill that passes, more support for those bringing in people with those sorts of skills.

Senator MIKULSKI. Mr. Gutierrez himself is an immigrant, and I bet when his family came here from Cuba, they didn't know that this was going to be a future entrepreneur that would be the Fortune 500 corporation, and lead a major Government agency, and had the ear of the President of the United States any time he wanted to. So, yes, immigration is a challenge.

Senator Reed.

MANUFACTURING EXTENSION PARTNERSHIP AND ECONOMIC DEVELOPMENT ADMINISTRATION FUNDING

Senator REED. Thank you very much, Madam Chairman, and Senator Shelby.

Mr. Secretary, welcome, thank you.

The Department of Commerce plays a very critical role in my home State of Rhode Island, I was very pleased recently when Admiral Lautenbacher announced that NOAA was considering the home porting of the Okeanos Explorer—NOAA's first ship of ocean exploration—in Rhode Island. And I look forward to working with you and the admiral to ensure this effort is completed.

There are two issues I'd like to address, first is a manufacturing extension partnership program (MEP)—I'm disappointed that a cut in the program is included in the budget. It's absolutely critical—we all say this, manufacturing is such an important part in not only the economy, but the fabric of every community in America, I think we have to do more.

And second, with respect to the Economic Development Administration (EDA), the proposal for the second year in a row to transform core programs into a regional development account, funded at about $170 million, to support large regional-based development projects. It's my understanding that the existing EDA program has received very high marks from the Office of Management and Budget (OMB) and independent analysts for their assistance to local communities with respect to public works, and economic justice, technical assistance, and I'm just wondering why we would abandon a proven model, and adopt this regional approach—at least propose it.

Mr. GUTIERREZ. Yes, Senator, we're obviously committed to it, and we're not thinking of abandoning it. We did have to decide strategically as to where we put the funds. Do we invest in high technology, basic research, and maintain those other programs, as you say, which are very important—especially EDA—where we believe we do invest to get a return? The balance we found was with $170 million, we are trying to be more efficient by having a regional development account, so we can continue to contribute to

these communities, while at the same time, put money behind the long-term research.

I understand your concern, and this is a topic that I knew would come up, because MEP and EDA are both areas that warrant much debate. But, it was a choice that we made and we felt that we were looking to the longer term.

Senator REED. Well, Mr. Secretary, one of our—my concerns—is that with a regional approach you lose focus, and there is the tendency, I think, to—in that respect—to see these accounts diminish, not expand. And I think we've got to expand these accounts for the reasons you've suggested.

And one of the things that's a bit perplexing is that the EDA proposal attempts to cut $80 million this year. A year ago you were requesting a $40 million increase, which would suggest that you were very enthusiastic about EDA—what's changed?

Mr. GUTIERREZ. Well, 2 years ago, you may recall, we were looking at strengthening America's communities initiative, which would have combined the block grant programs that are in Housing and Urban Development (HUD) with EDA, and so we are actually moving more money into this model.

What we'd like to do is look at this regional development account idea, develop a plan to make it more efficient—not just for us, but for the users—and come back with a plan, and share how we believe we can make it work with $170 million. We wouldn't go ahead and execute this without at least coming back and talking with major stakeholders as yourself.

[The information follows:]

MEETING WITH SENATOR REED'S STAFF ON THE EFFICIENCY OF REGIONAL DEVELOPMENT ACCOUNTS

Although nothing has been scheduled at this time, EDA will arrange for a meeting with Senator Reed's office to discuss the efficiency of Regional Development Accounts.

Senator REED. Well, Mr. Secretary, I was actually not impressed with the strengthening American communities approach, which would have put EDA proposals together with HUD funding. And, it looks like this budget—there's diminishing EDA, and the HUD budget, too, is being squeezed hard, which is not going to strengthen our communities. And, I think, when you go to a regional basis it's sort of a toss-up, who gets what, and again, I'm concerned—terribly concerned.

So, I appreciate your willingness to talk about this, but this is something that is, again, I think we'll revisit this.

I've mentioned before, my concerns about the manufacturing extension partnership centers. Dr. Jeffrey—Dr. Jeffrey will be testifying later, indicated there's going to be re-competition, because the proposed $46 million fiscal year 2008 is not sufficient to support the National budget? Or, that's a question I have—what is this re-competition about?

Mr. GUTIERREZ. We haven't really honed in on re-competition as a solution. We obviously have to do a lot of thinking as to how to make the $46 million go as far as possible. Understand that that's one-third of the total amount; there's private sector and there's local money.

But, we haven't recommended re-competition as the course of action. Again, we'd like to go back, think through this, and discuss it with you once we have a better plan in place.

Senator REED. Well, thank you, Mr. Secretary.

Mr. GUTIERREZ. Thank you, sir.

Senator REED. Thank you, Madam Chair.

Senator MIKULSKI. Senator Kohl.

MANUFACTURING EXTENSION PARTNERSHIP

Senator KOHL. Thank you very much, Madam Chairman.

I'm wanting, also, to discuss the manufacturing extension partnership account with you, Mr. Secretary. It's—and perhaps you're not fully familiar with it, because your job is so broad, so big, and has so many different pieces to it, and I can understand that.

But, the manufacturing extension partnership has been a big success, at a relatively low cost, at preserving and creating more jobs in small and medium-sized manufacturing companies.

I'm very familiar with it in my State because it's been a very active program, it's helped hundreds and hundreds of companies—many of whom I've visited—and gotten personal experience in seeing what they've done and listened to the accolades expressed by management, as well as those people who are MEP employees, go on to companies, seen what they've done, seen the results that they've produced in terms of increased efficiencies in these companies that have allowed these companies—in some cases—to come back from near bankruptcy. But, in many cases, just to continue to grow and produce sales and profits and employment. Our manufacturing jobs, which, of course, are critical and crucial for our economy. It's a success story, you know? It's something that I would hope that you would all talk about, and want to keep, at least at its present level of funding, which is $106 million, roughly $2 million per State.

And, as you indicate, it's complemented by State funding, as well as funding by the companies who use it. So, it's not one of these programs that we just sort of throw money at the wall, here at the Federal level, and hope that it may do some good—it is funded, as well, by the States, and the companies that use the service.

I went to a company in Wisconsin over the weekend, by coincidence. And they're a company that is presently using the MEP program, and they just rave about how MEP has come in and helped them to improve the efficiency of their business.

Now, in light of that, could you say something that would encourage us to believe that we're not going to have to go back to the mat again this year as we did last year and got the funding restored? Several of us Senators—and, you know, we got—it was cut last year and we got it restored to its funding level, and now here we come back this year, and it's cut in a similar fashion. And if we have to, you know, we'll fight like heck to get that funding back, and I hope, successfully. But, it would be nice if we wouldn't have to do that. And, you know, I'd just like to hear something from you.

Mr. GUTIERREZ. I understand your concern, let me just say that. We're constantly faced—and we do go through this, pretty much, every year—we're constantly faced with the choice of where do we allocate the money. And we have been—especially over the last sev-

eral years—moving more and more toward what we believe is the public sector's role, which is basic research.

On the MEP, because we play a matchmaking-type of role, we try to pair up private sector needs with consultants, that perhaps we can continue to play that matchmaker role, more efficiently, more productively, without giving up on the program. We've got the network in place, that's not going to go away. So, we want to keep the program going, understand that it is operational in the sense that, these are companies that are up and running, working with consultants, trying to get better rates, trying to match up consultants that are more suited with specific companies.

So, not giving up on the program, while being able to put more money behind the long-term research. As you know, when we make these choices, it never comes out perfectly, and there will be those who are not satisfied with that. But, that's sort of the thinking, and there's plenty of work that we need to do to get inside these offices and understand, how can we serve our customers with less money? My commitment to you is that I will do that and I will spend time on that, and try to stretch it out as much as possible.

Senator KOHL. I'm listening, and I'm trying to understand and, you know, and you speak very clearly and directly, which I appreciate. But, here's a program that works, Mr. Secretary. It works. I'm, you know, sometimes we come to these sessions and you make out a budget and you try and cut the fat off the bone, which, you know—which, what we're all wanting to do, the programs that don't work very well. But, I have not heard you say—or anybody say—that this is not a program that works.

And when you have a program that works at a relatively modest cost, particularly in keeping manufacturing from getting worse. Explain to me again, I mean, again—why try to knock this program off, you know, off its stool? It works. I'm familiar with it in my State and other States, and again—I don't just listen to some public relations (PR) people putting out a release, I've visited dozens and dozens of companies that have used the MEP program, and that it does work, in helping, and to become more efficient by bringing in—as you know—experts who are federally funded, at least, you know, they're Federal employees, but they also get paid by State and—and they come in and they do a job in making the company more efficient and more effective and more profitable.

Well, I guess I'm—I don't want to, I don't want to ask you to repeat what you've already said. But I—I'm surprised. You're a person who comes from the world of business, and so do I. And, I know you're concerned about dollars, and dollars spent, and value return for dollars spent and how important that is. And, I can tell you, this is a really, really good program, and you need to be proud of it. And that's not to say, "I'm proud of it, but I'm cutting its budget," because those things don't comport. If I'm proud of it, and it's a modestly funded program, then I'm not going to be cutting it.

And, so somewhere in your Department, somebody's not very proud of it, and somebody thinks it's not a very good program. And, I'm here to tell you—from my experience and my knowledge of the program, Mr. Secretary, it is a good program. And it deserves your sweat and effort to keep it funded at its currently modest level.

And with that, whatever you say, I will not respond and try to be critical, but I'd like to hear one last comment from you, and then I'll quit.

Mr. GUTIERREZ. What I will say is there isn't a disagreement that there's a concept and an idea and a model that could work, and that has worked. We have examples of projects where there has been a success. Not all projects have been successful and, perhaps these are outside of your State, or in other parts of the country. Our challenge is to focus our money on those projects that are successful. We're trying to cut off the tail that isn't successful, and trying to get a lot better at putting the money behind those projects that do have a return.

That's what I would do with the $46 million, as opposed to the $110 million, or $105 million. What we would try to do—is allocate the money to projects that do have a return, because there are some that don't. I think our challenge is to identify those, and we should have enough experience to have a better sense of which ones those are.

I understand your concern. I don't think there's anything I could say to convince you, but we do think about these things, and we take up the challenge and we try to make the most of it.

Senator KOHL. Thank you.

Thank you, Madam Chair. Chairwoman.

Senator MIKULSKI. Thank you very much, Senator Kohl. We appreciate the rigor of your questions, and you've expressed many of ours.

Mr. Secretary, in the interest of your time and ours, we're not going to go to a second round of questions. We're going to submit them—ask our colleagues to submit them in writing. And we know that the international markets are rattled, and we have a second panel, and we want to continue before the noon hour.

Colleagues will submit questions for the record, know that we will have ongoing concerns raised by members. NOAA—why isn't it in the competitive agenda? How we can put it in? How we can make sure the satellite program is back on track, the follow up on the patents, we'll be talking to Mr. Dudas in a minute or two, and then also, the census, because we're concerned about the security issues at the Census, and also the fact that as of this moment, the Director and the Deputy have resigned, and people are in an acting category. And, as we get ready for 2010, which is going to come so quickly, we've got to make sure that our census not only has the technology, but the leadership to do it.

So, those would be the areas that I think we look forward to following up. So, thank you.

Mr. GUTIERREZ. Thank you.

Senator MIKULSKI. And, colleagues, we'll submit it for record.

Thank you very much, Mr. Secretary.

CENSUS DEPUTY DIRECTOR

Mr. GUTIERREZ. Madam Chair?

Senator MIKULSKI. Yes, sir.

Mr. GUTIERREZ. If I may?

Senator MIKULSKI. Yes, sir.

Mr. GUTIERREZ. We have named Jay Waite the permanent Deputy Director at Census. He is permanent, and we will bring the person who will be nominated for the Director job as soon as we have that person.

Senator MIKULSKI. Well, we look forward to that and working with our authorizers for an expeditious confirmation. So that we're all going in the same direction.

Mr. GUTIERREZ. Thank you.

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

Mr. GUTIERREZ. Thank you very much.

Senator MIKULSKI. Until we meet again.

Mr. GUTIERREZ. Thank you, thank you.

**STATEMENT OF DR. WILLIAM JEFFREY, DIRECTOR**

Senator MIKULSKI. Now the Chair calls to the table, as our Secretary departs, the Director of NIST, Dr. Jeffrey. For the record, it is the National Institute of Standards and Technology, and also, Mr. Dudas, the head of the Patent Office.

We're really glad to see both of you. As you can hear the things of the subcommittee, and the fact that we have such a bipartisan commitment to innovation, and you're, you're—you're part of the A-team on this. Both, what you provide in terms of research, and also service to the private sector, it's a unique way that this country operates, and then—that if we invent it, we gotta protect it. And you know the challenges there. So, ours is not meant to be a schoolmarmish hearing, but how do we get—help you get the results that our country really needs this minute?

So, how about if we lead off with Dr. Jeffrey, and then, Mr. Dudas, we're going to turn to you, okay?

Dr. JEFFREY. Thank you, Chairman Mikulski, Ranking Member Shelby, and members of the subcommittee.

I am pleased to present the President's 2008 budget request for NIST. This is a strong budget that will further enhance our ability to support the measurement and standards needs of U.S. industry, and universities.

NIST has a long history of being at the forefront of new innovations, through our measurements and standards. In 2003, the National Academy of Engineering identified the greatest engineering achievements of the 20th century. NIST measurements and standards were integral to the successful development and adoption of virtually every one. Nineteen retrospective studies of economic impact show that on average NIST labs generated a benefit to cost ration of 44:1 to the U.S. economy.

The high rate of return results from the fact that new measurements or standards benefit entire industries, or sectors of the economy, as opposed to individual companies.

For example, NIST researchers recently developed new measurement techniques that cut up to 80 percent of the cost and time for industry to develop advanced materials. As one industry scientist put it, "NIST scientists are reawakening a major element of creativity that analytical science almost lost."

NIST also operates world-class user facilities. Last year approximately 2,000 researchers from 60 different industries leveraged the NIST Center for Neutron Research, or the NCNR. A National Academy of Sciences (NAS) report describes the NCNR's capability to image an operating fuel cell as "a considerable achievement," and "one of the most significant analytical advances in the fuel cell realized in decades." Industry scientists have stated that the re-

search performed at the NCNR has allowed them to jump 5 years ahead in fuel cell development.

To prepare for the future, NIST is working with industry to identify critical measurement barriers to innovation, evaluating its physical infrastructure, forming new and strengthening existing partnerships, and updating the ways it stimulates the knowledge transfer from its labs to industry and academia.

The increased funding provided through the budget request will directly support innovative advances in broad sectors of the economy, as well as improve the safety and quality of life of our citizens.

For example, the research initiatives will speed the development and foster the adoption of nano-technology products, and provide the physical measurements to ensure their safety, accelerate the revolutionary economic potential in exploiting unique properties of the quantum world, provide confidence and reduce uncertainty in measurements supporting global climate change models, reduce the risk to communities, as they encroach on hurricane-prone coasts and fire-prone wild land/urban interface regions, and enhance the safety of new and existing structures from the catastrophic impact of earthquakes.

To meet the demands for measurements at ever-smaller scales, at faster rates, and with more accuracy, requires excellent laboratory and user facilities. The 2008 budget request, therefore, includes capacity and capability improvement at both our Boulder campus, and the NCNR.

The budget request for MEP is identical to last year's request, and is a reduction of $58.3 million from the fiscal year 2006 enacted level. I recognize the difference in priority between the administration and Congress regarding the Federal funding level for the MEP program.

One thing you can be absolutely certain of—regardless of the final appropriations, NIST will execute this program in the most effective manner possible, to support the Nation's small manufacturers.

No funds for ATP are requested in the President's 2008 budget. The 2006 enacted budget was consistent with the phase-out of the program. Since the 2007 full year continuing resolution, however, included funding for ATP, we will be initiating a new competition.

In summary, recent NIST measurements and standards research have enabled innovations now embedded in the IPOD, body armor—saving the lives of domestic law enforcement officers and our service men and women overseas—and diagnostic screening devices for cancer patients, making their treatment more targeted and accurate. The results of NIST research can be found in virtually every manufacturing and service industry.

PREPARED STATEMENT

For more than a century, NIST research has been critical to our Nation's competitiveness. The increased funding requested for NIST will directly support innovations in broad sectors of the economy that will, quite literally, define the 21st century.

Thank you, and I'd be happy to answer any questions.

Senator MIKULSKI. Thank you very much, Dr. Jeffrey, and we will be asking you questions.

[The statement follows:]

PREPARED STATEMENT OF DR. WILLIAM JEFFREY

Madam Chair Mikulski, Ranking Member Shelby and members of the subcommittee, I am pleased to appear before you today to present the President's fiscal year 2008 budget request for the National Institute of Standards and Technology (NIST). This is a strong budget for NIST and it will further enhance NIST's ability to support the measurement and standards needs of U.S. industry and universities. The fiscal year 2008 request of $640.7 million includes $594.4 million for NIST's core (encompassing NIST's research and facilities) and $46.3 million for the Hollings Manufacturing Extension Partnership. The budget for the NIST core represents an 11 percent increase over the President's fiscal year 2007 request and a 21 percent increase over the fiscal year 2007 continuing resolution (H.J. Res. 20) recently signed by the President (Public Law 110–5). This funding supports NIST's mission to promote U.S. innovation and industrial competitiveness by advancing measurement science, standards and technology in ways that enhance economic security and improve our quality of life.

*NIST's Impact on Innovation and the Economy*

NIST has a long history of being at the forefront of new innovations through our high-impact measurements and standards. In 2003, the National Academy of Engineering identified 20 of the greatest engineering achievements of the 20th century—including automobiles, aircraft, lasers, computers, and the internet. NIST measurements and standards were integral to the successful development and adoption of virtually every one. Now NIST is paving the way for the greatest achievements of the 21st century which are still yet to be imagined.

NIST's measurement science and standards form part of the foundation upon which innovation is built. Just as the Nation's physical infrastructure (e.g., roads or power grid) define the Nation's capacity to build and transport goods—the Nation has an innovation infrastructure which defines the Nation's capacity to innovate. And investment in long-term basic research like that done at NIST is an integral component of the innovation infrastructure. As stated in the National Academy of Sciences' Rising Above the Gathering Storm, "The power of research is demonstrated not only by single innovations but by the ability to create entire new industries."

NIST researchers are world leaders in their fields. They frequently arrive at the "cutting edge" of science before anyone else. And once there, they partner with industry and academia to identify and overcome barriers that can slow or even halt the progress of new innovations. With the proposed fiscal year 2008 budget, NIST will continue developing the measurement and standards tools that enable U.S. industry to maintain and enhance our global economic competitiveness.

NIST continues to meet the Nation's highest priorities by focusing on high impact research and investing in the capacity and capability of our user facilities and labs. This emphasis is validated by the high rate of return to the Nation that the NIST labs already have demonstrated. Nineteen retrospective studies of economic impact show that, on average, NIST labs generated a benefit-to-cost ratio of 44:1 to the U.S. economy. The high rate of return results from the fact that new measurements or standards benefit entire industries or sectors of the economy—as opposed to individual companies.

NIST supports U.S. innovation and economic competitiveness primarily through its measurements, standards, and national user facilities. Recent NIST successes highlight the importance of each of these critical components and illustrate how NIST's labs are able to return such a large benefit to the Nation:

*Measurements.*—NIST researchers recently developed new measurement techniques that allow for rapid and cost-effective assessments of advanced materials that are used in a range of products from new detergents to improved adhesives for next-generation electronics. Previously, it could cost industry $20 million to develop and understand the characteristics of one new material. With this NIST measurement advance, the cost and time are estimated to have been cut by 80 percent. To facilitate the transfer of this technique to industry, NIST organized an open consortium now consisting of 23 members that are learning to use and adapt these new measurement techniques. As a scientist from Honeywell International put it, ". . . NIST offers an invaluable resource to show what can be done, and how to go about it. NIST Combinatorial Methods Center scientists are reawakening a major element of creativity that analytical science almost lost."

*Standards.*—Nanotechnology has the potential to revolutionize manufacturing. And one of the most promising nanomaterials is the carbon nanotube. Carbon nanotubes have unique electronic and mechanical properties that lend themselves to a variety of applications, ranging from the development of stronger and lighter materials to nanowires and transistors for miniature electronics. Regardless of the potential application, the quality of the materials is paramount. Unfortunately, current production techniques for carbon nanotubes result in products with high levels of uncertainty in their quality and uniformity. To address this concern, NIST is currently developing a carbon nanotube reference material. This reference material, when deployed, can be used by any nanotube manufacturer to validate their product's quality, purity, and consistency and accelerate the adoption of carbon nanotubes into more sophisticated devices.

*National User Facilities.*—NIST operates world-class user facilities that benefit the entire U.S. research community. Last year, approximately 2,000 researchers from 60 different industries across the country leveraged the NIST Center for Neutron Research (NCNR). One recently developed application of the NCNR was to image the interior of operating fuel cells to help improve the efficiency and durability of these devices. Large and small companies involved in the manufacture or use of hydrogen fuel cells, including General Motors, Daimler-Chrysler, Dupont, and PlugPower, have benefited from this new capability. The NCNR is the premier facility in the world providing this capability. A National Academy of Sciences report describes the NIST efforts in regards to fuel cell technologies as ". . . a considerable achievement and one of the most significant analytical advances in the membrane fuel cell realized in decades. The NIST facility offers the entire fuel cell community unique research opportunities that previously eluded them." Industry scientists have stated that the research performed at the NCNR has allowed them to jump 5 years ahead in terms of fuel cell development.

The President recognized NIST's critical role for the Nation as part of the American Competitiveness Initiative (ACI). The ACI describes NIST as: ". . . a high-leverage Federal research agency that performs high-impact basic research and supports the successful technical translation and everyday use of economically significant innovations." Under the ACI, overall funding for NIST's core, the National Science Foundation, and the Department of Energy's Office of Science is together slated to double by 2016.

*Preparing for the Future*

The 21st century will be defined by technology innovations that fundamentally change the products and services available, the way they are manufactured and provided, and the impact on our quality of life. These advances will arise from basic research now beginning in, for example, nanotechnology, quantum science, and alternative energies—all areas in which NIST has a strong and increasing focus with its investments.

The goal of increasing physical sciences research at NIST (along with that supported by the National Science Foundation and the Department of Energy's Office of Science) provides a unique opportunity to strategically establish the programs, plans, and infrastructure that will more than double the impact that NIST has on the economy. To prepare for the future, NIST is working with industry to identify critical measurement barriers to innovation, evaluating the capacity and capability of NIST's physical infrastructure, forming new and strengthening existing partnerships, and updating the ways it stimulates the knowledge transfer from its labs to industry and academia.

For example, over the past year, NIST worked with over 1,000 experts from industry and universities to identify measurement barriers to innovation in a number of critical industry sectors. Over 700 technical barriers were identified, analyzed, and documented in a report. NIST is now in the process of working with industry, universities, and other government agencies to address many of these identified barriers over the coming years.

In terms of facilities, NIST has conducted a rigorous evaluation of its laboratory capacity and capabilities on its Boulder, Colorado, campus. This review found facilities' shortfalls in our ability to meet both current and projected industry and university needs in a number of important areas. Examples include the high-speed and high-frequency measurements required for electronics, defense, and homeland security; measurements and tests at the single atom level; and improved methods for measuring time, an area expected to vastly improve navigation and positioning systems. Each technical area was evaluated in terms of necessary laboratory conditions (to include stability of temperature, vibration, and humidity, as well as air cleanliness). As a result of this assessment, new laboratory space to meet the nation's

needs well into the 21st century is proposed in the fiscal year 2008 budget (Boulder Building 1 Extension).

NIST also serves industry and academia by being a steward of world-class user facilities. As part of the ACI, NIST identified two important opportunities first called out in the fiscal year 2007 budget and enhanced in the fiscal year 2008 budget—increased capacity and capability of the NIST Center for Neutron Research and creation of the NIST Center for Nanoscale Science and Technology. Both of these facilities are designed to stimulate progress in support of our Nation's economic competitiveness.

The ACI provides NIST the opportunity to further promote U.S. innovation and industrial competitiveness. With focused, world-class research and facilities, NIST will have a greater impact on the 21st century economy than it did even over the past century.

*Fiscal Year 2008 President's Budget*

The increased funding provided through the fiscal year 2008 request will directly support innovative advances in broad sectors of the economy as well as improve the safety and quality of life for our citizens. The following table summarizes the proposed fiscal year 2008 budget. In this table we show both the fiscal year 2007 President's budget and the fiscal year 2007 continuing resolution (Public Law 110–5) for comparisons as different baselines.

BUDGET SUMMARY SHOWING BOTH FISCAL YEAR 2007 PRESIDENT'S REQUEST AND PUBLIC LAW 110–5 AS BASELINES

[In millions of dollars]

| | Fiscal Year 2007 President's Request | Fiscal Year 2007 Continuing Resolution (Public Law 110–5) [1] | Fiscal Year 2008 President's Request | Change Between Fiscal Year 2008 and Fiscal Year 2007 Request | Change Between Fiscal Year 2008 and Public Law 110–5 |
|---|---|---|---|---|---|
| STRS (Labs) | 467.0 | 432.8 | 500.5 | +33.5 | +67.7 |
| CRF (Facilities) | 68.0 | 58.7 | 93.9 | +25.9 | +35.2 |
| Core Subtotal | 535.0 | 491.4 | 594.4 | +59.4 | +102.9 |
| ITS (MEP + ATP) Subtotal | 46.3 | 183.6 | 46.3 | | −137.3 |
| TOTAL | 581.3 | 675.1 | 640.7 | +59.4 | −34.4 |

[1] Totals for fiscal year 2007 do not include the 50 percent of the pay raise that was included in Public Law 110–5.

The fiscal year 2008 budget was formulated with the fiscal year 2007 President's request as the baseline. Since Public Law 110–5 provides a smaller budget for the NIST core (STRS and CRF) than the fiscal year 2007 President's request by $43.6 million, some proposed initiatives in fiscal year 2007 that will not receive full funding are implicitly contained within the President's fiscal year 2008 request. New initiatives and program increases are described in more detail below:

*Scientific and Technical Research Services (STRS)*

*Enabling Nanotechnology From Discovery to Manufacture (+$6 Million)*

The potential market for products containing nanomaterials is estimated at over $1 trillion by 2015. Because of their small size—a thousand times thinner than a human hair—nanoscale products require entirely novel ways to characterize their physical properties and fully exploit their unique characteristics in the manufacture of new products.

In fiscal year 2007, NIST began a major initiative to address the measurement barriers hindering rapid development of nanotechnologies. A new NIST Center for Nanoscale Science and Technology (CNST) has been established that combines both research and a state-of-the-art nanofabrication and nanometrology user facility.

The research initiatives proposed in fiscal year 2008 will build on recent NIST advances by:

—Developing ways to measure strength, stress, strain, optical, and electronic properties of nanostructures to improve processes and understanding of failure mechanisms;

—Creating three-dimensional, high-resolution imaging methods that reveal details of structure, chemical composition, and manufacturing defects and allow researchers to view nanostructures as they interact with their environment;

—Simulating nanoscale phenomena with computer models to allow economical development of production methods for complex nanodevices; and
—Producing the measurement techniques required to address the interagency efforts to characterize nanotechnology impacts to our health, safety, and environment.

*Measurements and Standards for the Climate Change Science Program (+$5 Million)*

The climate is changing. Determining how fast it is changing, and understanding the complex relationships between all the environmental variables is a critical objective of the U.S. Climate Change Science Program. Many different climate monitoring systems in space, in the air, and on the ground are currently monitoring solar output as well as trapped and reflected heat by the Earth's atmosphere. These systems are operated by many countries and research groups. Establishment of absolute calibration and standard references will allow accurate intercomparisons of these systems, will help identify small environmental changes occurring over many years, and will reduce uncertainties in the data input to global climate change models.

With the proposed fiscal year 2008 funding, NIST will, working in coordination with other agencies, develop:
—An international irradiance measurement scale to be used in rigorously calibrating satellite light intensity instruments prior to launch to ensure sufficient accuracy to allow valid comparisons among results from different instruments or from data sets taken over different periods of time;
—New instrument design strategies and quality assurance programs to optimize accuracy and stability of satellite-based irradiance measurement systems;
—Techniques for generating specific types of aerosols in the laboratory, measuring aerosol optical and physical properties, and for simulating aerosol properties that cannot yet be measured in the laboratory; and
—A database of critically evaluated data on aerosol properties collected at NIST and elsewhere.

*Enabling Innovation Through Quantum Science (+$4 Million)*

Unlike the laws of physics that govern our "every day" world, the laws of physics that govern the quantum world of atoms, electrons, and light particles are fundamentally different. These quantum particles are able to interact in ways that according to human experience would seem impossible. For example, a quantum particle can actually be in two different places simultaneously.

Conceptualizing these phenomena is difficult to say the least, but developing ways to exploit them for the development of technologically significant innovations is even more challenging. NIST, however, has world-class scientists who are leaders in the emerging field of quantum information science. Three NIST scientists have won Nobel Prizes in the last 10 years based on their work in this field. Many of the best minds in physics today believe that applications of quantum science will transform the 21st century just as integrated circuits and classical electronics revolutionized the 20th century.

The proposed fiscal year 2008 initiative will build upon NIST's significant expertise in this area, and leverage the collaborations established in the recently created Joint Quantum Institute between the University of Maryland, NIST, and the National Security Agency. NIST proposes to accelerate the potential of the quantum world for enhancing our nation's competitiveness through research into:
—Quantum "wires" that use "teleportation" techniques to reliably transport information between the components of a simple quantum computer;
—Quantum memory analogous to the random access memory of today's computers to allow more complex logic operations;
—Quantum conversion processes that transfer information from one form of quantum information to another (for example, ways to transfer information about the quantum characteristics of an atom to a photon); and
—Quantum based measurement tools such as optical clocks and single electron counters.

*Disaster Resilient Structures and Communities (+$4 Million)*

The past few years have reminded us that both natural hazards—including extreme winds, storm surge, wildland fires, earthquakes, and tsunamis—as well as terrorist actions, are a continuing and significant threat to U.S. communities. The disaster resilience of our physical infrastructure and communities today is determined in large measure by the building codes, standards, and practices used when they were built. Many of these legacy codes, standards, and practices—which have evolved over several decades—are oversimplified and inconsistent with current risk

assessments. As construction and rebuilding costs continue to rise, there is increasing recognition of the need to move from response and recovery to proactively identifying and mitigating hazards that pose the greatest threats.

The proposed fiscal year 2008 initiative will, working in coordination with other agencies, develop:

—Standard methods to predict losses, evaluate disaster resilience, and estimate cost-to-benefit of risk management strategies at the community and regional scales that local officials can use to evaluate and mitigate risks via land-use planning and practices;

—Decision support tools to modernize codes, standards, and practices consistent with the risk;

—A validated "computational wind tunnel" for predicting extreme wind effects on structures; and

—Risk-based storm surge maps for the design of structures in coastal regions.

*National Earthquake Hazards Reduction (+$3.25 Million)*

Many earthquakes strike without warning. Within the United States, more than 75 million people are located in urban areas considered to be of moderate to high risk of earthquakes. Just the economic value of the physical structures within these regions—not including the potential loss of life and economic disruption—is valued at close to $8.6 trillion. To address this threat Congress has provided longstanding support for the National Earthquake Hazards Reduction Program which NIST coordinates across the Federal government.

This initiative will enhance the safety of:

—New structures by establishing and promoting performance-based standards for entire building designs and by accelerating the adoption of basic research into the model building codes, standards, and practices; and

—Existing structures through research on actual building performance in earthquakes; developing structural performance models and tools; and establishing cost-effective retrofit techniques for existing buildings.

*Construction of Research Facilities (CRF)*

*Building 1 Extension (B1E)—Enabling Sustained Scientific Advancement and Innovation (+$28 Million)*

When President Eisenhower dedicated the NIST facilities in Colorado in 1954, no one imagined that half a century later scientists would be manipulating matter atom-by-atom. Such technological advances require increasingly complex and difficult measurements—to be able to observe, characterize, and create structures at ever smaller spatial scales. As the structures shrink in size, small fluctuations in temperature, humidity, air quality, and vibration begin to distort the results. We are now at the point where laboratory conditions are inhibiting further advances in some of the most promising areas of research for the 21st century.

The $28 million proposed in the fiscal year 2008 budget will leverage previously proposed funds ($10.1 million) in the fiscal year 2007 budget to construct state-of-the-art laboratory space that will meet the stringent environmental conditions required for 21st century scientific advances. An additional $38.1 million will be needed in fiscal year 2009 to complete the project. With a total cost of $76.2 million, the Building 1 Extension is the most cost-effective approach to enabling world-class measurement science in support of some of the country's most important economic sectors.

*NIST Center for Neutron Research (NCNR) Expansion and Reliability Improvements (+$19 Million)*

The NCNR is widely regarded as the most scientifically-productive and cost-effective neutron facility in the United States, and serves more scientists and engineers than all other U.S. facilities combined. Neutron scattering techniques, in which beams of neutrons are used as probes to see the structure and movements of materials at the smallest scales are critical in a wide range of applications that will define the 21st century including nanotechnology, alternative energies, and understanding the structure of biological molecules. Because of the unique properties of neutrons for probing materials and their applications to some of the most advanced technologies, a significant shortage of neutron beam capacity and capability exists in the United States to satisfy the demands of industry and academia.

This initiative begun in fiscal year 2007 is the second-year of a planned 5-year program to expand significantly the capacity and capabilities of the NCNR. The program includes the development of a new neutron cold source together with a new hall to house the guide tube, modernization of the control system, and five new

world-class neutron instruments. The specific fiscal year 2008 funding will complete construction of the new guide hall.

*Industrial Technology Services*

*Hollings Manufacturing Extension Partnership (MEP) ($46.3 Million—No Change from Fiscal Year 2007 President's Request; −$58.3 Million From Public Law 110–5)*

The MEP program is a partnership between the Federal Government and local officials to provide assistance to small and medium sized manufacturers around the country. Surveys taken of companies 1 year after receiving MEP assistance indicate a significant financial benefit accrued to the individual company.

The Federal Government is an important partner in the MEP program. Specifically, the Federal Government:

—Develops new services and programs in response to the evolving manufacturing environment and propagates them throughout the network;

—Evaluates and ensures high-quality performance of every member of the network; and

—Ensures that small manufacturers remain the focus of the effort.

The above Federal role can be accomplished within the requested budget. The reduction of Federal funds to the local centers may have to be compensated through a combination of increased fees derived from the benefits accrued by individual companies and cost-savings in the operations of the centers.

*Advanced Technology Program (ATP) ($0—No Change From Fiscal Year 2007 President's Request)*

No funds for ATP are requested in the President's fiscal year 2008 budget. The fiscal year 2006 enacted budget and the 109th Congress' House mark and Senate Appropriations committee mark were consistent with the phase-out of the ATP program. The last new awards were made in 2004 and sufficient funds were available in the carryover to complete all awards and provide government oversight.

The fiscal year 2007 Continuing Resolution (Public Law 100–5) recently signed by the President included funding for the ATP program. NIST will work with Congress to ensure the funds are executed in the most effective manner to promote U.S. industry's competitiveness.

*Summary*

Measurements and standards are the bedrock upon which any economy stands. Our founding fathers recognized this. The Constitution assigns the Federal Government responsibility to both issue money and to "fix the standards of weights and measures." The two are actually more similar than they might seem at first glance.

All economic transactions rest fundamentally on trust—trust between two parties that a given amount of something is worth a given amount of something else. Helping to create that trust for innovative new technologies is the common theme that runs through all of NIST's proposed fiscal year 2008 research initiatives. Each helps build a missing or inadequate measurement base—a rigorous, accepted way of quantitatively describing something—that improves confidence in scientific results or improves the quality, reliability or safety of innovative products. Recent NIST measurements and standards research have enabled innovations now embedded in the iPod, body armor currently saving the lives of domestic law enforcement officers and our service men and women overseas, and in diagnostic screening devices for cancer patients making their treatment more targeted and accurate. The results of NIST research can be found in virtually every manufacturing and service industry.

For nearly 106 years, NIST research has been critical to our Nation's current and future competitiveness. The increased funding in the President's fiscal year 2008 budget for the NIST core will directly support technological advances in broad sectors of the economy that will quite literally define the 21st century—as well as improve the safety and quality of life for all our citizens.

## U.S. PATENT AND TRADEMARK OFFICE

**STATEMENT OF JON W. DUDAS, DIRECTOR**

Senator MIKULSKI. Mr. Dudas, why don't we welcome you, and look forward to hear from you and your protecting intellectual property.

Mr. DUDAS. Thank you, Madam Chairwoman.

Thank you ranking member Shelby, and Senator Alexander.

I appreciate this opportunity to share with you the things we're doing at the USPTO, and I also recognize I have a responsibility—and it's even clearer now—a responsibility to the employees of the USPTO to do a better job, not only talking about the challenges we face, but communicating the successes that our employees have had at the USPTO. So, I really do welcome this as an opportunity.

And with that, I think I'll just cut to the chase and say, on behalf of the 8,500 of my colleagues at the USPTO, I'm truly proud to report that the women and the men of the USPTO delivered results in 2006 in, literally, record proportions. Last year, the USPTO set 11 all-time agency-wide records, including the highest quality in the history in trademarks, the second highest quality in history in patents, the highest production in history in both patents and trademarks, the highest hiring of examiners in history, in both patents and trademarks, the highest electronic processing, and electronic filing in history in both patents and trademarks, and allowing more examiners than ever before to work from home. Eighty-five percent of trademark examiners, and 500 new patent examiners were working from home last year.

In 2006, we were also chosen by Business Week magazine as one of the best places in America to launch a career, and we were featured in Business Week magazine as a premier place to round out one's career. One of our examiners, who is 66 years old was featured in Business Week as, again, a place to round out your career.

And USPTO examiners not only succeeded on behalf of the United States on protecting innovation, they succeeded personally and professionally. Sixty percent of all patent examiners, and 70 percent of all trademark examiners exceeded their goals in production and quality, or production or quality, and received an additional bonus for exceeding those goals.

Thanks is owed, first and foremost, to these loyal and determined employees of the USPTO, and in our office hangs a banner, seven stories high, that says, "Celebrating 2006, Our Record-Breaking Year." We held an 8,500 person, all-hands celebration, where senior executives served the rest of our colleagues a thank you lunch, a well-deserved thank you lunch, for breaking those records.

Simply put, these results would not have been possible without this subcommittee allowing all innovators' fees to be used to fund determination of their innovations. The years 2005 and 2006 were the first 2 years in more than 15 years, that the USPTO operated

under full funding, and the difference has been dramatic. Since Congress passed the Government Performance and Results Act to hold Government agencies accountable and report their metrics, and hold them accountable, the USPTO, on average, had only met about 25 percent of their key goals.

Under the Government Performance and Results Act, just last year, after full funding, an appropriate strategic plan, new methods in place, responding to some of the reports you've mentioned, we moved to 90 percent of our goals met. There's one we missed, we should meet it, we should be at 100 percent of our key goals, and our overall goals, we've met 94 percent of.

In 2007, you again provided full funding, and we look forward to working with this subcommittee, to make this a permanent policy.

This subcommittee has helped the USPTO come a long way, but as you point out, there are real challenges that lie ahead. Continuing to attract and retain the finest public servants is a growing challenge. Our employees are at the heart and soul of our intellectual property system, and we need to do everything we can possibly do to ensure they have an environment of respect, and an environment of opportunity.

The Business Week magazine article I talked to before, reported that the most favored employers in the United States—not the average, but the most favored employers in America—are losing about one-third of their new hires within the first 3 years of employment. The USPTO is experiencing similar attrition in the first 3 years. And with the record hiring we have done, that pushes our overall attrition to slightly above what the average has been. That's something we need to, again, focus more on, and I can share with you some of the things we're doing.

The pendency of application also continues to be a challenge. Despite record-level hiring, and record-level production increases in both patents and trademarks last year—19 percent increase in trademarks, and a 17-percent increase in patents, in terms of production—and an already demanding environment for examiners, we continue to receive applications at a record that exceeds our capacity to examine. We've simply broken records in the number of applications we've received for over 20 years now.

The answers there lie, in large part—and I think this is some of what we'll talk to you about in the plan—in asking for more and better information. Not just from our examiners—we recognize that the USPTO owes a whole lot, and that our examiners are the finest in the world—but we need to get more and better information from applicants themselves, and from the public at large. And those are some of the strategies that can increase productivity, and increase production.

To that end, I'd like to share with you that we introduced a system of accelerated examination last year. Under this program, for those applicants—any applicant, any technology, from anywhere—who want quick turnaround, the USPTO now offers a complete examination within 12 months. An applicant can literally reduce their time to 12 months as of August 26, 2006.

In exchange for this quick turnaround, we don't ask for a whole lot more money, but what we ask is that applicants file a complete application. That they give us meaningful and quick turnaround.

That they file electronically, so things can be more efficient. And importantly, they give us search reports and information that will help our examiners become more efficient and more proficient.

The first application to be completed under this program will issue this month, and it will issue in less than 6 months.

Thank you, again, for this opportunity to discuss the progress the USPTO has made, and importantly, the challenges that we still face. I look forward to working with this subcommittee to make the best intellectual property system in the world even better.

Please accept my invitation—if you have an opportunity—to come down and visit the USPTO, an open invitation to any and all of you to meet with the examiners, to share in the success. I can just tell you, anecdotally, the very best ideas we've had have come from opening communication more with employees, the people who are on the ground, doing the work, who have the very best ideas. And I think that's where you'll find the solutions that you're looking for.

Thank you.

PREPARED STATEMENT

Senator MIKULSKI. Thank you very much, Mr. Dudas, and also Dr. Jeffrey.

[The statement follows:]

PREPARED STATEMENT OF JON W. DUDAS

Chairwoman Mikulski, Ranking Member Shelby, and members of the subcommittee: Thank you for this opportunity to appear before you to discuss the United States Patent and Trademark Office's (USPTO) operations, programs and initiatives and the President's fiscal year 2008 budget request to fund those efforts.

I first want to take this opportunity to thank this subcommittee and your colleagues on the House side for ensuring that our current fee schedule remains in effect for fiscal year 2007. We look forward to working with you to make that fee schedule permanent.

We are also pleased that the fiscal year 2008 budget request gives the USPTO full access to the $1.9 billion in fees we expect to collect. This is the fourth consecutive year that the President's budget recommends full access to collected fees, and we appreciate the continued congressional support for that funding level.

Full access to user fees allows the USPTO to continue our successful model of disciplined focus on real measures that enhance quality and increase production, increase hiring and training, promote electronic filing and processing, provide telework opportunities for our employees and improve intellectual property protection and enforcement domestically and abroad.

As we entered the 21st century, the USPTO faced a number of challenges, all of which are well known to the subcommittee. We did not have access to all of our fee collections, our workload in patents was growing at record and unanticipated rates, and there existed the perception that patent examiners did not produce high quality work while management ignored the growing backlog of patent cases and acted to erode employee morale. Indeed, 6 months before I entered the USPTO as the Deputy Under Secretary, this subcommittee had communicated its strong concerns with the agency in its report:

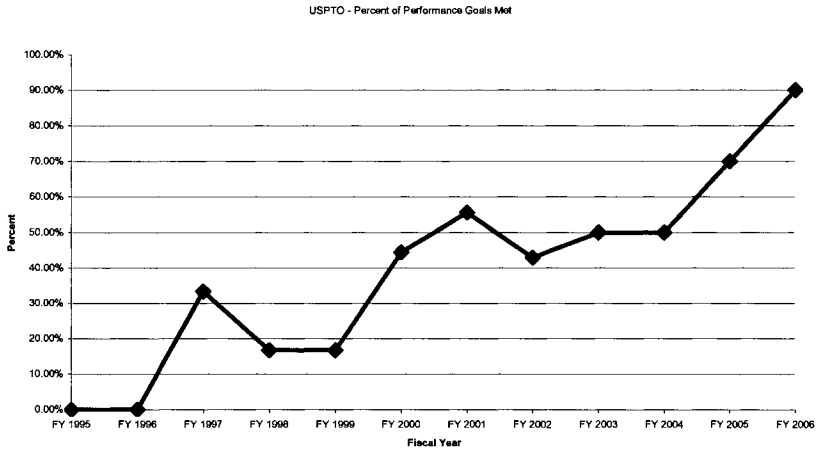
"The ability of the administration to formulate an adequate budget for the PTO is complicated by two factors. First, the agency historically has formulated an incremental budget based on the previous year's budget, and does not provide the committee with a thorough business plan that demonstrates how resources will be used and what results will obtain. Second, PTO management has not been sufficiently innovative. * * * Finally, the committee lacks full confidence in the information provided to it by PTO management regarding its needs and performance." Senate Report 107–42.

This subcommittee's concerns weighed heavily on the USPTO. As Deputy to Under Secretary Rogan, and upon assuming responsibility for the USPTO as Under

Secretary in January 2004, I made commitments to the administration, the Congress, our stakeholders and my dedicated colleagues at the USPTO to address these issues. I made specific promises, namely, that: we would make quality our number one priority; we would control pendency by increasing production; we would "hire more, train better, retain better and telecommute"; we would make patent processing fully electronic; we would protect the U.S. intellectual property system and American interests internationally; and we would reaffirm the USPTO's credibility within the administration and with the Congress.

We made promises, and we have kept those promises. Thus, I am pleased to be able to share with you today the real, measurable successes the USPTO has achieved. The women and men of the USPTO, my colleagues, delivered results in record proportions in fiscal year 2006. Last year, the USPTO set 11 all-time agency records, including: highest quality in history, highest production in history, highest hiring of examiners in history, highest electronic processing and electronic filing in history and allowing for more examiners than ever to work from home-saving them precious time and the rest of us space on the roads. In 2006, we were also chosen by Business Week magazine as one of the best places in America to launch a career. I can further promise you that the men and women of the USPTO will not rest on our accomplishments while we have so many things we still want to achieve.

This subcommittee has made USPTO's recent successes possible. This is our third year operating under the new patent and trademark fee schedule, which provides funding appropriated by the subcommittee. The reliable fee schedule permits us to finance the initiatives—particularly initiatives requiring long-term planning and commitment—so necessary to providing and maintaining reliable, functioning systems. Without your support, we would not be able to function in a business-like manner and achieve these results.




*USPTO—Percent of Performance Goals Met Under the Government Performance and Results Act of 1993*

Our success has been accomplished in the following manner. We have spent the last 4 years concentrating on meeting or exceeding objective measures, as required by the Government Performance and Results Act of 1993 (See chart above).

This requires continual assessments that identify system-wide process improvements. We use relevant metrics and measures to gauge progress and as early warning of deviations that indicate a need for process adjustment. Our record reflects the hard work and sound decisions of more than 8,000 USPTO employees. We are now seeing the results of their efforts.

*Quality*

We have focused our attention on improving quality. Public confidence in the quality of our patent grants and trademark registrations is critical. Confidence is earned, and we do not take it for granted. At the USPTO, we believe the essential components of quality are accuracy and consistency. We must ensure that allowed

applications meet both statutory and regulatory standards, thus providing the certainty that enhances competition in the marketplace. We must not allow the need for timeliness to adversely impact the requirement for quality. Last year, despite receiving a record level of patent applications, we achieved the highest patent allowance compliance rate in nearly a quarter century at 96.5 percent. Our trademark organization had a final compliance rate of 96.4 percent—the best rate since we began measuring quality.

*Human Resources*

In September 2006, Business Week identified the USPTO as one of the best places in America to launch a career. The USPTO has also been lauded by Families magazine as one of the best places in the Washington, DC area to work if you have a family. These results are due in part to the fact that the USPTO seriously addressed the audit findings involving our past human resources practices.

We are now attracting and hiring record numbers of employees—at a rate of 1,200 new patent examiners a year. We started a new, university style approach to training, which allows us to deliver intensive, balanced and long-term training to newly-hired examiners. We now offer bonuses to hire and retain talented engineers and scientists in certain critical fields.

An achievement of which we are also proud is the number of patent examiners who have joined their trademark counterparts in working from home. Our 10 year old Telework program is the gold standard and has proven to be a key quality-of-life benefit for increasing employee morale and retention, and now 500 patent examiners per year have chosen this route.

In 2006, we also had the first ever management conference for all of the USPTO's 800 managers. For 2 days, our managers attended seminars and collaborated on best practices of how to best manage the highly skilled and dedicated workforce at the USPTO. On November 1, 2006, we also held an agency-wide "thank you" event for all of the USPTO's 8,000 plus employees. Senior executives served lunch and thanked our colleagues for making 2006 a record-breaking year. At the management level, we also have started to implement our long-term Strategic Human Capital Plan.

*Electronic Government*

Our commitment to e-Government has been unequivocal. In March 2006, we unveiled "EFSWeb," the first-ever, user-friendly, Internet-based patent application and document submission system. Since last March, electronic filing of patent applications has skyrocketed from the 1 percent rate of fiscal year 2005, to almost 40 percent filings today. In other words, in less than a year, almost 40 percent of our patent applications are now filed electronically, via the Internet. Last year, 94 percent of trademark applications were filed electronically, and we recently celebrated receipt of electronic trademark application number 1,000,000.

*International IP*

On the global level, we continue spreading the word about protecting and respecting intellectual property, both domestically and internationally. We are fully engaged in the Bush Administration's Strategy Targeting Organized Piracy (STOP!) in the fight against piracy and counterfeiting around the world. We hold intellectual property awareness conferences, with a focus on small-businesses, all around the country. More than 90 percent of the attendees have rated these programs as good or excellent, and it has been described by at least one participant as "the best use of my taxpayer dollars." Some of our conferences focus exclusively on doing business in China, from an intellectual property perspective.

The USPTO has the lead for the United States in discussions and negotiations to strengthen global intellectual property protection throughout the world. We operate the Global Intellectual Property Academy, which offers intensive patent, trademark, copyright and IP enforcement training for foreign government officials and private-sector representatives from around the world. Finally, we have placed intellectual property experts in Brazil, China, Egypt, India and Thailand, to advocate for improved intellectual property protection that benefits all, including our American businesses.

*Production and Productivity*

The rate of filing of applications in the United States continues to break records every year. The USPTO's core business continues to grow at a steady pace. In fiscal year 2006 we received 419,760 UPR (utility, plant and reissue) patent applications and expect an increase of 7 percent in fiscal year 2007 followed by an anticipated annual increase of 8 percent in fiscal year 2008 through fiscal year 2012. In the trademarks area, we received 354,775 applications and expect an increase of 6 per-

cent in fiscal year 2007 followed by an 8 percent increase in fiscal year 2008. Trademark applications are anticipated to increase by 7 percent in fiscal year 2009 and increase 6 percent each year from fiscal year 2010 through fiscal year 2012.

This is a strong sign of growing innovation and investment in the United States, but it also represents potential strains on the system. The USPTO has the highest productivity of any major IP office in the world. The USPTO processes and examines more patent applications and more trademark applications than any other office in the world. Based on the latest statistics, the USPTO also has the lowest pendency of any other major office in the world. In addition, 2006 was a record year for production—from 2005 to 2006 production increased 18 percent in trademarks and 16 percent in patents.

Even with the success we have had increasing production and hiring, the volume of patent applications continues to outpace our capacity. Even with 1,200 new hires each year through 2012, pendency, which averages about 31 months now, will be nearly 39 months in 2012. Of course, hiring is critical—without that plan, pendency would be more than 50 months in 2012. However, as this subcommittee has noted, hiring alone is simply not enough. As a result, the USPTO's Strategic Plan released this year places a high emphasis on increasing productivity in the USPTO and in patent systems throughout the world by leveraging the work that is being done in other offices, by applicants themselves and from interested parties in the public.

While increasing productivity, we must take into account the incredible demands placed upon our examiners to issue on the highest quality results in an increasingly demanding world. The inventions for which patent protection is sought are becoming more technically complex. Complex technologies take more time to examine and make up an ever-greater percentage of applications. For the average application, an examiner now has to review 50 percent more claims and 300 percent more background literature. At the same time, the mix of more experienced, more productive examiners to less experienced, less productive examiner varies every year, as does the production loss to train new examiners. For these reasons, patent productivity (the number of patent applications examined per examiner per year) has been steadily decreasing from 101 in 1993 to 78 in 2006.

These are challenges that we can and will overcome. In trademarks, the USPTO increased productivity by 7 percent in fiscal year 2006 after negotiating a new performance plan. Although the trademark examiners union expressed good faith concerns that the vast majority of trademark examiners would fail under increased production and quality requirements, examiners flourished when given this opportunity to succeed—70 percent of trademark examiners earned a production bonus and the number of trademark examiners who received an "Outstanding" or "Commendable" rating grew by nearly 10 percent.

We are adopting a number of strategies in the patents area as well. The USPTO expects to increase productivity in patents by offering examiners more opportunities to determine their workload and achieve higher bonuses. The USPTO is piloting a voluntary flat goals program for patent examiners that builds upon the successful system in trademarks.

We are trying a variety of innovations, including a new offering for the public, called "Accelerated Examination." Under this program, which began August 26, 2006, for those applicants who need or want quick turn around, the USPTO offers a complete examination within 12 months. In exchange for this quick turn around, applicants must file a complete application, agree to telephone interviews and accelerated response periods, must file and prosecute their application electronically and must provide more information about the application to the USPTO in the form of a search and a support document. The first application to be completed under this program was filed on September 29, 2006 and will issue on March 13, 2007 (less than 6 months from date of filing).

While the significant growth in patent and trademark applications indicates that innovation and entrepreneurship are alive and well, it presents our agency with a variety of challenges. We plan to use the following strategies to address these challenges which are included in USPTO's fiscal year 2008 budget request.

*Strategy #1: Hiring, Retention*

The USPTO hired a record 1,218 patent examiners in 2006, exceeding our hiring goal by more than 200 examiners. The USPTO plans to hire 1,200 patent professionals a year in fiscal year 2007 through fiscal year 2012 for a total of at least 8,400 patent examiner new hires by end of year fiscal year 2012.

Since more experienced examiners naturally are able to review cases faster, and in an excellent manner, the USPTO has implemented a program of recruitment bonuses to hire and retain the talented engineers and scientists we need to examine our increasingly complex applications. We are reviewing other possible programs to

help us compete with industry for professionals in the "hot" technology sectors. We want to be an "employer of choice" to the pool of tech professionals.

*Strategy #2: Training*

In fiscal year 2006, the USPTO implemented a university approach to training new examiners. The university method provides training to new examiners in a classroom setting for 8 months, rather than using the traditional one-on-one training model. This allows us to deliver intensive training to the new hired examiners, leaving more experienced examiners and supervisors to focus on quality examination. In fiscal year 2006, 123 examiners completed the university's 8-month program. So far in fiscal year 2007, a total of 225 new examiners completed training, with an additional 293 examiners slated to graduate by the end of the fiscal year.

*Strategy #3: Quality Initiatives*

In fiscal year 2008 and beyond, patents will use a number of strategies to improve quality, such as:

—leveraging the effectiveness of the Patent Training Academy to enhance examiner skills;
—creating chief scientist positions;
—designing and implementing a comprehensive quality system to collect and analyze all quality review information for consistency and to provide feedback and improved training;
—offering a separate quality award that better recognizes the accomplishments of examiners who meet or exceed quality expectations;
—conducting targeted reviews in problem areas which focus on examination processes or functions that show problematic trends; and
—encouraging submissions of prior art by participating with a consortium of patent users, applicants, attorneys, and members of the academic community to build a system to actively solicit prior art.

Trademarks will continue quality improvements by increasing the use of quality review findings, analyzing and incorporating the results in training, examination guidelines, policies and manuals. In addition, trademarks will create comprehensive new employee training programs, and explore the creation of web-based search tools, data mining, and automated preliminary searches so that examining attorneys can search more effectively.

*Strategy #4: E-Government*

The USPTO promotes electronic filing of applications. In fiscal year 2006, 94 percent percent of trademark applications and 14 percent of patent applications were filed electronically. Trademarks and patent programs estimate that rates of electronic submission of new applications will continue in fiscal year 2007, at 90 percent and 40 percent respectively. In fiscal year 2008, patents expects to receive 50 percent of all patent applications electronically, while trademarks will hold at approximately 90 percent or above of applications filed electronically.

Trademarks is continuing to enhance electronic filing by expanding the number and type of transactions offered on-line and by offering reduced fees to any applicant who files a complete applications using the newer system, the Trademark Electronic Application System-Plus (TEAS-Plus).

Patents implemented the Electronic Filing System-Web (EFS-Web), a user friendly, Internet-based patent application and document submission solution. This system dramatically increased the electronic filing of patent applications from 1.5 percent per month to 33 percent per month at the end of fiscal year 2006. This easy to use system will continue to encourage applicants to file electronically.

Patents is developing the electronic Patent File Wrapper (PFW) as the solution to several business problems. PFW in conjunction with current Patent Automated Information Systems (AIS's) will allow for a fully automated, text-driven patent application processing system.

*Strategy #5: Telework*

In fiscal year 2006, a pioneer group of 500 patents examiners participated in the newly implemented Patent Hoteling Program (PHP). This voluntary program is designed to comply with congressional direction and build upon the lessons learned from the very successful Trademark Work-at-Home program. The PHP provides patent examiners the ability to work from home with complete on-line access to the USPTO resources. This concept allows participants to reserve time in designated shared "hotel" offices at the Carlyle Campus in Alexandria, Virginia. We plan to add 500 more examiners to the hoteling program in fiscal year 2007. The goal of the hoteling program is to change the boundaries of the old workplace patterns allowing for decreased commute time, greater control over workloads, and even a more bal-

anced lifestyle for our employees. This all translates into increased employee productivity and satisfaction, as well as higher employee retention. On a more long-term basis, we hope to create a workplace that can be anywhere, any time. Patents will also pilot a work-at-home program for technical support staff.

In 2006, Trademark's Work-at-Home program for examining attorneys received the "Telework Program with Maximum Impact on Government Award" from the Telework Exchange. The Trademark Work-at-Home program is considered a "best practice" because of its success in addressing budgetary, space, retention, recruitment, and job satisfaction issues. During 2006, trademarks expanded this program to include 85 percent of all eligible employees.

*Strategy #6: International*

With substantial congressional support, the USPTO has significantly expanded its efforts to strengthen intellectual property (IP) rights protection globally. As part of the Bush Administration's Strategy Targeting Organized Piracy (STOP!) initiative and the National Intellectual Property Law Enforcement Coordination Council (NIPLECC), the USPTO worked with other U.S. Government agencies to fight piracy and counterfeiting around the world. We collaborate on IP training, advocating progress in IP-related norm-setting bodies (e.g., intergovernmental organizations such as World Intellectual Property Organization (WIPO)), and enforcement efforts with our colleagues in the Departments of Commerce, Justice, and State; the Department of Homeland Security's Customs and Border Protection; the Copyright Office; and the Office of the United States Trade Representative (USTR).

As part of STOP! the USPTO continues a communications campaign to educate small businesses about protecting their IP in the United States and abroad. Small business conferences are offered throughout the country and other USPTO conferences focus exclusively on the IP challenges of doing business in China. The USPTO continues to staff the STOP! Hotline, which lets callers receive information on IP rights and enforcement from our attorneys with regional and subject matter experts. In 2006, the hotline received 1,460 phone calls from people across America with a range of IP questions—an increase of 52 percent over 2005.

To strengthen global IP protection, the USPTO represented the United States in discussions and negotiations at the WIPO throughout 2006. Most notably, the USPTO led a delegation to the WIPO Diplomatic Conference, which culminated in the adoption of the Singapore Treaty on the Law of Trademarks. The new treaty will help trademark owners around the world file applications and renew registrations with fewer formality requirements.

The USPTO has promoted IP protection in China. Through the Joint Commission on Commerce and Trade and its Intellectual Property Rights Working Group, the USPTO and USTR have negotiated commitments from the Chinese Government to reduce counterfeiting and piracy.

The USPTO has established the Global Intellectual Property Academy and has conducted IP rights programs for foreign government officials and private sector representatives around the world. Additionally, we have placed IP experts in Brazil, China, Egypt, India, Thailand, and Geneva to advocate improved IP protection for American businesses and to coordinate training to help stop piracy and counterfeiting abroad.

*Strategy #7: Business Continuity/Disaster Recovery*

The USPTO Business Continuity Program/Disaster Recovery Program is committed to ensuring protection of USPTO data and systems from damage or unavailability in the event of a disaster or prolonged outage. The USPTO is operating both the patent and trademark production pipelines in a predominantly electronic environment and is dependent on automated systems to support the end-to-end processing of patent and trademark applications. As such, the continuing operations of the USPTO are at an increased risk should catastrophe strike the single data center prior to the full deployment of disaster recovery services. We are undertaking a phased implementation for deploying dual, load balanced data centers that would enable us to protect our mission critical patent and trademark data.

The USPTO's Business Continuity Program completion timeline will occur in five major phases. As part of phase one, in 2007 the USPTO will establish an off-site data "bunker," far enough away from our current data center to prevent a disaster from affecting both sites. Phase two will begin with the establishment of a "warm site" that can be activated in the event of a disaster at the primary data center. Future phases will provide distributed processing, load balancing, and automatic fail over for both core and non-core systems.

*Conclusion*

Intellectual property rights is a critical aspect of how nations protect and promote innovation and global competitiveness. The United States represents the gold standard for intellectual property protection, and the USPTO is the most productive and most respected intellectual property office in the world. However, because intellectual property protection is so fundamental to our Nation's economic growth, being the best is not enough. We must be perfect. Despite the challenges, we at the USPTO strive to get it perfect, and we look forward to working with the subcommittee to ensure that we do.

Thank you.

PATENT APPLICATIONS AND PENDENCY

Senator MIKULSKI. I have visited NIST, and I've been inspired. I've seen the hydrocarbon car and rode around in it and looked at how you've examined building properties after what happened at the World Trade Center, so not only do we prevent an attack on us again, but that our buildings will be safer and more secure.

Let me now go to patents, and then I'll come back to you, Dr. Jeffrey.

The protection of our intellectual property is an obsession with me. Because if we invent it, and all that goes into it, that's how we're going to compete in the world. My question to you, Mr. Dudas—and thank you for your energetic testimony—how many patents do you receive a year, and what is the nature of the backlog? I understand it's called "pendency."

Mr. DUDAS. Pendency is the amount of time it takes for an application from the time it's filed until the time it's completed, and the backlog is literally the number of applications that are waiting in line.

Senator MIKULSKI. Okay, well, tell me how many do you get?

Mr. DUDAS. Yes, we are now receiving——

Senator MIKULSKI. What is the backlog, and what is the pendency?

Mr. DUDAS. Yes, the number of applications we receive is growing every year, this year we anticipate 440,000 new patent applications—largest in the world—which is a good news in terms of innovation. 440,000 applications, and we're experiencing growth right now of about 8 percent—many countries are wanting to file more, and certainly Americans are filing more.

Senator MIKULSKI. So, we have to be clear that it is not only inventors and entrepreneurs of the United States of America that file with you. But they file with you from around the world.

Mr. DUDAS. Absolutely.

Senator MIKULSKI. And, I understand one of the largest countries is South Korea.

Mr. DUDAS. South Korea is one of the fastest growing countries. It is not right now one of the largest, but it is the fastest growing.

Senator MIKULSKI. But you have 400,000 applicants a year, of pretty techno stuff.

Mr. DUDAS. Absolutely.

Senator MIKULSKI. Okay, and what is the backlog?

Mr. DUDAS. The backlog is 700,000 patent applications waiting in line.

Senator MIKULSKI. And how long is the timeframe?

Mr. DUDAS. The average across the board is 31 months—and it is growing because that backlog is, you know, I just call it "deficit

examining"—more applications coming in, even with record hiring. So 700,000 applications, it's 31.1 months right now, on average—but that's a little misleading, let me tell you, to say "on average" because we have some areas—in the mechanical arts, for instance—maybe relatively simple inventions that are only taking 14 months. That's wonderful, but on the other hand, we have some areas—like the electrical arts—where you see a lot of the high technology, unfortunately where you see the short life cycle, that could take 5 or 6 years. And this is exactly why we are introducing concepts like accelerated examination.

Senator MIKULSKI. Well, then, let me go to these questions. You've read the Government Accountability Office (GAO) report, you're obviously there, and we're glad about the recognition in Business Week. But my concerns relate to ongoing communication.

Mr. DUDAS. Right.

Senator MIKULSKI. And the issues related to improving technical education of staff. You're hiring people that are hot tickets in the marketplace.

Mr. DUDAS. Right.

Senator MIKULSKI. These are intellectual property lawyers, paralegals, support staff—they're hot.

Mr. DUDAS. Right, very.

Senator MIKULSKI. And, in some instances, they also have to have security clearances.

Mr. DUDAS. Right, absolutely.

Senator MIKULSKI. And we understand the dynamic in that.

Mr. DUDAS. Right, they all have to be American citizens, as well.

Senator MIKULSKI. So, could you—one of the things I noted in your prepared remarks that you submitted, that you want to retain, you don't want to keep training the new.

Mr. DUDAS. Right.

PATENT AND TRADEMARK OFFICE RETENTION AND TRAINING

Senator MIKULSKI. And we support that. Could you tell us what you're doing in the area, both of retention, and providing and cracking this whole issue of ongoing technical training. There are people, when I talk to Nobel Prize winners that have worked, who were civil servants, both at NASA and NIST, they said they liked working for the Federal Government because it was mission, it wasn't money, it was purpose. And, they also worked with the best colleagues in the world, and they had the opportunity for their own intellectual expansion. For us, for them to stay fresh, both technically, and fresh in terms of enthusiasm for the job, and a desire to stay.

Could you talk, then, about your retention techniques, and the opportunity for them to get ongoing education.

Mr. DUDAS. Absolutely.

Senator MIKULSKI. And do you need something from us?

Mr. DUDAS. I'll report what you have, and quite honestly, we're looking for guidance from anywhere and everywhere we can get it, but I will tell you that I think we've done a number of things.

First and foremost, what you talked about—what do people want today? They're called the "millennial," I'm not a millennial, the millennial generation, but many of the people we hire today, they care

about Government service, they want to be valued—money matters, but that's not the number one thing that attracts them, and we try to address that, as well.

And you talked about training, and making sure you show value. Of course, we have a challenge, because we are a performance-based organization, people do have to work hard in our office, but there's a number of things that we've done.

First and foremost, we've changed the way we train. Instead of having examiners come in and train for 2 to 3 weeks and then have a mentor approach, we've actually started a Patent Examiner Training Academy, where they come in for 8 months, we give extended-term training, so we can get a greater level of consistency, it allows for more teamwork, it allows for people to get to know the office better, and more consistency. That is something that we needed to do, both because we thought it was a best practice, and because of the amount we were hiring. It turns out it has been a good practice.

Senator MIKULSKI. That's when they come in. What about training for them while they're there? In other words, say they've worked for 3 years, and they want to get refreshed and renewed——

Mr. DUDAS. Yes, absolutely.

Senator MIKULSKI. Both intellectually, and professionally.

Mr. DUDAS. Absolutely.

Senator MIKULSKI They need to know the new stuff and the new bus.

Mr. DUDAS. Absolutely. One of the things we've done, is beef up on allowing examiners to take time and use money to get external training. And we're doing more internal training as well. So, for instance, an examiner can have an opportunity to have their legal degree paid for. If they want to get education outside, they can get a legal degree outside the office and the office will pay for it. In addition to that, any training they want to get that's related to their field, outside the office, PTO will pay up to $10,000.

Last year we had the first-ever managers training conference, where we worked with managers, we got all of the managers out, 2 days away from the office, to talk to them about how they can train better, how they can resolve conflicts better, how they can listen and communicate better with examiners. Now we're also developing the different kinds of training programs we can offer. We already offer several through the office, and through the Federal Government. But, how do we tailor it specifically for those examiners who've been there for a long time?

Another program that we think is very important for retention is teleworking. Five hundred examiners were given the opportunity to work from home last year, and 500 more patent examiners this year. Giving the examiners the opportunity to have the flexibility to determine what they think is the best work environment for themselves. We've found that that has been an incredible boost for morale. Teleworking also gives people more time with their families, but also more time to increase their production, if they want to do that.

Senator MIKULSKI. Well, my time has expired, I will turn to Senator Shelby. But, Dr. Jeffrey, you won't leave without a question from me.

I think that's exciting—no, go ahead, go ahead. Senator Shelby, you go right ahead.

Senator SHELBY. Thank you.

AMERICAN COMPETITIVENESS INITIATIVE

Dr. Jeffrey, I'll start with you, if I could.

The National Institute of Standards and Technology. Last year, we've been talking about, the President announced the American competitiveness initiative—investments are made in federally funded research to ensure that the country has a technologically skilled workforce. The National Institute of Standards and Technology is one agency designated to lead this initiative.

Dr. Jeffrey, how has the American competitiveness initiative improved your portfolio in NIST?

Dr. JEFFREY. Thank you very much, Senator.

The ACI was an absolutely tremendous boost to NIST's ability to do its mission. NIST stimulates innovation and competitiveness through measurements and standards, specifically to help support U.S. industry in terms of their competitiveness, and also improving the quality of life.

The ACI finding will help us in a number of areas. For example, it helps us to accelerate the development and adoption of absolutely groundbreaking, and economically significant technologies. Like, for example, nano-technology, which is estimated to, perhaps, be a $1 trillion industry in 10 years. Also, in support of our energy independence through advancing the hydrogen economy and biofuels work.

It also supports the technical infrastructure that industry needs for the measurements like the work at the NIST Center for Neutron Research (NCNR), and the new NIST Center for Nano-Scale Science Technology. Bottom line is the ACI substantially enhances NIST's capacity and capability to meet our mission.

DISASTER RESILIENT STRUCTURES STUDIES

Senator SHELBY. I'm also pleased to see that the budget request includes an increase of funding for improving disaster-resilient structures in communities. Results from these studies are expected to influence building codes and construction practices along the gulf coast, which need updating to match current risk assessments.

How are you planning to coordinate with gulf coast communities and State agencies to implement any results from this program? As you know, continued construction—costs continue to rise in the gulf coast as a result of rebuilding from the 2005 hurricane. What part of this program explores how safer construction could actually become more cost-effective than current practices? Looking at the whole picture.

Dr. JEFFREY. Thank you, Senator.

We're very excited by the programs and new initiatives that we put in in the 2008 budget. To answer the first question "how we're going to coordinate". After Hurricanes Katrina and Rita, NIST did an assessment—Lessons Learned in the Gulf Coast Region. At that

point we worked very closely with a lot of State and local officials who were responsible for enacting and enforcing the building codes. We have a good working relationship with them, as well as the construction industry down there.

Just like that, we will continue to work with the State and local officials and with the local industry building officials as the results from these new initiatives come forward. We'll also continue to work with the National Building Codes and Standards, to make sure that the lessons get adopted in there.

To answer the second question, which is how do we ensure the cost effectiveness, the whole crux of that program, the whole goal is to find a way of balancing the risk and the cost. So the overall programs focus on exactly that goal. There are actually three ways that we're going to be doing that. One is in the focus on the building codes and standards on the local risk assessment. It matters—whether you're a block away from the ocean, versus 1 mile away from the ocean, and that needs to be included when one looks at the risk assessment, and what the building codes should be.

Second, we're emphasizing performance of the building codes, as opposed to individual components, that way, it's very prescriptive right now. What you want to do is look at the performance in the entire structure.

And last, to really foster the adoption of new construction techniques and materials that are at lower costs, that can help provide greater security and risk assessment.

INTELLECTUAL PROPERTY THEFT

Senator SHELBY. Secretary Dudas, what are you doing at the U.S. Patent and Trademark Office to curb intellectual property theft, and strengthen both domestic and international protection of these rights?

Mr. DUDAS. Thanks for asking that question.

We are working both internationally and domestically. First, while training small businesses in the United States, we came to the conclusion we can't just issue patents and registered trademarks, we need to educate businesses. So, we have seminars throughout the country training small businesses.

First, on intellectual property generally, second on how to do business in China, particularly, because it's such a hot area and there's such a problem there.

INTELLECTUAL PROPERTY LAW ENFORCEMENT

Senator SHELBY. What about enforcement?

Mr. DUDAS. Enforcement, we are not police.

Senator SHELBY. We know that. But you aid in the——

Mr. DUDAS [continuing]. Absolutely. We're the advisors to the rest of the administration on free trade agreements, we work very closely with the Departments of Justice and Customs and Homeland Security, and we are often on the front lines. We place people in China, Brazil, India, Russia, who work with custom officials and others. And we also have a Global Intellectual Property Training Academy where we train hundreds of officials from foreign governments. We bring them here, they're Supreme Court justices, customs officials, and train them here in the United States.

Senator SHELBY. Absolutely. How large of a role does lax enforcement—lax enforcement—of patents and copyrights agreements, internationally play in violating intellectual property rights? In other words, if you don't enforce what you have.

Mr. DUDAS. Right.

Senator SHELBY. Or if you don't try to enforce it, if you're not diligent, you're not on top of things—what do you have, right?

Mr. DUDAS. Right. Lax enforcement, I think, is the number one problem for intellectual property rights. Many nations have put laws into place that might comply, but if you don't enforce them, you have nothing. Sometimes shaking a stick at other nations, and telling them why it's critical, and we do that through a variety of ways—but also, educating their officials in why it's in their interest, as well as the United States.

COST OF INTELLECTUAL PROPERTY THEFT

Senator SHELBY. Well, what's the estimated cost impact in the United States, to the U.S. economy in terms of money and jobs that can be attributed to the theft of U.S. intellectual property?

Mr. DUDAS. We've seen estimates as high as $250 billion.

Senator SHELBY. Say that again, for the record, two hundred——

Mr. DUDAS. $250 billion.

Senator SHELBY. $250 billion of lost money, it's jobs, is it not?

Mr. DUDAS. And the estimates of up to 750,000 jobs just from intellectual property theft.

Senator SHELBY. Do you have the coordination of the other agencies to enforce our copyrights?

Mr. DUDAS. I think we do, and——

Senator SHELBY. Is it working pretty well?

Mr. DUDAS. At the Presidential level, they pull together nine different departments and agencies, targeting organized piracy. We now see the President raising, as he has been for some years, the issue with world leaders, and we've seen real results because of that. The Department of Justice had a copyright takedown in 10 different countries because of international cooperation.

PATENT EXAMINATION QUALITY

Senator SHELBY. The quality of patent examination is central to ensuring that we have strong, enforceable patents, otherwise they challenge, and say there's absolutely nothing to that, you know, that's in the marketplace, everybody knows it. What are you doing to ensure the quality of the patent examination? You talked about the applications with Senator Mikulski, and the backlog, but you know, you don't want to run in and do something too hastily.

Mr. DUDAS. Right.

Senator SHELBY. Because, otherwise you—the quality's not there.

Mr. DUDAS. You're 100 percent right that there is tension between productivity and quality, and we have to be fair to the examiners. I will tell you, our number one goal was to make certain we improved certainty and quality in the system.

The first thing we do is hire the best and the brightest, the most dedicated people.

Senator SHELBY. How do you do that, and compete in the marketplace, this is very important for a governmental agency that we fund to do that?

Mr. DUDAS. Hiring 1,200 examiners has been an incredible challenge, to hire the best and the brightest. We've judged by grade point averages, and where people are coming from. Quite honestly, I think the reason we've been successful in this model, is because we do offer what Senator Mikulski mentioned, which is Government service. You take a constitutional oath to come to our office.

Senator SHELBY. They're not doing it for money.

Mr. DUDAS. They're not doing it for money.

Senator SHELBY. But also, intellectual challenges in there.

Mr. DUDAS. The intellectual challenges in our office are absolutely one huge challenge for us. They do become valuable, because they are so intelligent coming in, and the skills they learn at the Patent and Trademark Office make them valuable in other ways. But, we actually have a team that measures, separate team that measures randomly, quality of examiners, randomly 6 to 18 different cases. We've beefed up that, in terms of how many cases we look at.

Senator SHELBY. You have production goals, but at the same time, it can't just be numbers, it's got to be quality.

Mr. DUDAS. Right, we have production goals and quality goals, and there are no bonuses—you cannot get a bonus until you've met your quality goal. At least met your goal for quality.

Senator SHELBY. The worst thing you could do is allow a patent for something that, isn't, perhaps not patentable, just to meet a goal or a deadline, is that correct?

Mr. DUDAS. You're absolutely right that quality has to be first and foremost. And that's why, probably, the thing we are proudest of is that we drove our error rate down to the lowest it's been in history in trademarks, and second lowest in history of patents.

Senator SHELBY. The chairman has indulged me, if I have one more question, Madam Chairman?

HUMAN CAPITAL MANAGEMENT REVIEWS

Mr. Dudas, over the past 7 years, independent audit in agencies such as Government Accountability Office, OPM and the inspector general have reviewed your office management of human capital. What has been the result of these numerous audits, and do you believe that your agency is aggressively implemented the recommendation of these reviews, can you—and can you provide specific improvements that has shown in the area of human capital management?

Mr. DUDAS. Absolutely.

Senator SHELBY. So much of what you're doing is dealing with people, but people with high intellectual capacity.

Mr. DUDAS. Right. First, to answer your question directly, I am certain that we're aggressively implementing the recommendations in these studies, and I will give you specifics, but I want to point out—I think you're 100 percent right—we have some of the smartest people there are, and they're at the cutting edge of technology. I'm always humbled when I sit down and talk to a Ph.D. in bio-

technology in our office to try to learn something specifically about a case.

And, I will tell you, first and foremost, when we look at the Federal human capital survey, what our employees——

Senator SHELBY. You got a lot of Phi Beta Kappas over there?

Mr. DUDAS. We've got a lot of Phi Beta Kappas, yes.

And when we look to our employees themselves, and look at the results we have—and quite honestly, anecdotally, from me walking around in the gym, and the preschool, and walking around, just talking to examiners—what we do incredibly well is measure. We give people the expectations they need and they believe they're promoted for the right reasons.

What we're not doing well enough, and what we're focused on now, is letting people feel they have creativity and innovation in what they're doing. Because this production environment and the metrics environment is a challenge to that.

And, so we've done a number of things. We've established an Office of Internal Communications, focused only on how we communicate with others. I've called in our management team, we actually changed some of our management team, because we wanted to make certain that we're communicating better, and we wanted to make certain our senior managers did communicate better. So our Commissioners of Patents and Trademarks have brown bag lunches at least every month. Sometimes it's little things, like going to retirement parties, speaking to examiners, 500 or 600 at a time. The Patent Training Academy brings in classes of about 120 examiners at a time. Either I, or the Deputy and the Commissioner will meet with them two or three times, to make certain we're letting them know what's going on. And certainly, most importantly, open to the different questions.

But on the more administrative side, we have a human capital plan that we put in place and the Human Capital Council that we've put in place. The question is, what are the results? So, certainly, long term, I think administratively we've made a big difference. I will tell you some of the results, I think, we've gotten this year.

Being able to hire 1,200 examiners, and have a high-quality class is something that, quite honestly, we were intimidated by, because a number of Senators, a number of Members said, "You simply can't do it." Our original goal was 750, and then we did 875, and then we raised the goal to 1,000, and we did 1,219. And now we feel comfortable and confident that we can do this with 1,200 folks. So, I think, just having an operation that can hire 25 percent of your workforce every year is a testament to what our human capital plan has put in place so far.

Although money is not the most important thing, we recognize we need to be competitive. We were able to get both retention and recruitment bonuses adopted through the Office of Personnel Management, as well as an across-the-board pay raise of 7 percent for all patent examiners, both in the same year, to say, "Listen, we have to be able to recruit on this basis."

RELATIONSHIP WITH FOOD AND DRUG ADMINISTRATION

Senator SHELBY. What kind of relationship do you have with the Federal Drug Administration?

Mr. DUDAS. Food and Drug Administration?

Senator SHELBY. Food and Drug——

Mr. DUDAS. It's more administrative than anything else. Our policy folks get together and talk, but certainly we have an administrative relationship in that certain pharmaceutical and agricultural products——

Senator SHELBY. Right.

Mr. DUDAS. Have an administrative way of getting a term extension. It's mostly a ministerial task at the Patent and Trademark Office.

Senator SHELBY. Because they patent.

Mr. DUDAS. What happens is that the Food and Drug Administration or Agriculture has to approve a certain product, so they're not allowed to get to the market——

Senator SHELBY. Absolutely, it's safety.

Mr. DUDAS. Yeah, exactly, the Hatch-Waxman law allows for some extensions. So, we have a relationship in that we communicate with them, so we understand——

Senator SHELBY. Sure.

Mr. DUDAS. But, really it's more administrative.

Senator SHELBY. Okay.

Thank you for your indulgence, Madam Chairman.

Senator MIKULSKI. Well, Senator Shelby, those were excellent questions, and certainly reflect my own thinking.

I just wanted to close the loop for the purposes of this hearing on the patent issue. I think what we're saying is, that what we want is the PTO to really function in the way I think you and we would like it to be. There have been a series of issues that have been raised, and there are numerous reports, and that you have raised internally. We know that there's been legislation that took the PTO from kind of a 1950's Government thinking—when Rubric's quoting in 50's and 60's technology—to a performance-based agency in a new world order. Not only a new economy. And, therefore, we're very conscious in performance-base with benchmarks, and metrics, these things are important.

All of this is important, but ultimately, it's those employees who feel that they are on solid ground, and they want to either make it a career, or they want to make it a long enough of a career to make what we invest in them worthwhile. That's really our question. Because we know, in the marketplace, they'll move out. But you will always need a cadre of civil servants that are there. So, this is why we'll come back to you in terms of what I raise with both Secretary Dudas and Gutierrez, you've heard what we've raised, no surprises, and no spring hazing—we wanted that remediation plan. So, let's get this remediation plan. You know what the challenges are, and what we think we can do this year, and what we can do subsequently.

We're also aware of the international challenges—not only the number of countries that are applying and—because they want our

intellectual property so they can come into our market. We're the gold standard. You are, like FDA, the gold standard.

And, what we're very impressed by the National Intellectual Property Law Enforcement Coordinating Council. I've read their most recent report, and Senator Shelby, I know you've traveled the world on security matters, both as intel chair, and actually of this subcommittee, which—you get high marks for training Government officials in other countries to enforcement issues, educating foreign publics about intellectual property, the group called STOP.

So, that's a whole other area we could follow up on. But, we want to be sure, as we go ahead in this year's appropriation, you can meet some of those international challenges, as well as being flooded with patents. So, we're going to come back to you.

NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY FUNDING INCREASE FOR AMERICAN COMPETITIVENESS INITIATIVE

But, Dr. Jeffrey, let me go over to you, I mean, we're very impressed that the President's budget increased funding for NIST, particularly in the laboratory and some construction accounts, however we're concerned that it was paid for out of ATP and the manufacturing extension program.

But, if we could come back to you being in the competitiveness agenda—what do you think are the three kinds of most robust things that you want to do with this new money, and is this—does it go to the horizon, or does it take us over the horizon? And also, looking at both innovation and then, to the extent that you can testify publicly, its link to security?

Dr. JEFFREY. Absolutely. The three overriding things that we need to do at NIST to ensure that we're providing the support in industry and academia that we need to do, is one, we need to absolutely ensure that our basic core competencies are strong, and that we're meeting the needs of industry today, and as we look forward to the future. And there's a number of areas that some of the funding under ACI is going in to strengthen.

It's no secret that the NIST funding has—over the last, essentially, two decades, not really kept pace with the needs that were arising. And so we've eaten into our seed corn. This, now, fixes that.

Second, we need to look at was the future to those areas that are going to be absolutely critical for industry and universities. Nanotechnology is a great example. That's going to be an incredible disruptive and important economic impact. It's estimated that up to 15 percent of all manufactured goods in 10 years is going to include nano-technology. We need to be there and ready for them.

And the third area is that we have to ensure that we have the facilities capabilities to make these kind of measurements. And that also, if I could almost follow on to the last of the questioning, is critical to being able to attract and retain the best and the brightest scientists. They have to be able to have the kinds of facilities necessary to do the job, and that's why you also see an important component on the facilities, and in our budget.

CENTER FOR NANO-SCALE SCIENCE TECHNOLOGY

Senator MIKULSKI. Well, we appreciate that, and if I could go right to nano-technology in a question.

As I understand it, this is $6 million for enabling nano-tech from discovery to manufacturer. At this center, do you, have you developed an operating business plan for moving ahead with this, because there's some question about the user facility.

Dr. JEFFREY. Absolutely, the Center for Nano-Scale Science Technology is sort of a two-pronged program. One is, as a national user facility, and the other is as a research facility. That was created in the 2007 President's budget and is now being expanded in 2008. We are in the process of completing all of policy documents and all of the business models for that. I was, quite frankly, slowed down a bit because of the continuing resolution, until that was resolved, and thanks to a lot of the support of the people here and on the House side, we've had sufficient funding in the continuing resolution to now move forward.

So, we expect to have all of the documents done, and open for business, essentially, May of this year.

SAFETY OF NANO-TECHNOLOGY

Senator MIKULSKI. Well, that sounds good. One last question about nano-tech.

One of the issues that is raised is, that—is nano-tech safe? Because they're such mini-, micro-particles, I don't even have—they're nano-particles, which means they're sub-mini-micro-particles. But there's a lot of question, as you know, about the safety of them. Is part of your ongoing research and standards is, the flashing yellow lights around the impact of health, the part of the NIST effort?

Dr. JEFFREY. Excellent question, Senator.

NIST is taking very seriously the issues of safety in nano-technology. And we're working with other agencies to make sure that we have good answers for the general public, because the worst thing that can happen is, either an actual environmental——

Senator MIKULSKI. But are you doing it?

Dr. JEFFREY. The role that NIST plays is on the measurements and characterization of the nano-technology that gets, that one can then determine the health impacts.

I'll give you an example, a concrete example. Carbon nano-tubes, which are one of the essential building blocks of nano-technology—we received a sample of carbon nano-tubes from industry to characterize it. We found that 60 percent—six-zero percent—of the atoms were not carbon, they were heavy metals.

Senator MIKULSKI. Oh, gosh.

Dr. JEFFREY. There were catalysts that were used, thereby contaminating the sample. So, when one, then goes to NIH or others to look at the toxicity, are you measuring the toxicity of the carbon nano-tube? Or the toxicity of the heavy metals?

So, NIST is working very closely to characterize materials, to purify the materials, to ensure that we've got the measurements that we can then apply, working closely, and we are working closely and collaboratively with NIH, with FDA and with others, to have that

collusive approach. We provide the measurements characterizations, they supply the medical implications.

Senator MIKULSKI. That's fantastic.

We also are very heartened by the fact that you are one of the lead agencies in dealing with the climate crisis, when measurements and standards for climate change science, as well as the practical things like the national earthquake hazard reduction program.

EFFECTIVENESS OF MANUFACTURING EXTENSION PARTNERSHIP

We won't go into that now, but here's the question—you hear our colleagues here raising questions about manufacturing extension. And then you've also heard on the floor, challenges to ATP, is it corporate welfare, whose time has come and gone. What are your comments about ATP and MEP? We're going to be on pressure from one group of Senators who want to save ATP and another group of Senators who want to tank it. And then, of course, there's enthusiastic support for MEP. And, I think, well-warranted—the support is not, again, it's not about pork, but in their community it's been, it's brought the beef.

Dr. JEFFREY. Thank you. Let me take the last part first, on MEP, as the Secretary testified to, the administration recognizes the effectiveness of MEP, it is an effective program, it's been measured and rated by OMB as an effective program. The issue is one of prioritizations in the tight budget climate. Our core competencies and concentration is on the measurements and standards that impact entire industries, and opposed to individual companies one at a time. And, in a tough budget climate, those prioritizations had to be made.

On ATP, there is a lot of disagreement as to where the appropriate role is for the Federal Government to be investing. One thing, I think, is fairly clear, though, is that there is friction between the basic scientific discoveries, and when it ends up in the marketplace.

And, there are a number of different ways that one can look at trying to minimize that friction, and make it easier to increase the efficiency by which a scientific discovery is able to get commercialized. And I think we need to be open in looking at all sorts of different models and policy options to try to help and make that the most efficient. Because, the faster we can get those discoveries to market, the better the advantage we will have in the global economy.

Senator MIKULSKI. Well, that's exactly right, and you're working to develop those standards and so on, and that's the heart and soul of a patent process—not only what is it and what does it do, but how do you kind of measure it, or certain metrics, not only measurement, to identify it, et cetera.

Well, our time is really up.

Senator SHELBY. I just wanted to——

Senator MIKULSKI. Yes, we could go on all day, and I hope one day to visit you, and of course, visit you, Dr. Jeffrey, and perhaps we could go together, but Senator Shelby?

Senator SHELBY. I would like to go sometime, and I don't know if I'd understand everything they were doing, but I'd be fascinated.

Senator MIKULSKI. Me too.

NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY'S COLLABORATION WITH INDUSTRY

Senator SHELBY. Dr. Jeffrey, in your testimony, you mentioned the recent advancements, I'm picking up on Senator—in nano-technology, and how your agency is developing a method for testing the quality of nano-tube material.

Besides testing the tubes, what other ways does NIST plan to interact with the industry? Particularly, with the manufacturing of more efficient fuel cells, and creating baseline standards for the use of nano-particles within the medical industry.

Dr. JEFFREY. Thank you very much. There's a number of different areas where we've been reaching out to industry. One of the beauties of NIST, which is almost unique among the Federal Science and Technology Enterprise, is the close collaboration that we have with industry. Where they are not just customers, they are partners.

I believe Secretary Gutierrez made a reference that we have about 1,500 technical Government employees, but we have about 2,800 technical private sector people from industry and academia, literally coming to the NIST campus and working side by side, so it's a very close collaboration.

In terms of some of the specifics, I'll give this as an example. We actually just completed a study, it's called An Assessment of the U.S. Measurement System, where we actually looked at——

Senator SHELBY. What are the results of the study?

Dr. JEFFREY. Well, the results are that we're trying to identify measurement barriers to innovation. This is to help us in our strategic planning process, as well as to reach out to other parts of the Federal Government, where they have measurement needs. We identified 723 measurement barriers to innovation that were in 11 different industry sectors—including ones that you described. One of the things that we're now doing, now that we have—this is the first cut—it's fascinating reading, sir, we'll be glad to provide copies. But one of the things that we're now doing is, essentially, a deep dive into this, and looking at—as opposed to 723 separate measurement needs, are there systemic issues that we can attack that would be the highest priority that we can then, really make the biggest difference on.

And, so we're working very closely with the universities and I'm very proud to say we hosted a set of universities from Alabama up on the NIST campus, specifically looking at some of the health impacts on the new technology, and looking broadly at reaching out and forming partnerships. I was very impressed with what I saw.

Senator SHELBY. This is very promising. It's a different field from anybody could imagine other than the lab 25 years ago, is that right?

Dr. JEFFREY. Absolutely. This is an entirely new area. One of the things to put this into perspective, when we talk about nano-technology, and mini-micro and going all the way down. We have a beautiful picture that we captured of a carbon nano-tube, again, it's sort of a basic building block—on the hair of the leg of an ant.

Senator SHELBY. It's so small, it's hard for us to imagine, isn't it?

Dr. JEFFREY. Yeah, absolutely.

Senator SHELBY. We talked about miniaturization of everything, but then, this has gone a quantum leap, has it not?

Dr. JEFFREY. Absolutely. We are literally talking about a few atoms. It's really where the action is occurring.

Senator SHELBY. Thank you, Madam Chairman.

Senator MIKULSKI. Well, thank you. And, we want to thank our panelists, and I think this has been a very, a very robust hearing. And we've gotten the subcommittee off to a good start, we thank you for your service, and we look forward to working with you now, as we go through the appropriation process.

ADDITIONAL COMMITTEE QUESTIONS

If there are no further questions, Senators may submit additional questions for the subcommittee's official record. We request the Department's responses in 30 days.

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

QUESTIONS SUBMITTED BY SENATOR BARBARA A. MIKULSKI

DEPARTMENTAL MANAGEMENT WCF AND A&R

*Question.* Please provide the WCF bill breakout (including the A&R) by bureaus for fiscal year 2001–2007. Also provide the estimated WCF bill (including A&R) for each of the bureaus in the fiscal year 2008 request.

Answer. The requested information follows.

## ATTACHMENT 1.—ADVANCES & REIMBURSEMENTS SUMMARY BY BUREAU

[In thousands of dollars]

| Bureau | Fiscal year— | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| | 2001 | 2002 | 2003 | 2004 | 2005 | 2006 | 2007 estimate | 2008 estimate |
| OFFICE OF THE SECRETARY—SALARIES & EXPENSES | 4,201 | 4,333 | 3,873 | 2,690 | 5,094 | 4,306 | 4,820 | 4,931 |
| INTERNATIONAL TRADE ADMINISTRATION | 15,351 | 15,202 | 15,454 | 12,901 | 13,910 | 12,510 | 13,319 | 13,622 |
| ECONOMIC DEVELOPMENT ADMINISTRATION | 1,376 | 1,411 | 1,370 | 1,230 | 1,298 | 1,372 | 1,613 | 1,647 |
| NATIONAL TELECOMMUNICATIONS AND INFO ADMIN | 2,608 | 2,650 | 2,579 | 2,027 | 2,431 | 2,387 | 2,582 | 2,641 |
| NATIONAL TECHNICAL INFORMATION SERVICE | 282 | 32 | 76 | 211 | 85 | 129 | 143 | 145 |
| BUREAU OF THE CENSUS | 1,703 | 2,261 | 1,367 | 1,540 | 1,503 | 3,210 | 4,873 | 4,956 |
| ECONOMIC AND STATISTICAL ANALYSIS | 1,109 | 1,135 | 1,128 | 901 | 1,195 | 882 | 1,058 | 1,081 |
| NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION | 4,805 | 4,047 | 3,810 | 4,062 | 3,938 | 5,420 | 7,155 | 7,290 |
| NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY | 1,042 | 825 | 778 | 988 | 910 | 1,002 | 1,451 | 1,476 |
| MINORITY BUSINESS DEVELOPMENT AGENCY | 786 | 797 | 849 | 602 | 709 | 703 | 777 | 795 |
| BUREAU OF INDUSTRY AND SECURITY | 3,643 | 3,735 | 3,662 | 3,061 | 3,487 | 3,243 | 3,550 | 3,630 |
| TECHNOLOGY ADMINISTRATION | 929 | 937 | 932 | 775 | 660 | 423 | 277 | 283 |
| OFFICE OF INSPECTOR GENERAL | 1,350 | 1,373 | 1,126 | 999 | 1,163 | 1,130 | 1,142 | 1,169 |
| OFFICE OF COMPUTER SERVICES | 419 | 425 | 309 | 266 | 269 | 268 | 276 | 282 |
| OFFICE OF THE SECRETARY—WORKING CAPITAL FUND | 6,813 | 7,076 | 6,813 | 5,338 | 6,066 | 5,661 | 5,918 | 6,057 |
| SUBTOTAL BY BUREAU | 46,417 | 46,239 | 44,126 | 37,591 | 42,718 | 42,646 | 48,954 | 50,005 |
| PATENT AND TRADEMARK OFFICE | 1,248 | 1,107 | 825 | 1,133 | 1,135 | 2,517 | 2,610 | 2,655 |
| TOTAL A&R | 47,665 | 47,346 | 44,951 | 38,724 | 43,853 | 45,163 | 51,564 | 52,660 |

NOTE: Fiscal years 2001–2002 represents the operating plan for the year.

## ATTACHMENT 1A.—WORKING CAPITAL FUND BILLINGS SUMMARY BY BUREAU

[In thousands of dollars]

| Bureau | Fiscal year— | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| | 2001 actuals | 2002 actuals | 2003 actuals | 2004 actuals | 2005 actuals | 2006 actuals | 2007 operating plan | 2008 estimate |
| OFFICE OF THE SECRETARY | 6,810 | 6,419 | 6,873 | 7,966 | 8,906 | 8,551 | 10,142 | 10,923 |

| | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| INTERNATIONAL TRADE ADMINISTRATION | 16,997 | 18,905 | 20,673 | 24,356 | 26,886 | 27,688 | 29,801 | 31,306 |
| ECONOMIC DEVELOPMENT ADMINISTRATION | 1,193 | 1,409 | 1,419 | 2,029 | 1,983 | 2,519 | 2,161 | 2,582 |
| NATIONAL TELECOMMUNICATIONS AND INFO ADMIN | 2,385 | 2,456 | 2,629 | 3,188 | 3,294 | 3,346 | 3,643 | 4,153 |
| NATIONAL TECHNICAL INFORMATION SERVICE | 407 | 554 | 556 | 516 | 515 | 461 | 487 | 563 |
| BUREAU OF THE CENSUS | 22,073 | 20,609 | 21,712 | 21,345 | 23,249 | 23,263 | 22,601 | 25,531 |
| ECONOMIC AND STATISTICAL ANALYSIS | 1,779 | 2,140 | 2,127 | 2,215 | 2,542 | 2,608 | 2,564 | 3,058 |
| NATIONAL OCEANIC AND ATMOSPHERIC ADMIN | 29,680 | 31,270 | 32,712 | 36,164 | 39,546 | 33,306 | 36,206 | 35,165 |
| NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY | 7,482 | 9,317 | 9,858 | 9,798 | 10,527 | 9,616 | 9,339 | 11,496 |
| MINORITY BUSINESS DEVELOPMENT AGENCY | 1,213 | 1,203 | 1,439 | 1,468 | 2,024 | 1,866 | 1,928 | 2,384 |
| BUREAU OF INDUSTRY AND SECURITY | 4,578 | 4,827 | 5,628 | 6,725 | 6,797 | 7,223 | 7,604 | 8,717 |
| TECHNOLOGY ADMINISTRATION | 630 | 665 | 552 | 900 | 939 | 724 | 613 | 1,100 |
| OFFICE OF INSPECTOR GENERAL | 967 | 1,057 | 1,054 | 1,359 | 1,531 | 1,621 | 1,700 | 1,874 |
| OFFICE OF COMPUTER SERVICES | 261 | 355 | 266 | 326 | 274 | 231 | 245 | 331 |
| SUBTOTAL BY BUREAU | 96,455 | 101,186 | 107,498 | 118,355 | 129,013 | 123,023 | 129,034 | 139,183 |
| PATENT AND TRADEMARK OFFICE | 6,052 | 3,559 | 3,015 | 2,964 | 2,808 | 3,507 | 2,929 | 2,555 |
| OTHER AGENCIES [1] | 8,593 | 8,762 | 9,666 | 1,067 | 997 | 714 | 517 | 1,086 |
| TOTAL | 111,100 | 113,507 | 120,179 | 122,386 | 132,818 | 127,244 | 132,480 | 142,824 |

[1] DOC Federal Credit Union, White House Visitor Center, National Aquarium, National Indian Gaming Comm. and FAA.

*Question.* Please provide a breakout of ATBs (adjustments to base) by bureau for WCF payments, any E-Government initiatives and for the Commerce Business System.

Answer. The requested information follows.

ATTACHMENT 2.—DEPARTMENTAL MANAGEMENT—WORKING CAPITAL FUND FISCAL YEAR 2008 BUDGET SUBMISSION—ATBS & PROGRAM INCREASES BY BUREAU

[In thousands of dollars]

| | CSRS | FERS | TSP | FICA | WIGS PAY BAND | GSA RENT | PRINTING | HEALTH | GPL ADJ | PER DIEM | COMP DAY | POSTG |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| O/S | −4 | 7 | 2 | 7 | | 32 | 1 | 23 | 72 | 1 | 53 | 2 |
| ITA | −8 | 13 | 2 | 13 | | 64 | 1 | 47 | 177 | 11 | 105 | 2 |
| EDA | −1 | 1 | | 1 | | 6 | | 4 | 14 | | 10 | |
| NTIA | −1 | 1 | | 1 | | 8 | | 4 | 27 | | 11 | |
| NTIS | | | | | | | | 1 | 3 | | 2 | |
| CENSUS | −7 | 11 | 2 | 10 | | 38 | 1 | 38 | 136 | 4 | 87 | |
| ESA/BEA | −1 | 1 | | 1 | | 6 | | 4 | 13 | | 10 | |
| NOAA | −10 | 16 | 3 | 15 | | 63 | 2 | 56 | 183 | 8 | 131 | 1 |
| NIST | −3 | 5 | 1 | 5 | | 16 | 1 | 18 | 40 | 2 | 43 | |
| PTO | | | | | | | | | | | | |
| MBDA | −1 | 1 | | 1 | | 4 | | 3 | 9 | | 8 | |
| BIS | −2 | 4 | 1 | 3 | | 18 | | 12 | 34 | 1 | 29 | |
| TA | | | | | | 2 | | 1 | 6 | | 3 | |
| OS—IG | | 1 | | 1 | | 4 | | 2 | 14 | | 4 | |
| OCS | | | | | | 1 | | 1 | 3 | | 3 | |
| OTHER | | | | | | | | | | | | |
| LESS ABSORBED | −38 | 61 | 11 | 58 | | 262 | 6 | 214 | 731 | 27 | 499 | 5 |
| TOTAL | −38 | 61 | 11 | 58 | | 262 | 6 | 214 | 731 | 27 | 499 | 5 |

ATTACHMENT 2.—DEPARTMENTAL MANAGEMENT—WORKING CAPITAL FUND FISCAL YEAR 2008 BUDGET SUBMISSION—ATBS & PROGRAM INCREASES BY BUREAU—CONTINUED

[In thousands of dollars]

| | EMP COMP | CBS DE-CREASE | STEAM | PEPCO ELECTRIC | SUBTOTAL GENERAL ATBS | 2008 PAY RAISE | 2007 PAY RAISE | TOTAL WCF ATB | PROGRAM INCREASE | TOTAL TO BUREAUS |
|---|---|---|---|---|---|---|---|---|---|---|
| O/S | | −8 | 41 | 97 | 326 | 156 | 39 | 521 | | 521 |
| ITA | | −48 | 138 | 329 | 846 | 302 | 75 | 1,223 | | 1,223 |
| EDA | | −6 | 13 | 30 | 72 | 30 | 7 | 109 | | 109 |
| NTIA | | −4 | 27 | 64 | 138 | 31 | 8 | 177 | | 177 |
| NTIS | | −8 | | | −2 | 5 | 1 | 4 | | 4 |

ATTACHMENT 2.—DEPARTMENTAL MANAGEMENT—WORKING CAPITAL FUND FISCAL YEAR 2008 BUDGET SUBMISSION—ATBS & PROGRAM INCREASES BY BUREAU—CONTINUED—Continued

[In thousands of dollars]

| | EMP COMP | CBS DE-CREASE | STEAM | PEPCO ELECTRIC | SUBTOTAL GENERAL ATBS | 2008 PAY RAISE | 2007 PAY RAISE | TOTAL WCF ATB | PROGRAM INCREASE | TOTAL TO BUREAUS |
|---|---|---|---|---|---|---|---|---|---|---|
| CENSUS | ..... | −160 | ..... | ..... | 160 | 250 | 62 | 472 | ..... | 472 |
| ESA/BEA | ..... | −10 | 10 | 23 | 57 | 30 | 7 | 94 | ..... | 94 |
| NOAA | ..... | −278 | 23 | 54 | 267 | 379 | 94 | 740 | ..... | 740 |
| NIST | ..... | −70 | 1 | 2 | 61 | 123 | 30 | 214 | ..... | 214 |
| PTO | ..... | ..... | ..... | ..... | ..... | ..... | ..... | ..... | ..... | ..... |
| MBDA | ..... | −3 | 7 | 18 | 47 | 23 | 6 | 76 | ..... | 76 |
| BIS | ..... | −8 | 37 | 89 | 218 | 83 | 21 | 322 | ..... | 322 |
| TA | ..... | −1 | 7 | 17 | 35 | 7 | 2 | 44 | ..... | 44 |
| OS—IG | ..... | −4 | 13 | 33 | 68 | 13 | 3 | 84 | ..... | 84 |
| OCS | ..... | ..... | ..... | ..... | 8 | 7 | 2 | 17 | ..... | 17 |
| OTHER | ..... | ..... | ..... | ..... | ..... | ..... | ..... | ..... | ..... | ..... |
| LESS ABSORBED | ..... | −608 | 317 | 756 | 2,301 | 1,439 | 357 | 4,097 | ..... | 4,097 |
| TOTAL | ..... | −608 | 317 | 756 | 2,301 | 1,439 | 357 | 4,097 | ..... | 4,097 |

*Question.* Please provide a complete cost breakout for the development of CAMS/CBS by fiscal year since inception. Cost should capture: all contract costs; all Commerce staff assigned to central coordinating offices; all detailed staff from bureaus to central office; all staff costs for staff that primarily worked on CAMS/CBS.

Answer. Attachment 3 provides a complete cost breakout for the development of the Commerce Administrative Management System/Commerce Business System (CAMS/CBS) from fiscal year 1999 to 2003. Upon full bureau implementation at the end of fiscal year 2003, CAMS/CBS has been in operational maintenance and support status.

## ATTACHMENT 3.—CAMS/CBS COSTS

[In thousands of dollars]

| | Fiscal Years— | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | 1999 | 2000 | 2001 | 2002 | 2003 | 2004 | 2005 | 2006 | 2007 | 2008 | 2009 | 2010 | 2011 | 2012 |
| Fiscal Year Total | 27,275 | 33,465 | 41,952 | 46,195 | 36,469 | 35,221 | 34,729 | 35,967 | 38,125 | 38,638 | 39,313 | 39,986 | 40,655 | 40,100 |
| Labor | 23,195 | 28,620 | 36,000 | 39,731 | 31,123 | 30,030 | 29,480 | 30,393 | 31,335 | 31,385 | 31,980 | 32,557 | 33,048 | 32,341 |
| Government | 9,561 | 11,731 | 12,009 | 12,354 | 12,784 | 12,346 | 12,474 | 12,814 | 13,238 | 16,281 | 17,418 | 17,895 | 18,110 | 18,320 |
| Contractor | 13,634 | 16,889 | 23,991 | 27,377 | 18,339 | 17,684 | 17,006 | 17,579 | 18,097 | 15,104 | 14,562 | 14,662 | 14,938 | 14,021 |
| Other Costs | 4,080 | 4,845 | 5,952 | 6,464 | 5,346 | 5,191 | 5,249 | 5,574 | 6,790 | 7,253 | 7,333 | 7,429 | 7,607 | 7,759 |

Note: No staff were detailed from the bureaus to the central office.

*Question.* Please provide any estimated out-year costs associated with CAMS/CBS development.

Answer. Since fiscal year 2004, CAMS/CBS development costs have been for technical migrations to keep current with Oracle forms and database applications to ensure information technology audit compliancy. There have been no application functionality developments except in non-compliance situations when dictated by new and/or changes in Federal policy or regulations.

*Question.* Please provide the latest FAIR Act inventory along with the status of any on-going or planned A–76 competitions.

Answer. The Department of Commerce has initiated a streamlined competitive sourcing competition for their Office of Photographic Services. A decision is expected to be announced by the Department by April 2007. No additional competitions are planned at this stage. The last OMB-approved inventory (fiscal year 2005) is attachment 4. We expect to have our fiscal year 2006 inventory approved and released by OMB in the next few weeks and will notify Congress at that time. There has been no substantial change between the 2005 and 2006 inventories.

The link to the website is: http://oamweb.osec.doc.gov/CS__doc__inventories.html

ATTACHMENT 4

| Seq. No. | Agency/Bureau | Department/Agency/Bureau Title | Total CY FTEs | Dir CY FTEs | Reim CY FTEs |
|---|---|---|---|---|---|
| | | Department of Agriculture: | | | |
| 05060003 | 005–03 | Office of the Secretary | 87 | 87 | ..... |
| 05060004 | 005–04 | Executive Operations | 3,376 | 390 | 2,986 |
| 05060005 | 005–07 | Office of Civil Rights | 191 | 181 | 10 |
| 05060006 | 005–05 | Departmental Administration | 394 | 327 | 67 |
| 05060007 | 005–06 | Office of Communications | 90 | 90 | ..... |
| 05060008 | 005–08 | Office of the Inspector General | 721 | 721 | ..... |
| 05060010 | 005–10 | Office of the General Counsel | 330 | 321 | 9 |
| 05060013 | 005–13 | Economic Research Service | 455 | 452 | 3 |
| 05060015 | 005–15 | National Agricultural Statistics Service | 1,366 | 1,260 | 106 |
| 05060018 | 005–18 | Agricultural Research Service | 8,794 | 8,598 | 196 |
| 05060020 | 005–20 | Cooperative State Research, Education, and Extension Service | 451 | 442 | 9 |
| 05060032 | 005–32 | Animal and Plant Health Inspection Service | 6,761 | 5,928 | 833 |
| 05060035 | 005–35 | Food Safety and Inspection Service | 9,761 | 9,525 | 236 |
| 05060037 | 005–37 | Grain Inspection, Packers and Stockyards Administration | 725 | 338 | 387 |
| 05060045 | 005–45 | Agricultural Marketing Service | 3,455 | 2,344 | 1,111 |
| 05060047 | 005–47 | Risk Management Agency | 568 | 568 | ..... |
| 05060049 | 005–49 | Farm Service Agency | 5,498 | 2,134 | 3,364 |
| 05060053 | 005–53 | Natural Resources Conservation Service | 13,627 | 12,488 | 1,139 |
| 05060055 | 005–55 | Rural Development | 6,872 | 1,686 | 5,186 |
| 05060068 | 005–68 | Foreign Agricultural Service | 1,002 | 812 | 190 |
| 05060084 | 005–84 | Food and Nutrition Service | 1,488 | 1,488 | ..... |
| 05060096 | 005–96 | Forest Service | 37,298 | 35,414 | 1,884 |
| 050600ZZ | | Total, Department of Agriculture | 103,310 | 85,594 | 17,716 |
| | | Department of Commerce: | | | |
| 05061005 | 006–05 | Departmental Management | 1,134 | 363 | 771 |
| 05061006 | 006–06 | Economic Development Administration | 247 | 240 | 7 |
| 05061008 | 006–07 | Bureau of the Census | 9,401 | 6,659 | 2,742 |
| 05061009 | 006–08 | Economic and Statistical Analysis | 552 | 525 | 27 |
| 05061025 | 006–25 | International Trade Administration | 2,602 | 2,553 | 49 |
| 05061030 | 006–30 | Bureau of Industry and Security | 418 | 414 | 4 |
| 05061040 | 006–40 | Minority Business Development Agency | 115 | 115 | ..... |
| 05061048 | 006–48 | National Oceanic and Atmospheric Administration | 12,634 | 11,769 | 865 |
| 05061051 | 006–51 | U.S. Patent and Trademark Office | 7,198 | ..... | 7,198 |

| | | | | | |
|---|---|---|---|---|---|
| 05061053 | 006–53 | Technology Administration | 31 | 30 | 1 |
| 05061054 | 006–54 | National Technical Information Service | 200 | ..... | 200 |
| 05061055 | 006–55 | National Institute of Standards and Technology | 3,028 | 2,334 | 694 |
| 05061060 | 006–60 | National Telecommunications and Information Administration | 295 | 128 | 167 |
| 050610ZZ | | Total, Department of Commerce | 37,855 | 25,130 | 12,725 |
| | | Department of Defense—Military: | | | |
| 05062010 | 007–10 | Operation and Maintenance | 433,191 | 353,892 | 79,299 |
| 05062020 | 007–20 | Research, Development, Test, and Evaluation | 26,823 | 14,717 | 12,106 |
| 05062025 | 007–25 | Military Construction | 7,893 | 1,962 | 5,931 |
| 05062030 | 007–30 | Family Housing | 2,030 | 2,021 | 9 |
| 05062040 | 007–40 | Revolving and Management Funds | 189,952 | ..... | 189,952 |
| 050620ZZ | | Total, Department of Defense—Military | 659,889 | 372,592 | 287,297 |
| | | Department of Education: | | | |
| 05072030 | 018–30 | Office of Vocational and Adult Education | 20 | 20 | ..... |
| 05072040 | 018–40 | Office of Postsecondary Education | 5 | 5 | ..... |
| 05072045 | 018–45 | Federal Student Aid | 1,140 | 1,140 | ..... |
| 05072050 | 018–50 | Institute of Education Sciences | 16 | 16 | ..... |
| 05072080 | 018–80 | Departmental Management | 3,273 | 3,273 | ..... |
| 050720ZZ | | Total, Department of Education | 4,454 | 4,454 | ..... |
| | | Department of Energy: | | | |
| 05073005 | 019–05 | National Nuclear Security Administration | 2,543 | 2,543 | ..... |
| 05073010 | 019–10 | Environmental and Other Defense Activities | 2,566 | 2,566 | ..... |
| 05073020 | 019–20 | Energy Programs | 4,660 | 3,373 | 1,287 |
| 05073050 | 019–50 | Power Marketing Administration | 4,711 | 1,264 | 3,447 |
| 05073060 | 019–60 | Departmental Administration | 1,442 | 1,442 | ..... |
| 050730ZZ | | Total, Department of Energy | 15,922 | 11,188 | 4,734 |
| | | Department of Health and Human Services: | | | |
| 05074010 | 009–10 | Food and Drug Administration | 9,696 | 7,957 | 1,739 |
| 05074015 | 009–15 | Health Resources and Services Administration | 1,590 | 1,445 | 145 |
| 05074017 | 009–17 | Indian Health Services | 13,950 | 8,909 | 5,041 |
| 05074020 | 009–20 | Centers for Disease Control and Prevention | 7,917 | 6,683 | 1,234 |
| 05074025 | 009–25 | National Institutes of Health | 17,106 | 11,875 | 5,231 |

ATTACHMENT 4—Continued

| Seq. No. | Agency/Bureau | Department/Agency/Bureau Title | Total CY FTEs | Dir CY FTEs | Reim CY FTEs |
|---|---|---|---|---|---|
| 05074030 | 009–30 | Substance Abuse and Mental Health Services Administration | 508 | 466 | 42 |
| 05074033 | 009–33 | Agency for Healthcare Research and Quality | 286 | | 286 |
| 05074038 | 009–38 | Centers for Medicare and Medicaid Services | 4,852 | 4,780 | 72 |
| 05074070 | 009–70 | Administration for Children and Families | 1,382 | 1,382 | |
| 05074075 | 009–75 | Administration on Aging | 126 | 119 | 7 |
| 05074090 | 009–90 | Departmental Management | 1,896 | 1,400 | 496 |
| 05074091 | 009–91 | Program Support Center | 1,491 | 37 | 1,454 |
| 05074092 | 009–92 | Office of the Inspector General | 1,506 | 278 | 1,228 |
| 050740ZZ | | Total, Department of Health and Human Services | 62,306 | 45,331 | 16,975 |
| | | Department of Homeland Security: | | | |
| 05074510 | 024–10 | Departmental Management | 905 | 903 | 2 |
| 05074520 | 024–20 | Office of the Inspector General | 502 | 502 | |
| 05074530 | 024–30 | Citizenship and Immigration Services | 10,052 | 10,052 | |
| 05074540 | 024–40 | United States Secret Service | 6,516 | 6,516 | |
| 05074550 | 024–50 | Border and Transportation Security | 112,932 | 105,441 | 7,491 |
| 05074560 | 024–60 | United States Coast Guard | 7,036 | 6,274 | 762 |
| 05074570 | 024–70 | Emergency Preparedness and Response | 4,792 | 4,374 | 418 |
| 05074580 | 024–80 | Science and Technology | 320 | 320 | |
| 05074590 | 024–90 | Information Analysis and Infrastructure Protection | 803 | 803 | |
| 050745ZZ | | Total, Department of Homeland Security | 143,858 | 135,185 | 8,673 |
| 05075035 | 025–35 | Department of Housing and Urban Development: Management and Administration | 10,028 | 5,372 | 4,656 |
| | | Department of the Interior: | | | |
| 05076004 | 010–04 | Bureau of Land Management | 11,065 | 10,691 | 374 |
| 05076006 | 010–06 | Minerals Management Service | 1,763 | 1,632 | 131 |
| 05076008 | 010–08 | Office of Surface Mining Reclamation and Enforcement | 580 | 577 | 3 |
| 05076010 | 010–10 | Bureau of Reclamation | 5,757 | 3,087 | 2,670 |
| 05076011 | 010–11 | Central Utah Project | 17 | 17 | |
| 05076012 | 010–12 | United States Geological Survey | 8,950 | 6,007 | 2,943 |
| 05076018 | 010–18 | United States Fish and Wildlife Service | 9,378 | 8,605 | 773 |
| 05076024 | 010–24 | National Park Service | 20,671 | 19,983 | 688 |
| 05076076 | 010–76 | Bureau of Indian Affairs | 9,605 | 8,901 | 704 |

| | | | | | |
|---|---|---|---|---|---|
| 05076084 | 010–84 | Departmental Management | 1,810 | 479 | 1,331 |
| 05076085 | 010–85 | Insular Affairs | 40 | 40 | ..... |
| 05076086 | 010–86 | Office of the Solicitor | 422 | 366 | 56 |
| 05076087 | 010–88 | Office of Inspector General | 270 | 270 | ..... |
| 05076088 | 010–91 | Natural Resources Damage Assessment and Restoration | 6 | 6 | ..... |
| 05076089 | 010–90 | Office of Special Trustee for American Indians | 581 | 581 | ..... |
| 05076092 | 010–92 | National Indian Gaming Commission | 81 | 81 | ..... |
| 050760ZZ | | Total, Department of the Interior | 70,996 | 61,323 | 9,673 |
| | | Department of Justice: | | | |
| 05077003 | 011–03 | General Administration | 3,645 | 2,805 | 840 |
| 05077004 | 011–04 | United States Parole Commission | 104 | 104 | ..... |
| 05077005 | 011–05 | Legal Activities and U.S. Marshals | 22,694 | 19,159 | 3,535 |
| 05077010 | 011–10 | Federal Bureau of Investigation | 31,939 | 29,081 | 2,858 |
| 05077012 | 011–12 | Drug Enforcement Administration | 10,644 | 9,189 | 1,455 |
| 05077014 | 011–14 | Bureau of Alcohol, Tobacco, Firearms, and Explosives | 4,940 | 4,885 | 55 |
| 05077020 | 011–20 | Federal Prison System | 41,565 | 38,466 | 3,099 |
| 05077021 | 011–21 | Office of Justice Programs | 964 | 947 | 17 |
| 050770ZZ | | Total, Department of Justice | 116,495 | 104,636 | 11,859 |
| | | Department of Labor: | | | |
| 05078005 | 012–05 | Employment and Training Administration | 1,209 | 1,206 | 3 |
| 05078011 | 012–11 | Employee Benefits Security Administration | 887 | 887 | ..... |
| 05078012 | 012–12 | Pension Benefit Guaranty Corporation | 806 | ..... | 806 |
| 05078015 | 012–15 | Employment Standards Administration | 4,120 | 3,992 | 128 |
| 05078018 | 012–18 | Occupational Safety and Health Administration | 2,208 | 2,203 | 5 |
| 05078019 | 012–19 | Mine Safety and Health Administration | 2,187 | 2,187 | ..... |
| 05078020 | 012–20 | Bureau of Labor Statistics | 2,475 | 2,445 | 30 |
| 05078025 | 012–25 | Departmental Management | 2,884 | 2,181 | 703 |
| 050780ZZ | | Total, Department of Labor | 16,776 | 15,101 | 1,675 |
| | | Department of State: | | | |
| 05079005 | 014–05 | Administration of Foreign Affairs | 29,685 | 18,895 | 10,790 |
| 05079015 | 014–15 | International Commissions | 307 | 273 | 34 |
| 05079025 | 014–25 | Other | 292 | 292 | ..... |

ATTACHMENT 4—Continued

| Seq. No. | Agency/Bureau | Department/Agency/Bureau Title | Total CY FTEs | Dir CY FTEs | Reim CY FTEs |
|---|---|---|---|---|---|
| 050790ZZ | | Total, Department of State | 30,284 | 19,460 | 10,824 |
| | | Department of Transportation: | | | |
| 05080004 | 021–04 | Office of the Secretary | 868 | 596 | 272 |
| 05080012 | 021–12 | Federal Aviation Administration | 47,659 | 46,307 | 1,352 |
| 05080015 | 021–15 | Federal Highway Administration | 3,133 | 3,104 | 29 |
| 05080017 | 021–17 | Federal Motor Carrier Safety Administration | 1,098 | 1,046 | 52 |
| 05080018 | 021–18 | National Highway Traffic Safety Administration | 673 | 673 | ..... |
| 05080027 | 021–27 | Federal Railroad Administration | 827 | 827 | ..... |
| 05080036 | 021–36 | Federal Transit Administration | 527 | 527 | ..... |
| 05080040 | 021–40 | Saint Lawrence Seaway Development Corporation | 157 | ..... | 157 |
| 05080050 | 021–50 | Pipeline and Hazardous Materials Safety Administration | 415 | 384 | 31 |
| 05080053 | 021–53 | Research and Innovative Technology Administration | 620 | 21 | 599 |
| 05080056 | 021–56 | Office of Inspector General | 430 | 372 | 58 |
| 05080061 | 021–61 | Surface Transportation Board | 150 | 141 | 9 |
| 05080070 | 021–70 | Maritime Administration | 827 | 462 | 365 |
| 050800ZZ | | Total, Department of Transportation | 57,384 | 54,460 | 2,924 |
| | | Department of the Treasury: | | | |
| 05081005 | 015–05 | Departmental Offices | 3,035 | 2,016 | 1,019 |
| 05081006 | 015–04 | Financial Crimes Enforcement Network | 309 | 309 | ..... |
| 05081010 | 015–10 | Financial Management Service | 2,134 | 2,044 | 90 |
| 05081013 | 015–13 | Alcohol and Tobacco Tax and Trade Bureau | 559 | 544 | 15 |
| 05081020 | 015–20 | Bureau of Engraving and Printing | 2,400 | ..... | 2,400 |
| 05081025 | 015–25 | United States Mint | 2,108 | ..... | 2,108 |
| 05081035 | 015–35 | Bureau of the Public Debt | 1,318 | 1,301 | 17 |
| 05081045 | 015–45 | Internal Revenue Service | 97,440 | 96,434 | 1,006 |
| 05081057 | 015–57 | Comptroller of the Currency | 2,791 | ..... | 2,791 |
| 05081058 | 015–58 | Office of Thrift Supervision | 920 | ..... | 920 |
| 050810ZZ | | Total, Department of the Treasury | 113,014 | 102,648 | 10,366 |
| | | Department of Veterans Affairs: | | | |
| 05082015 | 029–15 | Medical Programs | 203,112 | 197,758 | 5,354 |
| 05082025 | 029–25 | Benefits Programs | 14,296 | 13,482 | 814 |

| | | | | | |
|---|---|---|---|---|---|
| 05082040 | 029–40 | Departmental Administration | 4,447 | 2,516 | 1,931 |
| 050820ZZ | | Total, Department of Veterans Affairs | 221,855 | 213,756 | 8,099 |
| | | Major Independents: | | | |
| 07082500 | 202–00 | Corps of Engineers—Civil Works | 23,522 | 22,422 | 1,100 |
| | | Other Defense Civil Programs: | | | |
| 07082615 | 200–15 | American Battle Monuments Commission | 390 | 390 | ..... |
| 07082620 | 200–20 | Armed Forces Retirement Home | 485 | 485 | ..... |
| 07082625 | 200–25 | Cemeterial Expenses | 100 | 100 | ..... |
| 07082645 | 200–45 | Selective Service System | 154 | 154 | ..... |
| 070826ZZ | | Total, Other Defense Civil Programs | 1,129 | 1,129 | ..... |
| 07083000 | 020–00 | Environmental Protection Agency | 17,635 | 17,166 | 469 |
| 07083200 | 100–00 | Executive Office of the President | 1,832 | 1,831 | 1 |
| | | General Services Administration: | | | |
| 07084005 | 023–05 | Real Property Activities | 5,759 | ..... | 5,759 |
| 07084010 | 023–10 | Supply and Technology Activities | 4,533 | 61 | 4,472 |
| 07084030 | 023–30 | General Activities | 2,443 | 956 | 1,487 |
| 070840ZZ | | Total, General Services Administration | 12,735 | 1,017 | 11,718 |
| | | International Assistance Programs: | | | |
| 07084503 | 184–03 | Millennium Challenge Corporation | 133 | 133 | ..... |
| 07084515 | 184–15 | Agency for International Development | 2,337 | 2,211 | 126 |
| 07084520 | 184–20 | Overseas Private Investment Corporation | 225 | 225 | ..... |
| 07084525 | 184–25 | Trade and Development Agency | 50 | 50 | ..... |
| 07084535 | 184–35 | Peace Corps | 1,171 | 1,168 | 3 |
| 07084540 | 184–40 | Inter-American Foundation | 47 | 47 | ..... |
| 07084550 | 184–50 | African Development Foundation | 32 | 32 | ..... |
| 070845ZZ | | Total, International Assistance Programs | 3,995 | 3,866 | 129 |
| 07085000 | 026–00 | National Aeronautics and Space Administration | 19,440 | 19,271 | 169 |
| 07085200 | 422–00 | National Science Foundation | 1,301 | 1,301 | ..... |
| 07086000 | 027–00 | Office of Personnel Management | 4,097 | 990 | 3,107 |
| 07087000 | 028–00 | Small Business Administration | 4,189 | 4,178 | 11 |

ATTACHMENT 4—Continued

| Seq. No. | Agency/Bureau | Department/Agency/Bureau Title | Total CY FTEs | Dir CY FTEs | Reim CY FTEs |
|---|---|---|---|---|---|
| 07090000 | 016–00 | Social Security Administration | 64,205 | 63,405 | 800 |
| | | Other Independents: | | | |
| 08106000 | 306–00 | Advisory Council on Historic Preservation | 45 | 35 | 10 |
| 08109000 | 309–00 | Appalachian Regional Commission | 11 | 11 | |
| 08110000 | 310–00 | Architectural and Transportation Barriers Compliance Board | 30 | 30 | |
| 08113000 | 313–00 | Barry Goldwater Scholarship and Excellence in Education Foun | 2 | 2 | |
| 08114500 | 514–00 | Broadcasting Board of Governors | 2,341 | 2,341 | |
| 08116500 | 510–00 | Chemical Safety and Hazard Investigation Board | 42 | 42 | |
| 08118500 | 465–00 | Christopher Columbus Fellowship Foundation | 1 | 1 | |
| 08123000 | 323–00 | Commission of Fine Arts | 10 | 10 | |
| 08126000 | 326–00 | Commission on Civil Rights | 60 | 60 | |
| 08137000 | 338–00 | Committee for Purchase from People Who Are Blind or Severely | 29 | 29 | |
| 08138000 | 339–00 | Commodity Futures Trading Commission | 491 | 491 | |
| 08142000 | 343–00 | Consumer Product Safety Commission | 471 | 471 | |
| 08142500 | 485–00 | Corporation for National and Community Service | 589 | 589 | |
| 08145000 | 511–00 | Court Services and Offender Supervision Agency for the Distr | 1,390 | 1,390 | |
| 08146000 | 347–00 | Defense Nuclear Facilities Safety Board | 100 | 100 | |
| 08146200 | 517–00 | Delta Regional Authority | 3 | 3 | |
| 08146500 | 513–00 | Denali Commission | 12 | 12 | |
| 08148500 | 525–00 | Election Assistance Commission | 23 | 23 | |
| 08149000 | 350–00 | Equal Employment Opportunity Commission | 2,441 | 2,421 | 20 |
| 08150000 | 351–00 | Export-Import Bank of the United States | 420 | 420 | |
| 08151000 | 352–00 | Farm Credit Administration | 294 | | 294 |
| 08154000 | 355–00 | Farm Credit System Insurance Corporation | 10 | 10 | |
| 08155000 | 356–00 | Federal Communications Commission | 1,999 | 21 | 1,978 |
| | | Federal Deposit Insurance Corporation: | | | |
| 08156010 | 357–10 | Bank Insurance | 4,223 | 4,223 | |
| 08156020 | 357–20 | Savings Association Insurance | 619 | 619 | |
| 08156030 | 357–30 | FSLIC Resolution | 228 | 228 | |
| 08156040 | 357–40 | FDIC—Office of Inspector General | 160 | 160 | |
| 081560ZZ | | Total, Federal Deposit Insurance Corporation | 5,230 | 5,230 | |
| 08159000 | 360–00 | Federal Election Commission | 391 | 391 | |
| 08161000 | 362–00 | Federal Financial Institutions Examination Council Appraisal | 7 | 7 | |

| | | | | | |
|---|---|---|---|---|---|
| 08163000 | 364–00 | Federal Housing Finance Board | 146 | ..... | 146 |
| 08164000 | 365–00 | Federal Labor Relations Authority | 175 | 175 | ..... |
| 08165000 | 366–00 | Federal Maritime Commission | 133 | 133 | ..... |
| 08166000 | 367–00 | Federal Mediation and Conciliation Service | 285 | 276 | 9 |
| 08167000 | 368–00 | Federal Mine Safety and Health Review Commission | 45 | 45 | ..... |
| 08168000 | 369–00 | Federal Retirement Thrift Investment Board | 101 | 101 | ..... |
| 08169000 | 370–00 | Federal Trade Commission | 1,080 | 430 | 650 |
| 08171000 | 372–00 | Harry S. Truman Scholarship Foundation | 5 | 5 | ..... |
| 08173500 | 467–00 | Intelligence Community Management Account | 318 | 318 | ..... |
| 08177000 | 378–00 | International Trade Commission | 380 | 380 | ..... |
| 08180000 | 381–00 | James Madison Memorial Fellowship Foundation | 6 | 6 | ..... |
| 08181000 | 382–00 | Japan-United States Friendship Commission | 6 | 6 | ..... |
| 08186000 | 387–00 | Marine Mammal Commission | 11 | 11 | ..... |
| 08188000 | 389–00 | Merit Systems Protection Board | 228 | 202 | 26 |
| 08188500 | 487–00 | Morris K. Udall Scholarship and Excellence in National Envir | 29 | 29 | ..... |
| 08192000 | 393–00 | National Archives and Records Administration | 2,870 | 1,459 | 1,411 |
| 08193000 | 394–00 | National Capital Planning Commission | 57 | 57 | ..... |
| 08199000 | 400–00 | National Commission on Libraries and Information Science | 6 | 6 | ..... |
| 08212000 | 413–00 | National Council on Disability | 14 | 14 | ..... |
| 08214000 | 415–00 | National Credit Union Administration | 963 | 2 | 961 |
| 08216000 | 417–00 | National Endowment for the Arts | 160 | 160 | ..... |
| 08217000 | 418–00 | National Endowment for the Humanities | 175 | 170 | 5 |
| 08217500 | 474–00 | Institute of Museum and Library Services | 57 | 57 | ..... |
| 08219000 | 420–00 | National Labor Relations Board | 1,865 | 1,865 | ..... |
| 08220000 | 421–00 | National Mediation Board | 52 | 52 | ..... |
| 08223000 | 424–00 | National Transportation Safety Board | 416 | 416 | ..... |
| 08228000 | 429–00 | Nuclear Regulatory Commission | 3,125 | 3,108 | 17 |
| 08230000 | 431–00 | Nuclear Waste Technical Review Board | 18 | 18 | ..... |
| 08231000 | 432–00 | Occupational Safety and Health Review Commission | 69 | 69 | ..... |
| 08233000 | 434–00 | Office of Government Ethics | 80 | 80 | ..... |
| 08234000 | 435–00 | Office of Navajo and Hopi Indian Relocation | 51 | 51 | ..... |
| 08235000 | 436–00 | Office of Special Counsel | 113 | 113 | ..... |
| 08240000 | 512–00 | Presidio Trust | 307 | ..... | 307 |
| 08245000 | 446–00 | Railroad Retirement Board | 1,025 | 975 | 50 |
| 08248000 | 449–00 | Securities and Exchange Commission | 3,933 | 3,932 | 1 |
| 08251000 | 452–00 | Smithsonian Institution | 5,577 | 5,577 | ..... |
| 08254000 | 455–00 | Tennessee Valley Authority | 12,019 | ..... | 12,019 |
| 08254600 | 345–00 | United States Court of Appeals for Veterans Claims | 98 | 98 | ..... |
| 08255000 | 456–00 | United States Holocaust Memorial Museum | 248 | 248 | ..... |

ATTACHMENT 4—Continued

| Seq. No. | Agency/Bureau | Department/Agency/Bureau Title | Total CY FTEs | Dir CY FTEs | Reim CY FTEs |
|---|---|---|---|---|---|
| 99999999 | | Report Total | 1,871,194 | 1,427,590 | 443,604 |

*Question.* Please provide a funding estimate for the DOC portion of the HCHB renovation by fiscal year for the project.

Answer. The Department is requesting $4.3 million for its portion of the HCHB renovation in fiscal year 2008. The total estimated cost for the Department is $21.6 million, through 2020.

*Question.* Please provide an itemized listing of the $4.3 million requested for HCHB renovation.

Answer. The itemized listing of the $4.3 million requested for HCHB renovation follows:

| | Amount |
|---|---|
| Relocation and Planning | $156,000 |
| DOC Construction Costs | 1,441,000 |
| Equipment and Furniture | 2,117,000 |
| Security | 56,000 |
| IT | 530,000 |
| Total | 4,300,000 |

*Question.* How much does DOC spend on maintenance of the HCHB? What is the source of those funds? Does GSA provide any funding to support HCHB maintenance?

Answer. DOC spent approximately $12,413,000 for maintenance of the HCHB in fiscal year 2006. The source of funds is from the HCHB tenants through the Departmental Management's Working Capital Fund. GSA does not provide any funding to support HCHB maintenance.

DEPARTMENTAL MANAGEMENT—MEDIA QUESTIONS

*Question.* We understand that Commerce has been revising its over 20 year old communications policy for the last few months. What is the status of the policy and when can we expect it to be released and implemented?

Answer. On March 29, the Department released its new public communication policy, following three separate rounds of internal input from our employees, in particular our scientists, on the draft policy. The policy will take effect on May 14, following a 45 day time period to conduct training and outreach sessions with employees.

*Question.* What steps will the Department take to ensure that all staff are informed of and understand how to implement the policy?

Answer. We have publicly released the policy along with "Frequently Asked Question" document, and placed both on our website. We are providing a 45 day window of time before the policy takes effect in order to conduct training and outreach sessions with current employees. We are also considering ways to require annual "refresher" sessions as well as to require training for new employees.

*Question.* Will the revised policy include language to specifically address recent concerns raised by scientists regarding interference with the dissemination of their research results?

Answer. Yes, the new policy provides a series of clear principles which reiterate the Department's support for the open exchange of scientific ideas, information, and research. The policy also specifically provides for Fundamental Research Communications (a communications "carve-out" for scientific research), a series of best practices for public affairs employees, and provides operating units with the flexibility to use existing, or issue new, guidance regarding the implementation of the new policy (as long as it is consistent with the Department policy).

*Question.* Specifically, will the new policy define the types of media contacts, press releases, presentations, or other documents that would be subject to the policy?

Answer. Yes, the policy provides clear definitions of what types of documents are covered by the policy.

*Question.* Describe situations, if any, in which prior approval is required for press releases and media interviews.

Answer. Yes, the policy describes the situations, if applicable, which require prior approval for press releases and media interviews.

*Question.* If prior approval is required, describe the specific process for approving press releases and media interviews.

Answer. The Department's policy provides an overall conceptual framework for public communications, and set general Department-wide guidelines. Because the 13 agencies within the Department are so diverse, the new policy will provide oper-

ating units the flexibility to continue to set more specific procedures, which must be consistent with the overall Department policy.

*Question.* Explicitly delegate authority to approve releases or interviews of a time sensitive nature or local interest to appropriate levels within the Commerce agencies.

Answer. Yes, the new policy explicitly delegates authority to approve releases or interviews of a time sensitive or local interest to appropriate levels within the Commerce agencies.

*Question.* Affirm that scientists can express personal views and share those views with the media as long as they declare them to be their own.

Answer. Yes, the policy specifically includes a section explaining how employees may communicate their personal views with an appropriate disclaimer.

*Question.* Define the role of the Office of Public Affairs office with regard to facilitating the dissemination of research.

Answer. Yes, the new policy defines the role of the Office of Public Affairs with regard to facilitating the dissemination of research. Each operating unit will have the flexibility to continue to use existing or issue new guidance regarding the implementation and interpretation of the policy, which must comport with the overall Department policy.

*Question.* Delineate a process to resolve disputes regarding dissemination of research.

Answer. Yes, the new policy delineates a process to resolve disputes regarding dissemination of research.

SPECIAL BILL LANGUAGE

*Question.* Please provide an explanation/background of each of the provisions within the Commerce portion of the appropriations bill. For example, under ITA there is the following provision, "purchase or construction of temporary demountable exhibition structures for use abroad." Why is special language required? Isn't this a "necessary" expense?

*Census Bureau (Account: PC&P)*

*": Provided, That none of the funds provided in this or any other Act for any fiscal year may be used for the collection of Census data on race identification that does not include 'some other race' as a category."*

Census was considering eliminating the "Some Other Race" category on the questionnaire and putting the Hispanic check box at the top of the list. Congress opposed that option out of concern that it would deter Hispanics' self-identification of those who did not also fit into any of the standard race categories, thereby possibly under recording Hispanic populations.

*Departmental Management (Account: S&E)*

*"For expenses necessary for the departmental management of the Department of Commerce provided for by law, including not to exceed $5,000 for official entertainment, $47,466,000: Provided, That not to exceed 11 full-time equivalents and $1,490,000 shall be expended for the legislative affairs function of the Department."*

Appropriated funds may not be used for entertainment expenses except when specifically authorized by law. This provision authorizes the Secretary to use up to $5,000 from appropriated funds for entertaining foreign dignitaries and U.S. citizens who are involved in activities of interest to the Department.

Congress added language imposing a ceiling on the legislative affairs function of the Department was included beginning in the fiscal year 2004 Appropriations Act.

*International Trade Administration*

*"For necessary expenses for international trade activities of the Department of Commerce provided for by law, and for engaging in trade promotional activities abroad, including expenses of grants and cooperative agreements for the purpose of promoting exports of United States firms, without regard to the provisions of law set forth in 44 U.S.C. 3702 and 3703;"*

44 U.S.C. 3702 specifies that an executive department may not publish or pay for advertisements without written authority from the head of that department.

The nature of ITA's overseas exhibition program requires maximum flexibility in advertising requirements since exhibitions may be changed, added, or canceled. When such changes take place, advertisements must be placed as soon as possible to inform the local business community. This exception from 44 U.S.C. 3702 will provide the flexibility, which is required to effectively advertise for these exhibitions.

44 U.S.C. 3703 stipulates that prices paid for advertising may not exceed the commercial rates charged to private individuals, with the usual discounts. Since the

United States Government does not have sovereign status in other countries and is charged commercial rates without the discounts required by 44 U.S.C. 3703, this exception is necessary to permit contracting in a manner which conforms to the realities of foreign advertising markets.

*"full medical coverage for dependent members of immediate families of employees stationed overseas and employees temporarily posted overseas;"*

This language permits the International Trade Administration to extend to certain of its overseas employees the same benefits afforded domestically employed Federal employees and employees of ITA's Foreign Commercial Service in equivalent positions overseas.

*"travel and transportation of employees of the United States and Foreign Commercial Service between two points abroad, without regard to 49 U.S.C. 40118;"*

49 U.S.C. § 40118(d) exempts State and USAID officials from the requirement that government travel between two points outside the United States be accomplished by U.S. air carrier. This phrase clarifies that U.S. and Foreign Commercial Service officers are included in the exemption, notwithstanding a Comptroller General decision to the contrary. This exemption is necessary and appropriate in that most of the travel undertaken by U.S. and Foreign Commercial Service officers occurs abroad, where U.S. air carriers are generally not reasonably available.

*"employment of Americans and aliens by contract for services;"*

44 CG 761, OPM guidance, and House Report 89–188 have concluded that Federal agencies must have specific authority to employ personnel by contract. In order to present its overseas exhibitions, ITA often requires the use of narrators, demonstrators, receptionists, clerical, and facilities maintenance personnel who speak the language of the host country; are familiar with local practices and procedures; or who only need to be employed for a short period of time. In addition, in some cases, it is more advantageous to employ U.S. citizens in the host country (generally members of an employee's family) because they have greater familiarity with American methods and, therefore, require less effort to train.

*"rental of space abroad for periods not exceeding 10 years, and expenses of alteration, repair, or improvement;"*

Buildings, pavilions, and space in such structures must be rented for overseas exhibitions. However, rental terms are typically set by schedules established by fair authorities and are not negotiated or established competitively. In addition, organizers may limit the build-out to approved contractors at scheduled prices. This phrase clarifies that ITA may enter into leases for real property and make such improvements as are necessary without limitation.

*"purchase or construction of temporary demountable exhibition structures for use abroad;"*

40 U.S.C. 601 prohibits the construction of public buildings except by the Administrator of the General Services Administration. Authority to purchase or construct such demountable structures is necessary to allow ITA to present exhibitions overseas when permanent exhibition facilities are not available.

*"payment of tort claims, in the manner authorized in the first paragraph of 28 U.S.C. 2672 when such claims arise in foreign countries;"*

28 U.S.C. 2672 provides for settlement of tort claims for monetary damages of $25,000 or less against the Unites States by the head of each federal agency for loss of property or personal injury or death caused by a negligent or wrongful act or omission of any employee of the Government while acting within the scope of his employment in circumstances where the United States, if a private person, would be liable under local law. However, 28 U.S.C. 2680 exempts the settlement of tort claims which arise abroad from the provisions of 28 U.S.C. 2672. The language exempts ITA from 22 U.S.C. 2680 and covers the settlement of tort claims against the United States, which arise in connection with the ITA's trade promotion activities abroad.

*"not to exceed $327,000 for official representation expenses abroad;"*

Appropriated Funds are generally not available for official representation, absent specific statutory authority. This gives ITA the authority to spend up to $327,000 on official representation abroad.

*"purchase of passenger motor vehicles for official use abroad, not to exceed $45,000 per vehicle; obtaining insurance on official motor vehicles, and rental of tie lines;"*

Per 31 U.S.C. 1343, an appropriation may be expended to purchase passenger motor vehicles only as specifically authorized by law and places certain limitations on the total cost of such vehicles. The annual appropriations act sets the general limits on the total cost of the vehicles. This language provides ITA with the authority to exceed the general amount (up to $45,000) so that it can purchase vehicles abroad.

*"$406,925,000, to remain available until September 30, 2007, of which $8,000,000 is to be derived from fees to be retained and used by the International Trade Administration, notwithstanding 31 U.S.C. 3302"*

Per 31 U.S.C. 3302, agencies may not retain or use fees unless specifically authorized by law. This language provides ITA the necessary authorization to use these collections to offset its appropriation.

*"That negotiations shall be conducted within the World Trade Organization to recognize the right of members to distribute monies collected from antidumping and countervailing duties:"*

This language added by Congress directed ITA to work with USTR to continue negotiations with the WTO regarding the "Byrd Amendment". In 2003, the WTO ruled the Continued Dumping and Subsidy Offset Act of 2000 or "CDSOA" (Byrd Amendment), which provides for the distribution of duties to the domestic parties that supported the petition under certain circumstance, was not in compliance.

When the President signed the Deficit Reduction Act of 2005 on February 8, 2006, legislation was enacted that will bring the United States into compliance with the WTO Dispute Settlement Body ruling on the Byrd Amendment—the legislation repeals the Byrd Amendment for entries made on or after October 1, 2007.

*": Provided further, That the provisions of the first sentence of section 105(f) and all of section 108(c) of the Mutual Educational and Cultural Exchange Act of 1961 (22 U.S.C. 2455(f) and 2458(c)) shall apply in carrying out these activities without regard to section 5412 of the Omnibus Trade and Competitiveness Act of 1988 (15 U.S.C. 4912);"*

Having the references to 22 U.S.C. 2245(f) and 2458(c) in the annual appropriations act permits the International Trade Administration (ITA) to accept, retain, and expend or otherwise utilize contributions of funds, property, and services from foreign governments, international organizations and private individuals, firms, associations, agencies and other groups for the purposes of furthering ITA's mission as generally defined in the annual appropriations act, namely trade promotion and international trade activities. Among other activities, ITA relies on this authority to charge, retain, and expend fees for export promotion services benefiting individual U.S. exporters.

15 U.S.C. 4912 states that the Secretary shall provide reasonable public services and access (including electronic access) to any information maintained as part of the National Trade Data Bank and may charge reasonable fees consistent with section 552 of title 5 (the Freedom of Information Act, which includes specific provisions regarding fees to be assessed under that Act). Authorizing ITA to carry out these activities without regard to 15 U.S.C. 4912 allows ITA to charge other than the public services and access fees for export promotion services, even when such services rely on or incorporate data contained in the National Trade Data Bank.

*"and that for the purpose of this Act, contributions under the provisions of the Mutual Educational and Cultural Exchange Act shall include payment for assessments for services provided as part of these activities."*

This provision was added in 1990 to clarify a question pending at the time with GAO concerning whether ITA's authority to accept contributions under MECEA was limited to voluntary gifts. This explicitly gives ITA the authority to accept contributions as assessments or fees as well as gifts.

*"Provided further, That the International Trade Administration shall be exempt from the requirements of Circular A–25 (or any successor administrative regulation or policy) issued by the Office of Management and Budget:"*

This language, inserted by Congress, increases the flexibility that ITA has in the establishment of prices and fees for services beyond that allowed by OMB Circular A–25.

*": Provided further, That negotiations shall be conducted within the World Trade Organization consistent with the negotiating objectives contained in the Trade Act of 2002, Public Law 107–210."*

The principle textile and apparel negotiating objectives handed to the U.S. government in the Trade Act of 2002 are as follows:

(16) TEXTILE NEGOTIATIONS.—The principle negotiating objectives of the United States with respect to trade in textiles and apparel articles are to obtain competitive opportunities for United States exports of textiles and apparel in foreign markets substantially equivalent to the competitive opportunities afforded foreign exports in United States markets and to achieve fairer and more open conditions of trade in textiles and apparel.

*United States Patent and Trademark Office*

*"Provided further, That not less than 657 full-time equivalents, 690 positions and $85,017,000 shall be for the examination of trademark applications; and not less*

*than 5,810 full-time equivalents, 6,241 positions and $906,142,000 shall be for the examination and searching of patent applications: Provided further, That not more than 265 full-time equivalents, 272 positions and $37,490,000 shall be for the Office of the General Counsel: Provided further, That not more than 82 full-time equivalents, 83 positions and $25,393,000 shall be for the Office of the Administrator for External Affairs:"*

Congress wanted to ensure that the core examination functions were properly staffed and funded.

*"Provided further, That any deviation from the full-time equivalent, position, and funding designations set forth in the preceding four provisos shall be subject to the procedures set forth in section 605 of this Act:"*

This reprogramming provision was added after fiscal year 2005 because the floors and ceilings are statutory and Congress had to give us a legal way of reprogramming if we weren't going to hit our levels. When we tried to reprogram in fiscal year 2005, staff pointed out that it was the law that we hit the levels specified, neither they nor we had any discretion in the matter.

*"Provided further, That from amounts provided herein, not to exceed $1,000 shall be made available in fiscal year 2006 for official reception and representation expenses: Provided further, That notwithstanding section 1353 of title 31, United States Code, no employee of the United States Patent and Trademark Office may accept payment or reimbursement from a non-Federal entity for travel, subsistence, or related expenses for the purpose of enabling an employee to attend and participate in a convention, conference, or meeting when the entity offering payment or reimbursement is a person or corporation subject to regulation by the Office, or represents a person or corporation subject to regulation by the Office, unless the person or corporation is an organization exempt from taxation pursuant to section 501(c)(3) of the Internal Revenue Code of 1986:"*

Appropriators were concerned that PTO officials had been accepting invitational travel, usually from non-profits but occasionally from other entities. This also ended the invitational examiner education program.

*": Provided further, That in fiscal year 2006, from the amounts made available for 'Salaries and Expenses' for the United States Patent and Trademark Office (PTO), the amounts necessary to pay: (1) the difference between the percentage of basic pay contributed by the PTO and employees under section 8334(a) of title 5, United States Code, and the normal cost percentage (as defined by section 8331(17) of that title) of basic pay, of employees subject to subchapter III of chapter 83 of that title; and (2) the present value of the otherwise unfunded accruing costs, as determined by the Office of Personnel Management, of post-retirement life insurance and post-retirement health benefits coverage for all PTO employees, shall be transferred to the Civil Service Retirement and Disability Fund, the Employees Life Insurance Fund, and the Employees Health Benefits Fund, as appropriate, and shall be available for the authorized purposes of those accounts."*

OPM had been paying certain amounts on behalf of USPTO for CSRS retirement, health insurance, and life insurance. Because PTO is fully-user fee funded, the Administration proposed that USPTO should pay the full costs of its employees' benefits.

*Bureau of Industry and Security*

*"That the provisions of the first sentence of section 105(f) and all of section 108(c) of the Mutual Educational and Cultural Exchange Act of 1961 (22 U.S.C. 2455(f) and 2458(c)) shall apply in carrying out these activities"*

The MECEA language is intended to allow BIS to receive and retain the funds it receives from attendees at BIS export training programs, such as Update. Without this language, all money received from attendees would have to be deposited in Treasury.

*National Telecommunications and Information Administration*

*": Provided, That notwithstanding 31 U.S.C. 1535(d), the Secretary of Commerce shall charge Federal agencies for costs incurred in spectrum management, analysis and operations, and related services and such fees shall be retained and used as offsetting collections for costs of such spectrum services, to remain available until expended."*

In 1996, Congress asked NTIA to investigate the feasibility of charging federal agencies for spectrum management services. NTIA proposed to Congress that each agency be charged in proportion to its use of the spectrum, using a simple fee-per-assignment formula. As a result, Congress enacted language in the fiscal year 1996 appropriation, Public Law 104–134, which authorized the Secretary of Commerce to

charge federal agencies for spectrum management, analysis, operations, and related services to cover spectrum management costs.

Because NTIA experienced significant difficulties collecting fees from multiple federal agencies, Congress subsequently enacted additional language in the fiscal year 1997 appropriation, Public Law 104–208, which authorized the Secretary of Commerce to charge fees, but also specified that the federal agencies shall pay the fees charged by NTIA for spectrum management costs or they would have to cease using the spectrum.

Through NTIA's annual appropriation, Congress has enacted this authority each fiscal year. Currently, NTIA uses this authority to collect 80 percent of its costs for spectrum management services each fiscal year. The specific legislative language is necessary to permit NTIA to continue to collect spectrum management fees without the particular requirements of the Economy Act (31 U.S.C. 1535(d)) being imposed on the transfer of funds and to prevent the expiration of funds transferred from other agencies for NTIA's ongoing spectrum management services.

*": Provided further, That the Secretary of Commerce is authorized to retain and use as offsetting collections all funds transferred, or previously transferred, from other Government agencies for all costs incurred in telecommunications research, engineering, and related activities by the Institute for Telecommunication Sciences of NTIA, in furtherance of its assigned functions under this paragraph, and such funds received from other Government agencies shall remain available until expended."*

NTIA's laboratory in Boulder, Colorado, the Institute of Telecommunication Sciences, (ITS) performs spectrum-related research and analysis for other federal agencies on a reimbursable basis. Due to the nature of this work, which involves projects that do not fit into a fiscal year timetable, it is necessary for NTIA to ensure that the funds transferred from other agencies for this reimbursable work do not expire at the fiscal year's end. Frequently, projects and related funding need to be carried over into the next fiscal year. Therefore, NTIA continues to need authorization to prevent the expiration of funds transferred from other agencies for ITS reimbursable projects. Currently, ITS reimbursable projects constitute about 60 percent of its annual budget.

*Operations Research and Facilities*

*"Provided, That fees and donations received by the National Ocean Service for the management of national marine sanctuaries may be retained and used for the salaries and expenses associated with those activities, notwithstanding 31 U.S.C. 3302:"*

Per 31 U.S.C. 3302, fees and donations are not available to be retained and used by agencies without specific authority.

*"Provided further, That in addition, $3,000,000 shall be derived by transfer from the fund entitled 'Coastal Zone Management' and in addition $67,000,000 shall be derived by transfer from the fund entitled 'Promote and Develop Fishery Products and Research Pertaining to American Fisheries':"*

This language transfers funds from special NOAA accounts to Operations, Research, and Facilities account (ORF) to partially offset the appropriation.

$67 million was transferred from the Promote and Develop account to the ORF account. The Promote and Develop account is funded by a thirty percent levy on imported fish product duties and transferred from the Department of Agriculture to the Promote and Develop American Fishery Products account.

$3 million was transferred from the Coastal Zone Management Fund. This fund was established by the Costal Zone Act Reauthorization Amendments of 1990 (CZARA). The fund consists of loan repayments from the former Coastal energy Impact Program. The proceeds are to be used to offset the Operations, Research, and Facilities account for the costs of implementing the Coastal Zone Management Act of 1972, as amended.

*"Provided further, That no general administrative charge shall be applied against an assigned activity included in this Act or the report accompanying this Act:"*

This proviso is included to forestall NOAA from paying for general administration via a tax on the line offices and specific projects contained in the report language.

*"Provided further, That the total amount available for the National Oceanic and Atmospheric Administration corporate services administrative support costs shall not exceed $179,036,000:"*

This proviso strengthens the previous proviso and puts a hard cap on NOAA administration costs.

*"Provided further, That payments of funds made available under this heading to the Department of Commerce Working Capital Fund including Department of Commerce General Counsel legal services shall not exceed $34,000,000:"*

This proviso is included to limit the Department's assessment of NOAA for Working Capital Fund costs.

*"Provided further, That any deviation from the amounts designated for specific activities in the report accompanying this Act, or any use of deobligated balances of funds provided under this heading in previous years, shall be subject to the procedures set forth in section 605 of this Act:"*

This strengthens the force of the report language by requiring a notification to the Appropriations Committees if NOAA deviates from it, and increases oversight of spending from deobligations by requiring notification as well.

*"Provided further, That grants to States pursuant to sections 306 and 306A of the Coastal Zone Management Act of 1972, as amended, shall not exceed $2,000,000, unless funds provided for 'Coastal Zone Management Grants' exceed funds provided in the previous fiscal year:"*

This language requires NOAA to divide up CZM grants fairly equally between the states (by formula), protecting states with small coastlines and preventing states with long coastlines (CA, AK, FL) from receiving the bulk of the grant funds.

*"Provided further, That if funds provided for 'Coastal Zone Management Grants' exceed funds provided in the previous fiscal year, then no State shall receive more than 5 percent or less than 1 percent of the additional funds:"*

This language was inserted to ensure that if more funds were available for CZM than in the prior year, all participating states would benefit.

*"Provided further, That the personnel management demonstration project established at the National Oceanic and Atmospheric Administration pursuant to 5 U.S.C. 4703 may be expanded by 3,500 full-time positions to include up to 6,925 full-time positions and may be extended indefinitely:"*

This language expanded the scope of the payroll demonstration project.

*"Provided further, That the Administrator of the National Oceanic and Atmospheric Administration may engage in formal and informal education activities, including primary and secondary education, related to the agency's mission goals:"*

This provides specific authorization for NOAA to engage in educational activities.

*": Provided further, That, in accordance with the Federal Credit Reform Act of 1990 (2 U.S.C. 611 et seq.), within funds appropriated under this heading, $2,000,000 shall remain available until expended, for the cost of loans under section 211(e) of title II of division C of Public Law 105–277, such loans to have terms of up to 30 years and to be available for use in any of the Bering Sea and Aleutian Islands fisheries."*

This language provided a $2 million subsidy to cover the costs associated with a $200 million loan to the Community Develop Quota fisheries in the Bering Sea and Aleutian Islands. These loans have terms of up to 30 years.

*Procurement, Acquisition and Construction*

*"Provided, That of the amounts provided for the National Polar-orbiting Operational Environmental Satellite System, funds shall only be made available on a dollar for dollar matching basis with funds provided for the same purpose by the Department of Defense:"*

This proviso was included because of concern that DOD would shift costs to NOAA by under funding their portion of the project.

*"Provided further, That except to the extent expressly prohibited by any other law, the Department of Defense may delegate procurement functions related to the National Polar-orbiting Operational Environmental Satellite System to officials of the Department of Commerce pursuant to section 2311 of title 10, United States Code:"*

Air Force officials asserted that NOAA officials could not perform certain procurement functions because they were not authorized to do so. This proviso was included to satisfy the need for authorization.

*"Provided further, That any deviation from the amounts designated for specific activities in the report accompanying this Act, or any use of deobligated balances of funds provided under this heading in previous years, shall be subject to the procedures set forth in section 605 of this Act:"*

This strengthens the force of the report language by requiring a notification to the Appropriations Committees if NOAA deviates from it, and increases oversight of spending from deobligations by requiring notification as well.

*"Provided further, That beginning in fiscal year 2007 and for each fiscal year thereafter, the Secretary of Commerce shall include in the budget justification materials that the Secretary submits to Congress in support of the Department of Commerce budget (as submitted with the budget of the President under section 1105(a) of title 31, United States Code) an estimate for each National Oceanic and Atmospheric Administration procurement, acquisition and construction program having a total multiyear program cost of more than $5,000,000 and an estimate of the budgetary requirements for each such program for each of the five subsequent fiscal years:"*

This proviso was added by Congress and requires five years of outyear projections for programs with total costs of $5 million or more.

*"Provided further, That subject to amounts provided in advance in appropriations Acts, the Secretary of Commerce is authorized to enter into a lease with The Regents of the University of California for land at the San Diego Campus in La Jolla for a term not less than 55 years:"*

NOAA is seeking to replace its Southwest Fisheries Science Laboratory at La Jolla, CA, because it sits at the edge of a cliff that is receding. Because the University of California offered suitable land nearby but required a long-term lease, NOAA needed specific authorization to enter into a lease of more than 20 years in order to consider the offer.

*": Provided further, That funds appropriated for the construction of the National Oceanic and Atmospheric Administration Pacific Regional Center are an additional increment in the incremental funding planned for the Center, and may be expended incrementally, through multi-year contracts for construction and related activities, provided that obligations under any such multi-year contract shall be subject to the availability of appropriations."*

This provides NOAA greater flexibility in spending the funds for the Pacific Regional Center. Usually, NOAA would require appropriations in an amount that would build or buy something that would be useful even without further appropriation. However, even the major increments for this project are substantially in excess of the amounts provided to date. Without this authorization, NOAA would not be able to spend the funds appropriated, and they would expire unused.

*Fisheries Finance Program Account*

*"Provided, That such costs, including the cost of modifying such loans, shall be as defined in the Federal Credit Reform Act of 1990:"*

Loans given out under the Fisheries Finance Program are to use accounting principles specified under the Federal Credit Reform Act of 1990.

*"Provided further, That these funds are only available to subsidize gross obligations for the principal amount of direct loans not to exceed $5,000,000 for Individual Fishing Quota loans, and not to exceed $59,000,000 for traditional direct loans, of which $19,000,000 may be used for direct loans to the United States menhaden fishery:"*

Provides loan authority for two loan programs.

Direct loan authority of $5 million was given for Individual Fishing Quota (IFQ). These loans provide fishery wide financing to ease the transition to sustainable fisheries through its fishing capacity reduction programs and provides financial assistance in the form of loans to fishermen who fish from small vessels and entry level fishermen to promote stability and reduce consolidation in already rationalized fisheries.

Provides direct loan authority of $59 million was given for Traditional Direct loans. Traditional Direct Loans are available to U.S. citizens who otherwise qualify for financing or refinancing the construction, reconstruction, reconditioning, and in some cases, the purchasing of fishing vessels, shoreside processing, aquaculture, and mariculture facilities. Language was also included directing that of the $59 million in traditional loans, priority should be given to providing $19 million in direct loans to the menhaden fishery.

*": Provided further, That none of the funds made available under this heading may be used for direct loans for any new fishing vessel that will increase the harvesting capacity in any United States fishery."*

This proviso makes it unlawful for a fisherman to use Fisheries Finance Program loans to modify or replace a fishing vessel such that it would materially increase the harvesting capacity of the fishery. This language prevents fisheries finance program loans from contributing to over-fishing.

ECONOMIC DEVELOPMENT REPRESENTATIVE

*Question.* The Economic Development Representative (EDR) that services Maryland has been vacant for well over a year. When will this vacancy be filled? If not, please explain.

Answer. The Economic Development Administration (EDA) has initiated the competitive civil service recruitment process to fill the vacant Economic Development Representative (EDR) position in the Maryland/West Virginia office. This office is to be located in West Virginia but would have convenient access to Maryland. EDA currently has five vacant EDR positions nationwide. Recruitment is currently underway to fill the three vacancies located in Maryland/West Virginia, Minnesota, and Missouri. EDA anticipates the recruitment process to fill the other two vacancies will begin sometime in April.

UNOBLIGATED BALANCE LEVELS

*Question.* Please provide unobligated balance levels for the S&E appropriation and the Economic Development Assistance Program appropriation for fiscal years 2001 through 2006.

Answer. The following unobligated balance levels are provided for the S&E appropriation and the Economic Development Assistance Program appropriation for fiscal years 2001 through 2006. The EDAP balances primarily consist of deobligations of prior year obligations, and were re-obligated against new projects in subsequent years.

[In thousands of dollars]

| Fiscal year [1] | S&E | EDAP |
|---|---|---|
| 2001 | 240 | 63,777 |
| 2002 | 42 | 11,902 |
| 2003 | 338 | 14,826 |
| 2004 | [2] 912 | 15,355 |
| 2005 | 20 | 10,965 |
| 2006 | [3] 96 | 10,757 |

[1] Balances were for year end for each year.
[2] Balance due to EOY DOD reimbursable credit.
[3] As corrected.

ECONOMIC DEVELOPMENT ADMINISTRATION CUT

*Question.* What will be the consequence of an $80 million cut in EDA grants? How many fewer projects will be funded? How many communities will not receive assistance?

Answer. We believe the President's budget balances competing priorities and provides sufficient resources for the agency to accomplish its mission. A funding level of $170 million will provide 60–65 public works-type grants and 25 economic adjustment-type construction grants, which will generate 19,000 new higher-skill jobs. EDA will focus these resources on the Nation's most distressed communities. EDA fiscal year 2006 and fiscal year 2007 funding levels supported approximately 140 investments.

STAFFING BREAKOUT

*Question.* Please provide a staffing breakout (including contractors) at headquarters and at each of the regional offices as of the end of each fiscal year (2001–2006) as well as a current breakout as of the latest pay period. Provide staffing levels by appointment, grade, and position.

Answer. Attachment 5 lists on-board staffing, including contractors, at headquarters and each regional office at the end of each fiscal year, and the current staffing, including appointment, grade and position.

ATTACHMENT 5.—ECONOMIC DEVELOPMENT ADMINISTRATION STAFFING CHART AS OF 3/20/2007—EMPLOYEES

| Office | Positions | Appointment | Grade |
|---|---|---|---|
| Office of the Assistant Secretary | Assistant Secretary | Political | ([1]) |
| Office of the Assistant Secretary | DAS for Economic Development | Political | ([2]) |
| Office of the Assistant Secretary | Senior Advisor to Assistant Secretary | Political | ([2]) |
| Office of the Assistant Secretary | Special Advisor | Political | 11 |
| Office of the Assistant Secretary | Confidential Assistant | Political | 11 |
| Office of the Assistant Secretary | Secretary | Career | 10 |
| Office of Chief Counsel | Chief Counsel | Career | 15 |
| Office of Chief Counsel | Attorney Advisor | Career | 14 |
| Office of Chief Counsel | Attorney Advisor | Career | 14 |
| Office of Chief Counsel | Paralegal | Career | 12 |
| Office of Chief Counsel | Administrative Assistant | Career | 8 |
| Office of Management Services | CFO/DAS for Management Services | Career | ([2]) |
| Office of Management Services | Secretary | Career | 8 |
| Office of Management Services | Program Analyst—PMF | Career | 12 |
| Office of Management Services | Deputy CFO/Director Administration & Support Svs Div. | Career | 15 |
| Office of Management Services | Human Resources | Career | 15 |

ATTACHMENT 5.—ECONOMIC DEVELOPMENT ADMINISTRATION STAFFING CHART AS OF 3/20/2007—EMPLOYEES—Continued

| Office | Positions | Appointment | Grade |
|---|---|---|---|
| Office of Management Services | Management Analyst | Career | 14 |
| Office of Management Services | Management Analyst | Career | 13 |
| Office of Management Services | Management Analyst | Career | 13 |
| Office of Management Services | Financial Analyst | Career | 14 |
| Office of Management Services | Accountant | Career | 14 |
| Office of Management Services | Accountant | Career | 13 |
| Office of Management Services | Director, Budgeting & Performance Evaluation Division. | Career | 15 |
| Office of Management Services | Senior Program Analyst | Career | 14 |
| Office of Management Services | Program Analyst | Career | 13 |
| Office of Management Services | Program Analyst | Career | 13 |
| Office of Management Services | Program Analyst | Career | 7 |
| Office of Management Services | Grant Specialist—PMF | Career | 11 |
| Office of Management Services | Budget Analyst | Career | 13 |
| Office of Information Technology | Chief Information Officer | Career | 15 |
| Office of Information Technology | Information Tech Specialist | Career | 14 |
| Office of Information Technology | Information Tech Specialist | Career | 13 |
| Office of Information Technology | Information Tech Specialist | Career | 11 |
| Office of Information Technology | Information Tech Specialist | Career | 7 |
| Office of External Affairs and Communications | DAS for External Affairs and Communications. | Political | (2) |
| Office of External Affairs and Communications | Secretary | Career | 8 |
| Office of External Affairs and Communications | Director, Public Affairs | Political | 15 |
| Office of External Affairs and Communications | Web Master | Career | 13 |
| Office of External Affairs and Communications | Senior Public Affairs Specialist | Career | 13 |
| Office of External Affairs and Communications | Public Affairs Specialist | Career | 12 |
| Office of External Affairs and Communications | Prog Comm Specialist Team Leader | Career | 15 |
| Office of External Affairs and Communications | Management Analyst | Career | 13 |
| Office of External Affairs and Communications | Intergovernmental Affairs Specialist | Career | 13 |
| Office of External Affairs and Communications | Investment Information Specialist | Career | 12 |
| Office of External Affairs and Communications | Comm & Cong Liaison Spec | Career | 12 |
| Office of External Affairs and Communications | Investment Information Specialist | Career | 12 |
| Office of External Affairs and Communications | Program Communications Asst | Career | 7 |
| Atlanta Regional Office | Regional Director | Career | (2) |
| Atlanta Regional Office | EDR/Kentucky | Career | 13 |
| Atlanta Regional Office | EDR/Mississippi | Career | 13 |
| Atlanta Regional Office | Administrative Officer | Career | 12 |
| Atlanta Regional Office | Econ Dev Prog Spec | Career | 12 |
| Atlanta Regional Office | Econ Dev Prog Spec | Career | 12 |
| Atlanta Regional Office | Econ Dev Assistant | Career | 6 |
| Atlanta Regional Office | Civil Engineer | Career | 14 |
| Atlanta Regional Office | Civil Engineer | Career | 13 |
| Atlanta Regional Office | IT Specialist | Career | 12 |
| Atlanta Regional Office | Project Manager | Career | 12 |
| Atlanta Regional Office | Chief, Public Works & Econ Adjust | Career | 14 |
| Atlanta Regional Office | Program Specialist | Career | 12 |
| Atlanta Regional Office | Program Specialist | Career | 12 |
| Atlanta Regional Office | Program Specialist | Career | 12 |
| Atlanta Regional Office | Econ Dev Prog Spec | Career | 11 |
| Atlanta Regional Office | Regional Counsel | Career | 15 |
| Atlanta Regional Office | Econ Dev Prog Spec | Career | 12 |
| Atlanta Regional Office | Secretary O/A | Career | 6 |
| Austin Regional Office | Regional Director | Career | (2) |
| Austin Regional Office | Regional Counsel | Career | 15 |
| Austin Regional Office | Environmental Specialist | Career | 13 |
| Austin Regional Office | Area Director | Career | 14 |
| Austin Regional Office | EDR/Louisiana | Career | 13 |
| Austin Regional Office | Senior Program Specialist | Career | 13 |
| Austin Regional Office | Econ Dev Prog Specialist | Career | 12 |
| Austin Regional Office | Mgmt Analyst | Career | 12 |
| Austin Regional Office | Area Director | Career | 14 |
| Austin Regional Office | Civil Engineer | Career | 13 |
| Austin Regional Office | Civil Engineer | Career | 13 |

ATTACHMENT 5.—ECONOMIC DEVELOPMENT ADMINISTRATION STAFFING CHART AS OF 3/20/2007—EMPLOYEES—Continued

| Office | Positions | Appointment | Grade |
|---|---|---|---|
| Austin Regional Office | OPCS Officer | Career | 12 |
| Austin Regional Office | Office Tech/Office Auto | Career | 5 |
| Austin Regional Office | Area Director | Career | 14 |
| Austin Regional Office | EDR—Arkansas | Career | 13 |
| Austin Regional Office | Econ Dev Prog Specialist | Career | 12 |
| Austin Regional Office | Econ Dev Prog Specialist | Career | 12 |
| Austin Regional Office | Econ Dev Prog Specialist | Career | 12 |
| Chicago Regional Office | Regional Director | Career | (2) |
| Chicago Regional Office | Regional Counsel | Career | 15 |
| Chicago Regional Office | EDR/Ohio/Indiana | Career | 13 |
| Chicago Regional Office | EEO Specialist | Career | 13 |
| Chicago Regional Office | Econ Dev Prog Specialist | Career | 9 |
| Chicago Regional Office | Supv Program Specialist | Career | 14 |
| Chicago Regional Office | Engineer | Career | 13 |
| Chicago Regional Office | EA Program Specialist | Career | 12 |
| Chicago Regional Office | PW Program Specialist | Career | 12 |
| Chicago Regional Office | PW Program Specialist | Career | 12 |
| Chicago Regional Office | Supervisory Econ Dev Prog Spec | Career | 14 |
| Chicago Regional Office | Engineer | Career | 13 |
| Chicago Regional Office | EA Program Specialist | Career | 12 |
| Chicago Regional Office | OPCS Officer | Career | 14 |
| Chicago Regional Office | Administrative Officer | Career | 12 |
| Chicago Regional Office | Secretary | Career | 6 |
| Chicago Regional Office | Secretary | Career | 6 |
| Chicago Regional Office | Coordinator | Career | 14 |
| Denver Regional Office | Regional Director | Career | (2) |
| Denver Regional Office | Regional Counsel | Career | 15 |
| Denver Regional Office | Civil Engineer | Career | 13 |
| Denver Regional Office | OPCS Officer/Computer Spec | Career | 12 |
| Denver Regional Office | Admin Officer | Career | 12 |
| Denver Regional Office | Program Specialist | Career | 12 |
| Denver Regional Office | Program Specialist | Career | 11 |
| Denver Regional Office | Community Planner | Career | 13 |
| Denver Regional Office | East Team Leader | Career | 14 |
| Denver Regional Office | Program Specialist | Career | 13 |
| Denver Regional Office | EDR Colorado/Kansas | Career | 13 |
| Denver Regional Office | EDR Iowa/Nebraska | Career | 13 |
| Denver Regional Office | EDR Montana/Utah | Career | 13 |
| Denver Regional Office | West Team Leader | Career | 14 |
| Denver Regional Office | Program Specialist | Career | 13 |
| Philadelphia Regional Office | Regional Counsel | Career | 15 |
| Philadelphia Regional Office | Environmental Officer | Career | 13 |
| Philadelphia Regional Office | General Attorney | Career | 14 |
| Philadelphia Regional Office | Administrative Officer | Career | 12 |
| Philadelphia Regional Office | Adm Support Assistant | Career | 5 |
| Philadelphia Regional Office | EDR New York/VT | Career | 13 |
| Philadelphia Regional Office | Chief, Planning Technical Asst | Career | 14 |
| Philadelphia Regional Office | Community Planner | Career | 13 |
| Philadelphia Regional Office | Community Planner | Career | 12 |
| Philadelphia Regional Office | Community Planner | Career | 12 |
| Philadelphia Regional Office | Chief, Pubic Works | Career | 14 |
| Philadelphia Regional Office | Civil Engineer | Career | 13 |
| Philadelphia Regional Office | Sr. Program Specialist | Career | 13 |
| Philadelphia Regional Office | Civil Engineer | Career | 13 |
| Philadelphia Regional Office | Civil Engineer | Career | 13 |
| Philadelphia Regional Office | Public Works Program Spec | Career | 12 |
| Philadelphia Regional Office | Econ Dev Prog Spec | Career | 12 |
| Philadelphia Regional Office | Program Specialist | Career | 9 |
| Philadelphia Regional Office | Chief, Economic Adjustment | Career | 14 |
| Philadelphia Regional Office | Sr.Program Specialist (Financial Analyst) | Career | 13 |
| Philadelphia Regional Office | Program Specialist | Career | 13 |
| Philadelphia Regional Office | Program Specialist | Career | 12 |
| Seattle Regional Office | Regional Director | Career | (2) |

ATTACHMENT 5.—ECONOMIC DEVELOPMENT ADMINISTRATION STAFFING CHART AS OF 3/20/2007—EMPLOYEES—Continued

| Office | Positions | Appointment | Grade |
|---|---|---|---|
| Seattle Regional Office | Regional Counsel | Career | 15 |
| Seattle Regional Office | EEO/Civil Rights | Career | 13 |
| Seattle Regional Office | Administrative Officer | Career | 12 |
| Seattle Regional Office | Computer Specialist | Career | 11 |
| Seattle Regional Office | EDR Alaska | Career | 13 |
| Seattle Regional Office | Economic Development Specialist | Career | 11 |
| Seattle Regional Office | Chief, Economic Adjustment | Career | 14 |
| Seattle Regional Office | Economic Adjustment Specialist | Career | 12 |
| Seattle Regional Office | EDR/Oregon, Northern Cal | Career | 14 |
| Seattle Regional Office | EDR Pacific Islands | Career | 13 |
| Seattle Regional Office | EDR/Idaho and Nevada | Career | 13 |
| Seattle Regional Office | EDR/Central, Bay, CA | Career | 13 |
| Seattle Regional Office | EDR/Southern California | Career | 13 |
| Seattle Regional Office | EDR/Arizona | Career | 13 |
| Seattle Regional Office | Supv Community Planner | Career | 14 |
| Seattle Regional Office | Civil Engineer | Career | 13 |
| Seattle Regional Office | Civil Engineer | Career | 13 |
| Seattle Regional Office | Civil Engineer | Career | 13 |
| Seattle Regional Office | Public Works Specialist | Career | 12 |
| Seattle Regional Office | Public Works Specialist | Career | 12 |
| Seattle Regional Office | Public Works Specialist | Career | 12 |
| Total | | | 161 |

[1] EX.
[2] SES.

ATTACHMENT 5.—ECONOMIC DEVELOPMENT ADMINISTRATION STAFFING CHART AS OF 3/20/2007—CONTRACTORS

| Office | Positions | Funded by | Number |
|---|---|---|---|
| Office of Management Services | Accounting Technician | S&E | 2 |
| Office of Management Services | Human Resources [1] | S&E | 2 |
| Office of Information Technology | Information Technology | S&E | 7 |
| Total contractors funded by S&E funds | | | 11 |
| Contractors Funded by Other Sources of Funds: | | | |
| Seattle Regional Office | Community Planner | DOD Reimb Funds | 1 |
| Seattle Regional Office | Administrative Assistant | DOD Reimb Funds | 1 |
| Seattle Regional Office | Civil Engineer | DOD Reimb Funds | 1 |
| Seattle Regional Office | Program Specialist | DOD Reimb Funds | 1 |
| Seattle Regional Office | Environ Protection Specialist | DOD Reimb Funds | 1 |
| Total Other Fund Sources | | | 5 |

[1] HR services previously provided under a cross-servicing agreement with ITA.

ESA HEADQUARTERS STAFFING AND FUNDING LEVELS

*Question.* Please provide a staffing and funding breakout for ESA Headquarters for fiscal year 2005, fiscal year 2006, fiscal year 2007 CR.

Answer. All ESA headquarters' appropriated staffing and funding are identified in the Economics and Statistical Analysis budget under the "Policy Support" heading.

| ESA Headquarters | Fiscal Year 2005 Actual | | Fiscal Year 2006 Actual | | Fiscal Year 2007 Enacted | |
|---|---|---|---|---|---|---|
| | Personnel | Amount | Personnel | Amount | Personnel | Amount |
| Positions/Budget Authority | 34 | $6,316 | 23 | $3,975 | 23 | $3,975 |
| FTE/Obligations | 39 | 6,398 | 18 | 3,480 | ([1]) | ([1]) |

[1] TBD.

DYNAMICS OF ECONOMIC WELL-BEING

*Question.* Will there be a gap in continuity between the start of the Dynamics of Economic Well-Being and the end of the SIPP? If so, how long?

Answer. The Budget provides $15.9 million (an increase of $6.7 million over the 2007 Budget) to continue the development of the new Dynamics of Economic Well-being System (DEWS). However, to ensure Census can focus its efforts and be successful at fielding the new survey in 2009, the Budget does not include funding to continue SIPP data collection in 2008. Therefore there will be a short "data gap" between ending the SIPP and beginning of DEWS.

Data collection will end for SIPP in September 2007. We will have full data through May, partial data through August, and no data from September through December 2007. The first DEWS data collection will provide data for calendar year 2008. It should be noted that there have been gaps in the SIPP series before. For example, to enable the Census Bureau to initiate a new panel in February 2001 and process data more recently collected, data collected from February to September 2000 were never released and data from October 2000 to January 2001 were never collected. Based on those experiences and consultations with some of our Federal agency partners, we believe that a similar data gap between SIPP and DEWS should not hamper program evaluation or modeling.

IMPROVED MEASUREMENT OF SERVICES

*Question.* Please provide the complete funding requirements for the "Improved Measurement of Services" including any out-year requirements.

Answer. The Improved Measurement of Services initiative request for fiscal year 2008 is $8,118,000. We expect that a similar amount will be needed in the out-years, with adjustments for inflationary cost increases and other technical adjustments to base, providing for the continued quarterly and annual collection and dissemination of service industry data.

ITA EXPORT FEE INCREASE

*Question.* The budget request proposes to double a fee that the Subcommittee has rejected the last two years. Will the fee increase be a disincentive for exports at the very time we are trying to encourage them?

Please provide a schedule of current fees vs. those proposed under the request.

Answer. In 2006, ITA was involved with over 12,000 export success stories. Overall, exports from the United States are up over 2005. In fiscal year 2006, ITA assumed that it would collect $8 million in fees. ITA actually collected $7.9 million. We believe these fees could be managed better to free-up funding for ITA activities that provide the greatest benefit to the nation as a whole. ITA believes its services are important for potential exporters and will continue to contribute to the export boom.

ITA is working toward developing a fee setting strategy that will recover a slightly larger share of costs from companies that can afford it, while still encouraging SMEs to participate in the export market. The proposed fees will cover approximately 5 percent of the costs of the U.S. and Foreign Commercial Service (an increase from 3 percent in fiscal year 2007), and only about 3 percent of ITA's overall costs. The fees are targeted at services that provide benefits for specific firms, such as International Partner Searches, and Gold Key services. These services are most similar to those provided by private consulting firms.

In addition, ITA is developing novel partnerships with companies such as FEDEx and E–BAY, to name a couple, to expand the number of SMEs that export and those that export to more the one country. For example, FedEx is helping ITA to identify and inform U.S. exporters to Mexico about new business opportunities in Central America, which have come about as a result of recent Free Trade Agreements that the United States has signed with these countries. These private sector partners join ITA's traditional interagency partners, such as SBA, the Export-Import Bank, the Overseas Private Investment Corporation, and state and local governments in an effort to educate, inform and assist companies. These partnerships help achieve the government's and the private partners' goals of expanding foreign sales.

Below is a schedule of current fees. There are no proposed fees at this time.

| | Current Fees |
|---|---|
| Products | |
| Business Facilitation Service | Variable depending on company requirements |

| | Current Fees |
|---|---|
| BuyUSA.gov Business Service Provider | International $150–$500<br>Domestic $250<br>Free for U.S. Companies |
| Commercial News USA | Revenue comes from advertising |
| Customized Market Research | Variable depending on company requirements |
| Featured US Exporters (FUSE) | $25–50 |
| Gold Key—1st day | $685–$770 [1] |
| Gold Key—each additional day | $320–$385 [1] |
| International Company Profile (ICP) | $520–$810 [1] |
| International Partner Search (IPS) | $500–$790 [1] |
| Platinum Key Service | Variable depending on company requirements |
| Events | |
| Catalog Event/PLC | $450 and $650 |
| Certified Trade Mission | Variable depending on company requirements |
| International Buyer Program | $8,000 |
| Seminar-Webinar | Variable |
| Trade Fair | Variable depending on trade fair expenses and company requirements |
| Trade Mission | Variable depending on company requirements |
| Trade Promotion Event | Variable depending on company requirements |
| Single Company Promotion | Variable depending on company requirements |
| Certified Trade Fairs | $1,750 |

[1] The range of user fees charged for certain services reflects variations in the cost of doing business in different markets.

ITA CHINESE SUBSIDY PROGRAMS

*Question.* Please provide a funding summary of efforts to identify and analyze Chinese subsidy programs.

Answer. While ITA records maintain cost information for overall China enforcement efforts, it does not record separately its activities with respect to China subsidies for financial purposes. We can reasonably estimate that, between efforts in Washington, DC, and ITA's foreign offices in Asia, particularly Beijing, ITA devoted well over $1,000,000 to research, monitoring, consultation and advocacy regarding China subsidy issues during fiscal year 2006. During fiscal year 2007, we estimate that this amount could reach somewhere in the range of $1,500,000.

ITA ASSISTANT SECRETARY STATUS

*Question.* What is the status of the A/S for Manufacturing vacancy?

Answer. We are working closely with Personnel at the White House on this appointment and are making good progress. We are committed to filling this position as quickly as possible.

FUNDING FOR NOAA EDUCATION PROGRAMS

*Question.* Secretary Gutierrez, a few weeks ago you invited me to attend an event at a local Maryland high school to visit with students participating in the FIRST Robotics competition. From the interest you have shown in this program I know that you are keenly aware of the fact that we need to engage our young people I math and science programs.

What is the rationale for cutting the NOAA education programs by 50 percent?

Does the Department of Commerce believe in the NOAA education mission?

Answer. NOAA's fiscal year 2008 budget maintains NOAA's education spending at the fiscal year 2007 President's request level. The Department of Commerce strongly believes in NOAA's educational mission and we believe that NOAA can make considerable progress toward its goal of developing an ocean literate population at the requested funding level. In order to produce a society well versed in ocean-related issues, it is vital that NOAA establishes a strong foundation of knowledgeable students who will later move into the general population. The programs included in the fiscal year 2008 budget (see Table 1) all contribute to this goal.

TABLE 1.—EDUCATION PROGRAMS INCLUDED IN PRESIDENT'S FISCAL YEAR 2008 BUDGET REQUEST

| Program | Fiscal Year 2008 President's Request |
|---|---|
| Educational Partnership Program | $14,261,000 |
| Hollings Scholarship | 3,700,000 |
| JASON | 1,000,000 |
| Nancy Foster Scholarship | 400,000 |
| Total | 19,361,000 |

Examples of each of these successful NOAA programs are highlighted below:

The JASON Project uses multimedia tools and cutting-edge technology to engage middle-school students in scientific research and expeditions led by leading scientists. Dr. Bob Ballard has transmitted his discoveries to millions of students in classrooms around the country, via satellite and internet broadcasts. The JASON Project also provides on-site and on-line teacher professional development supported by the National Science Teachers Association and the U.S. Department of Education's Star Schools Program.

NOAA's Educational Partnership Program began in 2001 and provides financial assistance, on a competitive basis, to Minority Serving Institutions (MSIs) to increase programs and opportunities for students to be trained and graduate in sciences that directly support NOAA's mission. The program consists of four core components: Cooperative Science Centers, Environmental Entrepreneurship Program, Graduate Sciences Program and the Undergraduate Scholarship Program.

—Five Cooperative Science Centers have been designated at MSIs with graduate degree programs in NOAA-related sciences. To date, NOAA has provided formal training and research opportunities for 2,050 students at these centers. External teams of scientists have reviewed the centers to determine the effectiveness of student recruitment, training and graduation. Program statistics have consistently exceeded performance measures with over 383 students graduating with bachelors and advanced degrees in NOAA-related sciences. Of those students, 33 have received Ph.D.'s and 105 students have been awarded Masters Degrees. Another 94 Ph.D. candidates and 126 Masters candidates are expected to receive advanced degrees within the next three to five years.

—The Environmental Entrepreneurship Program provides financial assistance to increase the number of students at MSIs who are proficient in both environmental studies and business enterprises. The Program facilitates linkages between MSIs, NOAA and the private sector.

—The Undergraduate Scholarship Program has trained 84 students majoring in NOAA-related sciences at MSIs. Of these, 69 students have completed the program and 15 are finishing their second year of training. Twenty-eight of the students that have completed the program have been accepted into graduate programs.

—The Graduate Sciences Program offers training and work experience to exceptional female and minority students pursuing advanced degrees in the environmental sciences. After completing the program, participants commit to employment at NOAA based upon the length of their training. To date, the Graduate Sciences program has hired 32 graduates as NOAA scientists.

The Dr. Nancy Foster Scholarship Program, named in honor of the late distinguished NOAA scientist and Assistant Administrator, recognizes outstanding scholarship and encourages independent graduate level research—particularly by female and minority students—in oceanography, marine biology and maritime archaeology. Congress authorized the Program, as described in the National Marine Sanctuaries Amendments Act of 2000, soon after Dr. Foster's death in June 2000, as a means of honoring her life's work and contribution to the Nation. To date, 22 students have received scholarships, 18 of whom are women.

The Ernest F. Hollings Scholars Program recruits and prepares students for public service careers with NOAA and other natural resource and science agencies as well as for careers as teachers and educators in oceanic and atmospheric science. Last year, the first Hollings Scholars successfully participated in summer internships with NOAA labs and facilities. The Hollings Scholarship Program currently funds more than 100 students in ocean and atmospheric sciences, math, computer science, social science and education.

As indicated above, the Department supports education programs at NOAA and is requesting over $19 million in fiscal year 2008 for education programs and activities.

UNITED STATES PTO PATENT BACKLOG

*Question.* What is the current backlog of patents?

Answer. The backlog (cases that have not been examined) of patent applications at the beginning of fiscal year 2007 was 701,000. As noted in the 2007–2012 Strategic Plan, the rate at which patent applications are being filed has increased beyond the rate at which the USPTO is presently able to examine them. It is possible that this backlog could approach 1.4 million by 2012.

We are currently employing the following strategies to address backlogs:

—Enhance recruitment to hire 1,200 new patent examiners a year for an extended period of time, including examiners with degrees and/or experience in areas of emerging technologies.

—Expand telework and explore establishing regional USPTO office.

—Competitively source PCT Chapter 1 applications, freeing examiners to focus on national cases.

—Explore examination reform through the rule making process to create better-focused examination and enhance information exchange between applicant and examiner.

LONG-TERM METRIC/GOAL FOR PATENT PENDENCY

*Question.* What is the agency's long-term metric/goal for patent pendency?

Answer. Our long-term, strategic goal for patent pendency[1] is 28 months to final disposition, by 2012.

Metrics include reduction of the initial waiting time for patent applications in our most backlogged Technology Centers and successful implementation of various initiatives that ensure goal achievement by 2012.

The USPTO is both implementing initiatives and exploring strategies that will reduce the backlog of unexamined patent applications and improve the timeliness of a patent examination.

An important set of options—important because they would have a significant, long-lasting positive effect on timeliness of patent examination—might require legislation. Therefore, we are grateful to the Subcommittee for its interest in the topic of patent pendency, as we believe faster processing of patent applications is crucial to America's Competitiveness.

RETENTION RATE

*Question.* What is the current staff retention rate?

Answer. The USPTO typically reports an attrition rate rather than a retention rate. In 2006 the USPTO's examining staff had an attrition rate of 10.6 percent. In contrast, the U.S. Department of Labor, Bureau of Labor Statistics reported a total government separation rate of 16.9 percent for 2006.

INCREASE EXAMINER RETENTION

*Question.* Beyond recruitment and retention bonuses, how is PTO working to increase examiner retention?

Answer. In addition to providing eligible examiners a market-driven recruitment bonus for up to four years with a condition of employment agreement, the USPTO has identified a number of initiatives that would improve retention:

—The Office is forming teams of hiring coordinators with specialized technology-specific and human resources and recruiting skills to attract candidates for hard to fill examining positions, particularly those most likely to stay at the USPTO.

—Another way of attracting candidates who most likely would remain at the USPTO is to use personal interaction at college and regional job fairs to educate candidates about the exact nature of the job.

—The on-going Patent Hoteling Program (PHP), which was launched in 2006 with 500 examiners, will be expanded by 500 examiners a year through fiscal year 2010.

—PH is a voluntary program whereby participants can remotely access USPTO automated system, on-line resources, and other information from an alternative worksite. They also can remotely reserve office space one day per

[1] Patent pendency is the amount of time a patent application is waiting (in queue) before a patent is issued or the application is abandoned.

week in a "hotel office suite" located at USPTO headquarters to conduct in-person business activities.

—On a more long-term basis, we hope to create, with Congressional support and legislative authority, a workplace that can be anywhere. In this regard, three possibilities are being investigated by Patents: (1) expanding the successful Patents Hoteling Program (PHP) in such a way as to create a more nationwide workforce; (2) creating remote or regional offices, or brick and mortar presences, in different locations across the country selected upon a variety of factors such as where pockets of technology may be concentrated or there is increased access to a suitable workforce for hire; and (3) a storefront approach which in a sense is a hybrid of the possibilities (1) and (2). The storefront approach would potentially provide a small-scale brick and mortar presence, or node, which could then act as a support center for employees participating in an expanded hoteling program.

—The USPTO plans a multi-pronged approach to provide enhanced training programs for patent employees—both new employees and mid-career and senior examiners.

—The Office also plans to develop alternatives to the current performance and bonus systems, for example, the Patent Flat Goal pilot program, which is designed to improve flexibility as to when and where examiners perform their work.

—Patent examiners received a 7 percent special pay rate increase in November 2006.

—In 2006, USPTO management submitted proposals to patent union representatives for a new collective bargaining agreement that would replace a previous agreement negotiated in 1986. Proposals include enhanced patent examining monetary awards and production activities, as well as a stand-alone quality award.

TIMELINE FOR ACHIEVING STRATEGIC PLAN GOALS AND OBJECTIVES

*Question.* In December, PTO submitted its latest 5-year strategic plan to OMB. The plan lists four goals: Optimizing Patent Quality and Timeliness; Optimizing Trademark Quality and Timeliness; Improving Intellectual Property Protection; and Achieve Organizational Excellence.

What is your timeline for achieving the goals and objectives of the plan?

Answer. The 2007–2012 Strategic Plan proposes consideration of substantial changes for patents, trademarks, intellectual policy and management that will better position the USPTO and its users for future growth and complexity. The Plan also documents our belief that partnership with stakeholders is crucial to defining, in a collaborative manner, solutions that will benefit the entire IP system.

The Strategic Plan specifically identifies and describes more than 60 initiatives for achieving the goals and objectives in the Strategic Plan. Some of these initiatives already are under way or have specific timeframes, while others commit us to continue researching and exploring options to solve specific problems.

—For example, one alternative that is under way is the Patent Flat Goal pilot program. This pilot is designed to improve flexibility as to when and where examiners perform their work.

—Another example is the initiative to competitively source Patent Cooperation Treaty (PCT) Chapter I applications. As an International Searching Authority under the PCT, the USPTO is obligated to perform this search function. By competitively sourcing this function, the USPTO will redirect patent examiner resources back to the examination of U.S. applications. Two contracts were awarded last fiscal year to initiate this program. In addition, the USPTO entered into agreements with IP Australia to perform search and examination work on PCT applications. Initially, the USPTO expects to competitively source up to 15,000 Chapter I applications.

—In addition, we have identified a broad objective to explore the development of alternative approaches to patent examination in collaboration with stakeholders.

—The USPTO is planning a pilot program for peer review of patent applications. Up to 250 applicants whose applications are in the computer architecture, software and information security technologies will be able to voluntarily place their applications on a non-USPTO web site for public review by a peer group of patent users, attorneys and academics. This peer group will determine and submit to the USPTO what they consider the best available and relevant prior art. The pilot will test whether this peer review can effectively identify prior art that might not otherwise be found by our examiners during the typical ex-

amination process. We will also make an evaluation as to whether this process results in measurable examination timesaving and quality improvement.

—We also are developing a plan to reach out to the entire patent community to ensure their ideas are adequately represented and considered. The Patent Public Advisory Committee (PPAC) would assist in this process by gathering information and making recommendations to improve the patent system to the USPTO. A proposed process has been developed for gathering input and proposals for improving the patent examination system by bringing together the diverse external patent community to identify patent examination products or services that may result in the more efficient use of examination resources. The process would strive to identify a wide range of ideas from those needing statutory changes to those that can be implemented immediately under our existing authorities.

—The USPTO is developing and reviewing a variety of innovative patent processing initiatives including a new offering for the public called "Accelerated Examination." Under this program, which began August 26, 2006, for those applicants who need or want quick turn around, the USPTO offers a complete examination within 12 months. In exchange for this quick turn around, applicants must file a complete application, agree to interviews and accelerated response periods, must file and prosecute their application electronically and must provide more information about the application to the USPTO in the form of an examination support document. The first application to be completed under this program was filed on September 29, 2006 and issued on March 13, 2007 (less than 6 months from date of filing).

—We believe that to effectively address and control pendency and reduce backlog, the USPTO needs to receive more and better focused information from applicants themselves and from the public at large. The USPTO has proposed and will propose regulations and administrative changes governing submission of patent applications that will enable our examiners to make more efficient and informed determinations.

—First, we have proposed limiting the number of continuing applications and continued examination requests to provide an incentive for applicants to focus their initial patent applications on their inventive contributions.

—Second, we have proposed to limit the number of claims that are initially examined in order to provide an incentive to focus the examination process.

—The first and second proposals have optional procedures which continue to provide an applicant flexibility where the applicant may need additional continuing applications or initially examined claims upon a showing of that need or by shouldering additional responsibilities. In parallel we have proposed revisions to our information disclosure requirements to focus our limited examination recourses on prior art that is most relevant to the examination process. Additionally we are considering a new practice change to require applicants to conduct a pre-examination search and provide an explanation as to why they believe that they are entitled to a patent in view of the information discovered during the pre-examination search.

—Our hope is to achieve examination reform that creates better-focused examination and enhances information exchange between applicant and examiner. We look forward to working with the public and Congress to develop an enhanced examination system that effectively and fairly balances the needs of the Office and the interests of the patent applicants, interested third parties and the general public.

—While the USPTO currently has a procedure for submission of prior art after publication, which allows submission by third parties within two months of publication, the procedure does not allow explanations or other information about the patents or publications absent express written consent of the applicant. We encourage consideration of a change to the statute governing this procedure to allow filing of relevant information by third parties after pre-grant publication. Such a change would allow those interested parties to explain why the prior art would have a negative impact on the patentability of the claims. This process, which would provide the examiner with information he or she might not otherwise obtain, should result in a more efficient examination process and a higher quality, more reliable patent. Putting the best and most complete information before our examiners, as early in the examination process as possible, is beneficial to the legitimate interests of all interested parties and stakeholders.

—We look forward to working with Congress to develop a submission procedure that effectively and fairly balances the interests of the patent applicant, interested third parties and the general public.

—We are also looking to provide assistance to the open source community in their development of an open source database to provide examiners with potential prior art.

—Trademarks expects to achieve 3-month first action pendency by 2008 and maintain it thereafter. Trademarks also expects to reduce disposal pendency to 16 months by 2009 and maintain it. Our challenge will be to maintain performance goals given the uncertainties of filings and funding. The Strategic Plan addresses improvements in the criteria used to define quality as well as expanding quality assessments throughout the office.

In conclusion, we consider the Strategic Plan to be a work in progress, and we will refine and update it regularly to adjust to changing conditions and to incorporate the best thinking of the intellectual property community and beyond. Our budget and performance plan that is submitted to the Congress each year will document key measurements and yearly milestones to justify full funding for the Office in achieving our strategic goals.

PATENT EXAMINATION QUALITY

*Question.* How does the PTO measure patent examination quality?

Answer. Quality begins with the fundamentals—a high-performing workforce that is properly trained and given the tools and information technology systems needed to accomplish the job. Furthermore, the USPTO monitors quality quite precisely by measuring:

—In-process compliance with published statutory, regulatory, and practice standards;

—End-of-process compliance with these same standards.

These parameters are measured by performing a review of statistically significant random samplings of examiners' work products.

Since we put additional quality initiatives in place in 2003, our compliance rates have increased.

In fiscal year 2006, we achieved a 96.5 percent patent allowance compliance[2] rate the highest in 25 years, while receiving a historically high number of patent applications (419,760).

WORK WITH USER COMMUNITY TO EVALUATE QUALITY

*Question.* Is the PTO working with the user community to evaluate whether the right measures are being used to evaluate quality?

Answer. As part of the 2007–2012 Strategic Plan, we will continue to work with all interested parties to find new ways to improve and measure quality even more effectively.

The USPTO plans to keep developing appropriate measures of patent quality and related performance targets given the current patent examination system. We will engage the patent community about developing objective review criteria that can be applied in all review processes. By doing this, we will create more consistent and credible measurements of quality.

TECHNOLOGY ADMINISTRATION STAFFING AND UNOBLIGATED BALANCES

*Question.* Please provide the current on-board staffing levels for TA.

Answer. As of March 14, 2007, the on-board staffing levels for TA are 7 consisting of 6 full-time permanent employees and 1 excepted service employee.

*Question.* Please provide the fiscal year 2006 end-of-year unobligated balance for TA.

Answer. The fiscal year 2006 end-of-year unobligated balance for TA was $443,000.

MEP FUNDING LEVELS

*Question.* Please provide the analysis behind the $46.3 million funding level request for the MEP?

Answer. We believe that the proposed budget would achieve these specific Federal objectives:

—Ensure that MEP continues to develop and provide all the centers up-to-date skills and techniques;

—Ensure standards of quality are met and maintained at every center receiving Federal funding; and

[2] Compliance rate is the percentage of applications allowed by patent examiners with no errors after being reviewed by the Office of Patent Quality Assurance.

—Ensure that centers focus on offering services to the small manufacturers in their areas, rather than large firms.

In a tight budget environment, we need to ensure that we are funding the highest priority programs. The President's request for the National Institute of Standards and Technology (NIST) will ensure that funding goes to basic research—especially in the areas of physical sciences, engineering, computing, and nanotechnology—that is vital to the Nation's innovation enterprise and manufacturing. NIST meets these priorities by focusing on high impact research and investing in the capacity of NIST's user facilities and labs. This emphasis is validated by the high rate of return to the Nation that the NIST labs already have demonstrated. Nineteen retrospective studies of economic impact show that, on average, NIST labs generated a benefit-to-cost ratio of 44:1 to the U.S. economy. The high rate of return results from the fact that new measurements or standards benefit entire industries or sectors of the economy—as opposed to individual companies. The MEP program is just one method by which NIST supports small manufacturers. NIST laboratory activities are geared to enhancing the Nation's manufacturing base, provide more of a true public good, and are a better use of scarce Federal funding.

The fiscal year 2008 budget request would encourage MEP Centers to be more efficient by reducing their overhead costs, including marketing costs. Given the benefits reported by MEP clients, centers could also ask MEP clients to cover more of the cost of the services through increased fees.

*Question.* How would NIST implement the program at $46.3 million?

Answer. The MEP Director will work with the centers to develop options that consider each center's customer base, constraints, and opportunities. Actions taken by any center or group of centers will be assessed against their ability to maintain support to the small manufacturers. MEP will work with the centers to examine alternatives and optimize the best plan for operating at the $46.3 million level that ensures the maximum benefit to small manufacturers.

NTIA'S APPROPRIATION LANGUAGE

*Question.* Please provide a brief summary of the status of each of the mandatory spending programs funded through the Digital Television Transition and Public Safety Fund.

Answer. The Deficit Reduction Act of 2005, Public Law 109–171, (Act) provides borrowing authority for four programs that are the current focus of the Department of Commerce's National Telecommunications and Information Administration (NTIA).

*Digital-to-Analog Converter Box Program (Sec. 3005 of the Act)*

Congress directed NTIA to implement and administer a program through which eligible U.S. households may obtain up to two coupons of $40 each to be applied towards the purchase of digital-to-analog television converters. NTIA issued its Final Rule to implement the Coupon Program on March 9, 2007. The rule, which is available on NTIA's website at www.ntia.doc.gov, describes how consumers may obtain and use coupons, outlines retailer participation, and provides detailed specifications for manufacturers who wish to produce converters to be eligible for purchase with coupons.

NTIA held a public meeting on March 19 to review the Final Rule in detail and to answer any questions. The meeting was the first of several periodic meetings NTIA will hold to communicate with the public and leverage a wide range of private sector, nonprofit, and governmental partners in disseminating information about the Coupon Program and the digital transition.

NTIA intends to enter into a contract for services to administer the Coupon Program through a separate program acquisition. On July 31, 2006, NTIA issued a Request for Information to initiate market research for the contract. Interested vendors attended an Industry Day on August 11, 2006, and submitted information to NTIA on September 15, 2006. NTIA released the Request for Proposals ("RFP") on March 13, 2007. NTIA held a Bidder's Conference on March 26, 2007. Offerors will respond to this RFP by April 30, 2007. The procurement schedule anticipates that a contract will be awarded by August/September 2007 and the period of performance will start some months later.

The voluntary participation of consumer electronics retailers and manufacturers is crucial to the success of the Coupon Program. Business considerations, however, will ultimately guide the retailers and manufacturers in deciding whether they will produce and market converter boxes through the Coupon Program. NTIA, through its rules and administration of the program, is making every effort to encourage participation and support from these industries.

NTIA has taken suggestions from manufacturers and broadcasters to establish technical specifications for converters that will ensure the availability of low-cost, reliable converters based on today's state of the art technology. NTIA set minimum specifications and features for converters that are "required" but also identified features and specifications that are "permitted." Pursuant to the statute, NTIA's Final Rule also provides examples of "disqualifying" features such as built-in DVD capability.

NTIA has addressed retailers' concerns about a range of topics such as the timing of payments to reimburse them for coupon redemption, requirements for stocking and managing converter inventory, training requirements, and promotion and marketing of converters. NTIA's retailer certification program will minimize incidents of waste, fraud and abuse. Retailers will be part of the Federal Government's Central Contractor Registry (www.ccr.gov) and will agree to have electronic systems in place to track coupon redemption activity. NTIA will provide training materials for retailers and maintain lists of certified retailers.

NTIA's consumer education efforts will succeed only with the help of the broadcasters, consumer electronics manufacturers and retailers, and several key consumer and public outreach organizations. NTIA is a key participant in the Digital Television Transition Coalition (www.dtvtransition.org) which was recently launched to ensure that no consumer is left without broadcast television due to a lack of information about the transition. NTIA will work with intermediary groups representing vulnerable populations—rural residents, economically disadvantaged, minorities and seniors—to get the word out through broadcast stations, newspapers, advertisements, the Internet and other outlets that serve these communities. NTIA will also work with other agencies, such as Food Stamps, SSI, and Veterans Affairs—as well as state, county and local associations—to reach consumers directly through mail stuffers alerting households to the Coupon Program.

*Public Safety Interoperable Communications Grant Program (Sec. 3006 of the Act)*

The Act establishes a $1 billion grant program to assist public safety agencies in the acquisition of, deployment of, or training for the use of interoperable communications systems that utilize, or enable interoperability with communications systems that can utilize, reallocated pubic safety spectrum in the 700 MHz band for radio communications. NTIA does not view this language to limit the grant funds only to 700 MHz systems investments. Rather, NTIA is committed to exploring the use of all available technologies to advance overall public safety interoperability, as long as those technologies will enable first responders to interoperate with the 700 MHz bands in the future. The Call Home Act of 2006 directs NTIA, in consultation with DHS, to award the grants no later than September 30, 2007.

On February 16, 2007, the Department of Homeland Security (DHS) Office of Grants and Training and NTIA signed a Memorandum of Understanding (MOU) through which DHS will provide NTIA with grants administrative services to assist in the administration of the Public Safety Interoperability Communications (PSIC) Grant Program. The program schedule has been developed to meet the statutory requirements and deadlines as well as to create an effective PSIC Grant Program.

The Program will make grants to eligible public safety agencies through the State Administrative Agencies in the 56 States and Territories. In mid-July 2007, PSIC grant awards will be made and jointly announced by NTIA and DHS, and the grant guidance, application kits, and eligibility requirements will be released. PSIC funds will be allocated using a modified version of the DHS risk methodology.

Up to five percent of the total grant for each State and Territory will be disbursed to ensure that their Statewide Interoperable Communications Plans (Statewide Plans) include consideration of PSIC requirements. No later than November 2007, States and Territories will submit their final Statewide Plans and an investment justification outlining how the PSIC funds will be used to meet the PSIC requirements consistent with their Statewide Plans. Once the Statewide Plans, applications and investment justifications are reviewed and approved, the PSIC funds will be disbursed to States and Territories to pass through to eligible public safety agencies. Projects must be completed by September 30, 2010.

The PSIC Grant Program will be designed to complement funds that have been awarded through other grant programs—such as the Homeland Security Grant Program and the Infrastructure Protection Program—that include interoperable communications funds. The program guidance and application process will emphasize leveraging grants, contracts or state/local budgets to build and sustain intrastate and interstate regional capabilities and identified needs.

*New York City 911 Digital Transition (Sec. 3007of the Act)*

The Act directs NTIA to reimburse the Metropolitan Television Alliance (MTVA) up to $30 million for costs associated with the digital television transition. MTVA, a consortium of New York City area television stations, formed when the television stations' digital and analog transmission facilities were destroyed in the collapse of the North Tower of the World Trade Center. This funding will assist MTVA in the design and deployment of a temporary digital television broadcast system to ensure that, until a permanent facility atop the Freedom Tower is constructed, the stations can provide digital television service to the New York City area.

NTIA has been working with MTVA since June 2006 in the preparation of an application for this funding and to ensure that MTVA will be able to comply with federal funding requirements. The application process has been completed and the grant was announced on March 21 2007. NTIA is awarding $7,855,000 for fiscal year 2007 to MTVA for the first phase of the project that will design and test the technology for a distributed transmission system at three of five sites in the New York City metropolitan area. Based on the results of these test sites, MTVA anticipates requesting $21,645,000 for reimbursement in fiscal year 2008 to complete the full 20-site system in the New York City metropolitan area. This will ensure operation prior to the digital television transition deadline of February 17, 2009.

*Low-Power Television and Translator Digital-to-Analog Conversion (Sec. 3008 of the Act)*

The Act establishes a $10 million program to compensate each low-power television station for the purchase of digital-to-analog conversion equipment to enable the conversion of an incoming digital signal from its corresponding full-power television station to analog format for transmission on the low-power station's analog channel. Funds are to be made available to these organizations in fiscal year 2008. Approximately 10,000 facilities are eligible for this support.

NTIA plans to work closely with the low-power television and translator communities to ensure that this $10 million program effectively assists these communities as the February 2009 deadline approaches. NTIA is currently reviewing technical issues necessary to draft program guidance and application guidelines, which it expects to issue later this year.

---

## QUESTIONS SUBMITTED BY SENATOR PATRICK J. LEAHY

### ITA WESTERN HEMISPHERE TRAVEL INITIATIVE

*Question.* I have serious reservations with the manner in which the Departments of Homeland Security (DHS) and State (State) have pushed forward with implementation of the Western Hemisphere Travel Initiative (WHTI) before the necessary technology installation, infrastructure upgrades, and training takes place at our border stations. If these critical features of the deployment are not in place, I am afraid we will see severe delays at our border and law-abiding citizens from the United States, Canada, and Mexico will have great difficulty moving between our countries. Most importantly, a hasty implementation without assurances that the technology to be used is truly effective will result in a less secure border.

Since Canada is such an important trading partner and friendly neighbor to the United States, it clearly is in the best interest of both of our countries to keep those relations as positive and productive as possible. To that end, we all know that there is a dynamic relationship between commerce and security, and we constantly need to balance the two.

Has your agency conducted or been asked to conduct any economic impact analysis for how WHTI is going to affect communities along our Northern Border?

If not, could you please provide for the Subcommittee your best estimate as to the economic impact that the WHTI would have on (a) the states along the Northern Border, and (b) the U.S. economy?

Answer. While Commerce has not conducted, nor has it been asked to conduct, an analysis of WHTI's regional or national economic impact, the following data is provided for consideration.

Currently, Canadian and Mexican travel to the USA has a dramatic impact on the country. In 2006, Canada became the second largest market for U.S. travel exports ($13.5 billion). Canada is still the largest generator of arrivals to the United States, with 16 million visitors staying one night or longer.

Mexico is the fourth largest travel export market for the United States ($9.2 billion), and the second largest visitor market for the USA, setting records for arrivals and travel exports in 2004–2006. Since 2000, Canada and Mexico have been the

only countries to post increases in arrivals among the top six arrival markets for the country.

Commerce is working with the Departments of Homeland Security and State and with the industry to try to minimize any negative impact WHTI may have in travel and tourism. For example, discussions have taken place on developing a pass card between the USA and Canada; the passport requirement was changed to exempt children under 16; and a communication effort was implemented by industry and DHS to inform travelers of the WHTI changes.

As the U.S. Government moves into the second wave of implementation (land border and cruise), Commerce will work closely with the Department of Homeland Security to ensure clear communications with potential travelers. Travel flows between the countries will continue to be reported on a monthly basis by Commerce's Office of Travel and Tourism Industries.

WESTERN HEMISPHERE TRAVEL INITIATIVE

*Question.* I was troubled to learn that the DHS may have prematurely endorsed one PASS Card technology over another without first securing the required National Institute of Standards and Technology (NIST) certification of the card architecture and then notifying Congress. The law clearly states that the NIST must certify, prior to implementation, "that the Departments of Homeland Security and State have selected a card architecture that meets or exceeds International Organization for Standardization security standards and meets or exceeds best available practices for protection of personal identification documents." By unilaterally moving forward with vicinity-read technology, the DHS would be choosing an insecure technology that has not been proven effective at ensuring privacy protection, and it would be necessitating the installation of new technological infrastructure at every U.S. land and sea port of entry.

Has NIST begun its analysis into the WHTI-related technology issues, as called for in the fiscal year 2007 Homeland Security Appropriations Bill?

Answer. After passage of the statute (Public Law 109–295), NIST immediately began to work with the Departments of State and Homeland Security in order to identify appropriate standards and best available practices that relate to the security aspects of the card architecture, for the technology chosen jointly by State and DHS. NIST has engaged in extensive discussions with the technical staff of those departments, and has provided a set of requirements for certifying the security of the PASS Card architecture.

*Question.* If so, when do you estimate the NIST will complete its analysis?

Answer. NIST has advised State and DHS that certification would be done within four weeks of receiving the draft Request for Proposal (RFP) from State, and prior to the release of the final RFP. This is to ensure that the RFP accurately reflects the set of requirements identified by NIST so that the selected card architecture meets or exceeds International Organization for Standardization (ISO) security standards and meets or exceeds best available practices for protection of personal identification documents. This commitment presumes that State and DHS continue to work with NIST in their drafting of the RFP. That has been the case to date.

*Question.* Once complete, how does your agency plan to release and certify the results?

Answer. Certification by NIST would be by a letter from the NIST Director to the appropriate individual(s) at State and/or DHS noting that the test protocols in the RFP verify that the card architecture meets or exceeds ISO security standards and meets or exceeds best available practices for protection of personal identification documents for the chosen technology.

*Question.* Do you see a difference between NIST certifying the procurement of the technology and certifying the feasibility of the technology? If so, please explain.

Answer. NIST will be neither certifying the procurement of the technology nor the feasibility of the technology. Our certification will be focused on the specification of the statute: that NIST certify that DHS and State "have selected a card architecture that meets of exceeds International Organization for Standardization (ISO) security standards and meets or exceeds best available practices for protection of personal identification documents." We will be conducting this certification via ensuring that the set of requirements identified by NIST in compliance with the statute are embodied in the Request for Proposals that define the compliance requirements for industry.

*Question.* Have you or employees in your agency been under any pressure to reach a preordained conclusion or hurried certification in this matter?

Answer. NIST has not been under any pressure to reach a pre-ordained conclusion or hurried certification.

MEP PROGRAM

*Question.* I understand that the National Institute of Standards and Technology (NIST) recently announced its intention to re-compete the MEP system beginning in April 2007, and then quickly drew back that proposal. I strongly disagree with any re-competition proposal because of the disruption it would cause to the national MEP infrastructure and the good work accomplished daily by the Vermont Manufacturing Extension Center. On top of that, the President's request of $46.3 million is not an appropriate level of funding for this valuable program dedicated to serving our nation's smaller manufacturers.

For the past six years, a bipartisan majority of the Congress has fully supported the MEP program despite the annual ritual of deep cuts proposed by the President. This support stems from the successful performance demonstrated by centers nationwide in ensuring the sustainability of our domestic small manufacturing industry and its high-quality jobs.

With the fiscal year 2008 congressional budget and appropriations processes just beginning, I believe it would be inappropriate for the Bush administration to disrupt, re-compete, or restructure the MEP program based on its own proposed budget proposal for the coming year. On top of that, any such actions during fiscal year 2007 would be inconsistent with Congress' intention for those funds.

In light of the recent announcement by the NIST that it will not re-compete the program in April, I ask the following questions of Secretary Gutierrez and Director Jeffrey:

What factors, considerations, or conversations made you change your mind in the eleven days that passed between your February 15 re-competition announcement and your February 26 announcement that the re-competition would cease?

Answer. The proposed re-competition was intended as a contingency to ensure the strongest network possible regardless of final appropriations. To conduct such a competition would take approximately 5–6 months, which is why we initially looked towards late spring of 2007 to initiate the process. This would provide us the necessary data to make informed decisions at the beginning of fiscal year 2008—once the fiscal year 2008 enacted budget was known. Based upon inputs from the MEP Center Directors, Congressional Members and Staff, and others it became clear that the process of the re-competition would be disruptive to current Center operations. We, therefore, decided not to hold this re-competition.

*Question.* This is not the first time you have tried to re-compete the MEP program, as you attempted to mount a re-competition less than three years ago.

Now that you have changed course again, can you assure us that you will not attempt a re-competition for a third time in 2008? If you cannot make this affirmation, under what circumstances, and with what policy objectives, can you envision proceeding down the re-competition path again?

Answer. We cannot make that definitive affirmation. The goal of MEP is to support the Nation's small manufacturers. The MEP program will therefore examine all possible alternatives to most effectively achieve that goal given any enacted budget level.

*Question.* In your written testimony, you state, "The reduction of Federal funds to the local centers may have to be compensated through a combination of increased fees derived from the benefits accrued by individual companies and cost-savings in the operations of the centers."

Please explain what data or reports you have to support that increased fees from the benefits accrued by companies and cost savings in the operation of the centers are possible.

Answer. The annual reported benefits by manufacturing clients of the MEP Centers conducted through an independent survey demonstrates a significant level of cost savings and efficiency improvements for the MEP clients. For example, the latest MEP client survey results (released January 2007 and reflecting fiscal year 2005 benefits) demonstrate that MEP helped 16,448 clients create and retain 53,000 jobs; increase and retain sales of nearly $6.3 billion; and generated cost savings of just over $1.3 billion (both recurring and non-recurring). These impacts resulting in reduced costs and potentially increased profits for the client could be used to support increased fees for future services. With increased revenues streams from client fees, MEP centers may offset, in whole or in part, the reduction in Federal funds.

*Question.* I understand that you may be considering the creation of regional innovation centers across the country.

Are you considering this idea? If so, how do you envision the constitution of these centers? What role would the MEP play in this plan?

Answer. MEP has no plans to develop regional innovation centers.

*Question.* Has the NIST consulted with its state partners to ensure that state governments, which provide cost share to these programs, are comfortable with their state resources being used across state boundaries? If so, please describe the reaction of these state partners.

Answer. MEP has no plans to develop regional innovation centers. MEP routinely consults with its state partners on programs priorities and alignment with state initiatives.

*Question.* The MEP system is an effective, economic development program that has generated results, created and retained jobs, and leveraged local partnerships. In fiscal year 2005 alone, as a direct result of MEP services, clients reported more than $6.25 billion in new and retained sales, $1.304 billion in cost savings, $2.248 billion in client investment in modernization, 17,453 jobs created, and 35,766 jobs retained. Thus, it appears that MEP returns far exceed the initial investment.

What is your plan for building on this proven resource to produce even greater results for American manufacturers and workers?

Answer. MEP will build upon our foundation of process improvements with clients to develop innovation and growth services that will position U.S. manufacturers to meet the increasing demands of the global marketplace. A key focus will be providing manufacturers with access to the technologies needed for the development of new processes and innovative products.

We also will focus on supplier development since small manufacturers are such a crucial part of the supply chain.

*Question.* It is no secret that one of the biggest challenges facing small American manufacturers is competition from low-cost overseas producers. As large Original Equipment Manufacturers seek the best, fastest, and cheapest suppliers, they are increasingly looking overseas. Even our major defense contractors are purchasing more from overseas suppliers, putting our Nation in the position of depending on parts from other countries to equip our troops.

Have you contemplated using the MEP system to strengthen our domestic suppliers so that we can preserve jobs in the United States and keep more defense suppliers in this country? If not, would you consider undertaking that evaluation?

Answer. MEP has already been working with domestic defense suppliers and manufacturers by providing technical assistance and training to improve productivity, reduce costs, and develop a highly-skilled workforce. The small manufacturers that MEP Centers have worked with are crucial to a robust defense supply chain. The strengthening of this supply chain should help keep critical defense supply and manufacturing jobs in the United States.

Specific projects within the aerospace and ship building industries have resulted in connecting small machining companies with Defense acquisition opportunities and creating groups of engineering and manufacturing companies that work collaboratively to supply critical defense equipment and parts.

---

## QUESTIONS SUBMITTED BY SENATOR HERB KOHL

### MEP DEFENSE SUPPLIERS

*Question.* It is no secret that the biggest challenge facing small American manufacturers is competition from low-cost overseas manufacturers. As large manufacturers seek the best, fastest, and cheapest suppliers, they are increasingly looking overseas. With great success, the Wisconsin MEP center has worked with large manufacturers like Oshkosh Truck, Harley Davidson and John Deere on a supplier development model to keep jobs at home.

So far, the Wisconsin MEP has trained MEP centers in sixteen states, proving there is a strong need for this training nationally.

Mr. Jeffrey, can you develop a plan based on the Wisconsin model for using the MEP system to strengthen our domestic suppliers so that we can preserve jobs in the United States and keep more suppliers in this country?

Answer. The Wisconsin MEP Supplier Development model addresses several components of the supply chain issues faced by manufacturers. The Wisconsin model and the positive impacts realized by manufacturers have been presented at several MEP quarterly meetings making more centers aware of the approach. Within the past year, fifteen other MEP Centers have participated in or employed the model assisting 123 small and medium-sized suppliers in states, such as Illinois, Indiana, Iowa, Missouri, Minnesota, Ohio, Pennsylvania, and Texas.

MEP AND ENERGY COSTS

*Question.* When I talk to manufacturers in Wisconsin, they tell me the same thing I am sure you are hearing across the Nation: energy costs are killing them. In the 2005 Energy bill, I inserted language into the Energy bill that directs the Small Business Administration to work with you and the MEP program to improve energy efficiency for small businesses, including manufacturers.

Can you update me on what is going on with this program?

Answer. Building upon existing relationships and contacts with other Federal agencies, NIST MEP has offered the assistance of the national network to educate manufacturers and better implement energy management approaches as described in the Energy Policy Act of 2005.

NIST MEP has coordinated with the Small Business Administration (SBA) Small Business Development Center, the Department of Energy (DOE) Industrial Technologies Program and the Environmental Protection Agency (EPA) Partnership Programs on the HVAC Maintenance Consumer Education Program.

NIST MEP is also developing a comprehensive energy awareness and implementation program with manufacturers that will result in increased energy efficiency, reduced business and operations costs, waste reduction, and new technology adoption.

MEP has also teamed with the EPA through the Green Supplier Network—a collaborative venture among industry, the EPA, and MEP—to help suppliers learn ways to save money, optimize resource use, and eliminate waste through on-site technical reviews. This will help reduce the negative impact that manufacturing suppliers have on the environment.

DOE's Industrial Assessment Centers (IAC) are sharing their energy assessment expertise and tools with MEP, which in turn help small manufacturers on the HVAC Maintenance Consumer Education Program and other similar energy conservation related efforts.

MEP and SBA have developed a joint-teaming delivery system that provides small businesses with access to Lean implementation tools to improve business operations and reduce operating costs contributing to energy conservation.

In a broader context, MEP has taken the lead in organizing the Interagency Network of Enterprise Assistance Providers (INEAP)—a network of Federal government agencies and programs including EPA, SBA and DOE's IACs—that addresses issues that facilitate the success of small businesses and smaller manufacturers.

---

## QUESTIONS SUBMITTED BY SENATOR JACK REED

SURVEY OF INCOME AND PROGRAM PARTICIPATION

*Question.* The President's budget for last year proposed eliminating the Survey of Income and Program Participation (the SIPP) but according to many experts it failed to provide an adequate plan for maintaining the kind of longitudinal data that CBO and others have used to analyze income volatility. What is being done to make sure that we continue to collect data that allows us to examine the impact of a wide variety of government programs over time?

Answer. Census is continuously consulting with major SIPP stakeholders to assure that the new Dynamics of Well-being System (DEWS) will continue to supply the data needed to meet the goals of the current SIPP as well as the goals of monitoring a changing economy. The overall goal of the DEWS is to reengineer the current SIPP to construct a streamlined system that can provide similar information at a reduced cost, with improved data quality, improved timeliness, and improved data accessibility. While the lag between data collection and release decreases over time within a SIPP Panel, at the beginning of a panel the lag between data collection and release can be as long as three years. By contrast, we anticipate being able to release data from DEWS within one year of their collection.

The system will be able to generate data that can be used, in part, as SIPP data have been used, to provide accurate and comprehensive information about the income and program participation of individuals and households in the United States. The DEWS will provide a nationally representative sample that can be used to evaluate the annual and sub-annual dynamics of income, the movements into and out of government transfer programs, the effect on family and social context of individuals and households, and the interaction among these items. The longitudinal nature of SIPP will be retained in DEWS as a critical aspect of its value to many major stakeholders. The three year panel length planned for the first Panel of DEWS is the minimum length of time major stakeholders, including CBO, felt necessary for their longitudinal analysis.

*Question.* Is there sufficient funding in the budget to prevent a "data gap" between ending the SIPP and the new Dynamics of Economic Well-being System (DEWS)? Will we be able to compare data historically between the two surveys?

Answer. The Budget provides $15.9 million (an increase of $6.7 million over the 2007 Budget) to continue the development of the new Dynamics of Economic Well-being System (DEWS). However, to ensure Census can focus its efforts and be successful at fielding the new survey in 2009, the Budget does not include funding to continue SIPP data collection in 2008. Therefore, there will be a short "data gap" between ending the SIPP and beginning of DEWS.

Data collection will end for SIPP in September 2007. We will have full data through May, partial data through August, and no data from September through December 2007. The first DEWS data collection will provide data for calendar year 2008. It should be noted that there have been gaps in the SIPP series before. For example to enable the Census Bureau to initiate a new panel in February 2001 and process data more recently collected, data collected from February to September 2000 were never released and data from October 2000 to January 2001 were never collected. Based on those experiences and consultations with our Federal agency partners, we believe that a similar data gap between SIPP and DEWS will not hamper program evaluation or modeling. Unless the two surveys are conducted for the same time period, a complete evaluation of the impact of any differences in the two surveys on the same estimates will not be possible.

*Question.* Has Census done any kind of systematic analysis of whether we are producing and maintaining the data we need to understand the important changes that have been taking place in the economy so that we can adequately answer the kinds of questions that keep coming up about the extent of income volatility or the impact of outsourcing or globalization on the quality of jobs?

Answer. Census is continuously consulting with major SIPP stakeholders to assure that the new Dynamics of Well-being System (DEWS) will continue to supply the data needed to meet the goals of the current SIPP as well as the goals of monitoring a changing economy. The DEWS will provide a nationally representative sample that can be used to evaluate the annual and sub-annual dynamics of income, the movements into and out of government transfer programs, the effect on family and social context of individuals and households, and the interaction among these items. Labor force participation is integral to measuring these concepts, and in evaluating and modeling the effects of programs on these estimates. DEWS will continue to provide the same general labor force information historically provided by SIPP. As far as we know, however, SIPP has never been used to specifically evaluate the impact of outsourcing or globalization on the quality of jobs.

---

## QUESTIONS SUBMITTED BY SENATOR ROBERT C. BYRD

### ITA TRADE ACT 2002

*Question.* The Trade Act of 2002 requires that the Bush Administration reserve the U.S. trade laws. I understand that, in prior appearances before the Congress, namely before the Senate Finance Committee, you advised Senator Rockefeller that you would "vigorously defend and enforce our existing trade remedy laws, and implement those laws as intended to stop dumped or subsidized goods from injuring U.S. industries."

While the United States has made some submissions in the Rules negotiations in the past two years, with the exception of papers on causation, expanding prohibited subsidies, and the proposal on perishable and seasonal agricultural products, most proposals either simply seek to codify existing U.S. practice, or improve transparency and processes abroad.

Consequently, would you please identify for the Committee (1) each WTO dispute over the past five years in which U.S. trade remedy laws have been challenged and in which the WTO has issued a determination adverse to the United States; and (2) what specific proposals to correct those erroneous determinations have been submitted by the United States in the Rules negotiations in either 2005 or 2006. If no specific proposals have been submitted by the United States in the last two years, please identify when such proposals will be submitted, consistent with the Congressional mandate contained in the Trade Act of 2002.

Answer. There have been numerous WTO disputes over the last 5 years in which the U.S. trade remedy decisions have been challenged. In response, we have pursued an aggressive strategy in the WTO Rules Negotiations of defending our trade remedy regime, targeting the unfair trade practices of others, and improving transparency and due process in trade remedy proceedings so that U.S. producers and

exporters are fairly treated. We continue to follow the basic principles that we laid out early in the Rules negotiations, namely to seek to: (1) maintain the strength and effectiveness of the trade laws; (2) enhance transparency and due process requirements; (3) enhance disciplines on trade distorting practices that lead to unfair trade; and (4) ensure that dispute settlement panels and the Appellate Body do not impose obligations that are not clearly contained in the Agreements.

As of July 2006, when the formal negotiations were suspended, the U.S. negotiating team advanced proposals to address many of the Rules issues that are negotiating "priorities" for our domestic industry and Congress. These include such areas as facts available, causation, and the all-others rate, where we are seeking to correct the substantive results of certain disputes that we think were incorrectly decided by WTO panels. Some of the other proposals advanced include circumvention, new shippers, and perishable seasonal agriculture, all of which are priorities identified by the domestic industry and Congress.

This Administration is committed to strong enforcement of our trade laws, and fulfilling our TPA obligations. The Administration will continue to consult closely with the Congress as the negotiations proceed.

CONTINUED DUMPING SUBSIDY OFFSET ACT OF 2000

*Question.* The Administration previously recognized that the WTO decision on the Continued Dumping and Subsidy Offset Act of 2000 or "CDSOA," also known as the Byrd Amendment trade law, incorrectly imposed obligations on the United States by prohibiting the distribution of monies collected as antidumping and countervailing duties on unfairly traded U.S. imports. Congress repeatedly called for negotiations in the Doha Round to address this issue, not only in letters sent to the Administration, but also in legislation signed into law. Further, report language accompanying a series of Consolidated Appropriations Acts directed the Administration to report to the Appropriations Committee every 60 days on the status of those negotiations. I understand that Commerce Department officials have a very important role in such negotiations, as do USTR negotiators. By law, the Administration has been directed to negotiate a solution to this trade dispute.

In April 2004, the United States did submit a proposal in the Rules negotiations to recognize "the right of Members to distribute monies collected from antidumping and countervailing duties." And, while undergoing your confirmation process, you explained that the Department of Commerce and the Office of the U.S. Trade Representative were consulting to ensure proper implementation of the requirements of U.S. law regarding negotiations over CDSOA distributions. You indicated that the agencies would complete those consultations as soon as possible. You also agreed to continue to work to advance congressional objectives in the Doha Round negotiations, including reversal of not only the adverse CDSOA decision, but also other WTO decisions where WTO Panelists and the Appellate Body have overreached and created obligations never agreed to by U.S. negotiators.

Since committing to "pursue changes to those Agreements that will reverse specific adverse findings, including those regarding the Continued Dumping and Subsidy Offset Act," the United States has not submitted any further proposals recognizing the right of WTO Members to distribute monies collected from antidumping and countervailing duties.

Can you please explain how the Administration intends to obtain an acceptable and expeditious solution to the CDSOA and other WTO disputes, where the WTO has inappropriately breached its authority in decisions adversely affecting the trade laws of the United States?

Answer. We have been concerned with the possibility of the WTO dispute settlement system, in your words, "inappropriately breach[ing] its authority." The USTR has noted our disagreement with certain dispute settlement reports and the reasons for those disagreements in appropriate circumstances. In addition, Commerce has raised WTO panel decisions on such topics as zeroing in the ongoing Rules negotiations. As you know, Congress repealed the CDSOA to comply with the adverse WTO ruling. We evaluate each decision on its own and work in conjunction with Congress to find an appropriate response. Where we believe revision of the agreement is necessary, we work with other members of the WTO toward accomplishing those changes.

WTO DISPUTES

*Question.* From 1995 to 2006, over 40 percent of all decisions adopted by the WTO Dispute Settlement Body addressed trade remedy disputes involving the WTO Antidumping (AD), Subsidies and Countervailing Measures (SCM) and Safeguards Agreements. And, I understand that, in 2005 and 2006, an even higher percentage—

over 60 percent—of WTO disputes initiated were trade remedy disputes. The United States, which actively helped shape the trade remedy rules and has a highly transparent system providing significant due process of law, is the primary target of those WTO trade remedy disputes. In fact, I have been advised that the United States has been the defending party in roughly 60 percent of the trade remedy decisions adopted by the WTO Dispute Settlement Body from 1995 to 2006. More specifically, the United States was the defending party in almost 50 percent of requests for consultations filed since 1995 concerning the WTO Antidumping Agreement in particular. Yet, the United States imposed only 12.6 percent of all antidumping measures imposed by all WTO Members from 1995 to June 2006. In the trade remedy area, the WTO has, often wrongly, found one or more violations by the United States in nearly 90 percent of disputes, imposing on the United States obligations that our Nation never agreed to in trade talks. In fact, the United States actively opposed "zeroing" during negotiations. Thus, it is clear that the WTO dispute settlement system is being used unfairly, threatening U.S. sovereignty and eroding the effectiveness of our country's trade remedy laws. Despite this, the United States has submitted only a handful of publicly available proposals in the Rules negotiations suggesting textual modifications to correct instances of "overreaching" by the Appellate Body.

When and how do you intend to collaborate with USTR to correct this continuing imbalance? What is your strategy to rapidly generate textual proposals that will better protect existing U.S. trade laws?

Answer. We are fully aware of the frequency in which the United States has had to defend its trade remedy laws before the WTO Dispute Settlement Body and have collaborated with USTR to address this issue since the inception of the Doha Round. In the context of the Dispute Settlement Understanding negotiations, we have raised proposals addressing the problem of the Appellate Body creating rights and obligations that are not contained in the underlying agreements. Additionally, in the Rules negotiations, the United States continues to emphasize the importance of clearly written rules so that the dispute settlement process will involve less interpretation to the extent that the intent of the Members is clearer. As the negotiations progress, in close coordination with USTR, we plan to intensify our efforts to advance the proposals already tabled that will protect U.S. trade laws and direct the WTO Dispute Settlement Body toward a balanced decision making process.

DOHA DISPUTE SETTLEMENT NEGOTIATIONS

*Question.* Specifically concerning the issue of the Doha Dispute Settlement negotiations, during your confirmation process, you offered a general strategy of: (1) increasing Member nations' control over the dispute settlement process; (2) increasing transparency; (3) pursuing changes to the Rules Agreements to ensure that panels and the Appellate Body adhere to the appropriate standards of review; and (4) pursuing changes to the Rules Agreements that "will reverse specific adverse findings, including those regarding the Continued Dumping and Subsidy Offset Act, 'zeroing,' and injury determinations."

Can you please provide the status of U.S. efforts to advance negotiations concerning items (1), (2), and (3), above, and advise the Committee when specific proposals will be submitted by the United States addressing the fourth item, namely reversing the WTO's findings with respect to CDSOA, zeroing, and injury determinations?

Answer. In the context of the Dispute Settlement Body negotiations, USTR, collaborating with Commerce, has introduced two sets of proposals—including proposed text. The first set of proposals would expand transparency and public access to dispute settlement proceedings by opening panel hearings to the public, requiring public versions of written submissions, providing for early public release of panel reports, and setting guidelines for amicus curiae submissions. The second set of proposals, submitted jointly with Chile, contains provisions aimed at giving parties to a dispute more control over the process and greater flexibility to settle disputes. These proposals address such concepts, among others, as ensuring that panel members have appropriate expertise to appreciate the issues presented in a dispute and providing additional guidance to WTO adjudicative bodies concerning the nature and scope of the issues and rules of interpretation of the WTO agreements. These proposals are still on the table, and as the negotiations progress, we will intensify our collaboration with USTR to advance the key concepts encompassed by the proposals.

We agree that the Appellate Body's findings raise concerns; however, we also place significant importance on respecting the dispute settlement system and addressing the findings, whether we agree with them or not, through the appropriate

mechanisms. First, we are developing our thoughts and options with respect to implementation and are committed to consulting closely with Congress as to the appropriate way to move forward in response to the Japan zeroing report. Second, we will continue to use the Rules negotiations as a forum to educate other Members on the troubling implications of the Appellate Body reports, particularly with respect to their own antidumping systems. We firmly believe that the zeroing issue is one that must be addressed through negotiation and we are in close consultation with USTR regarding how to move forward.

Likewise, injury is part of our affirmative agenda in the Rules negotiations, and we have submitted proposals to address specifically the problem created by the WTO decision related to this issue. As the Negotiations progress, we will continue to advance these proposals and address our injury concerns as an integral part of the U.S. negotiating strategy.

Regarding CDSOA, we have been concerned with the possibility of the WTO dispute settlement system, in your words, "inappropriately breach[ing] its authority." The USTR has noted our disagreement with certain dispute settlement reports and the reasons for those disagreements in appropriate circumstances. However, in light of the importance we attach to respecting the dispute settlement system, noted above, and the potential consequences of a failure to abide by Appellate Body decisions, we evaluate each decision on its own and work in conjunction with Congress to find an appropriate response. Where we believe revision of the agreement is necessary, we work with other members of the WTO toward accomplishing those changes.

WTO APPELLATE BODY

*Question.* As described in prior questions, it is unfortunate that the WTO Appellate Body for several years now has been engaged in improperly expanding its mandate by making a series of decisions that undermine our Nation's trade remedy laws. One of the most egregious of these decisions has been issued against the U.S. antidumping duty practice called "zeroing.

On one level, the Bush Administration should be commended for combating these zeroing decisions, which would force the United States to collect less than 100 percent of dumping duties owed. For example, in recent statements before the WTO Dispute Settlement Body, the Administration has called Appellate Body reports against zeroing "deeply flawed," and "devoid of legal merit."

Yet, on February 22, 2007, the Commerce Department nonetheless implemented the findings of the Appellate Body with respect to "zeroing" in investigations, and, two days earlier, the Administration told the WTO that it would comply with its WTO obligations with respect to "zeroing" in other phases of antidumping proceedings.

Why would the United States implement Appellate Body reports that it admits are "deeply flawed" and "devoid of legal merit"? Couldn't the United States simply refuse to implement these "deeply flawed" WTO decisions and, instead, seek a negotiated solution through the WTO Doha Round negotiations? This would be consistent with our Nation's statements on the Appellate Body's report before the Dispute Settlement Body (DSB), which consisted of the following:

"Were this a municipal court result, such an illogical outcome would be a prime candidate for reconsideration by the legislative branch. That is no less the case here, and the United States submits that Members take up this issue, which affects the antidumping systems of a number of Members, in the Rules negotiations."

When will the United States submit a proposal in the Rules negotiations addressing this issue?

Answer. We agree that the Appellate Body's recent findings on zeroing in reviews are very troubling, however, we also place significant importance on respecting the dispute settlement system and addressing the findings, whether we agree with them or not, through the appropriate mechanisms. To that end, we are thinking about this issue along two tracks. First, we are developing our thoughts and options with respect to implementation and are committed to consulting closely with Congress as to the appropriate way to move forward in response to the Japan zeroing report. Second, we will continue to use the Rules negotiations as a forum to educate other Members on the troubling implications of the Appellate Body reports, particularly with respect to their own antidumping systems. We firmly believe that this zeroing issue is one that must be addressed through negotiation and we are in close consultation with USTR regarding how to move forward.

CAFTA—SOCK TRADE

*Question.* In July 2005, during the CAFTA debate before the U.S. House of Representatives, you and U.S. Trade Representative Portman wrote a letter in which you advised that the United States would initiate a special CAFTA textile safeguard re-imposing U.S. tariffs on imported socks for three years, if imports "cause or threaten to cause serious damage to the domestic industry." You stated that you wished to be "pro-active in initiating a sock safeguard if the situation were to warrant it."

I have been apprised that, since CAFTA came into effect 11 months ago, sock imports from Honduras have increased by roughly 40 percent. Domestic production is falling, and over 20 U.S. sock mills have closed. Because it appears that the situation today may warrant the initiation of a safeguard on imported socks, is the Administration prepared to seek such a safeguard? Does the Administration intend to honor its prior commitment to the Congress in this regard, even as it seeks additional free trade agreements? Is there some reason that CAFTA's negotiators failed to anticipate and address the possibility of such an un-level playing field in trade in socks?

Answer. As you noted, on July 27, 2005, USTR Rob Portman and I promised Congressman Aderholt that the Administration would (1) include socks in any textile agreement with China, (2) ensure that, if the existing China sock safeguard was renewed, it would be in place for the maximum possible time period at the minimum possible safeguard level, (3) seek to amend CAFTA–DR to alter the rules of origin or to lengthen the tariff phase-out for socks, and (4) to proactively utilize the CAFTA–DR textile safeguard for socks, if warranted. The Administration subsequently, as promised, included socks in the China textile agreement, concluded a special China sock quota agreement while the China textile talks were ongoing, and has pursued a sock amendment to the CAFTA–DR. We also are carefully monitoring CAFTA–DR sock import data and, as promised, will proactively utilize the CAFTA–DR safeguard, if warranted by the facts. To assess whether safeguard action may be warranted, the Department of Commerce carefully monitors imports of socks from CAFTA–DR signatories and other relevant data, including domestic production data, to assess whether imports of socks from these countries are causing, or threatening to cause, serious damage to the domestic industry as a result of the elimination of duties under the Agreement, which went into effect for Honduras on April 1, 2006. Notably, imports of socks from Honduras fell in each of the last three months of 2006 to levels lower than before CAFTA went into effect. Nevertheless, we are closely tracking the data and will act should data warrant a safeguard, but it is worth noting that domestic production was down by only 1.1 percent in 2006 from 2005 levels.

---

QUESTION SUBMITTED BY SENATOR RICHARD C. SHELBY

BEA'S R&D BUDGET INITIATIVE

*Question.* The BEA has a proposal for $2.1 million to measure the impact of research and development on the economy. Can you tell us more about this initiative and how it will impact future GDP calculations?

Answer. While most economists believe that R&D and other investments in intangibles are among the most important sources of growth in GDP and productivity—with some estimates ranging as high as 40 percent of growth—there are no hard official estimates on their impact. This project will provide the Nation with a much clearer picture of the impact of investments in R&D and other intangibles on trend growth in GDP and productivity, as well as their impact over the course of the business cycle. The BEA project will provide aggregate data, as well as data on the effects across industries, across regions of the country, and its impact on our international trade and balance of payments. These data will prove useful in a broad variety of contexts ranging from monetary policy and budget projections to tax policy and the funding of investments in R&D.

BEA is in the early stages of developing estimates for R&D as investment, and these estimates will not be fully incorporated into the National Income and Product Accounts until 2013. However, this preparatory work, in the form of satellite accounts, can provide valuable information on the effect of investment in R&D on U.S. economic growth. The preliminary R&D satellite accounts released in September 2006 showed R&D investment accounted for 6.5 percent of growth in real GDP between 1995 and 2002 and 4.5 percent of growth between 1959 and 2002. In comparison, businesses' investment in commercial and all other types of buildings accounted for just over 2 percent of real GDP growth between 1959 and 2002.

NOAA JOCI AND THE OCEAN POLICY SCORECARD

*Question.* Although NOAA's 2008 budget request boasts a $123 million increase for ocean-related activities, it represents a fraction of the true budgetary needs for the marine community. For the past few years, the Joint Ocean Commission, which formed the inception of the President's U.S. Ocean Action Plan, has clearly and objectively laid out the budgetary requirements to better support ocean-related science research and education. I am extremely concerned that Congress continually receives a budget request from the Administration that downplays these critical activities. I wonder at what level your department endorses marine science, because frankly, Mr. Secretary, the Senate is weary of being the only federal entity that champions this funding disparity.

Are you familiar with the Joint Ocean Commission Initiative, and the contents of its recent publications, namely the U.S. Ocean Policy Report Card for 2006? And are you aware that the category for "New funding for ocean policy and programs" received the grade of "F"? What are your thoughts on this grade?

Answer. Yes, I am familiar with both the Joint Ocean Commission Initiative and the recent Ocean Policy Score Card. We are pleased to note that we have had grade improvements for 2006 in five out of the six subject areas. We were also pleased with the overall scores for Ocean Governance and Fisheries Management Reform. With respect to the grade for "new funding for ocean policy and programs," the scorecard was issued prior to the release of the fiscal year 2008 President's Budget. The fiscal year 2008 Budget includes significant new increases in support of implementing the Ocean Action Plan, addressing many of the concerns noted by the Report Card.

NTIA PUBLIC SAFETY INTEROPERABLE COMMUNICATIONS GRANT PROGRAM

*Question.* Mr. Secretary, your department has entered into a memorandum of understanding with the Department of Homeland Security to assist in the development of policies, procedures and regulations governing the Public Safety Interoperable Communications (PSIC) grant program.

What role will your department play in developing the grant guidance package and eligibility requirements for this $1 billion program?

Answer. The Department of Commerce's National Telecommunications and Information Administration (NTIA) is working very closely with the Department of Homeland Security (DHS) in the development of grant guidance and requirements for the program. Consistent with the requirements of the Deficit Reduction Act of 2005 and the Call Home Act of 2006, NTIA retains final approval authority for policies, procedures and regulations that govern the PSIC Grant Program.

*Question.* The Department of Homeland Security has been grappling with the issue of interoperable communications for years. I sit on the appropriations subcommittee for that department as well. These funds are intended to focus on the purchase of equipment to address interoperability.

Mr. Secretary, tell me how your involvement will ensure this funding will be put to the best use by the localities in Alabama and throughout the United States to achieve true interoperability across county and state lines?

Answer. NTIA intends to use its expertise to explore and encourage all technology solutions that are available to first responders to advance overall interoperability. With the Statewide Interoperability Communications Plans and the PSIC investment justifications, NTIA and DHS will be able to approve projects that clearly identify interoperability gaps and provide the greatest benefit toward improved interoperability.

*Question.* Will Commerce work to ensure that the choice for a workable solution to interoperability will rest in the hands of locals and will not be dictated from the federal level?

Answer. NTIA understands that interoperability is a complex issue and no one federal solution exists. Local governments have collectively spent billions of dollars on communication infrastructure. The program guidance and application process for the PSIC Grant Program will be designed to leverage existing investments to build and sustain intrastate and interstate regional capabilities and identified needs. NTIA is working with DHS to develop the grant guidance that ensures that funding will be passed through to eligible public safety agencies.

2010 CENSUS—COST EFFECTIVENESS

*Question.* The President's budget request includes increased funding for the Census Bureau in anticipation of conducting the decennial census. These increases are quite significant and will continue to grow over the next several years. While this

effort is constitutionally mandated, there are also other activities that the Census is involved in, including surveys of state and local governments, as well as economic indicators.

Mr. Secretary, what efforts are being made to ensure that the 2010 Census is as cost effective and accurate as possible while maintaining the other capabilities the Bureau provides?

Answer. All the factors that have led to higher costs for each decennial census since 1970 will continue—besides inflation and increased workload, these include the increased difficulty of ensuring coverage accuracy (both overall and for each population group and jurisdiction); increased public resistance to answering surveys; and increased diversity that make it more difficult to reach everyone. No matter what design is chosen, the 2010 Census will be costly.

For the 2010 Decennial Program, compared to the cost of the previous census (2000), the percentage increase in estimated life cycle costs will be the lowest in the last four decades. This pattern also holds when comparing unit costs. Thus, while achieving the significant benefits to our Nation from the annual release of long-form data by the new American Community Survey, and improvements to our MAF/TIGER (geographic) databases, the Reengineered 2010 Census of Population and Housing also will be significantly less costly than historical trends would project.

—Cost containment is one of the four key goals for the reengineered 2010 Decennial Census program. When this effort was launched in 2001, we estimated it would save over $400 million compared to repeating the Census 2000 approach. And, we now estimate that reverting in fiscal year 2008 to the Census 2000 approach would cost over $1 billion more than continuing with our reengineered approach.

—Significant savings and accuracy improvements will result from:

  —Not having to collect long-form data in the 2010 Census (because it now is being collected by the American Community Survey),

  —Restructuring our field data collection process to use GPS-equipped Handheld Computers (that will benefit from the improvements to our MAF/TIGER databases), and

  —Reducing non-response follow-up workloads by sending a targeted second mailing of questionnaires to households who do not respond to initial mail-out, and being able to electronically remove late mail returns from the non-response follow-up assignments on the Handheld Computers.

SECURITY OF PERSONALLY IDENTIFIABLE INFORMATION ON LAPTOPS AND OTHER PORTABLE DEVICES

*Question.* Last year the Department of Commerce reported the loss of hundreds of laptop computers, thumb drives and data disks used in collecting data for many of its surveys, including data associated with the American Community Survey. The Census Bureau is now acquiring hundreds of handheld devices to be used by temporary employees as part of the 2010 Census.

Do all portable devices in the Bureau containing sensitive personal information have the necessary encryption to protect the data if the computer or handheld is lost or stolen?

Answer. Yes. All data files on the laptops currently being used for data collection in census survey and census operations are encrypted (FIPS 140–2 compliant). Full disk encryption for the laptops is under development and will be implemented later this year. For the 2010 Census, we plan to use handheld computers for collection of Title 13 data for three major operations (Address Canvassing, Non-response Follow-up and Coverage Measurement Person Interviews), with all others still being done on paper. All sensitive data collected during the 2008 Dress Rehearsal and 2010 Census using the handheld computers will be stored on removable secure digital (SD) cards using FIPS 140–2 compliant encryption software.

*Question.* How can we ensure we protect the privacy of our citizens if handhelds are lost?

Answer. In addition to the file encryption described above, census enumerators will access their handheld computers through biometric technology (fingerprint reader) as well as a response to a question for which only they would know the answer. All sensitive data are encrypted while stored on the enumerator's handheld computer's secure digital (SD) card, as well as during transmission over a secure private network to the secure data center. Upon successful transmission, all sensitive data on the enumerator's Handheld Computer that are no longer required to conduct the census operation will be automatically deleted.

*Question.* What procedures have been instituted to track devices that contain sensitive personal information within the Bureau?

Answer. All laptops that currently contain sensitive personal information are managed through the Census Bureau's automated property management system (APMS). The APMS assigns a unique identifier to each device and associates it with the individual that is using it. In addition, we are implementing new procedures that will require our census field representatives to enter their laptops' unique identifiers into an automated questionnaire. This information will be automatically retrieved by our control systems and matched against the information in the APMS to ensure that all devices are accounted for on a regular basis. This procedure should be in place later this Spring.

With respect to the hand-held computes (HHCs), Secure Digital (SD) Cards (SD), laptop computers, and air cards used in the 2008 Dress Rehearsal (DR) and 2010 Census, we track who possesses them via a paper and an automated tracking system. We track all hand-offs of equipment via a paper process. All staff that deliver or are assigned equipment sign a paper form acknowledging receipt of that equipment. We also key the data from the paper forms into Harris' asset management system. Every time a piece of equipment is replaced, the user signs a paper form to return the defective device. Staff also sign another paper form to acknowledge receipt of the replacement device. All paper forms are stored in computer control files in the Local Census Offices.

Harris provided laptops are used by Field Operations Supervisors. These laptops are not used for data collection, but do have PII on them, such as payroll data and staff rosters. These laptops will have full disk encryption. They will require a user ID and password for access during 2008 DR Address Canvassing. We plan to add biometric technology (fingerprint reader) in time for DR Non-Response Follow-Up.

*Question.* Once the sensitive data is collected on the laptop or handheld computer and transmitted to the Census Bureau, how do you ensure that the data is scrubbed from these computers?

Answer. For the laptops currently being used by census field representatives, the Regional Office survey manager initiates a process to delete data from the laptops based on the interview period. This process does not require the census field representative to execute a routine; it happens automatically as part of the transmission processing. A date is stored in the survey control database indicating when this deletion routine was initiated, which allows us to ensure that it is happening on a regular basis.

With respect to the hand held computers that will be used in the 2008 Census Dress Rehearsal and the 2010 Census, upon successful transmission, all sensitive data that are no longer required to conduct the census operation will be automatically deleted. In addition, we plan to destroy the SD cards following the completion of each operation to further ensure data protection. Procedures will be fully developed and tested prior to use in the field.

REAUTHORIZATION OF THE NOAA CORPS

*Question.* The Committee understands that the size of NOAA's fleet is expanding, yet the NOAA Corps authorization, which regulates the size of the NOAA Commissioned Officer Corps, expired in 2005. The Committee supports NOAA Corps officers and the valuable expertise they lend to NOAA's field operations and homeland security activities.

When can Congress expect to receive the legislative package reauthorizing the NOAA Corps, and may I receive a copy personally?

Answer. We are interested in reauthorizing the NOAA Corps and we look forward to working with the Committee on this important legislation. We will ensure that you receive a personal copy of any legislation the Administration submits to reauthorize the NOAA Corps when it is delivered.

FEDERAL CONSISTENCY STANDARDS AND THE CZMA FOR FLORIDA AND ALABAMA

*Question.* Recently, an issue has come up during my meetings with constituents involving interstate coastal zone management activities, namely between Florida and Alabama. I am concerned about the potential situation arising where one state can influence, or even impede, another state's development projects. I am watching this situation closely as it unfolds, especially with how it may impact Alabama's businesses and economic development.

What level of assurances can I receive from you that my office will be informed of any interstate coastal zone management issues affecting Alabama?

Answer. We understand that this is an issue of high priority and importance for Alabama. You have my full assurance that NOAA will continue to keep you informed as this process unfolds. At this time, there has not been a formal submission by Florida of a request for approval to review activities in other states, but, as you

know, Florida has initiated the state and federal agency consultation process to list activities for interstate consistency review. On March 7, NOAA staff with the Office of Ocean and Coastal Resource Management facilitated a meeting between the coastal program managers for the States of Florida, Alabama and Georgia to develop a better understanding of Florida' intentions, the concerns of neighboring States, and the expectations that NOAA will place on Florida in justifying their request for NOAA's approval. In addition to ensuring that any change to the Florida Coastal Management program is fully consistent with the requirements of the Coastal Zone Management Act and NOAA's Interstate Consistency regulations, NOAA will be fully engaged in a dialog with all of the states and affected federal agencies in addressing whatever concerns may arise from Florida's proposed extension of its review authority.

FUNDING LEVELS FOR SEVERE WEATHER FORECASTING

*Question.* Severe weather always threatens the Gulf Coast. Although last year's hurricane season was relatively light, I still encourage my constituents to remain vigilant as flooding, tornadoes and severe thunderstorms are a constant danger.

Are we providing sufficient resources to meet the challenges of predicting and protecting our citizens from severe weather events?

Answer. NOAA's fiscal year 2008 President's budget request fully supports its forecast and warning operations. Specifically, NOAA's fiscal year 2008 budget requests additional funding to improve its hurricane forecasting program: $3 million for hurricane data buoy O&M, $1 million for Hurricane Weather-Research Forecast (HWRF) model O&M and $2 million to accelerate research to improve hurricane intensity forecasts. NOAA is committed to improving operational effectiveness and services, particularly for high-impact weather events, by taking full advantage of emerging science and technological improvements. We are committed to evolving services to best meet the changing and growing need for environmental forecasts and services. NOAA's fiscal year 2008 budget request supports efforts to upgrade the NEXRAD Radar network by implementing dual polarimetric radar. It also supports other efforts including: improved numerical modeling, data assimilation, education and outreach, training, forecaster workstation (AWIPS) upgrades, as well as efforts for future technological advances, such as phased array radar (PAR). We believe the President's fiscal year 2008 budget request positions us to make those technical and service improvements.

PATENT ALLOWANCE VERSUS PATENT REJECTION

*Question.* I'm aware that you set production goals for PTO examiners. Those production goals should of course promote quality examination. The last thing we want is for production goals to be based solely on patent allowance so that examiner's are motivated to allow a patent even if the application doesn't warrant such allowance, resulting in poorer quality patents.

Do you consider patent allowance versus patent rejection when setting production goals?

Answer. Examiner production goals are set so that an examiner receives the same amount of credit for an application that is allowed or becomes abandoned.

*Question.* The Bureau of the Census has initiated a large IT program to automate the process of conducting the 2010 Decennial Census, such as using wireless GPS-enabled handheld computers to directly capture information collected during interviews. This process is expected to reduce the need for paper-based processing while increasing operational efficiency, improving accuracy and reducing costs.

Mr. Secretary, former Census Director Kincannon testified before Congress last year that capital investment in an automated system to replace the traditional paper count will save taxpayers approximately $1 billion to conduct the 2010 Census. Is that estimate still accurate?

Answer. Yes—we still estimate that reverting to paper-based operations would add more than $1 billion to the total cost of the program. Thanks in large part to the support of Congress in the continuing resolution for fiscal year 2007, we have been able to continue our efforts for the automation components of the reengineered census.

Last summer, when those funds were in jeopardy, the Census Bureau was forced to consider reverting back to paper-based operations that would have added over $1 billion to the overall cost of the 2010 Census. That estimate is based on the savings we expect to achieve through the use of handheld computers and other aspects of our reengineering efforts. If we have to revert to a paper-based census:

—The Census Bureau would have to expand space and office staff in over 450 temporary Local Census Offices by 50 percent to conduct 2010 Census oper-

ations. The additional space and office staff would be needed to store, track, and process the additional paper forms that will be needed if we do not use handheld computers for data collection.

—Non-response follow-up and other field operations would be less efficient, requiring significantly more field enumerators.

—We would have to spend significantly more money visiting households that have already responded to the Census. This is because, without the handheld computers, we would have no ability to remove late mail returns (those households that return their census forms after the date we begin preparing non-response follow-up assignments) from the assignment lists on those devices.

—Other cost increases would be inevitable, including increased cost for paper and other supplies, mileage, and salaries to conduct a census without automation.

These additional costs would be offset only partially by reductions in automation costs that would not be incurred (under a paper-based census) related to the handheld computer equipment.

2010 CENSUS—HANDHELD COMPUTERS

*Question.* What is the status of the development of the handheld computer that is critical to the success of this program?

Answer. Thanks in large part to the support of Congress in the continuing resolution for fiscal year 2007, we have been able to continue our efforts for the automation components of the reengineered census. For the 2008 Dress Rehearsal and the 2010 Decennial Census, the Census Bureau plans to use handheld computers and supporting services to directly capture information collected during personal interviews and eliminate the need for paper maps and address lists for the two largest field data collection operations (Address Canvassing and Non-response Follow-up) and for the Census Coverage Measurement Personal Interview process. The development of handheld computers for these operations in the Dress Rehearsal is on-track.

DVD PIRACY IN MEXICO

*Question.* The Department of Commerce is part of the Administration's effort to combat global piracy. I understand U.S. businesses are concerned about DVD piracy in Mexico.

Can you comment on the implications of the recent DVD and CD raid in Mexico City and what this might mean for United States-Mexican cooperation to combat piracy?

What is Commerce's role on this issue?

Answer. The Department of Commerce is encouraged by the Mexican Government's efforts to combat piracy and counterfeiting over the past year. Recent raids by Mexican enforcement officials during February and March reflect the new Calderon Administration's commitment to the rule of law and economic competitiveness. However, greater enforcement efforts and stronger prosecution are still needed in Mexico. According to the 2007 Special 301 Submission by the International Intellectual Property Alliance, trade losses due to copyright piracy in Mexico are estimated to have exceeded $1 billion in 2006. Accordingly, Commerce continues to monitor Mexico's progress on intellectual property rights (IPR) issues through the combined efforts of an interagency IPR team. Additionally, Commerce and the U.S. Trade Representative (USTR) are working with the Governments of Mexico and Canada on the Security and Prosperity Partnership of North America Intellectual Property Action Strategy, a trilateral initiative to combat piracy and counterfeiting in North America.

Finally, the USPTO conducts several programs for government officials in order to improve the level of expertise on intellectual property enforcement in Latin America. In August of 2006 and February 2007, the USPTO invited Latin American government officials to its Global Intellectual Property Academy. The Academy provided practical intellectual property rights enforcement education and capacity-building to Latin American judges, prosecutors, customs officials, law enforcement officers and others who are involved in the civil, administrative or criminal enforcement of intellectual property rights. Mexican government officials participated in the Academy.

Also, in December of 2006, the USPTO held a Seminar for the Judiciary on Intellectual Property Enforcement. The program was attended by both Mexican and Central American judges.

ITA CAFTA NATIONS

*Question.* Since the enactment of CAFTA, the domestic sock industry has continued to close plants. The CAFTA nations, particularly Honduras, have increased

their production and importation of socks to the United States by significant amounts to the detriment of our domestic industries. Why has the Department of Commerce not granted their promise to extend the period for tariffs on socks produced in CAFTA nations?

Answer. As you know, on July 27, 2005, USTR Rob Portman and Secretary Gutierrez promised Congressman Aderholt that the Administration would (1) include socks in any textile agreement with China, (2) ensure that, if the existing China sock safeguard was renewed, it would be in place for the maximum possible time period at the minimum possible safeguard level, (3) seek to amend CAFTA–DR to alter the rules of origin or to lengthen the tariff phase-out for socks, and (4) to proactively utilize the CAFTA–DR textile safeguard for socks, if warranted. The Administration subsequently, as promised, included socks in the China textile agreement, concluded a special China sock quota agreement while the China textile talks were ongoing, and has pursued a sock amendment to the CAFTA–DR. We also are carefully monitoring CAFTA–DR sock import data and, as promised, will proactively utilize the CAFTA–DR safeguard, if warranted by the facts. To assess whether safeguard action may be warranted, the Department of Commerce carefully monitors imports of socks from CAFTA–DR signatories and other relevant data, including domestic production data, to assess whether imports of socks from these countries are causing, or threatening to cause, serious damage to the domestic industry as a result of the elimination of duties under the Agreement, which went into effect for Honduras on April 1, 2006. Notably, imports of socks from Honduras fell in each of the last three months of 2006 to levels lower than before CAFTA went into effect. Nevertheless, we are closely tracking the data and will act should data warrant a safeguard, but it is worth noting that domestic production was down by only 1.1 percent in 2006.

SUBCOMMITTEE RECESS

Senator MIKULSKI. We're going to stand in recess until next Thursday, March 8, continuing our innovation oversight hearings. We will be getting testimony from the National Oceanic and Atmospheric Administration, and the Director of the National Science Foundation.

This subcommittee stands in recess until March 8.

[Whereupon, at 11:50 a.m., Thursday, March 1, the subcommittee was recessed, to reconvene at 10 a.m., Thursday, March 8.]

# COMMERCE, JUSTICE, SCIENCE, AND RELATED AGENCIES APPROPRIATIONS FOR FISCAL YEAR 2008

**THURSDAY, MARCH 8, 2007**

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

The subcommittee met at 10:05 a.m., in room SD–192, Dirksen Senate Office Building, Hon. Barbara A. Mikulski (chairman) presiding.

Present: Senators Mikulski, Inouye, Reed, Stevens, Shelby, and Hutchison.

## DEPARTMENT OF COMMERCE

### NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

**STATEMENT OF VICE ADMIRAL CONRAD LAUTENBACHER, JR., ADMINISTRATOR**

STATEMENT OF SENATOR BARBARA A. MIKULSKI

Senator MIKULSKI. Good morning and welcome to the second hearing of the Commerce, Justice, Science Subcommittee. As I said in the first hearing, the themes of the subcommittee will be innovation, security, and accountability. Today's hearing will focus on two of the premiere agencies that promote innovation in our society and using the principles of the gathering storm, which is that innovation rests on research, discovery as well as on education. We are looking forward to hearing from the National Science Foundation (NSF) as well as the National Oceanic and Atmospheric Administration (NOAA).

Just a brief announcement before I go more deeply into my statement and listen to our ranking member. On March 25, the subcommittee will conduct a classified hearing on the Federal Bureau of Investigation (FBI), which will deal with their role in counterterrorism. We remember that after 9/11, we chose not to create—but an agency within the agency. There are aspects of the agency's law enforcement responsibilities that are deeply involved in the global war against terrorism. We will be holding traditional public hearings but we will also be holding classified hearings. So we want to alert the members of the very important meeting with the FBI.

But today, we're examining the budgets for the National Science Foundation and NOAA, focusing on innovation, education, and ac-

countability. This isn't about line items in the budget. It's about our country and how we're going to compete in the global economy. It's about science. It's about the climate crisis. It's about educating our young people to come into the fields of science, technology, and engineering. We're holding this hearing in the midst of an awakening in this country about these particular issues. We all know that the issue just of climate—the climate crisis has resulted in a former colleague winning an Oscar and who knows, maybe a Nobel Prize.

The CJS Subcommittee is the innovation subcommittee in the United States Senate appropriation process.

NSF and NOAA are two key innovation agencies relating to discovery that have power to save lives, protect our communities, protect the planet, and create prosperity for our country. I'm pleased that the NSF is in the President's innovation agenda but I'm sorry that NOAA isn't as well.

As we look at today's hearing, we will be looking at broad topics but I want to assure everyone that one of the areas of focus will be on the climate crisis. The CJS Subcommittee is going to look a little green while we look at the blue planet.

What do I mean by that? I believe that every public policy should be based on sound science. In that way, we can build the coalitions necessary to create the positive and constructive solutions while minimizing at the same time, any economic increase or dislocation.

As we look at the budget requests for NSF and NOAA, we're going to follow the roadmaps given to us by the National Academy of Sciences and the blueprint given to us by the Joint Ocean Commission initiative.

Seventy percent of the Earth is covered by oceans. When you look at us from space, we are big blue. Our Nation's economy depends on the oceans, contributing over $120 billion to our Nation's economy, supporting 2 million jobs. The Senator from Alabama as well as myself, are coastal Senators. We know how important our oceans and our estuaries are. We also know how oceans influence the weather and we know that the focus also of this subcommittee will be a very good weather prediction.

Alabama was hit very hard by Katrina and they worry about every hurricane season. Maryland was hit so hard most recently by Isabel. We need the National Weather Service but we need also those scientists and so on, that can give us early predictions and early warnings but also those kinds of things that mitigate against what is changing in our climate that then could be exacerbating these weather disruptions that we are seeing, from wild fires to hurricanes.

At the same time, we want to know about education, how we're going to be able to attract the best and the brightest into science, engineering, and technology. What are the financial supports that we need to provide to be able to do that? Because that is where our future lies.

At the same time, we'll be focusing on the accountability from the NOAA satellites to the NSF research stations and observatories. We know they are critical tools but we have faced cost overruns and schedule slippages.

So we're here—we're here to really promote innovation. So it is not about agencies. It's not about line items, though it is about that. But it is about our Nation's future. I want to make sure we continue to be a superpower but that our superpower rests on our intellectual capital and the values that we stand for in the world.

Having said that, I turn to my ranking member, Senator Shelby, for anything he has to say.

STATEMENT OF SENATOR RICHARD C. SHELBY

Senator SHELBY. Thank you, Madam Chairman and thank you, Admiral Lautenbacher and Dr. Bement for joining us today.

This is an important hearing, as the chairman has pointed out because it gives me the opportunity to talk about the critical roles the National Oceanic and Atmospheric Administration we know as NOAA and the National Science Foundation, the NSF, play in the economic, scientific, and technology drive the engine of our country's economic future, as the chairman mentioned.

Cutting edge technology creates a better quality of life for all of us. The strategic Federal investment in scientific research, particularly the funding supporting NSF has led to innovative problem solving and technological developments that have dramatically increased the country's economic growth.

NOAA's budget request for the year 2008 is $3.8 billion. This is a decrease of $100 million from the funding level provided in the joint resolution of 2007.

In stark contrast to the budget for NOAA, the budget request for NSF is $6.4 billion, an increase of $513 million over the 2007 joint resolution level.

Our Nation as a whole seems to do more to protect—needs to do more to protect our citizens, not just with storm prediction but also with disaster response and community preparedness. We must improve short-term forecasting and gain a better understanding of long-term climate change. The National Weather Service, which is an important part of NOAA, is key to this understanding. After forecasting, we must explore what can be done in advance communications so that warnings can reach communities quicker. We must find better ways to respond. Emergency coordination after a severe storm is a critical but often overlooked function in saving lives.

Last Friday, as a lot of you know, my home State of Alabama was devastated by a storm system that spawned killer tornadoes—I believe it was Thursday that claimed the lives of 10 people and destroyed hundreds of homes and a school and severely damaged another school. In southeast Alabama's Coffee County, a tornado slammed into Enterprise High School. Not far from the school in Enterprise, an elderly woman was killed by flying storm debris. In west Alabama's Wilcox County, the storm claimed the life of a Miller's Fairy father who was crushed in his home.

While we will never recover from the loss of life, I'm certain that the people of Alabama will work to rebuild even stronger communities and I will continue to do everything in my power to get them the resources that they need to do so. It will take time and resources for the damaged communities to begin to heal and erase the scars of this destruction and death.

The people of Alabama—my State—are resilient and have already begun cleaning up and planning to rebuild. I saw this firsthand when I toured some of the damaged areas this past Saturday.

But how can we ensure that they rebuild safer homes and schools to withstand the next storm? I don't have to be a NOAA weather forecaster to predict that another devastating storm will hit my State again and other States. It's just a matter of time.

Will our citizens be any safer? Hurricanes Ivan, Katrina, and Rita showed us how vulnerable we are to natural disasters. Last week, we were grimly reminded that we still have a long way to go in finding answers to the lessons taught us by those hurricanes. Science, technology, and research hold many of these answers.

Today, Admiral, I will be asking for your support and guidance on how we can better respond to these natural storms, be they hurricanes, tornadoes or what. Last week's storms claimed 20 lives from Alabama, Georgia, and Missouri. We cannot eliminate severe storms—we know that. But we should envision a day when we can live with them more safely.

Overall, I'm concerned about the health of NOAA's science budget. Congress continually receives a budget request from the administration that downplays critical science activities when compared to the previous year's funding levels. The NOAA 2008 request is less than what the agency received in 2007, 2006 and Madam Chairman, even 2005.

In past years, the Joint Ocean Commission has clearly and objectively laid out the budgetary requirements to better support ocean-related science research and education. NOAA's budget request boasts a $123 million increase for ocean-related activities while the National Science Foundation requests to study marine ecosystems and associated human impacts, contains only a $17 million increase. These mighty figures represent only a fraction of the true budgetary needs for the marine community.

I'm pleased to see that the American competitiveness initiative, ACI, has continued to receive support from the administration through the National Science Foundation's budget request. The ACI will keep the competitive edge that our Nation expects in the world economy through research and innovation by focusing on the ingenuity of our people and tying our capabilities to policies that will keep us at the forefront of scientific and technical advancement for generations to come. The ACI provides a tremendous opportunity to maintain our national technological advantage in a more competitive world.

I think—I do not think that it goes far enough to take advantage of our existing Federal investments, however. The funding of ACI includes an increase of $366 million in the research and related activities account in NSF. While this benefits current research, I'm concerned about what we're doing to encourage the next generation of researchers. The long-term vision, Madam Chairman, I believe must include increasing opportunities for colleges and universities across the country to participate in innovation. Many of the funds provided to NSF as part of the ACI will go to traditional research schools that have historically fared well in retaining its research grants.

We should find ways to raise the bar of competitiveness, to reach out to universities that have not traditionally been taken into consideration. We also need to provide the funds to increase the level of science education through better curriculum and inspiring K through 12 science teachers. NSF is the ideal place to begin such a long-term investment for this country.

I'm also concerned about the number of American students enrolling in science and engineering fields of study. The most recent report from the Council on Competitiveness states that foreign students account for most of the growth in Ph.D.s in science and engineering, despite the progress being made by females and minorities in this area. Our lack of new scientists and engineers will eventually become a crisis. We're not attracting enough young students into these disciplines and are relying too heavily on foreign students. These same students return to their homeland where competitive jobs are becoming increasingly available.

To remain at the cutting edge of innovation, I believe we need to act now in cultivating our next generation of engineers and scientists. There is much untapped potential within our own borders. We must make this a priority. The Office of Science and Technology Policy states that the goal of the ACI's goal is not to introduce entirely new Government programs but to increase fundamental research capacity and while there is significant Federal investment in research and innovation, there should be a much broader vision to include agencies beyond those already included in the ACI while not diluting current efforts.

Along those lines, it is discouraging to see that the administration wants to see the Nation at the forefront of innovation yet chooses to exclude NOAA from the initiative. This is perplexing.

NOAA stands out as an international leader in marine and atmospheric science and is a cornerstone of our Nation's research community. NOAA's education and outreach activities appear to fall directly in line with the ACI's educational goals. As I stated here in last week's Department of Commerce hearing, I'm concerned why this agency is not recognized as a candidate for the ACI program.

At this point, I want to thank Chairman Mikulski for having this hearing today and I look forward to the testimony.

Senator MIKULSKI. Thank you very much, Senator Shelby and as usual, I'm going to associate myself with your remarks. There are two key agencies that have, I believe, been left out of the ACI. Certainly NOAA, our flagship agency and on oceans, fisheries, and weather as well NASA. The fact that NASA was left out of ACI is absolutely stunning. There are two colleagues. I'd like to go right to the testimony rather than opening statements and you make them then when you get to the questions and answers. That way, we can move right along. Does that sound good?

Therefore, let's go right to those who are ready to testify. Why don't we start with, Admiral Lautenbacher and go to the National Science Foundation?

SUMMARY STATEMENT OF VICE ADMIRAL CONRAD LAUTENBACHER, JR.

Admiral LAUTENBACHER. Madam Chair, Ranking Member Shelby, Senator Hutchison, Senator Reed, distinguished staff members,

thank you very much for this opportunity to testify on behalf of the President's fiscal year 2008 budget request for NOAA and also thank you for your extremely important leadership in the areas that are under NOAA's responsibility. The support of this subcommittee has been extremely important to our ability to carry out the mission that is required for our country, so thank you very much for your continued support of our programs.

Our programs and services impact one-third of U.S. gross domestic product. Our environmental information is vital to the competitiveness of our country in the world marketplace and to the security and safety of our people here at home. Our investments in research and technology contribute to our Nation's innovative culture and our work to conserve and manage coastal and marine resources ensures economic vitality and enhances U.S. trade.

NOAA has had many notable accomplishments in 2006, some of which are mentioned in my written statement. I would like to take a moment to just highlight a couple of those before I move into the fiscal year 2008 budget request.

Thanks to the funding from Congress, NOAA was able to provide a NOAA weather all-hazards radio to every public school in America. That's 97,000 radios. These radios provide automatic alerts for severe weather, manmade disasters such as chemical spills and terrorist threats as well as Amber Alerts for missing children. While tragedies will still occur as they did last week with the tornado mentioned by Senator Shelby, officials there did receive our warnings on their weather radio and actions were taken. Unfortunately, lives were still lost but many fewer were lost as a result of the warning and the radios and the procedures that were in effect.

In June, the President designated the northwestern Hawaiian Islands as a marine national monument, the largest single act of marine conservation in history. Encompassing nearly 140,000 square miles, the monument includes 4,500 square miles of relatively undisturbed coral reef habitat, home to more than 7,000 species. For the first time, NOAA will play a leading role in managing a national monument. This is an exciting and important opportunity for NOAA.

In December, NOAA achieved initial operating capability for the expanded U.S. tsunami warning system. This means that the most dangerous tsunami generation areas are covered by tsunami deep-water buoy stations and last April, the Nation's two tsunami warning centers became operational 24 by 7. This combination of buoys and around-the-clock warning capability has greatly increased the security of the Nation's people living along Pacific coastlines.

Before I highlight the fiscal year 2008 budget request, I want to draw your attention to the fact that this year, NOAA is celebrating 200 years of science, service, and stewardship. In 1807, President Thomas Jefferson founded the Survey of the Coast to provide nautical charts to the marine community. Safe passage of vessels to American ports and along our coastlines was critical to increasing trade and building the U.S. economy, just as it is today. The Survey of the Coast, along with the Weather Bureau founded in 1870, the U.S. Commission on Fish and Fisheries in 1871, were brought together in 1970 with the establishment of NOAA. We're very

proud to be celebrating this 200-year legacy with Americans across the Nation at events throughout the year.

My written testimony presents the details of the budget as it aligns with five priority areas. First of all, sustaining critical operations, supporting the U.S. ocean action plan, improving weather warnings and forecasts, climate monitoring and research, and critical facilities investments. I will just highlight a couple of those.

FISCAL YEAR 2008 BUDGET REQUEST

The fiscal year 2008 request, as already stated, is $3.8 billion. That does represent a $131 million or 3.4 percent increase over the President's request from fiscal year 2007 but it does represent a $96 million decrease from the fiscal year 2006 enacted level.

The budget is able to provide modest new investments in our priority areas while maintaining critical services. In critical operations, we are providing an increase of $10.1 million for operations and maintenance of NOAA vessels and aircraft. NOAA is also driving innovation in research and monitoring by requesting $3 million in funding to support the further use of unmanned aircraft systems or UAS. With this funding, NOAA will evaluate the benefits and potential of using UAS to collect data crucial for such missions as fishery enforcement, coastal zone studies, and hurricane forecasting.

Continued implementation of the President's ocean action plan remains a priority. The fiscal year 2008 budget requests $123 million in increase to support the plan, including $60 million to advance ocean science and research, $38 million to protect and restore marine and coastal areas, and $25 million to ensure sustainable use of ocean resources.

Specifically, the request includes $16.4 million for the integrated ocean observing system or IOOS for development of regional systems and improved data management and communications. It also includes $8 million for enforcement and management activities in the newly designated Northwestern Hawaiian Islands Marine National Monument.

Funding of $10 million is requested to restore nearly 1,000 miles of habitat for endangered Atlantic salmon and other fish species in New England's largest watershed. Increased funding of $3 million will support Klamath River salmon recovery projects.

The fiscal year 2008 budget also provides $20 million in increases to support better management of fish harvests. This includes $6.5 million in increases to implement the new and expanded requirements of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act, passed last season. It provides $3 million to establish the regulatory framework to facilitate environmentally sustainable commercial aquaculture. Our Nation currently has an $8 billion trade deficit in seafood. Providing regulatory certainty will foster private sector investment in offshore aquaculture, increasing the Nation's competitiveness in the world seafood market and decreasing our reliance on imported seafood.

To improve weather warnings and forecasts, we are requesting a $5 million increase for the support of operation and maintenance of hurricane data buoys and research on hurricane intensity that

will ultimately save lives. More than $23 million is requested to continue strengthening the U.S. tsunami warning program, including an increase of $1.7 million to deploy additional deep ocean buoy stations.

Climate monitoring and research includes a $9.4 million increase to support the development of an integrated drought early warning and forecast system that will also enhance the Nation's food security by providing earlier and more accurate drought forecasts. More than one-half of this increase will be used to research the link between ocean currents and abrupt climate change.

Finally, critical facilities investments include an increase of $20 million for the Pacific Regional Center in Hawaii, which will bring NOAA's Pacific Island programs together in one facility to improve operations and strengthen our performance.

Let me conclude briefly by talking about two oversight issues important to the subcommittee and extremely important to NOAA. There have been many challenges with our satellite programs and the national polar-orbiting operational environmental satellite system (NPOESS) in particular. Let me assure the subcommittee that I and my staff are doing everything we can do to ensure that this program stays on track. We have made numerous personnel and organizational changes. We are implementing every recommendation from the Government Accountability Office (GAO) and Department of Commerce inspector general and I meet with the Under Secretary of the Air Force and NASA Administrator once a quarter at least, to review the program in detail, along with the presidents of the companies who have signed the contract to develop those satellites. Satellites are complex and risky tools but they are vital to all aspects of NOAA's mission. I also want to assure the subcommittee that the Department of Commerce is in the final stages of updating its communication policy, which will ensure for generations into the future that our scientists are able to freely and openly communicate their science to the media and the public. I have been on the record with my scientists numerous times supporting their ability to communicate freely their science activities to the public.

PREPARED STATEMENT

Again, I appreciate the opportunity to testify and I am happy to answer any of your questions. Thank you.

[The statement follows:]

PREPARED STATEMENT OF VICE ADMIRAL CONRAD LAUTENBACHER, JR.

Madam Chairwoman and members of the subcommittee, before I begin my testimony I would like to thank you for your leadership and the generous support you have shown the National Oceanic and Atmospheric Administration (NOAA). Your continued support for our programs is appreciated as we work to improve our products and services for the American people. Thank you for the opportunity to testify on the President's fiscal year 2008 budget request for NOAA.

The fiscal year 2008 President's budget supports NOAA's priority to advance mission-critical services. The fiscal year 2008 request is $3.815 billion, which represents a $131 million or 3.4 percent increase over the fiscal year 2007 request. This request includes the level of resources necessary to carry out NOAA's mission, which is to understand and predict changes in the Earth's environment, and conserve and manage coastal and marine resources to meet our Nation's economic, social and environmental needs. At NOAA we work to protect the lives and livelihoods of Americans, and provide products and services that benefit the economy, environment, and pub-

lic safety of the Nation. Before I discuss the details of our fiscal year 2008 budget request, I would like to briefly highlight some of NOAA's notable successes from the past fiscal year (2006).

FISCAL YEAR 2006 ACCOMPLISHMENTS

*President Designates Largest Fully-Protected Marine Area on Earth*

Recognizing the continuing need for resource protection, President Bush designated the Northwestern Hawaiian Islands as a marine national monument on June 15, 2006. Encompassing nearly 140,000 square miles, the monument covers an area larger than all of our national parks put together, including 4,500 square miles of relatively undisturbed coral reef habitat that is home to more than 7,000 species. The creation of the largest fully-protected marine area in the world is an exciting achievement and recognizes the value of marine resources to our Nation.

*Successful Launch of NOAA Satellite GOES–13 and New Satellite Operations Facility Ensure Continuity of Improved Data Collection*

On May 24, 2006, officials from NOAA and the National Aeronautics and Space Administration (NASA) confirmed that a new geostationary operational environmental satellite, designed to track hurricanes and other severe weather impacting the Nation, successfully reached orbit. Upon reaching final orbit, the satellite was renamed GOES–13. This is the first in a new series of satellites featuring a more stable platform enabling improved instrument performance. NOAA instruments were also launched on the European MetOp-A polar-orbiting satellite in October 2006. Combined with NOAA and Department of Defense (DOD) operational satellites, MetOp-A will help provide global data for improving forecasts of severe weather, disaster mitigation, and monitoring of the environment. This launch ushered in a new era of U.S.-European cooperation in environmental observing.

In 2006, NOAA satellite operations and data processing groups began moving into the new NOAA Satellite Operations Facility (NSOF). The NSOF will house the NOAA satellite command and control functions and data and distribution activities that are central to NOAA's mission. The NSOF will also house the U.S. Mission Control Center for the Search and Rescue Satellite-Aided Tracking (SARSAT) program and the National Ice Center (NIC), a joint NOAA/DOD mission to track ice floes and issue warnings to the Nation's maritime force. The NSOF will become fully operational in Spring 2007.

*Enhancements to NOAA's Fleet of Ships and Aircraft*

Significant progress is being made in modernizing NOAA's fleet. NOAA took delivery of the Fisheries Survey Vessel (FSV) Henry B. Bigelow, the second of 4 new FSV, on July 25, 2006. The Bigelow has high-tech capabilities that make it one of the world's most advanced fisheries research ships. These ships will be able to perform hydro-acoustic fish surveys and conduct bottom and mid-water trawls while running physical and biological oceanographic sampling during a single deployment—a combined capability unavailable in the private sector that will enable research and assessment to be carried out with greater accuracy and cost efficiency. NOAA also took delivery from the Navy of a "retired" P–3 aircraft in response to the hurricane supplemental bill attached to the fiscal year 2006 Defense appropriations legislation. Rehabilitation of the P–3 is expected to be completed by the start of the 2008 hurricane season.

*Magnuson-Stevens Fishery Conservation and Management Act Reauthorized*

Congress reauthorized the Magnuson-Stevens Fishery Conservation and Management Act (MSA) in December, 2006, and it was signed into law by President Bush on January 12, 2007. The MSA is the guiding legislation that authorizes fishery management activities in federal waters. Enactment of this bill was one of the top priorities of the U.S. Ocean Action Plan. The reauthorized MSA strengthens NOAA's ability to end overfishing, rebuild fish stocks, and work collaboratively on conservation.

*U.S. Tsunami Warning System Improved*

NOAA designed easy to deploy Deep-ocean Assessment and Reporting of Tsunamis (DART)-II technology, which provides two-way communication between the buoys and NOAA facilities. This technology allows engineers to troubleshoot these systems from the lab and repair the systems remotely when possible. This functionality can minimize system downtime and save money by not requiring a ship be deployed to make minor repairs. The U.S. Tsunami Warning Program also created tsunami impact forecast models for nine major coastal communities, providing information for inundation maps. With the December 11, 2006 deployment

of DART #23 in the Western Pacific Ocean, NOAA achieved initial operating capability (IOC) of the planned expanded U.S. Tsunami Warning Program. NOAA also achieved full 24/7 operations of the Nation's two Tsunami Warning Centers. Plans call for the U.S. Tsunami Warning Network to total 39 DART–II buoy stations by mid-summer 2008 (32 in the Pacific, 7 in the Atlantic).

NOAA also continued to monitor sea height through a network of buoys and tide gauges, collecting information critical to understanding the time of arrival and the height of tsunami waves. In 2006, NOAA completed the installation of eight new National Water Level Observation Network (NWLON) stations to fill gaps in the detection network, bringing the 2-year total to 15. The 15 stations were installed in California, Oregon, Washington, Alaska, Puerto Rico, and the Virgin Islands. These and other new stations brought the NWLON to 200 stations by the end of calendar year 2006. In addition, NOAA continued to upgrade the entire NWLON to real-time status by replacing over 50 data collection platforms.

*Red Tide Monitoring Protects Human Health and Coastal Economics in New England*

In the wake of the 2005 New England red tide crisis that forced the closure of most shellfisheries in the region, NOAA provided additional emergency funding in 2006 to provide timely and critical information to State managers to build upon long-term research supported by the Ecology and Oceanography of Harmful Algal Bloom, and Monitoring and Event Response for Harmful Algal Bloom programs at the Woods Hole Oceanographic Institution, as well as other partner institutions. In the spring of 2006, NOAA-sponsored monitoring detected rapid escalations of the bloom, which subsequently closed shellfisheries in Massachusetts, New Hampshire and Maine. Additional NOAA efforts allowed New England managers to make more strategic sampling and shellfish bed closures/openings to protect human health and minimize the economic impacts of harmful algal blooms.

*National Estuarine Research Reserve System Adds 27th Reserve*

On May 6, 2006, commerce and congressional officials dedicated the newest site in the National Estuarine Research Reserve System in Port Aransas, Texas, bring the total to 27 reserves. This new reserve introduces a new biogeographic area type into the system, and adds 185,708 acres of public and private land and water. The reserves are Federal-State partnerships, where NOAA provides national program guidance and operational funding. These reserves serve as living laboratories for scientists and provide science-based educational programs for students and the public.

*Wide Application Potential of Unmanned Aircraft Systems Demonstrated*

In 2006, NOAA worked with federal and private sector partners to successfully demonstrate Unmanned Aircraft Systems (UAS) technology. NOAA is interested in UAS as a tool to explore and gather data to help us reach new heights in our ability to understand and predict the world in which we live. Use of UAS could help NOAA achieve our mission goals and provide cost-effective means to: enforce regulations over NOAA's National Marine Sanctuaries, conduct long endurance flights for weather, conduct research over areas that pose significant risks to pilots, validate satellite measurements, provide counts of marine mammal populations, monitor atmospheric composition and climate, and hover above hurricanes and gather critical data for input into hurricane models. NOAA will continue to examine how UAS can assist in the collection of environmental data.

*Protecting Habitat Essential to Fish*

In 2006, over 500,000 square miles of U.S. Pacific Ocean habitats were protected from damage by fishing practices, particularly bottom-trawling. Combined, these areas are more than three times the size of all U.S. national parks. The historic protections, implemented by NOAA with the support and advice of the regional fishery management councils, fishing industry, and environmental groups, made the protection of essential fish habitat and deep coral and sponge assemblages a significant part of management efforts to conserve fisheries in the Pacific Ocean.

*NOAA Continues Efforts to Assist with Gulf Coast Recovery Following 2005 Hurricanes Katrina and Rita*

In addition to providing the forecasts and immediate response assistance in 2005, following Hurricanes Katrina and Rita, NOAA has continued to assist with Gulf Coast recovery efforts in fiscal year 2006.

NOAA ships and aircraft provided critical response and recovery capabilities in the aftermath of Hurricanes Katrina and Rita. NOAA Ship Thomas Jefferson completed obstruction surveys in the Gulf of Mexico so that busy ports and shipping lanes could be re-opened to traffic. NOAA's citation aircraft flew post-storm damage

assessment surveys along the coasts of the Gulf States. This imagery was downloaded on the NOAA website, enabling emergency managers, local officials and average citizens to inventory damage and prioritize recovery efforts.

NOAA mounted a multi-pronged effort to address fishery-related impacts in the Gulf of Mexico in fiscal year 2006. In August, 2006, NOAA awarded $128 million to the Gulf States Marine Fisheries Commission to reseed and restore oyster beds and conduct fisheries monitoring in the Gulf. In addition, NOAA Ship Nancy Foster conducted a seafood contamination survey for NOAA Fisheries near the Mississippi Delta to spot potential safety issues. This research monitored the seafood coming in from the Gulf to ensure it was safe for public consumption (free of PCBs, pesticides, and fossil fuels).

*Collaboration Enables a NOAA Weather Radio to be Placed In Every Public School in America*

NOAA and the Departments of Homeland Security and Education worked to get 97,000 NOAA weather radios placed in every public school in America to aid in protecting our children from hazards, both natural and man-made. In many cases, local weather forecast office staff provided expertise in programming the radios to select specific hazards and geographic areas for which the school wanted to be alerted. This multi-month effort required close collaboration between the Departments of Homeland Security, Education, and Commerce (NOAA). This effort enabled schools to connect to part of the Nation's Emergency Alert System and greatly increases environmental situational awareness and public safety.

*World Ocean Database 2005*

NOAA's National Oceanographic Data Center (NODC) released a major upgrade to its World Ocean Database product. World Ocean Database 2005 (WOD05) is the largest collection of quality-controlled ocean profile data available internationally without restriction. All data are available on-line for public use. Data are available for 29 ocean variables, including plankton data. The database includes an additional 900,000 temperature profiles not available in its predecessor. The database provides the ocean and climate science communities with research-quality ocean profile data sets that will be useful in describing physical, chemical and biological parameters in the ocean, over both time and space. This database is a crucial part of the Integrated Ocean Observing System and the Global Earth Observation System of Systems.

*New Arctic Observatory Established for Long-Term Climate Measurements*

NOAA's Earth System Research Laboratory in Boulder, Colorado, in conjunction with our Canadian counterparts, established a research site located on Ellesmere Island to make long-term climate measurements of Arctic clouds and aerosols. This observatory supports NOAA's activities for the 2007–2008 International Polar Year.

*NOAA Scientists Identify Carbon Dioxide Threats to Marine Life*

A report co-authored by NOAA research scientists documents how carbon dioxide is dramatically altering ocean chemistry and threatening the health of marine organisms. The research also uncovered new evidence of ocean acidification in the North Pacific. The report resulted from a workshop sponsored by NOAA, the National Science Foundation, and the U.S. Geological Survey.

*First Operational Satellite Products for Ocean Biology*

In June, 2006, NOAA began to process and distribute ocean biology products for U.S. coastal waters, using satellite observations. This activity represents a successful transition of NASA research to NOAA operations. These products (e.g. chlorophyll concentration) represent the first satellite-derived biological products generated by NOAA for coastal and open ocean waters. These products are useful in detecting and monitoring harmful algal blooms, assessing regional water quality, and locating suitable habitat for fish and other important marine species. Development of these products prepares NOAA for generating and distributing ocean biology products in the global ocean after 2010.

FISCAL YEAR 2008 BUDGET REQUEST HIGHLIGHTS

*Supporting the U.S. Ocean Action Plan*

Coastal and marine waters help support over 28 million jobs, and the value of the ocean economy to the United States is over $115 billion. The commercial and recreational fishing industries alone add over $48 billion to the national economy each year. The fiscal year 2008 President's budget requests $123 million in increases for NOAA to support the President's U.S. Ocean Action Plan. This oceans initiative in-

cludes $38 million to protect and restore marine and coastal areas, $25 million to ensure sustainable use of ocean resources, and $60 million to advance ocean science and research.

New investments in ocean science are aimed at monitoring and better understanding marine ecosystems. Increased funding of $16 million is included for the Integrated Ocean Observing System to enhance models and information products through development of regional systems and improved data management and communications. A total increase of $20 million is provided for NOAA research on four near-term priorities established through the national Ocean Research Priorities Plan. An additional $8 million will support exploring and defining areas of the continental shelf that are adjacent to, but currently outside of, U.S. jurisdiction. This work will enable a U.S. claim to these areas and the potential $1.2 trillion worth of resources they are estimated to contain.

The fiscal year 2008 President's budget builds on NOAA's strong record of investing in projects that embody the spirit of cooperative conservation. Projects to protect and restore valuable marine and coastal areas include funding of $8 million for enforcement and management activities in the recently designated Northwestern Hawaiian Islands Marine National Monument, and $10 million for a project to restore nearly 1,000 stream miles of habitat for endangered Atlantic salmon and other fish species. A total of $15 million is provided for the Coastal and Estuarine Land Conservation Program, to assist State and local partners in the purchase of high priority coastal or estuarine lands or conservation easements. Increased funding of $3 million is also included to support Klamath River salmon recovery projects. Finally, an increase of $5 million will support competitive grant programs focused on the Gulf of Mexico Alliance coastal resource priorities, as identified in the Governors' Action Plan for Healthy and Resilient Coasts.

Finally, the fiscal year 2008 NOAA budget provides support to ensure sustainable access to seafood through development of offshore aquaculture and better management of fish harvests. The administration will propose legislation to establish clear regulatory authority and permitting processes for offshore aquaculture. An increase of $3 million is included to establish the regulatory framework to encourage and facilitate development of environmentally sustainable commercial opportunities. In addition, $20 million in increases are provided to improve management of fish harvests, including $6.5 million in increases to implement the new and expanded requirements of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006, $3 million for observer programs, and $6 million for market-based approaches to fisheries management. Market-based approaches—such as Limited Access Privilege Programs (LAPPs) that provide exclusive privileges to harvest a quantity of fish—move fisheries management away from cumbersome and inefficient regulatory practices and have been shown to lead to lengthened fishing seasons, improved product quality, and safer conditions for fishermen. The administration has set a goal of doubling the number of LAPPs in use by the year 2010, and the increased funding of $6 million for LAPPs in this request supports that goal. Finally, an additional $2 million in funding is provided to meet the management challenges of assessing and mitigating the impacts of sound from human activities, such as national defense readiness and energy exploration and development, on marine mammals.

*Sustaining Critical Operations*

As always, I support NOAA's employees by requesting adequate funding for our people, infrastructure, and facilities. NOAA's core values are science, service, and stewardship, as well as people, ingenuity, integrity, excellence, and teamwork. Our ability to serve the Nation and accomplish the missions outlined below is determined by the quality of our people and the tools they employ. Our facilities, ships, aircraft, environmental satellites, data-processing systems, computing and communications systems, and our approach to management provide the foundation of support for all of our programs. Approximately $54.6 million in net increases will support our workforce inflation factors, including $44.9 million for salaries and benefits and $6.6 million for non-labor related adjustments such as fuel costs.

This year, we focus on the operations and maintenance of NOAA vessels and necessary enhancements to marine safety, facility repair, and modernization. A funding increase of $8.3 million will be used to support marine operations and equipment, including $5.6 million for new vessel operations and maintenance and $1.7 million to implement a more effective maritime staff rotation and safety enhancements. This funding will support the operations maintenance for the Okeanos Explorer, NOAA's first dedicated ocean exploration vessel. Increased funding of $5.5 million will support operations and maintenance for NOAA's third P–3 aircraft. NOAA is also moving forward this year with increases in funding for unmanned vehicles,

with $0.7 million in support of Autonomous Underwater Vehicles (AUV) and an increase of $3 million in funding to support the further use of Unmanned Aircraft Systems (UAS). With this increase, NOAA will evaluate the benefits and potential of using UAS to collect data crucial for climate models, weather research, fisheries enforcement, and coastal zone studies.

The backbone of the NOAA infrastructure is our integrated Earth observation effort. NOAA, NASA and the Office of Science and Technology Policy (OSTP) serve as the lead agencies for the Federal Government in developing our U.S. integrated Earth observing strategy. In addition, I serve as one of four intergovernmental co-chairs of the effort to develop the Global Earth Observation System of Systems. Building and maintaining state of the art satellite programs is an important component of NOAA's integrated observation efforts. An increase of $25 million in the Polar Operational Environmental Satellite (POES) program continues support for development and acquisition of polar-orbiting weather satellites to improve weather forecasting and our understanding of the climate. This increase will allow NOAA to complete acquisition of this series of polar satellites and install and maintain instruments important to U.S. Government interests on the European MetOp partner satellite. Following the completion of the POES program, it will be replaced by the tri-agency National Polar-orbiting Operational Environmental Satellite System (NPOESS). This transition is expected in 2013. We will continue to partner with the Europeans on their MetOp satellite as NPOESS replaces our current POES satellites.

*Improving Weather Warnings and Forecasts*

Severe weather events cause $11 billion in damages and approximately 7,000 weather-related fatalities yearly in the United States. Nearly one-third of the economy is sensitive to weather and climate. Realizing this, NOAA seeks to provide decisionmakers with key observations, analyses, predictions, and warnings for a variety of weather and water conditions to help protect the health, lives, and property of the United States and enhance its economy. Increased funding of $2 million will accelerate research to improve hurricane intensity forecasts through targeted research for new models and observations. Another $3 million will support the operations and maintenance of 15 hurricane data buoys in the Caribbean, Gulf of Mexico, and the Atlantic Ocean. Finally, NOAA continues to strengthen the U.S. Tsunami Warning Program with an increase of $1.7 million to deploy additional deep ocean buoy (DART) stations. Strengthening the U.S. Tsunami Warning Program provides effective, community-based tsunami hazard mitigation actions including required inundation flood mapping, modeling, forecasting efforts and evacuation mapping, and community-based public education/awareness/preparedness for all U.S. communities at risk.

*Climate Monitoring and Research*

Society exists in a highly variable climate system, and major climatic events can impose serious consequences on society. The fiscal year 2008 budget request contains investments in several programs aimed at increasing our predictive capability, enabling NOAA to provide our customers (farmers, utilities, land managers, weather risk industry, fisheries resource managers and decisionmakers) with assessments of current and future impacts of climate events such as droughts, floods, and trends in extreme climate events. NOAA is building a suite of information, products and services to enable society to understand, predict, and respond to changing climate conditions. These activities are part of the U.S. Climate Change Science Program and are being conducted in collaboration and coordination with our important interagency partners including NASA, NSF, and the Department of Energy. We will continue to expand and improve access to global oceanic and atmospheric data sets for improved climate prediction and development of climate change indicators. NOAA will support the critical National Integrated Drought Information System with increases of $4.4 million to develop an integrated drought early warning and forecast system to provide earlier and more accurate forecasts of drought conditions. This request also supports the administration's efforts to create a U.S. Integrated Earth Observation System. With an increase of $0.9 million, we will support research on water vapor to refine climate models. In support of the Ocean Research Priorities Plan, NOAA will enhance our understanding of the link between ocean currents and rapid climate change with an increase of $5 million in support of research on this topic. Finally, an additional $1 million in funding will provide additional computational support for assessing abrupt climate change.

*Critical Facilities Investments*

The fiscal year 2008 President's budget request also includes important increases for critical facilities, necessary to provide a safe and effective working environment for NOAA's employees.

Of particular importance this year is the $3 million funding increase to begin design of a replacement facility at the La Jolla Southwest Fisheries Science Center. NOAA is also requesting $20.3 million for continued construction of the new Pacific Region Center on Ford Island in Honolulu, Hawaii. This increase in funding will allow NOAA to complete the exterior renovation of one of the Ford Island buildings, a crucial next step in the construction process.

CONCLUSION

NOAA's fiscal year 2008 budget request provides essential new investments in our priority areas while maintaining critical services, reflecting NOAA's vision, mission, and core values. The work NOAA accomplished in 2006 impacted every U.S. citizen. We will build on our successes from last year, and stand ready to meet the challenges that will surface in fiscal year 2008 and beyond. NOAA is dedicated to enhancing economic security and national safety through research and accurate prediction of weather and climate-related events, and to providing environmental stewardship of our Nation's coastal and marine resources. That concludes my statement, Madam Chairwoman. Thank you for the opportunity to present NOAA's fiscal year 2008 budget request. I am happy to respond to any questions the committee may have.

## NATIONAL SCIENCE FOUNDATION

**STATEMENT OF DR. ARDEN BEMENT, JR., DIRECTOR**

Senator MIKULSKI. Dr. Bement.

Dr. BEMENT. Yes, thank you, Chairman Mikulski, Senator Shelby, Senator Hutchison, and Senator Reed. I am pleased to present the National Science Foundation's (NSF) budget for the next fiscal year. Before I begin, however, I must express my heartfelt appreciation for your support of NSF's research budget in the fiscal year 2007 continuing resolution.

The President's request for NSF is $6.43 billion for fiscal year 2008. This represents a $513 million or 8.7 percent increase over the continuing resolution. Funding at this level will keep NSF on a course set by the President's American competitiveness initiative to drive innovation and sharpen America's competitive edge.

Let me just quickly highlight some of the activities we are emphasizing in the new budget. As the lead agency supporting polar research, NSF will invest $59 million for international polar year (IPY) activities. Climate change research and environmental observations will be a major focus of investigation. The outlines of environmental change from sea ice extent and retreating glaciers to shifting patterns in flora and fauna are already visible in the polar regions, with implications for the rest of the globe. Another research effort will be to explore how life adapts to and survives in the polar extremes. Other major thrusts during IPY will be education and outreach activities.

The budget includes an important new NSF-wide investment of $52 million to develop a next generation of computationally based discovery concepts and tools to deal with complex, data rich, and interacting systems. Cyber-enabled discovery and innovation aims to explore radically new concepts, approaches and tools at the intersection of computational and physical or biological worlds to address such challenges.

Understanding how human activity interacts with the oceans can help ensure that the world's oceans remain clean, healthy, productive, and stable. NSF will invest $17 million in four research areas identified in the ocean research priorities plan as critical near-term priorities, the complex dynamics that control and regulate marine ecosystem processes, variability of Atlantic Ocean currents, the response of coastal ecosystems to a variety of natural events and human influence processes and the development of new sensors for marine ecosystems.

Our request also includes $390 million for nano-technology research. NSF's investment in the interagency national nano-technology initiative will increase by nearly $17 million. We will increase our multidisciplinary and interagency regulatory support efforts that address the environmental health and safety impacts of

nano materials by exploring how nano particles and materials interact with the living world at all scales.

NSF will increase support by $8 million for the experimental program to stimulate competitive research (EPSCoR). EPSCoR investments provide strategic programs and opportunities for participants in States that have historically received less Federal R&D funding to make sustainable improvements in research capacity and national research competitiveness.

We moved EPSCoR to the Office of the Director in order to focus on the research potential and capacity of these States and to integrate this activity across NSF.

Creating a strong science and engineering workforce for the future is vital to maintaining the Nation's competitive edge. NSF will continue to fund a broad portfolio of successful programs that contribute to this goal: CAREER, aimed at junior faculty, advanced technological education aimed at 2 year colleges, Noyce Scholarships for promoting the development of a world-class math and science teaching corp and programs which aim to broaden participation of underrepresented groups and engage a broader spectrum of institutions such as the STEM Talent Expansion Program and Centers for Research Excellence in Science and Technology.

We will fund an additional 200 graduate research fellowships, increasing the total number of students supported to nearly 3,000.

In coordination with the Department of Education, NSF will continue funding for the highly successful Math and Science Partnership Program aimed at improving K to 12 science and math education and teaching. In addition to supporting ongoing awards, approximately $30 million will be available for new awards in fiscal year 2008.

Scientists, engineers, and students need world-class instruments with the best capabilities, the farthest reach, and the finest accuracy. NSF proposes an investment of $32.75 million to initiate advanced LIGO, a gravitational wave observatory that will improve detection rates by a factor of 1,000 over current Earth-based facilities. Observations made with this instrument could revolutionize our understanding of the universe.

The development of a petascale computing capability and world-class cyber-infrastructure will continue to be a high priority. These investments will significantly augment computational and networking capabilities available to scientists and engineers in all disciplines.

The Foundation strategy for research and education must be to keep all fields and disciplines of science and engineering healthy and strong. At the same time, we must be constantly alert to research that has the potential to transform the world. This is the kind of research that can overturn accepted paradigms and open entirely new fields for exploration.

The National Science Foundation looks to the future with these important considerations in mind and we have crafted our fiscal year 2008 budget to address them.

PREPARED STATEMENT

Madam Chairman, thank you for the opportunity to present a brief overview of our request and I look forward to any questions you may have.

[The statement follows:]

PREPARED STATEMENT OF DR. ARDEN L. BEMENT, JR.

Chairman Mikulski, Senator Shelby, and members of the committee, I am pleased to present the National Science Foundation's budget for the next fiscal year. Before I begin, I must express my heartfelt appreciation for your support of NSF's research budget in the Fiscal Year 2007 Continuing Resolution.

The President's request for NSF is $6.43 billion for fiscal year 2008. This represents a $513 million or 8.7 percent increase over the continuing resolution. Funding at this level will keep NSF on the course set by the President's American Competitiveness Initiative to drive innovation and sharpen America's competitive edge.

Let me just quickly highlight some of the activities we are emphasizing in the new budget. As the lead agency supporting polar research, NSF will invest $59 million for International Polar Year activities. Climate change research and environmental observations will be a major focus of investigation. The outlines of environmental change, from sea ice extent and retreating glaciers, to shifting patterns in flora and fauna, are already visible in the polar regions, with implications for the rest of the globe. Another research effort will be to explore how life adapts to and survives in the polar extremes. Other major thrusts during IPY will be in education and outreach activities.

The budget includes an important new NSF-wide investment of $52 million to develop a new generation of computationally based discovery concepts and tools to deal with complex, data-rich, and interacting systems. Cyber-enabled Discovery and Innovation aims to explore radically new concepts, approaches, and tools at the intersection of computational and physical or biological worlds to address such challenges.

Understanding how human activity interacts with the oceans can help ensure that the world's oceans remain clean, healthy, productive, and stable. NSF will invest $17 million in four research areas identified in the Ocean Research Priorities Plan as critical near-term priorities: the complex dynamics that control and regulate marine ecosystem processes; variability of Atlantic Ocean currents; the response of coastal ecosystems to a variety of natural events and human influenced processes; and the development of new sensors for marine ecosystems.

Our request also includes $390 million for nanotechnology research. NSF's investment in the interagency National Nanotechnology Initiative will increase by nearly $17 million. We will increase our multidisciplinary and interagency regulatory support efforts that address the environmental, health, and safety impacts of nanomaterials by exploring how nano particles and materials interact with the living world at all scales.

NSF will increase support by $8 million for the Experimental Program to Stimulate Competitive Research (EPSCoR). EPSCoR investments provide strategic programs and opportunities for participants—jurisdictions and States that have historically received less Federal R&D funding—to make sustainable improvements in research capacity and national research competitiveness. We moved EPSCoR to the Office of the Director in order to focus on the research potential and capacity of these States and to integrate this activity across NSF.

Creating a strong science and engineering workforce for the future is vital to maintaining the Nation's competitive edge. NSF will continue to fund a broad portfolio of successful programs that contribute to this goal: CAREER, aimed at junior faculty; Advanced Technological Education, aimed at 2-year colleges; Noyce Scholarships, for promoting the development of a world-class math and science teaching corps; and programs which aim to broaden participation of underrepresented groups and engage a broader spectrum of institutions, such as the STEM Talent Expansion Program and Centers for Research Excellence in Science and Technology. We will fund an additional 200 Graduate Research Fellowships, increasing the total number of students supported to nearly 3,000.

In coordination with the Department of Education, NSF will continue funding for the highly successful Math and Science Partnership program, aimed at improving K–12 science and math education and teaching. In addition to supporting ongoing awards, approximately $30 million will be available for new awards in fiscal year 2008.

Scientists, engineers, and students need world-class instruments with the best capabilities, the farthest reach, and the finest accuracy. NSF proposes an investment of $32.75 million to initiate Advanced LIGO, a gravitational wave observatory that will improve detection rates by a factor of 1,000 over current earth-based facilities. Observations made with this instrument could revolutionize our understanding of the universe.

The development of a petascale computing capability and world-class cyber-infrastructure will continue to be a high priority. These investments will significantly augment computational and networking capabilities available to scientists and engineers in all disciplines.

The foundation's strategy for research and education must be to keep all fields and disciplines of science and engineering healthy and strong. At the same time, we must be constantly alert to research that has the potential to transform the world. This is the kind of research that can overturn accepted paradigms and open entirely new fields for exploration. The National Science Foundation looks to the future with these important considerations in mind, and we have crafted our fiscal year 2008 budget to address them.

Madam Chairman, thank you for the opportunity to present a brief overview of our request. I look forward any questions you might have.

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION TSUNAMI WARNING PROGRAM

Senator MIKULSKI. Thank you very much for your excellent testimony. I'm going to get right to a couple of the questions that I know are pressing in my mind and one is the whole idea—I know of the—kind of the mantra, if you will, of NOAA, saving lives and saving livelihoods. I just want to note the early part of your testimony about early warning for weather. The school alerts. Admiral, I think this is an example of what NOAA develops, works with the private sector then with the larger public sector, truly that develops products, creates jobs, and saves lives and saves livelihoods.

My question then to you is, I'd like to go right to weather warning systems. In this year's budget, you have a set of requests for ensuring the tsunami warning system. We all note when the terrible tsunami hit Indonesia and other parts of the Pacific, the world was alarmed and wondered what it would mean to Hawaii, to other places in the Pacific rim. Could you tell us the status of where you are on the tsunami warning and could you also tell us where we are in terms of having enough resources to implement that because this Pacific is pretty big and what about, also the east coast?

TSUNAMI WARNING SYSTEM

Admiral LAUTENBACHER. Yes, thank you. I'd be happy to. First of all, it's a result of the request that we turned in, the strong support of Congress to provide the money and the authorization for us to do this work. We have right now in place 25 deep-water buoys that are spaced around the Pacific and into the South Pacific as well as the Atlantic and the Caribbean area to provide warnings for the gulf coast and east coast.

So that represents an increase from 6 to 25. We had six experimental buoys in the water at the time of the Indonesian earthquake, buoys off of Alaska and off of the Aleutian Islands and off of the west coast. We now have 25 of these deepwater buoys to protect us from all directions. Thanks to funding from Congress, we also have 24 by 7 coverage, so we have people on duty at the warning centers around the clock that provide those warnings. We are

equipped today to provide the warnings to the Atlantic, to the Pacific and Pacific rim and we now have, from our international efforts, a buoy in the Indian Ocean and we are working to provide the coverage for the Indian Ocean for a worldwide system. We're also building more interest, I think, from communities to become tsunami ready. We've had 10 to 20 new communities join that program.

Senator MIKULSKI. Do you have enough? In looking at this year's appropriations to keep the tsunami program on track?

Admiral LAUTENBACHER. We do. If we are allowed the increase of the $1.7 million, that will provide us the ability to complete the program and to maintain the continuity of it into the future.

SUSQUEHANNA BASIN MONITORING SYSTEM

Senator MIKULSKI. Something that is very important to us in the Northeast, is the Susquehanna River Basin, which stretches from upstate New York, goes through Pennsylvania, touches a bit on Delaware but mostly New York and Pennsylvania and comes into Maryland and converges at a place at Port Depost, that without this Susquehanna warning system, could have tremendous loss of lives and an inability to manage it. I understand that the Susquehanna Basin monitoring system needs upgrading but it is never included in the budget. Can you tell me where we are on that and we do know it needs to be modernized. It was originally put into play in the 1960s and technology has changed and the weather has gotten more severe.

Admiral LAUTENBACHER. It does need to be modernized. We work with the United States Geological Survey (USGS) to try to ensure that there is funding in those areas. Many of our systems need improvement for monitoring of streams. We have some programs to improve the technological capability of these monitoring stations. Our AHPS Program, which is the advanced hydrological prediction system, makes use of these gauges so we've made some increases but more remains to be done in that regard.

Senator MIKULSKI. I would really like, as part of the excellent work that you're already doing, to include funding for this. We're talking about maybe $2 or $3 million that impact four States and billions of dollars of private property and impacting also on Aberdeen Proving Ground. And I would really like you to take a look at that as we move through this and look ahead.

NATIONAL ACADEMY OF SCIENCES REPORT ON CLIMATE CHANGE

Let me get then to the whole issue of climate change, studying our planet and also the oceans. The National Academy of Sciences has issued a report encouraging that NASA and NOAA sign a memorandum of agreement and follow about 17 different projects to really coordinate and have a synergistic leveraging effect on Earth science and encourage this. Have you had a chance to review this document? Your reaction to this document? Where is this heading with Dr. Griffin and where would this be in this budget because again, following the reports of a National Academy, which means it has been peer reviewed recommendations. It's not what anyone of us wants but it seems like it would really leverage what we need to know and play a major role in climate change.

Admiral LAUTENBACHER. It's a very important study and it was one that was chartered and supported, obviously, by NASA and NOAA. I have read the report. I agree with the thrust of the report. Right now, both within NOAA and NASA, we are going through the detailed recommendations and looking at ways that we can bring them into effect. It's an important study for us, for both agencies. I have talked with Dr. Griffin about it and we take it very seriously. It did not come out in time to affect the fiscal year 2008 budget but it is going to be an important factor as we go through this year developing it.

Senator MIKULSKI. Well, NASA itself is under tremendous stress, as my colleagues here at the table would attest to, from exploration, completing the space station as well as science and we work very closely together but in order to leverage every nickel from every agency, to accomplish a science budget, I think it's really important that NOAA and NASA will get at how they can literally leverage each other, particularly in the science area, while we look at completing the very important responsibilities for this station and a crew return vehicle. So we've got a lot here that we're juggling, including my time.

I have other questions. We haven't forgotten the NSF. It shows you how important this hearing is. Senator Shelby, I'll turn to you.

AMERICAN COMPETITIVENESS INITIATIVE

Senator SHELBY. Thank you, Madam Chairman. As I mentioned in my opening statement, Admiral, I'm concerned that NOAA was noticeably excluded from the American competitive initiative, the ACI program. NOAA stands out as an international leader in marine and atmospheric science. We all know that and it's in line with other advanced science agencies that are part of ACI. Admiral, from what you know of ACI and I think it's a lot, what aspects of NOAA do you feel have the potential to be part of this innovative program?

Admiral LAUTENBACHER. I thank you, Senator Shelby. I think that we are part of the American competitiveness initiative. Obviously, not in the funding arena as most people know——

Senator SHELBY. Well, you are and you're not but go ahead.

Admiral LAUTENBACHER. We are and we're not and the issue was to talk about basic research. NOAA doesn't have a definition of basic research so there is an issue with that. But we do have a substantial and very important R&D budget of around $500 million, depending on what categories you use and we are absolutely essential for the competitiveness of our economy. As I pointed out, one-third of our GDP depends on the kinds of environmental information that make our country competitive in a variety of industries.

We have looked very carefully at things like aquaculture. Here's an area where we need to be innovative. We are, in fact, going to try to partner with the National Institute of Standards and Technology (NIST), to leverage some of the money that is in that budget because an $8 billion trade deficit is an important area of our economy so we are looking to try to provide more innovation in building the kinds of tools for sustainable aquaculture, for doing it in an environmentally sensitive way. We're looking at trying to be innovative, given the importance of the satellites.

We have taken the newest instruments that NASA has developed and have figured out how to assimilate them into our weather models and our climate models so we're getting right on the front edge of research to ensure that it provides benefit for the country. We are asking this year to experiment and use unmanned aircraft to help us gain more information. The Arctic is a region that would be very useful for us to work in with these kinds of instruments and certainly, severe weather. Hurricanes, storms at sea and that sort of thing. Phased array radar—as we talked about trying to increase the warning times. Remember that in 1985, our warning time for tornadoes was negative. It was minus 2 minutes to warn people about tornadoes. Today, it's an average of 13 minutes or so and the Enterprise, Alabama tornado was a warning time of about 18 minutes. That's because of the technology innovation that has been created from our research.

We're looking now towards dual polarization radar systems that will help improve that warning time and in the future, we have a program for phased array radars. These are the radars that the Navy has on their ships at sea, which could double for Federal Aviation Administration (FAA) types of radars as well as allow us to gain significant advantage in the warning time that may save more lives. So those are a few of the things that we're working on and there are many others, Senator. Thank you for the question.

NATIONAL SCIENCE FOUNDATION'S EDUCATION PROGRAMS AND AMERICAN COMPETITIVENESS INITIATIVE

Senator SHELBY. Dr. Bement, as I mentioned in my opening statement, the ACI provides substantial dollars on the research side of the National Science Foundation (NSF), yet hardly touches the education efforts at NSF. One of the goals of the ACI as well as the Augustine report, is to develop a sustained pipeline of highly trained U.S. students in scientific fields. You're very aware of this. I'm disappointed that the potential for educating our students to be the scientists and engineers of the future has not been a highlight of NSF's portion of the ACI. Can you take this opportunity here today to talk about the program, such as the math and science partnerships, HBCU and other K through 12 programs where NSF can achieve the goals our country needs to stay on the cutting edge and remain competitive?

Dr. BEMENT. Thank you for that question, Senator Shelby. Obviously I feel very strongly about education because educating the workforce of the 21st century is a major goal of the ACI.

Senator SHELBY. It's the key to our survival economically and our standard of living, isn't it?

Dr. BEMENT. Absolutely. And you know, throughout all of our programs, even our research programs, we include education components, because those who do the research are graduate students who eventually move into the private sector or academia and become the leaders of our innovation system. So it's critically important and we try to keep our program in balance at all levels, K to 12, undergraduate and graduate education. The 2008 request was structured at the time that the Academic Competitiveness Council was formed in response to the Deficit Reduction Act of 2005 and the sense of that legislation was that programs should be increased

on the basis of rigorous evaluation and evidence that they were meeting their goals.

All of our programs are evaluated. Some were evaluated at the time the budget was formulated. Some are scheduled for evaluation this year and next year. You'll note in our budget that the programs that had been shown effective were plus-ed up significantly by 10 percent or more. There were some that were flat funded, pending evaluation this year and next and hopefully those budgets will increase after they are shown to be effective.

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION DISASTER RESPONSE CENTERS

Senator SHELBY. In recent years, NOAA has greatly improved, as we know, the timeliness of severe weather warnings. You just mentioned this and I think you will continue to make progress there. It saves lives. Yet despite this warning, many lives are still lost as we know this last week. Effectively safeguarding our citizens from natural disasters involves more than just improving warning times. It requires better education, better planning, better infrastructure, and better emergency response. Does it not? I will—you said yes, didn't you?

Admiral LAUTENBACHER. Yes, absolutely.

Senator SHELBY. Last year, NOAA explored the viability of having a Disaster Response Center on the gulf coast, a NOAA center that can effectively respond to weather and marine disasters as well as serve as a focal point for innovative research that prevents future storms from inflicting such deadly results in the gulf. I think it is necessary. In your opinion, what would such a gulf center need to effectively meet the full spectrum needs of mitigating disaster response before, during, and after these weather events? Because they will occur.

Admiral LAUTENBACHER. Yes, sir. They will occur. And we found out that we didn't have a really coordinated response effort to Katrina. I'm very proud of what we did in the gulf in restoring and providing our services down there but the object of having a node that is in the area that has a trained staff, that has the kind of the facilities that are available in an area that is close enough to bring them together.

Senator SHELBY. Does that make a lot of sense?

Admiral LAUTENBACHER. It makes a lot of sense and we are working on regional types of initiatives within NOAA and this region would be obviously very critical to us.

Senator SHELBY. Thank you.

Senator MIKULSKI. Excellent point. Senator Reed, from an ocean State?

REGIONAL FISHERIES COUNCIL

Senator REED. Thank you very much, Madam Chairman and let me first thank Admiral Lautenbacher for the decision by NOAA to evaluate Rhode Island for the home port for the *Okeanos Explorer*, which is a ship that will be, I think, very, very useful in terms of your mission and also for the proposed increase in funding for ocean exploration in this budget. Thank you very much.

Let me turn, Admiral, to a question about the Regional Fisheries Council. Since 1977, the budgets for these councils increased about 25 percent whereas the National Marine Fisheries Service (NMFS) budget went up about 225 percent. We're asking the councils to do more and more with the Magnuson Act reauthorization. Could you tell if there is going to be a funding increase in this budget for regional fisheries councils?

Admiral LAUTENBACHER. There is an increase and it is a modest increase based on the increment that I was able to get for the Magnuson-Stevens reauthorization, so part of the funding that we've talked about there is going to improve the science, and the support that each of these fishery management councils must use to meet the requirements of this bill. It's important to us to maintain fishery councils that are capable of doing the work.

Senator REED. It seems that they have more responsibilities but the resources aren't concomitant with that responsibility, is that fair?

Admiral LAUTENBACHER. I would say that it has been difficult over the years, to keep pace with the increasing administrative and scientific requirements. I'm very sensitive to it and would like to do more in that area.

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION SEA GRANT PROGRAM

Senator REED. Thank you. The NOAA Sea Grant Program, for years, has been the mainstay of a great deal of research. In fact, I think at the University of Rhode Island is one of your largest programs and the program took a significant cut in fiscal year 2006 and the President's budget this year is simply a repeat, about $55 million. With increased discussion of ocean research, hurricane effects, tidal issues, all these things, why can't we do more with respect to sea grant funding?

Admiral LAUTENBACHER. Well, quite frankly, I would like to see a larger sea grant budget. We were very sensitive to the congressional compromise, I guess, at the level that we have today so I'd like to keep working on trying to build the sea grant budget but looking at the lay of the land and the priorities and what would be supported at levels we have today, continuing the congressional appropriated level was felt to be the best approach, given the resources that we have.

Senator REED. Now, one following question—I understand National Marine Fisheries Service put out a request for funding proposals for research and those proposals were presented—at least offered to sea grant programs but I understand they are being offered to consulting firms instead of the sea grant programs. Is there a reason why the sea grant program wasn't used?

Admiral LAUTENBACHER. NOAA offers numerous funding opportunities that directly relate to our core mission, including grants for cooperative research. In June and December 2006, NOAA published in the Federal Register Omnibus notices of consolidated sources of program and application information related to its competitive grant and cooperative agreement award offerings for fiscal year 2007. In addition, in February 2007 NOAA augmented the Omnibus notices by publishing in the Federal Register a Broad

Area Announcement (BAA) to request proposals for special projects and programs associated with the agency's strategic plan and mission goals as a mechanism to encourage research, technical projects, or sponsorships that are not normally funded through our competitive discretionary programs. While each grants program has specific guidelines regarding eligibility, in general, researchers at Sea Grant colleges are free to compete for NOAA funding.

EXPERIMENTAL PROGRAM TO STIMULATE COMPETITIVE RESEARCH

Senator REED. Thank you, sir. Dr. Bement, thank you for your testimony and for your leadership and you mentioned EPSCoR—that's to us a very important program. We fought hard to get EPSCoR into Rhode Island and the thought was and I think the theory is that EPSCoR would allow a much more active participation in the national research funds of NSF.

It seems, however, that the NSF distribution of research funds has changed little over 25 years, that there are States that continue to have a lion's share and then many other States are still at 10 percent or less. In fact, one-half the States are 10 percent or less of the funding and my sense was when EPSCoR was rolled out, it was to give you a big footprint all across the country and not just to particular areas of research. So are you evaluating ways in which every State can participate more aggressively in the NSF funding through EPSCoR?

Dr. BEMENT. Yes, we are, Senator Reed. I should point out that I felt that EPSCoR could be more strategic, more effective, so we moved the EPSCoR office into the Office of the Director and the reason that EPSCoR serves and interacts with all the divisions and all the research offices in the Foundation. So it provides much closer coordination through the NSF senior management team, not just rely on the base funding for EPSCoR, which is largely through the research infrastructure improvement program, but to use those improvements to be more effective in addressing the rest of our research budget, which is the $4.8 billion part.

We will be looking at the strategic initiatives to do that and we did have a workshop just last year where we brought the leadership from EPSCoR to the Foundation and they developed their report for "EPSCoR 2020". So that report is informing us on some of the initiatives, but we'll go beyond that report as well.

Senator REED. Thank you very much, Doctor and it's an important program and I encourage you to keep looking at in strategic dimensions. Thank you, Madam Chairman.

Senator MIKULSKI. Senator Hutchison.

WEATHER MODIFICATION RESEARCH

Senator HUTCHISON. Well, thank you, Madam Chairwoman. I think we have discussed a lot in the area of hurricane notification and certainly better timing of notification of hurricanes and violent storms; but in the last Congress, I tried very hard to work with NOAA on weather modification research and NOAA, frankly, blew me off, honestly—didn't care about it, didn't want it. They suggested that we go to the Office of Science and Technology Policy (OSTP) in the White House. OSTP didn't really want it either. My question is, am I missing something? Why wouldn't we want, in ad-

dition to knowing in a timely manner, how we protect against these violent weather storms, tornadoes, and hurricanes, why wouldn't we study if there are ways to modify these types of occurrences and do the research on weather modification in how one area affects another area, either for the better or the worse?

Admiral LAUTENBACHER. Certainly it's an important topic. If you ask our meteorologists and our folks that look at the kinds of things that we do—that we are charged to do in our authorization bills and appropriation bills, obviously the warning and the observation of current storms needs to take top precedence because we can't neglect our ability to be able to warn citizens and save lives today.

Senator HUTCHISON. Of course, of course.

Admiral LAUTENBACHER. And then the next point is that you start looking at the maturity of weather modification as a science and it's really in a basic phase of science. I don't want to force it off on my colleague here, who does basic science——

Dr. BEMENT. I'm glad you did.

Admiral LAUTENBACHER. But in all seriousness, NOAA doesn't engage in the giving of grants that are in the experimental, very grade level of asking fundamental questions. Those kinds of things are done by the basic research agencies and what we felt was that OSTP, as the head of the science enterprise for the U.S. Government, would be in a better position to allocate, to decide how to deal with the issue. I think it is an important issue and certainly we did not try to blow it off at all. I think we need to worry about it and think about it. Other countries do and we should do it as well.

Senator HUTCHISON. Well, where should it go, and where will it get thorough attention? OSTP didn't pick it up. We couldn't—actually, they stopped the bill, to be honest. So where should it go? Should it go to the National Science Foundation? Is that something that would fit there? It seems to me that it would more likely fit in NOAA but putting it in the White House where they have so many other areas of need, didn't seem to work either. Can either of you, Dr. Bement, can you suggest if there is something——

Dr. BEMENT. Senator, there are many ways in which NSF and NOAA collaborate closely and especially in the area of understanding extreme weather formation, hurricanes, and cyclonic events, and also research on climate change. We are very much interested in how best to model the intensification of hurricanes, and we do that very well, but also to deal with other cyclonic behavior like tornadoes, to understand how they form and how they propagate. It is that type of basic research and the cyber-infrastructure that goes with modeling and simulation that will inform us on how to mitigate these very extreme weather events and if modification is the only means of mitigation.

Senator HUTCHISON. Do you think that we could work to bring our bill back and is there a way to bring in NSF and NOAA, together, where I think there is more collaboration—the White House, OSTP, doesn't really—they don't have grantmaking. They're not on the ground studying the research and looking at ways to better notify residents of coming storms and floods. Is there a potential that we could work together to carve an area where we not

only look at notification, which is absolutely the first thing, I understand, but also whether research holds potential that we would lessen the impact of a hurricane forming 1,000 miles out in the ocean?

Dr. BEMENT. Well certainly, Senator, speaking for the National Science Foundation, we would continue to encourage grants from the universities and colleges to do research on that topic. We would certainly make that information available in the open literature.

Senator HUTCHISON. My question is, could I work with you, then, Dr. Bement, to try to set something up that might create a focus there at the NSF?

Dr. BEMENT. I'd be delighted to work with you.

Admiral LAUTENBACHER. If you'd allow us, we'll work with the Office of Science—we can work together, too, if you can provide for——

Senator HUTCHISON. I think that would be helpful since you have so much in that area.

Admiral LAUTENBACHER. We can continue this further than I thought it had been.

RENEWABLE ENERGY RESEARCH

Senator HUTCHISON. Okay. Let's work on that. The other area I want to quickly just ask about is, I am working on a bill now that would establish a council on renewable energy, which would again bring together a focus on research on renewable energy, including wave technology and wind technology, wind energy created in the oceans or the gulf. Do you think that we could do something by bringing all of those entities together? My bill actually puts in either the National Science Foundation or the Federal Lab Consortium for Technology Transfer but do you think that there is a potential and maybe you're already doing it and I would like to know, on wave technology for creation of energy and wind energy in the water as opposed to wind on land?

Admiral LAUTENBACHER. Yes, we are the definer of the resource, so to speak. We have models, wave models and we have the National Oceanographic Data Center that produces reams of data of interest. We don't do the actual research on the energy devices themselves but we're a part of what needs to come together.

Senator HUTCHISON. But you could provide the data on what kind of power would be in the different parts of the——

Admiral LAUTENBACHER. We could tell people where—what sorts of energies are available in different parts of our coasts at what times of the day, et cetera, how things change. We also do that for wind, so if you want to place a wind farm somewhere, you can come to NOAA and see where there are winds and what the potential capability from them is. The same thing works for waves but the actual research on the instruments themselves that you would use to harness the energy would be done by the Energy Department or by some other outfits in the academic or private sector.

Senator HUTCHISON. Okay. We're going to be working with the National Science Foundation on that as well. Thank you, Madam Chairman.

INTERNATIONAL POLAR YEAR AND THE ALASKA REGION RESEARCH VESSEL

Senator STEVENS. Thank you, Madam Chairman. I have noticed that there is a $59 million request for the IPY activities in the budget. I'm sure that you both know that great, desirable Alaska and the Alaska Delegation that this money be used in a way to try to bring about some understanding of the climatic activities in Alaska and really, also the social challenges that we face because of those changes.

We had a hearing last year on this matter and we had hopes that these monies would be spent in that way. I don't know what the plans are and I'd be happy to learn them.

I do hope that you will acknowledge the role that Alaska must play in the IPY activities. I also note the President now has a request for NSF for $42 million for the construction of a new Alaska region research vessel. This will replace the *Alpha Helix*, which is a ship that has been dedicated to science. The replacement will literally be a floating laboratory focusing on chemistry, biology, physics, oceanography, geology. The President had $56 million in the 2007 budget. This year there is $42 million. Had the first been available—this $42 million would have completed construction on that vessel. Unfortunately some people around here think that that is an earmark for Alaska. It's part of the budget and I'm very disturbed at the way it's been viewed by some people.

I also want to note that we have great hopes that NOAA will really use some of these funds available in the President's budget. You've got a 3.4 percent increase. I know, however, that it is still below the enacted level for 2006 and 2007 but we have some enormous changes taking place. One-half the fish that we provide from domestic sources are harvested off the North Pacific of my State and we are very fearful that the NOAA programs that have been ongoing, including the monitoring of sea life and research—we now have a petition to declare the beluga whales endangered in the Cook Inlet. They are there when the fish are there. They follow the salmon. But now we've got lawsuits about that, too. I do think that—you mentioned the Magnuson-Stevens Act—money—I do think that we have to continue our protection against overfishing those areas but I do hope that—my question for that introduction is, what are you going to be doing about IPY and what's the situation with regards to the ship?

Dr. BEMENT. Thank you very much, Senator Stevens. IPY is a 2-year activity but we hope to put in legacy systems that will continue research over the next 50 years on some of these global issues, including sustainability. With regard to the State of Alaska, I have been working, and so has our Office of Polar Programs, with the University of Alaska at Fairbanks. We've been trying to get a closer partnership with the Barrow Climate Change Research Facility. So some of the infrastructure elements that we'll be investing in under the International Polar Year will be first of all, an Arctic observing network that will be linked in with other countries involved in IPY, and this Arctic observing network will be part of what we call SEARCH, which is the study of environmental Arctic change, and hopefully, will eventually be part of GEOSS, the global

Earth observing system of systems. That is a platform to build upon.

Second, we need to be able to measure climate change on a year-round basis, not just in the summertime. At Toolik Lake, we want to make that a year-round facility and we'll be making investments to provide the energy and the heating requirements to make it a year-round facility.

Third, working with NOAA on the Barrow Climate Change Research Facility, that facility will be completed and will be operational next year, in time for the International Polar Year. As a result of a workshop we had approximately 1 year ago with the University of Alaska and the Barrow Arctic Science Consortium, we've identified a number of opportunities for those two entities to work closely together during IPY and that will require instrumentation of the research facility and also connectivity to broadband communications and to the Internet. That will give researchers at Barrow access to the University of Alaska computing facilities as well as their technical and scientific library capabilities. Those are a few examples of what we have in our plan for Alaska during the IPY.

With regard to the Arctic region research vessel, that program is going well. We had our solicitation. The proposal that was selected turned out to be a sole proposal, from the University of Alaska at Fairbanks. We intend the Arctic region research vessel to be a national asset, more than just an asset for the State of Alaska. There were some issues with the proposal but we will work with the University of Alaska to broaden the scope and improve the plans for managing the project.

We hope to be able to start that project this fiscal year and we will be requesting permission to do so in our 2007 plan.

INTERNATIONAL POLAR YEAR PROJECTS

Admiral LAUTENBACHER. Well, as you're aware, the bulk of the new IPY funding or additional funding is not within NOAA. We are partnering with the agencies as I am with NSF to leverage the basic research funding that is going into it. We have $15 million associated directly with the IPY projects, which is an increase of $1 million for new projects.

The bulk of that is in observations. We need to create, as I know you well know, a better long-term observing system for the Arctic. We've partnered with the Canadians to start a new Arctic Observation Station on Ellesmere Island. We have research crews into the Arctic with the Russians, where we are leveraging some of their money.

We are going to continue looking at the stratosphere of ozone measurements. We have put some money in for looking at improved weather, sea ice, and ocean wave forecasting in the Arctic. That's a special part of the world, as you are well aware. That will be an important part of refining the new information that comes out of it and using it, hopefully, to help improve our weather and climate forecasting. We are looking at predictions on improving arctic environment forecasts from seasonal to centennial. So we want to get into the climate prediction area for that part of the world.

A very important part of the data gathering is the $3.3 million we have for UAS systems, unmanned aircraft systems, a perfect

place to test and experiment with those kinds of systems for continuous observing, is the Arctic. We plan to look for a strong way of doing that during this IPY. Thank you, sir.

INTERNATIONAL WHALING COMMISSION

Senator STEVENS. I'd be remiss if I didn't mention that the meeting in Anchorage of the International Whaling Commission, for almost 25 years, through the great efforts of Sylvia Earl, who is one of your predecessors. We've had the opportunity for Alaska Eskimos to harvest a number of whales that they use to consume. It's not a commercial operation. Japan now, is using surrogates from Pacific and Caribbean Islands to try to threaten that program unless we all support the restoration of their commercial whaling activities, which we oppose, totally oppose.

I hope that you use all the efforts that you can to convince the Japanese that as far as I'm concerned, if they insist on destroying the Eskimos ability to continue their cultural activities and have that meat available for their personal use because of the world's desire not to support their commercial activities, I think this—I will lead the charge and get some severe reaction against the nation of Japan. They're wrong and that's a small group within their country. They should not be doing this politically. They should not be doing it with their Embassy group and I'm really very disturbed with Japan to think that they believe that those 15 to 18 whales that our people consume should be offset by commercial whaling off their country, we've now restored the populations. They are balanced and protected so I hope you will all help us emphasize to Japan, this is not their day to bargain commercial whaling against Eskimos right to survive.

Admiral LAUTENBACHER. Yes, sir. We're working very strongly to support your position. Thank you, sir.

Senator INOUYE. Thank you very much, Madam Chair. I'd like to say that the Senator from Alaska is absolutely correct.

Madam Chair, the two agencies represented here are the guardian angels of the State of Hawaii. Hawaii, as we all know, is rather unique, isolated. For example, we have 85 percent of all the coral reefs in the United States. We just opened up a 140,000 square mile marine sanctuary. That's more than all the national parks combined.

And we're counting upon NSF to save us because of the climate change studies. You may not know this, Doctor, but as a result of your work, real estate people are beginning to look at whether coastal properties are just as good as mountain properties.

Senator INOUYE. The coastal properties used to be the prime ones but now with the sea level getting up there, people are beginning to take a second look. So what do you do? Hawaii is very important and we're working at this moment, Madam Chair, with the NSF on the feasibility and possibility of establishing a major solar telescope on Mount Hale/Akala and we're pleased with the work that NOAA does for us. For example, without NOAA I don't think Hawaii or the rest of the world can get such fast advance notice on tsunamis. I don't have any questions. I just want to thank them and I thank you.

Admiral LAUTENBACHER. Thank you very much, Senator.

Dr. BEMENT. Thank you very much, Senator.

Senator MIKULSKI. Well, the Senator was absolutely right in describing his own State. Before he arrived, we asked about the status, particularly of the tsunami early warning system, which I knew that you've been a real leader in establishing and advocating with this subcommittee, regardless who was Chair. Yes, sir?

Senator INOUYE. I have one question for the National Science Foundation. This is my third meeting this morning and I had to attend all three. Can you devise some system for the United States Senate where we can attend several meetings at the same time? I go to one for 10 minutes, another one for 15 minutes and here I am and I didn't hear your testimony. I wanted to be here in the morning, Madam Chair but——

Senator MIKULSKI. Well, you're here. We're very well mindful of this.

Senator INOUYE. Can you get the NSF to do this for us?

Senator MIKULSKI. We can put that in with Senator Hutchison's Weather Modification Program.

Senator INOUYE. I move to increase——

Senator MIKULSKI. We'll get a College Senate Venture Capitol Fund.

Dr. BEMENT. I think, Senator, perhaps in the next 50 years, we might be able to discover how to clone you physiologically but I don't think we'll ever be able to clone you mentally.

Senator MIKULSKI. Senator Shelby.

Senator SHELBY. Thank you, I think.

Senator MIKULSKI. A wrap-up here.

FUNDING INCREASES FOR NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION SATELLITE PROGRAM

Senator SHELBY. The Senator is absolutely on point, though. We do have to be at a lot of places at the same time and we can't do this but we appreciate your appearance here today. NOAA—the NOAA 2008 budget shows a decrease in overall satellite costs. However, it is my understanding that Congress can expect future increased budget requests for our NPOESS.

At some point, NOAA needs to make up for the $4.1 billion gap between the program's original cost and its projected expenses. NOAA's satellite program dwarfs the funding levels of NOAA's other research and operation programs. Admiral, what assurances, if any, can you provide the subcommittee today, that any increased funding for NOAA's satellite programs, which are important, will not infringe on the budget request for NOAA's other research and operation programs, especially for ocean-related activities?

Admiral LAUTENBACHER. Yes, sir. That's a very important question. We have tried to work on, since I've arrived, a longer range budget forecasting and programming system. One of the results of that is that we have delivered to you, through the chain of command, a budget that goes out 5 years. So you can look—we can look and see what's there.

Senator SHELBY. We know. And you're deeply challenged here. I know this, as we are.

Admiral LAUTENBACHER. Yes, yes we are. But I think there is a realization, certainly through much of my chain of command in the

administration that you have to look at these longer term plans and if you commit to a certain year, you are committing to a budget estimate that must be accounted for. I assure you that I will continue to push to have that capitalization budget held separately from the operating budget. Can I guarantee what will happen as you have future difficult budget decisions to make? That's a very difficult thing for me to make projections and commit to today. But I think there is more interest in dealing with the capitalization budget on a rational basis and looking at the operational budget.

Senator SHELBY. Absolutely. And I think this is going to be one of our challenges here, too.

Admiral LAUTENBACHER. Yes, sir.

NATIONAL SCIENCE FOUNDATION DAYS

Senator SHELBY. The National Science Foundation. Raising the awareness of opportunities available through research grants for the National Science Foundation, we know will benefit the Nation and also bring researchers with great ideas to an agency that funds the best of the best research. One such way to do this is through the National Science Foundation days where Foundation staff go to schools and explain the grant application process and how to improve proposals submitted to the National Science Foundation because we're interested in the best of the best, aren't we, Doctor?

Dr. BEMENT. That's correct.

Senator SHELBY. Could you give us briefly, some examples of how high past NSF Days have had an impact on improving grant approval rates at locations where the National Science Foundation has conducted some of these meetings?

Dr. BEMENT. Yes, sir. As you know, NSF has conducted three NSF days in the State of Alabama over the last 5 years, the last one being at Tuskegee just last March. What we normally discover is that it is an opportunity for all of those who attend these NSF Days. Collectively, for all three of these events, we interacted with 400 principal investigators (PIs) in the State of Alabama. Those who attend the days have an opportunity to talk with program officers and they have an opportunity to talk with other PIs on how best to submit proposals to the Foundation and especially how to submit a successful proposal. The proposal volume does go up shortly after the NSF Days, in fact, sometimes it's a blizzard. That is not the end of the story. Beyond that, it is a matter of our program officers working closely with the PIs after they may have been declined the first time to improve their proposals so that their chances of being accepted the second or third time can go up.

We generally find that that's probably the best way to succeed in getting a grant. It's seldom the case that a grant is approved the first time but usually the second or third time. So the role of the program officer is really very critical.

I should tell you, however, that workload on our program officers has become very enormous, primarily because what was the salaries and expenses account, which we now call the agency operation and award management account, keeps getting truncated, one way or another.

The opportunity to improve success rate depends very much on the ability of the program officers to work with the PIs in improving their proposals.

EPSCOR PROGRAM ENHANCED

Senator SHELBY. How will the elevation of the EPSCoR program into the Office of the Director enhance its position and benefit states in making them more competitive?

Dr. BEMENT. It will get the senior management team more directly involved. We will be working more closely at that level, with the leadership in EPSCoR, to see what more we can do to re-invigorate the program and perhaps take a more strategic approach in improving the leverage of the EPSCoR investment. Those are the directions we'll be taking.

Senator SHELBY. Madam Chairman, I have a number of questions that I'd like to submit for the record, in the interest of time, if you would.

POLAR SATELLITES

Senator MIKULSKI. Certainly, Senator Shelby. We'll welcome those questions and before you might have to depart because I know we're—several appropriations hearings are going on simultaneously. I'd like to pick up on the issue of polar satellites and yesterday, Admiral Lautenbacher, you talked about it because it's accountability and I've got two big issues. You, with this satellite system and where we're heading this way also, with the research facilities that I think are getting overruns at the National Science Foundation.

You outline for me and I'd like you to outline and repeat for Senator Shelby, how you intend to stand sentry over this bill, to bring about the necessary management reforms and oversight that have been triggered by Nunn-McCurdy that I think we can expect a better stewardship of this because this is a program that has overruns. We're worried about spending more money to get less science.

This is one of the most crucial observatory tools that we're going to have, particularly for the climate crisis. But could you share, for the record which you shared with me and I'd like very much if Senator Shelby heard it because every time they hear about overruns, it's just one more excuse to not get support for what we need to do for the agency. Would you agree, Senator?

Senator SHELBY. Yes.

Admiral LAUTENBACHER. Thank you, Madam Chair. I would be very happy to do that. This obviously is a very critical issue to me personally and to the agency.

The entire NOAA team is energized to work on this problem. My Deputy for Satellites, Assistant Deputies, the Deputy Under Secretary. We have set a program management team. We have basically overhauled the management team inside of NOAA from top to bottom. We've made personnel changes where necessary in our chain of command and personnel changes within the program office and set up, basically an inspector general (IG)—internal IG to make sure that there is continual oversight. We have also ensured that we'll work collaboratively with the Department of Defense and NASA, the other two agencies involved and I meet quarterly with

the heads of acquisition for the Department of Defense (DOD) and Space, which is the Under Secretary of the Air Force and Administrator Mike Griffin from NASA. So we are definitely, personally involved and we have gotten the personal attention of the presidents of and chief executive officers (CEOs) of Northrop Grumman and Raytheon, who sit in those meetings, too.

We have program monitoring from the Government down to very fine details inside the program. We are getting independent cost estimates frequently. We have independent review teams looking at it from outside to make sure we have independent advice to make sure people are on track. We track schedules and dollars on an earned value management system down four or five levels into the program and that information is reported daily and weekly, internal to the program.

We are changing the contract to set up the right incentives. That was another criticism and we will reward performance versus just hanging in there. We've also revamped the program so that it is less risky. We have reduced the amount of difficult technical milestones that contractors had trouble meeting, to a level we believe they can be met. I am confident that the schedule that we put in place with the new funding profile is going to achieve success, and I assure you that everyone at NOAA, from top to bottom, is committed to making that happen, Madam Chair. Thank you.

Senator MIKULSKI. Senator Shelby, does that give you a little bit more assurance on this matter?

Senator SHELBY. It does. I like what they're doing and you're trying to do. I think you just need some more funds.

NATIONAL SCIENCE FOUNDATION FACILITY FUNDING

Senator MIKULSKI. Let's go though, to also another area of accountability, is with the National Science Foundation. We're very concerned about the research facilities and also certain tools for research. The Alaska region research vehicle that Senator Stevens spoke about is really important. So we don't in any way minimize the need to have this vessel. And it's a research vessel, as I understand it, Director Bement, that has to operate in ice under very rugged conditions. But at the same time, it's running $25 million over the original estimate.

Now, this ship could run aground here, with cost overruns and as Senator Stevens said, he's being treated like it's an earmark when essentially it's an integral part of Arctic research. And when the overruns come, it sounds like we're picking and porking out here in some Alaska toy when it's not. It is a very important research tool but we're very concerned about this $25 million cost overrun. Now why are there overruns and what are you going to do about it?

Dr. BEMENT. Yes, Senator, thank you. This vessel was scoped a long time ago. The design was completed in 2004. The original baseline budget was set at that time. It is now being re-evaluated. Since that time, there have been changes in regulations, some having to do with environmental operations, some having to do with safety and operating in the Arctic region. And as you know, this ship will operate in ice up to 2 to 3 feet thick so it will be a great advancement over the *Alpha Helix*.

In addition to that, commodity costs, especially the cost of steel has skyrocketed because of global demand, especially from China. Furthermore, shipyards are now value pricing their operations, primarily because they're overloaded with building ships for the oil industry. So it's very difficult to get a shipyard scheduled, and furthermore, the cost of construction in a shipyard these days has also escalated. As we move into the coming year, we're going to have to revisit the budget. I can assure you it will be higher than it is now. This is just the way things are turning out, but the sooner we get a start on that project, and that's one of the reasons we want to start it in 2007, the more I think we can mitigate these cost increases over the next year or two.

Senator MIKULSKI. Do we know how much this is going to cost?

Dr. BEMENT. I'm sorry?

Senator MIKULSKI. Do we—you know, it's a pattern here that I've now experienced in other subcommittees and we're seeing it here, that there was a project. It was 2004. Then we're operating on data that is several years old and then we don't know what the cost is. But when we get into these things and they get started, it has congressional support because of the scientific necessity and then there we are. Now, do we know what this is actually going to cost?

Dr. BEMENT. Madam Chair, we will very shortly revisit the design of this ship, based on current regulations. The redesign will take place over the next 4 months or so, and we then will re-baseline the cost. We will be able to report to you at that time what we think the real cost will be for this ship.

Senator MIKULSKI. But at the same time that you're doing that, are you also going to be rebasing these costs?

Dr. BEMENT. Oh, we do that on a continuing basis, not only internal to the Foundation but also with the grantees that have the responsibility for this ship.

Senator MIKULSKI. Well, just know, we believe that this vessel is important, just like the satellites are important. And the world is mesmerized by Arctic research and now we're also looking at how to have more collaborative work with Greenland. We could elaborate on that. But when these things go $25 million, we also know that the ALMA telescope is $16 million over. Now why is the ALMA telescope $16 million over?

Dr. BEMENT. The ALMA telescope is pretty much the same story. The reflectors on the telescope are made out of a very expensive nickel-based alloy in order to prevent any thermal expansion, because it's a very precise instrument. The cost of those alloys have gone up enormously, again because of world pressure on commodity costs, which was the biggest contributor to the cost of the instrument. There are other factors that also contributed to increased project costs: construction costs in Chile and some upper management costs that escalated because it is a 50/50 joint venture between the United States and the European Southern Observatory that has been a very difficult teaming relationship to put together and to operate.

Senator MIKULSKI. But then my question is—so what? Where do we go from here? And what again are the fiscal disciplines coupled with making sure that the fiscal discipline is so severe we lose the point of the project?

Dr. BEMENT. Madam Chairman, we have re-scoped the project. We've reduced the number of telescopes from 24 to 50 in order to absorb some of the cost increases yet still retain the transformational capability for this facility. We have put in cost tracking methods and other management techniques and it has undergone a high level senior review of all elements and costs associated with the project. The project has been re-baselined. We have re-established a contingency. We have better management tools in place and I think based on the reports that I get, are confident that we'll be able to stay within the current budget.

Senator MIKULSKI. Well, you have a big responsibility here in this agency but I can tell you that as you look at how all of your research endeavors add up, if they begin to have overruns, there will have to then be a moratorium on new projects. I mean, the scientific community needs to know that. That is, once that goes up, there is not just unlimited—I'm not threatening. I'm not saying it. We would not do arbitrarily or capriciously. But every time we turn around, there is some big ticket being added then somebody else comes in and wants to do something new and we have inherited what are now becoming legacy projects and just these two alone come to $41 million in cost overruns. We know that instruments are expensive. We know about the global pressures on commodities, et cetera. At the same time, we are where we are. And, therefore, there needs to be both within the agencies themselves, all within our portfolio, NASA, NSF, NOAA—all—the FBI with their info-tech boondoggle that they are now getting back on track.

The subcommittee is going to be very stern on accountability because it's the only way, particularly in these off austere budget times, that we must get value for the mission and I'm very—I want everyone in the Commerce, Justice, Science to understand it's not being prickly but we just face a real reality.

Dr. BEMENT. Well, Madam Chairman, I accept that. As a matter of fact, I appreciate it because I stake my personal accountability on these projects.

Senator MIKULSKI. And I know you do—we know each other from the National Institute of Standards and Technology.

Dr. BEMENT. And between myself and the Deputy Director and our senior management team, we are spending much more time on this. We are having more frequent reviews and I can assure that going forward, we are going to watch these costs like a hawk.

ADDITIONAL COMMITTEE QUESTIONS

Senator MIKULSKI. What we want to say very loud and very clearly to both the agency directors, to the scientific community and then to the private sector with whom we have to have contracts with, we've got to really—we've got to really exercise every modern fiscal discipline technique at our disposal and the Congress loves science and technology. So do the American people. But we can't rubber stamp. So that's kind of what we wanted to talk about. We also want to encourage ongoing cooperation in ocean research. That's something we'd like to talk about more in another day, also really encouraging our young people in science. I think Senator Shelby raised this. I don't want the subcommittee to end on a downer. It's because Senator Shelby and I are so committed to the

fact of really rising above the gathering storm. But we have to also rise against what we fear is a gathering fiscal morass.

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

QUESTIONS SUBMITTED TO VICE ADMIRAL CONRAD LAUTENBACHER, JR.

QUESTION SUBMITTED BY SENATOR BARBARA A. MIKULSKI

PROGRESS ON THE U.S. OCEAN ACTION PLAN

*Question.* In response to the U.S. Ocean Commission, the Administration developed the "U.S. Ocean Action Plan". To date what progress has been made regarding implementation of this plan? To what extent does the "U.S. Ocean Action Plan" coincide with the recommendations of the Joint Ocean Commission?

Answer. In January 2007, the Committee on Ocean Policy released the "U.S. Ocean Action Plan Implementation Updates." Seventy-three of the 88 actions have been completed. The remaining actions are progressing on schedule.

The U.S. Ocean Action Plan (OAP) was a required response under the Oceans Act of 2000 to the U.S. Commission on Ocean Policy. Therefore, it is difficult to directly map the OAP to the recommendations of the combined Commissions, represented by the Joint Ocean Commission Initiative. In broad terms, both Commissions outlined the need for: enhancing ocean leadership and coordination, developing the institutional capacity to coordinate across jurisdictional boundaries, and strengthening the agency structure in phases in order to enhance the goals of addressing management needs through an ecosystem-based approach.

"COUNTERFEIT" FISH

*Question.* A recent article in the Washington Post cited an example of counterfeit fish being sold to restaurants and consumers in Florida. The article reported how undercover agents ordered grouper at 24 Florida restaurants, but the alleged grouper at 17 of 24 restaurants sampled by investigators was actually another, less desirable species, according to DNA analysis conducted. NOAA reported that, in many instances the "grouper" was actually farm-raised Asian catfish from Vietnam or other species that swim with grouper, and the filets have shown signs of salmonella and traces of illegal carcinogenic fungicides.

How rampant of a problem is imported counterfeit fish?

Answer. Mislabeled seafood products are a significant problem in the marketplace worldwide. While no definitive statistics exist about the rates at which fish is mislabeled, the NOAA Seafood Inspection Program (SIP) encounters several types of mislabeling that affect the economic integrity of seafood products. Examples of mislabeling include, substituting a lower cost species for a higher cost species, such as the grouper example in your question, short weighing, and altering the country of origin or fraudulently identifying the area fished and port of landing.

A recent example of the problem is provided by a 2005 case where NOAA SIP rejected over nine million pounds of seafood that was destined for a large retail supermarket chain. Another recently completed investigation disclosed the importation of approximately 3 million pounds of falsely labeled fish product over a three year period. During this investigation NOAA seized approximately 300,000 pounds of this illegal fish which contained malachite green—a known carcinogen banned by the FDA. NOAA SIP works with many retailers to ensure that the seafood they buy meets their quality levels and these scenarios are not untypical.

*Question.* Does NOAA have enough resources to adequately address this problem?

Answer. Currently, NOAA has approximately 150 special agents and 20 enforcement officers dispersed nationwide. Incidents of mislabeling are an international problem which provides substantial financial profits to those who participate in this illegal activity. Although NOAA's enforcement resources are primarily focused on importers and exporters, this illegal activity extends well beyond these operations to included distributors, wholesalers, retailers and restaurants. Investigations can take years to complete, are labor intensive, demand extensive financial and document analysis, and in many instances requires the cooperation of other countries. NOAA leverages its investigative resources by concentrating on the primary businesses (importers, exporters or large distributors) which have the greatest impact on this illegal activity.

*Question.* What is being done to prevent this problem from escalating?

Answer. Continued investigations and subsequent successful prosecutions of those found violating our laws is the best deterrent. Our investigations have resulted in the seizure and ultimate forfeiture of hundreds of thousands of pounds of mislabeled product worth millions of dollars on the market. Additionally, the imposition of fines and penalties in the millions of dollars and, in some cases, incarceration has a significant impact. In one recent case, two businesses were forfeited and we have observed the dissolution of business entities involved in illegal activities as a result of our enforcement activities. We continue to focus on the most blatant violators in an effort to have the largest impact on this illegal activity. Publication of our investigations and education of the public through various media sources is extremely helpful.

AQUACULTURE

*Question.* The NOAA budget for fiscal year 2008 requests an increase of $3 million to develop a regulatory program for marine aquaculture. What is the state of the U.S. marine aquaculture industry? What investment are our international competitors doing in regard to marine aquaculture? Are there technological barriers to more marine aquaculture? What is being done to reduce those technological barriers?

Answer. The U.S. marine aquaculture industry is relatively small compared with overall U.S. and world aquaculture production. U.S. aquaculture production totals about $1 billion annually, compared to world aquaculture production of about $70 billion. Only about 20 percent of U.S. aquaculture production is marine species.

The largest single sector of the U.S. marine aquaculture industry is molluscan shellfish culture (oysters, clams, mussels), which accounts for about two-thirds of total U.S. marine aquaculture production, followed by salmon (about 25 percent) and shrimp (about 10 percent). Current production takes place mainly on land, in ponds, and in coastal waters under state jurisdiction. Recent advances in offshore aquaculture technology have resulted in several commercial finfish and shellfish operations in more exposed, open-ocean locations in state waters in Hawaii, New Hampshire, and Puerto Rico.

Marine aquaculture includes the production of hatchery fish and shellfish which are released into the wild to support commercial and recreational fisheries as well as to enhance or rebuild wild stock populations. Marine aquaculture also includes the production of ornamental fish for the aquarium trade and plant species used in a range of food, pharmaceutical, nutritional, and biotechnology products. There are also related industries—such as equipment production, feed, and nutrition companies and aquaculture consulting service firms—that provide support to the global aquaculture industry.

According to the United Nations Food and Agriculture Organization, the United States ranked 10th in total aquaculture production in 2004, behind China, India, Vietnam, Thailand, Indonesia, Bangladesh, Japan, Chile, and Norway. The United States imports significant volumes of marine aquaculture products from these and other countries, resulting in an annual seafood trade deficit of about $8 billion.

There is significant potential to increase aquaculture production in the United States using today's technology. Preliminary production estimates by NOAA indicate that domestic aquaculture production of all species could increase from about 0.5 million tons annually to 1.5 million tons per year by 2025. The additional production could include 760,000 tons from finfish aquaculture, 47,000 tons from crustacean production, and 245,000 tons from mollusk production. Of the 760,000 tons of finfish aquaculture, 590,000 tons could come from marine finfish aquaculture.

The major barriers to marine aquaculture are finding suitable sites in coastal areas (where aquaculture must compete with many other coastal uses), clarifying the regulatory and environmental requirements for existing as well as new marine aquaculture operations (including offshore), and developing technologies and best management practices to ensure that various types of production systems are compatible with marine ecosystems. There is also a need to develop hatchery operations to provide fingerlings for finfish production systems.

Business needs regulatory certainty to make sound investment decisions and obtain financing. There is currently no way to obtain a permit for aquaculture in federal waters under existing laws and regulations. Thus, in response to the U.S. Commission on Ocean Policy and the U.S. Ocean Action Plan, the National Oceanic and Atmospheric Administration (NOAA) and the Department of Commerce drafted and sent to Congress the National Offshore Aquaculture Act of 2007. The Act would provide the necessary authority to establish a regulatory framework and authorize research for all types of marine aquaculture.

Those concerned about the impacts of offshore aquaculture need to know the industry will be held to strict environmental standards by the proposed legislation.

One way to address these needs at the same time as those of the marine aquaculture industry is through demonstration projects with research partners so that technologies and practices can be tested, their impacts evaluated, and systems improved. Another is to support research projects to develop alternatives to use of fish oil and fish meal in aquaculture feeds, develop culture methods for new species of value to commercial production as well as stock enhancement, and study the impacts (including cumulative impacts) of marine aquaculture on marine ecosystems.

Since 1998, the National Oceanic and Atmospheric Administration (NOAA) has funded a total of $15 million through the National Marine Aquaculture Initiative (NMAI) to support research to boost the production of commercially and recreationally valuable marine shellfish and finfish species in the United States. Projects have responded to key scientific, engineering, environmental, and economic questions for aquaculture. For example, NMAI has funded studies of candidate species, health and nutrition, best management practices, ecosystems monitoring and management, engineered production systems, and legal and operational frameworks.

In September 2006, NOAA awarded $3.6 million in competitive grants to 11 sustainable marine aquaculture demonstration and research projects under NMAI. The initiative is managed by the NOAA Aquaculture Program and administered by NOAA Sea Grant. The 2006 NMAI funding supports projects to assess the commercial potential of marine aquaculture, the feasibility of stock enhancement, the environmental impacts of aquaculture in various environments, as well as research on key aquatic animal nutrition and health issues.

Another way in which NOAA is working to address technological barriers is through a planning process with the Department of Agriculture and the Department of Interior to develop a national aquatic animal health plan. This plan, which has been in development for four years and has included stakeholders from industry and state agencies, will provide protection for the nation's cultured and wild aquatic resources, facilitate safe commerce of live products, and improve the availability of diagnostic laboratories for aquaculture. This plan will be completed by summer of 2007.

NOAA also has marine aquaculture research capabilities at NOAA laboratories within the National Marine Fisheries Service and the National Ocean Service, and research and extension capabilities through state Sea Grant Programs. Congressionally mandated research—such as an open ocean aquaculture demonstration project at the University of New Hampshire and research around the country on oysters, shrimp, crab, and other species—has also helped to advance the state of marine aquaculture technology. Other federal agencies and research institutions are also investing in research to address technological challenges. For example, the Advanced Technology Program within the National Institute for Standards and Technology has supported a number of advanced research and technology projects. In addition, aquaculture companies have received support for the development of commercial products and services through the Small Business Innovation Program (SBIR) at NOAA and the U.S. Department of Agriculture and, in the past, through the Saltonstall-Kennedy Program.

NOAA'S CENTER FOR WEATHER AND CLIMATE PREDICTION PROJECT

*Question.* The Committee was recently informed that the planned Center for Weather and Climate Prediction in College Park is behind schedule and cost estimates have increased for NOAA "above standard" improvements.

What are the consequences to NOAA's budget request due to the delayed construction schedule?

Is NOAA reexamining the "above standard" improvements in order to lessen any budgetary impacts?

Answer. The NOAA Center for Weather and Climate Prediction (NCWCP) project is a build and lease-back project under which a private developer is responsible for building a facility, in this case on property owned by the University of Maryland. The developer will own the building once built, and NOAA will lease back the building. The developer is only responsible, under the development lease with the General Services Administration (GSA) who is managing the project for the government, to build general office building space. Tenant specific requirements—such as enhanced heating, ventilation, air conditioning, electrical, and lighting capabilities—required to support specialized (above office-standard) NOAA operations such as weather and climate modeling, laboratory operations, analysis of global environmental satellite data, and protecting the reliable flow of critical weather warning, forecast, and data products to the Public must be paid for by NOAA as part of the initial construction costs of the building.

NOAA has been apprised by GSA that, due to delays in the construction schedule and general increases in construction costs (labor and materials) at rates higher than those projected by GSA when the initial cost estimate for the project was developed in 2002, NOAA should expect increases in the cost of above-standard construction work. NOAA has not yet received final pricing of above-standard construction work from the developer. Once we have received this pricing information, we will assess the impact on fiscal year 2008. Failure by the government to timely fund these costs could further delay the construction schedule; and expose the government to claims from the developer for government-caused delays and associated financial damages.

We are continuing to re-examine areas where we can take reductions in above-standard requirements without compromising the mission conducted at the facility, so as to mitigate budgetary impacts.

NPOESS AND GOES–R FUNDING REQUEST

*Question.* Please provide a detailed breakout of the NPOESS and GOES–R program funding requests for fiscal year 2008 for each of the major aspects of the programs.

Answer. The fiscal year 2008 request for the Geostationary Operational Environmental Satellite Series R (GOES–R) Series is $279 million. The breakout of the budget request, in millions of dollars, is as follows:

[In millions of dollars]

| Development Activity | Request |
|---|---|
| System Acquisition and Operations | 45 |
| Spacecraft | 14 |
| Instruments: | |
| Advanced Baseline Imager (ABI) to meet the production schedule for launch and provide real-time environmental data and uninterruptible observations | 54 |
| Solar Imaging Suite (SIS) preliminary design | 55 |
| Space Environmental In Situ Suite (SEISS) preliminary design | 21 |
| Geostationary Lightning Mapper (GLM) continuation of the acquisition and operations phase | 17 |
| Government Program Office Operations | 73 |
| TOTAL GOES–R Fiscal Year 2008 Request | 279 |

The combined fiscal year 2008 request for the National Polar-orbiting Operational Environmental Satellite System (NPOESS) is $666 million. Of that amount, NOAA's portion is $331 million, with the remaining funding coming from the U.S. Air Force. The breakout of the fiscal year 2008 budget request, in millions of dollars, is as follows:

[In millions of dollars]

| Development Activity | Request |
|---|---|
| Program Acquisition—NPOESS Prime Contract: | |
| Ground Systems | 98 |
| Spacecraft and Instruments | 340 |
| System Engineering/Program Management | 142 |
| Government Program Office Operations | 86 |
| TOTAL NPOESS Fiscal Year 2008 Request | 666 |

GOES–R PROGRAM TRL LEVEL

*Question.* The NOAA budget justification states that the GOES–R satellite launch date is now "no earlier than 2014" and that this provides "additional opportunities to mitigate identified risks in GOES–R development."

Using the NASA defined Technical Readiness Scale (TRL), what level is the GOES–R program currently in? What TRL level will GOES–R be in at the end of fiscal year 2008?

Answer. Technology Readiness Levels (TRL) for GOES–R are:

| Instrument | Current TRL (September 2006) | Projected TRL (September 2008) |
|---|---|---|
| Advanced Baseline Imager (ABI) | 5 | 6 |
| Solar Imaging Suite (SIS) | 6 | 6 |
| Space Environmental In-Situ Suite (SEISS) | 5 | 6 |
| Geostationary Lightning Mapper (GLM) | 4 | 5 |
| Spacecraft contract | ([1]) | 5–6 |

[1] Not awarded.

GOES SATELLITE CONSTRUCTION TIME

*Question.* Please provide a summary of how long it took to build each GOES satellite starting with GOES–11 through GOES–P.

Answer.

*GOES I–M Series*

Contract award for the Geostationary Operational Environmental Satellites (GOES) I–M Series was made on 1985. The first in the series, GOES–I, was launched in April 1994.

| Satellite | Contract Award Date | Satellite Launch |
|---|---|---|
| GOES–L (GOES–11) | 1985 | May 2000 |
| GOES–M (GOES–12) | 1985 | July 2001 |

*GOES N–Series*

GOES N–Series used the same primary instruments as the GOES I–M Series but a different spacecraft.

| Satellite | Contract Award Date | Satellite Launch |
|---|---|---|
| GOES–N (GOES–13) | 1998 | May 2006 |
| GOES–O | 1998 | Spring 2008 |
| GOES–P | 1998 | Spring 2009 |

For both the GOES I–M Series and GOES N–P Series, it took longest to build and launch the first satellite in the Series. The second and subsequent satellites in the Series are the same design as the first satellite.

PROBABILITY OF GOES–R OPERATIONAL GAP

*Question.* What is the estimated probability of an operational gap if GOES–R launches in 2013? 2014? 2015?

Answer. In order to minimize the probability of an operational gap, NOAA maintains two operational spacecraft, Geostationary Operational Environmental Satellite (GOES)-East and GOES-West, and an on-orbit spare at all times. The on-orbit spare can be activated to operational status in a short period of time in the event either GOES-East or GOES-West satellites fail.

NOAA constantly assesses the health of the spacecraft and instruments and uses sophisticated statistical techniques to calculate when satellites are needed to avoid an operational gap. Based on these analyses, NOAA has determined that the GOES–R satellite needs to launch in December 2014 to serve as the on-orbit spare. Two years later it will replace GOES–O as an operational satellite.

Launching GOES–R in December 2014 results in a 78 percent probability of two spacecraft availability.

Launching GOES–R in 2013 increases the probability to 86 percent of two operational spacecraft.

Launching GOES–R later in 2015, decreases the two-operational spacecraft availability to 62 percent.

*Question.* If an operational gap were to occur in GOES–R—what backup plan exists (e.g., utilizing other systems (allied or domestic))?

Answer. A single catastrophic failure of GOES–R would not compromise our ability to provide coverage. Should GOES–R sustain a catastrophic failure, GOES–S is planned to be launched (April 2016) in sufficient time to support the planned GOES–R activation in 2017. If the GOES constellation were to sustain multiple catastrophic failures, then NOAA would continue to rely on potentially degraded sup-

port using existing satellites from the GOES–N Series, or a degraded single satellite constellation located over the central United States.

Further, NOAA would supplement data needs from all available NOAA and non-NOAA polar-orbiting environmental satellites. NOAA also has on-going international agreements to provide mutual geostationary environmental satellite backup with the European Organisation for the Exploitation of Meteorological Satellites (EUMETSAT) and the Japanese Meteorological Agency (JMA) in the event of premature system or launch failure. This arrangement is based on previous experience of NOAA providing backup to JMA, and EUMETSAT providing backup support to NOAA. Under the single satellite constellation, NOAA would lose the ability to detect and track storms at the edges of the Atlantic and Pacific Oceans. This could lead to degraded hurricane forecasting in the Caribbean and Atlantic coasts, and Hawaii, respectively.

*Question.* If an operational gap were to occur in GOES–R—what backup plan exists (e.g., utilizing other systems (allied or domestic))?

Answer. A single catastrophic failure of GOES–R would not compromise our ability to provide coverage. Should GOES–R sustain a catastrophic failure, GOES–S is planned to be launched (April 2016) in sufficient time to support the planned GOES–R activation in 2017. If the GOES constellation were to sustain multiple catastrophic failures, then NOAA would continue to rely on potentially degraded support using existing satellites from the GOES–N Series.

Further, NOAA would supplement data needs from all available NOAA and non-NOAA polar-orbiting environmental satellites. NOAA also has on-going international agreements to provide mutual geostationary environmental satellite backup with the European Organisation for the Exploitation of Meteorological Satellites (EUMETSAT) and the Japanese Meteorological Agency (JMA) in the event of premature system or launch failure. This arrangement is based on previous experience of NOAA providing backup to JMA, and EUMETSAT providing backup support to NOAA.

*Question.* If an operational gap does occur—what is the impact to short-term forecasting ability?

Answer. In the event there was a gap in coverage from the Geostationary Operational Environmental Satellite (GOES), the most immediate impact would be loss in the quality of short term weather forecasts and timeliness of data refresh from every 30 minutes with GOES to every 6 hours with polar-orbiting satellite data.

Without GOES, forecasters would be blind to short-term variations in hazard weather events such as hurricanes, thunderstorms, flash floods, low clouds and fog.

---

## QUESTIONS SUBMITTED BY SENATOR DIANNE FEINSTEIN

### COASTAL NON-POINT POLLUTION

*Question.* The Coastal Zone Management Act gives authority to coastal states to implement a coastal nonpoint polluted runoff control program and both the Pew and U.S. Ocean Commissions found that polluted runoff is the single greatest source of ocean pollution. How can you assure us that coastal states will get adequate funding to carry out these coastal water quality programs in the 2007 budget? And because the President's 2008 budget provides zero funding for this program, what will you do to restore funding for this vital program?

Answer. Although NOAA was not able to fund the non-point grants within the fiscal year 2007 plan, NOAA has funded the Coastal Zone Management Grants at $65.7 million. States can reallocate resources within their programs to address their highest priorities, including the coastal water quality programs. In addition, states benefit from NOAA's development and dissemination of management tools and scientific research on nonpoint source pollution problems and responses.

NOAA continues to support state Coastal Nonpoint Source (NPS) Management Programs by fostering program integration, and by helping coastal states focus on managing the cumulative and secondary impacts of development to prevent NPS pollution. NOAA is also investing in monitoring, research, and modeling to support NPS management, such as through the development, testing and transfer of innovative technologies and best management practices to control polluted runoff. We are actively pursuing efforts to link coastal growth and development management with water quality protection by fostering a greater emphasis on community development and planning efforts to address growth issues in a sustainable manner.

The Non Point Implementation Grants have not been included in the President's Request for NOAA for a number of years, as significant funding for this issue is requested through other Federal Agencies.

NOAA and the Coastal States Organization (CSO) have undertaken a project to engage coastal managers and stakeholders to envision the future of coastal management. The goal of this visioning process is to gather feedback on priority issues and innovative ideas for improving the CZMA and the National Coastal Management Program. State coastal managers have identified decreasing water quality as one of the highest priority threats to the coastal resources of their states. Workshops will be held for stakeholders, coastal management experts and other Federal agencies to generate innovative techniques and solutions, explore their feasibility, and assess their potential impacts and degree of support among constituents.

COASTAL ZONE MANAGEMENT GRANTS

*Question.* Funding for California's core coastal management program has been capped at $2 million for the past 14 years while population growth now finds 1 in 10 Americans living along the California coast. Given that funding for coastal management nationally has increased during the same period by more than $20 million, are you going to allocate funds in the 2007 budget to the large coastal states proportionate to their population and length of coastline as mandated by the Coastal Zone Management Act?

Answer. We greatly appreciate the multitude of issues that California's coastal management agencies face in managing the activities which affect your State's coastal resources. We also recognize the effectiveness of the California's coastal management efforts which have been consistently documented in our Section 312 evaluations of your programs.

As mandated by the CZMA, Section 306 funding is awarded pursuant to a formula based on the shoreline mileage and coastal population of each state. The fiscal year 2007 funds have been allocated pursuant to this formula.

A $2 million cap on individual state allocations has been put in place by Congress for the past 14 years through the appropriations process. NOAA has followed this Congressional direction.

NRDC VS. RODGERS SETTLEMENT IMPLEMENTATION

*Question.* The National Marine Fisheries Service (NMFS) is a Party to the Settlement in *NRDC* v. *Rodgers* (concerning restoration of flows below Friant Dam in the Central Valley Project) and NMFS has an important role to play to ensure the success of the restoration effort required by the Settlement, especially the reintroduction of Chinook salmon. Could you please tell me what NOAA and NMFS are currently doing to support the Settlement implementation effort, what actions are proposed in fiscal year 2008 by NOAA and NMFS to further implement the Settlement, and what actions are needed, if any, to ensure that the Department of Commerce has the necessary staff and resources to fulfill its future roles and responsibilities under this major Settlement?

Answer. NMFS Southwest Regional Office has been actively involved in the Settlement since October 23, 2006. NMFS has been working closely with the Bureau of Reclamation, Fish and Wildlife Service, parties to the Settlement, and third parties on actions required to implement the Settlement. We have already provided staff to: (1) brief technical working groups and the public on fisheries, fish habitat, and Endangered Species Act compliance issues; (2) engage in all implementation-related technical and management meetings; (3) answer Congressional questions and review draft legislation; (4) provide expertise and technical support for the development of implementation-related documents; and (5) provide management and policy-level guidance to the overall Settlement and implementation processes. NMFS is working closely with the Bureau of Reclamation's Sacramento Office to secure reimbursable funding to support staff to fully implement all of our roles under the Settlement. Depending on the availability of funding for this Settlement, NMFS will continue working on the 26 items listed below in a coordinated and collaborative manner.

1. Review plans and designs for 14 major structural projects
2. Analyses, review and provide recommendations on over 500 varying flows regimes
3. Develop and review MOUs including associated budgets
4. Review numerous contracts
5. Review several Friant Dam maintenance and operational plans
6. Review several water right options
7. Develop and review recirculation, recapture, reuse, exchange or transfer of water plans and proposed modifications including monitoring
8. Review draft development and implementation water plans

9. Coordinate with 6 State agencies, 5 Federal agencies, tribes, and numerous NGOs
10. Develop and review design, engineering, and monitoring studies
11. Review potential land acquisitions and easements
12. Develop and review environmental and permitting documents
13. Undertake ESA Section 7 consultations and reinitiate consultations
14. Undertake ESA Section 10 consultations and reinitiate consultations
15. Develop and review procedural documents
16. Analyze, review, and make recommendations on: water year data; water flows data and models; riparian corridors habitat models; Chinook fall-run and spring-run and steelhead populations
17. Analyses, review, and make recommendations on: Restoration Administrator proposed actions: Technical Advisory Committee proposed activities; BOR and FWS proposed actions; CA DWR and DFG proposed actions; Secretary of the Interior proposed actions
18. Participation in numerous technical committees
19. Provide assistance to Federal and State agencies staffs
20. Review legal and procedural documents
21. Provide technical expertise and assist in the development of the restoration plans
22. Develop and execute budgets and financial plans
23. Make recommendations to Secretary of Commerce
24. Make recommendations to Secretary of the Interior
25. Develop and execute monitoring plans
26. Documentation of all activities for any future court actions

FUNDING LEVELS FOR SEVERE WEATHER RESEARCH

*Question.* The overall NOAA budget request for 2008 is less than 2 percent greater than that for 2006, including reductions in funding of $82 million for Oceanic and Atmospheric Research and reductions of $4 million for the National Weather Service. Given the large impacts of severe weather events on our nation's economy and the central role of climate change research in preparing our nation to adapt to the economic and ecologic impacts of climate change, can NOAA fulfill its mission at the funding levels requested in the President's budget? If not, what level of additional support is needed to properly address these challenges?

Answer. The President's fiscal year 2008 budget for NOAA requests a total of $3.8 billion, an increase of $131 million or 3.4 percent over the fiscal year 2007 President's budget. NOAA believes that the fiscal year 2008 budget request will allow NOAA to fulfill its obligations. The budget request advances mission-critical services, including work to expand meteorological prediction and extend our knowledge of climatic change.

The Office of Oceanic and Atmospheric Research (OAR) requests a total of $368.8 million in fiscal year 2008, reflecting a net increase of $20.1 million from the fiscal year 2007 President's budget and a decrease of $10.9 million from the fiscal year 2006 appropriation. The decrease from the fiscal year 2006 enacted level is due primarily to the large number of un-requested projects in 2006. Even in a tight budget year, the fiscal year 2008 budget request supports some new, cutting-edge science efforts by OAR's research programs.

The National Weather Service (NWS) requests $903.5 million in fiscal year 2008, reflecting a net increase of $21.6 million over the fiscal year 2007 President's budget as well as an increase of $55.2 million from the fiscal year 2006 enacted level. This budget request continues NWS on a path to produce and deliver forecasts that are trusted, employ cutting-edge technologies, provide services in a cost-effective manner, strive to eliminate weather-related fatalities, and improve the economic value of weather, water, and climate information. The request fully supports NWS forecast and warning operations. NOAA/NWS is committed to improving operational effectiveness and services, particularly for high-impact weather events, by taking full advantage of emerging science and technological improvements. We are committed to evolving services to best meet the changing and growing need for environmental forecasts and services. The NWS's fiscal year 2008 budget request supports efforts to upgrade the NEXRAD Radar network by implementing dual polarimetric radar. It also supports other efforts including: improved numerical modeling, data assimilation, education and outreach, training, forecaster workstation (AWIPS) upgrades, as well as efforts for future technological advances, such as phased array radar (PAR). We believe the President's fiscal year 2008 budget Request positions us to make those technical and service improvements.

QUESTIONS SUBMITTED BY SENATOR RICHARD C. SHELBY

OCEAN INITIATIVE FUNDING

*Question.* I am pleased to see that NOAA's 2008 budget request includes an increase of $123 million for the President's Ocean Action Plan, which is in part, related to the Joint Ocean Commission's recent reports. As you know, the Senate has been working with the Commission to receive specific, real-world guidance on how to improve ocean research and education. NOAA's increase is a step in the right direction, but based on the Commission's recommendations, the Nation still have a long way to go. Admiral, I know you are well aware of the Joint Ocean Commission's recent reports, and I know you strive to better our nation's ocean research activities. How can the Senate help you to ensure that this trend on funding increases and program advancements continues?

Answer. As you are aware, the fiscal year 2008 President's budget request includes $123 million in direct support of the President's Ocean Action Plan. To continue this positive trend in NOAA's ocean programs, please support the President's budget; specifically those items that support the Ocean Action Plan. We thank you and your colleagues for your continued support of NOAA's ocean programs, and ask that you continue to be leaders on ocean and coastal issues on a national level.

NOAA CORPS REAUTHORIZATION

*Question.* Admiral, the Committee supports NOAA Commissioned Officer Corps and the valuable expertise they lend to NOAA's field operations and homeland security activities. The Committee understands that the NOAA Corps authorization, which regulates the size of the Corps, has expired. When can Congress expect the NOAA Corps legislation package to be cleared by NOAA?

Answer. NOAA is interested in reauthorizing the NOAA Corps and we look forward to working with the Committee on this important legislation. Efforts to consider and possible develop a NOAA Corps legislation package are currently underway.

SUBCOMMITTEE RECESS

Senator MIKULSKI. If there is nothing further, the subcommittee will stand in recess.

[Whereupon, at 11:41 p.m., Thursday, March 8, the subcommittee was recessed, to reconvene subject to the call of the Chair.]

# COMMERCE, JUSTICE, SCIENCE, AND RELATED AGENCIES APPROPRIATIONS FOR FISCAL YEAR 2008

---

**THURSDAY, MARCH 15, 2007**

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

The subcommittee met at 2:04 p.m., in room SD–138, Dirksen Senate Office Building, Hon. Barbara A. Mikulski (chairman) presiding.

Present: Senators Mikulski, Shelby, Stevens, and Alexander.

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

### STATEMENT OF HON. MICHAEL D. GRIFFIN, Ph.D., ADMINISTRATOR

STATEMENT OF SENATOR BARBARA A. MIKULSKI

Senator MIKULSKI. Good afternoon, everybody, and welcome to the subcommittee hearing of Commerce, State, Justice. The topic today will be the appropriations for the National Aeronautics and Space Administration (NASA). As we have said earlier, the subcommittee was focusing on innovation, security, and accountability. Once again, we feel that NASA is the premier innovation agency within the United States Government.

We know that more inventions, technology, and patents have come out of NASA than I think is ever fully grasped or fully appreciated by the American people, and certainly at times by people who wear green eyeshades.

Today we are going to hear from the NASA Administrator, Dr. Mike Griffin, about the agency budget and priorities. Since our hearing last year, a NASA civil servant, Dr. John Mather, a civil servant at Goddard, won the Nobel Prize, the New Horizons Mission has given us new spectacular pictures of Jupiter on its way to Pluto. Cassini continues to send its images from Saturn, and good old Hubble keeps plugging away, continuing extraordinary contributions to science even though it is running a little low these days. We have successfully and safely returned the Space Shuttle to flight and laid the foundation to return to the Moon and eventually to go to Mars.

For 2008, the President's budget funds NASA at $17.3 billion, a 6.8-percent increase over the continuing resolution level. But when we look at the President's budget over the 2007 request, it is a 3-percent increase over last year. To put NASA's budget in perspec-

tive, a $17.3 billion budget represents seven-tenths of 1 percent of the entire Federal budget.

As we looked at science funding we see inside the budget request, $5.5 billion, a $300 million increase over the continuing resolution, or a $50 million increase when compared to the 2007 budget, the budget for science includes funding for Hubble servicing, the continuing development of the Webb telescope, and other missions. We are very, very pleased that these two will be in 2008.

I do see a significant problem with future science budgets because from 2008 to 2011 it only goes up by 1 percent, and we will be talking about that with the Administrator.

For Earth science, the budget shows a cut in funding starting next year, and by 2012 the budget for Earth science will be $200 million less than in 2008.

Now, the exciting news is the National Academy of Sciences recently released its report on the future of Earth science, calling for new Earth science missions by NASA over the next decade, 14 of them, and also others to be done by the National Oceanic and Atmospheric Administration (NOAA) and one in conjunction. Though this year's NASA budget does not accommodate any of these new missions, we would like to discuss these with the Administrator, get his reaction, and try to find a way forward.

In 1988 the aeronautics budget at NASA was $1.5 billion. Today it is $554 million. Every commercial aircraft on-line today uses technology developed by NASA and we need to talk about our aeronautics program because, after all, when we look at its name, it is the national aeronautics, as well as the national space program.

The Space Shuttle budget is $4 billion, the same as 2007 funding. The administration's budget calls for 14 additional flights to space, one to fix the Hubble. We just wonder how the Shuttle is doing. We know you have been hit by, was it, ice, hail? But our Space Shuttle returned to flight and the safety of our astronauts remains our number one priority. So we will be asking, how long can we keep the Shuttle going. And of course, like the Administrator, we do not want to be in the dark on the landing pad with a Shuttle return and not a way forward.

When we talk about exploration, it is a $500 million increase over the continuing resolution funding and, quite frankly, we are disturbed about the continuing resolution funding. If Shelby-Mikulski had passed from the way we did the bill, we would have been in a better spot. But you know, we are where we are. We know that NASA estimates that it is going to cost $16 billion to build Ares and Orion by 2012. We are concerned that there will be a 4-year delay between the retirement of the Space Shuttle and the launch of Orion and Ares. And look at it. The delay is not caused by Congress. As I understand, the President's plan also reflects this. But we do not want to delay any more than we can.

The Space Station will receive $2.2 billion, an increase of over $300 million, and we know we need to also have a way of resupplying it. So as we look ahead, there is no real growth in NASA's budget and there is no margin for error or overruns, and there is a lot of pressure on the NASA budget and on the Administrator on how to coordinate all the pieces that often need to move forward in what we hope is a balanced space program.

Senator Hutchison and I will work to increase the top line by $1 billion and to repay NASA for the cost of *Columbia*. We also want to salute both Hutchison and Nelson, who are putting NASA in the President's authorizing legislation, putting NASA in the President's competitiveness agenda, and I will say more about that in my questions and answers.

But no matter how we look at it, we just think that we have too many good things for too little money and we are concerned about that.

We intend to, as always, pledge our bipartisan support to work with Senator Shelby, with the space Senators, to help balance the space program. But I remember over a decade ago President Bush's dad and then Vice President Quayle when they were contemplating the Space Station and some other breakthroughs on a very important Apollo anniversary invited us to the White House for a space summit, to kind of get a navigational chart on where we wanted to go in space and then what would be the revenue stream that we would talk about over multiple years.

I think it is time for another space summit so that we can talk over both the President's agenda, the need to continue our effort in space science and aeronautics and to make sure that our country is number one in innovation, always ahead in competition on new ideas and new technology, knowing that we have got to get to the Moon, know that China is looming out there, and at the same time continue the bold, bodacious space exploration that is characteristic of our program.

So having said that, it is just a direction to suggest and discuss, and as always I turn with real warmth and collegiality to my ranking member, Senator Shelby.

STATEMENT OF SENATOR RICHARD C. SHELBY

Senator SHELBY. Thank you, Madam Chair.

Dr. Griffin, thank you for joining us here today. This is an important hearing because it gives us on the subcommittee an opportunity to discuss the significant role of the National Aeronautics and Space Administration and its budget proposal. NASA's proposed budget for 2008 is $17.3 billion. This is a $1 billion increase to NASA's base programs or 6.5 percent over 2007 joint resolution funding level.

This is by some yardsticks a sizable sum, considering the funding constraints that the Federal Government faces in the coming fiscal year. But it is not too much money, Dr. Griffin, for what we want to do. The requested increase can be attributed to $522 million for funding exploration systems which will enable NASA to return to the Moon, an additional $652 million for the exploration capabilities account, which will allow for further construction of the International Space Station and other space operations.

While these are significant increases, the proposed budget also contains a reduction of $336 million to aeronautics. Dr. Griffin, I think it is important to note that, while this budget reflects the President's implementation of the exploration vision, it is also grounded in NASA's 2007 request rather than the actual funding level provided in the 2007 funding resolution. This poses many dif-

ficulties for this subcommittee in developing its proposal for NASA funding in 2008.

There are many complex elements required to achieve the goal of returning to the Moon. No one knows this better than you, Dr. Griffin. First there are the preparatory missions, such as the Lunar Reconnaissance Orbiter and Lunar Crater Observation and Sensing Satellite, which will launch, I understand, in October 2008. The follow-on mission, which is expected to launch around 2010 or 2011, has been selected since December 2005. Yet the 2008 budget continues to be vague regarding a time line for beginning the development work.

Delaying such preparation missions will only further delay man's return to the Moon. I understand that the preparatory lunar missions are moving forward and that the crew launch and crew exploration vehicles are well into their design and development work. Over the past year NASA has refined the Ares vehicle to be a five-segment solid rocket booster and selected the J–2X engine for its upper stage. This selection will make it possible for the Orion capsule to reach the Space Station and also be ready for a rendezvous with other vehicles for the trip to the lunar surface.

These are but a few examples of the ongoing work needed to make NASA's goals a reality. It is my hope, Dr. Griffin, that the implementation of the President's vision can be accomplished while maintaining the capabilities that NASA has developed in other mission areas. I do not believe that we should sacrifice missions and capabilities that will be vital to the future of exploration while trying to obtain this goal. I believe that we can and should find a balance here.

Much like last year's hearing, we are reminded today that the proposed plan for returning to the Moon is contingent on several factors. We are all keenly aware that any unexpected bump along the path could pose significant challenges to NASA's long-term plans. We can point to the sizable funding requirements of flying the Space Shuttle until it retires in 2010 and the ongoing construction of the International Space Station's heavy fiscal burdens on NASA's ability to continue down the path laid out in the vision for exploration.

The continual strains on NASA's budget require that we all work together as partners to ensure NASA can meet its many objectives.

Dr. Griffin, I am very interested in you discussing how NASA today will preserve its ongoing programs and how it will modernize its ongoing programs and how it will modernize its institutions and facilities which are critical to NASA's success in the coming years. I expect that we will have an ongoing dialogue over the course of the year about NASA's ability to achieve the Vision for Space Exploration.

I am also excited by the opportunities that lay ahead regarding the exploration vision at NASA. But I must point out the fiscal realities that you face every day that have and will continue to affect some of these efforts. NASA must show the same resourcefulness in operating within fiscal reality on the ground as it does in its innovation and can-do spirit for exploring space.

Dr. Griffin, I believe that the subcommittee has made every effort to work with you and we will continue to provide NASA with

the appropriate level of funding to ensure that roles and missions are protected and preserved. When such significant funds are provided, it is NASA's responsibility to have the systems in place to ensure that these funds are spent responsibly.

I am concerned that for the fourth year in a row NASA's financial systems have earned the worst rating possible from the administration. We were assured in our hearing last year that efforts were underway to fix these problems. Yet, according to the administration there has been little progress since we last met. In addition, the Government Accountability Office (GAO) has released its annual high risk report that focuses on programs with the greatest vulnerability to fraud, waste, and mismanagement. NASA has the unfortunate distinction, Dr. Griffin, of having been included in the 1990 inaugural edition for its contract management and remains on the high risk list to this day.

Finally, the annual audit of NASA's financial statement by an independent auditing firm does not bring me any comfort. NASA's finances were disclaimed in both 2005 and 2006 due to an inability to provide auditable financial statements as well as material weaknesses in its financial systems regarding the management of property and equipment. With such assessments of NASA's accounting, the agency's $17.3 billion request should be backed up, I believe, by solid budget practices, not shoddy, unclear bookkeeping. I believe that NASA should be as committed to fiscal responsibility to this subcommittee, the Appropriations Committee, and the taxpayer as it is to your exploration mission, which we commend you for.

I think, Dr. Griffin, NASA must be better as far as what is going on with its books. I look forward, Dr. Griffin, to discussing how we may find a solution that keeps all of NASA's activities moving forward. It will be a difficult task, given the demands for funding across all of the agencies in this bill. The administration did not leave many crumbs on the table after making severe cuts to, among other things, NOAA and the proposed over $1.5 billion in reductions to State and local law enforcement. But we are willing to work with you and the chairman to ensure that NASA receives the funds necessary to achieve the Nation's goals. We look forward to your testimony.

Senator MIKULSKI. Thank you.

Now I would like to turn to Dr. Griffin, but I also want to acknowledge—Senator, can you stay for the hearing then? I know you have a lot of pressures with Defense.

Senator STEVENS. We have a Defense hearing at 2:30. I will have to leave soon, but I would like to hear Dr. Griffin if possible.

Senator MIKULSKI. As soon as Dr. Griffin finishes, to accommodate you, Senator, shall we turn to you then for questions? Okay.

Dr. GRIFFIN. Senator, in deference to your time constraints today, I will keep my opening remarks short, but would like to enter my opening statement in the record along with my other formal statement.

Senator MIKULSKI. We also want to note this is the third day that you are testifying on NASA budget, two in the House yesterday, the authorizers and the appropriators, and this is the third.

ADMINISTRATOR GRIFFIN'S OPENING REMARKS

Dr. GRIFFIN. Thank you.

Chairman Mikulski, Senator Shelby, members of the subcommittee: I thank you for inviting me here today to discuss our $17.3 billion fiscal year 2008 request. I am here today to seek your support for that request. The fiscal year 2008 budget request is 3.1 percent higher than that requested by the President for fiscal year 2007 and demonstrates his commitment to maintaining our Nation's leadership role in space exploration, scientific discovery, and aeronautics research.

But it supports many diverse priorities in these disciplines and so we need to allocate our resources carefully. In this we are guided by the NASA Authorization Act, our annual appropriations legislation, Presidential policy, and the decadal surveys of the national academies. But even so, we cannot afford everything that our many constituencies would like us to do. You will not find major strategic changes in the fiscal year 2008 budget request as compared to that for last year, but you will see some slight course corrections. Overall I think we are heading in the right direction and I think we have made great strides in the past year and we are on track and making progress in carrying out our tasks.

We have aligned NASA's aeronautics program with the first ever presidential policy on aeronautics research and development (R&D). The goal of this policy is to ensure that NASA and other agencies advance U.S. technological leadership in aeronautics.

We currently operate an armada of over 50 Earth and space science satellites and payloads today in orbit around the Earth, our Sun, and other planets. The fiscal year 2008 budget request provides the resources to launch 10 new science missions in that year, most of which involve international partners or other U.S. Government agencies. Our $5.5 billion portfolio of Earth and space science accounts for almost 32 percent of the budget.

It is interesting to develop some perspective on this. During the 1960s, the decade of Apollo, science was 17 percent of the NASA portfolio. By the early 1990s, it had grown to 24 percent and today, as I said, it is 32 percent. In contrast, NASA's human space flight account during the Apollo years was 63 percent of the budget and is 62 percent today. So science is doing very well at NASA.

Now, our greatest challenge over the next few years is to fly the Space Shuttle safely while using it to finish the International Space Station and to do one final Hubble Space Telescope mission, and then transitioning to our new systems, the Orion crew exploration vehicle and the Ares 1 immediately thereafter.

Human space flight is a strategic capability for this Nation. We are now, as you know, facing about 4, 4½ year gap following Space Shuttle retirement when the United States will not have its own human space flight capability. Some in the Earth and space science community have called for further delays in NASA's human space flight efforts in order to allow more money to be set aside for science missions. I do not agree with this and, in fact, I often wonder what the community of scientists would say if they and not the human space flight community were facing a 4½ desert of opportunity.

If Orion is further delayed, we will be viewed by many as ceding our Nation's leadership in human space flight at a time when Russia and China have such capabilities and India has declared its intention to develop them.

In 1963 President Kennedy visited Redstone Arsenal in Huntsville and posed the following question: "I know there are lots of people now who say, why go any further in space. When Columbus was halfway through his voyage the same people said, why go on any further? What will we possibly find? What good will it be? They want to stop now. I believe the United States of America is committed to be first in space, and the only way we are going to be first in space is to work as hard as we can here and all across the country."

I love that quote for its endorsement of the necessity to stay the course.

So when you consider our fiscal year 2008 funding request, I ask you to consider our Nation's interests above the interests of any individual product, program, or constituency. The United States is a recognized leader in space because several successive Presidents and Congresses have worked together in the past to make the right strategic decisions, but this leadership is something we cannot take for granted.

PREPARED STATEMENT

I believe that our budget request today provides you with a carefully considered, balanced set of programs for our Nation's civil space effort, with world-class Earth and space science, strategic capabilities in human space flight, and U.S. technical leadership in aeronautics. We need the help of the Congress to provide the resources to maintain that leadership.

Thank you.

[The statement follows:]

PREPARED STATEMENT OF MICHAEL D. GRIFFIN

Chairman Mikulski and members of the subcommittee, thank you for the opportunity to appear today to discuss the President's Fiscal Year 2008 Budget request for NASA. The President's Fiscal Year 2008 Budget request for NASA is $17.3 billion. This represents a 3.1 percent increase over the fiscal year 2007 request for the agency, but not the enacted fiscal year 2007 appropriation. The fiscal year 2008 budget request for NASA demonstrates the President's continued commitment to our Nation's leadership in space and aeronautics research, especially during a time when there are other competing demands for our Nation's resources. The fiscal year 2008 budget request reflects a stable plan to continue investments begun in prior years, with some slight course corrections. Overall, I believe that we are heading in the right direction. We have made great strides this past year, and NASA is on track and making progress in carrying out the tasks before us.

Before I outline the fiscal year 2008 budget request, I would like to address the status of NASA's plans for the use of fiscal year 2007 funding. On February 15, 2007, the President signed into law a joint resolution stipulating fiscal year 2007 funding levels for NASA and other Federal agencies. This appropriation represents a funding level that is $545 million below the President's fiscal year 2007 request. The fiscal year 2008 budget request could not possibly factor the impact of this reduced level from the fiscal year 2007 request for NASA's carefully-considered multi-year programs, and thus, several programs in the fiscal year 2008 budget request will be impacted. The fiscal year 2007 appropriation further specifies funding levels in human spaceflight of that are $677 million below the request—$577 million of that from exploration systems. This reduction from the requested level may significantly impact our ability to safely and effectively transition from the shuttle to the Orion Crew Exploration Vehicle and Ares I Crew Launch Vehicle. It will have seri-

ous effects on many people, projects, and programs this year, and for the longer term. As I noted during last year's congressional hearings on NASA's fiscal year 2007 budget request, we have a carefully balanced set of priorities to execute on behalf of our Nation. So as a result of these funding levels that are less than the fiscal year 2007 request, NASA is carefully assessing the implications to overall exploration priorities and milestones, and will present detailed impacts after a full analysis is complete. The initial NASA operating plan for fiscal year 2007, which, we are endeavoring to finalize as soon as practicable, will reflect the impacts of less funding than planned and the requisite decisions. As always, we are here to carry out our Nation's civil space and aeronautics programs with the resources made available by the Congress. All of our programs proceed in a "go-as-we-can-afford-to-pay" manner; so if we receive less funding than requested, we will adjust our pace. Our stakeholders have my commitment to continue to keep them informed as to what I believe is the best approach to carrying out NASA's space and aeronautics research missions with the resources provided. In this determination, I will be guided by the NASA authorization acts, annual appropriations acts, presidential policy, and the decadal survey priorities of the National Academy of Sciences. If we determine that there is an agency objective that we will be unable to meet, I will inform our agency's stakeholders, including this subcommittee.

*Highlights of the NASA Fiscal Year 2008 Budget Request*

The fiscal year 2008 budget request for NASA is a carefully considered and balanced request formulated over many months with the White House. Unfortunately, the Congress had not completed action on the fiscal year 2007 budget at the time the fiscal year 2008 budget was being finalized, so the impact of the final fiscal year 2007 appropriation outcome is not accounted for in NASA's fiscal year 2008 budget request. The fiscal year 2008 budget request weaves together the Nation's priorities in space exploration, scientific discovery, and aeronautics research that will help fuel this Nation's future, creating new opportunities for scientific benefit, economic growth, national security, and international cooperation.

The greatest challenge NASA faces is safely flying the Space Shuttle to assemble the International Space Station (ISS) prior to retiring the shuttle in 2010, while also bringing new U.S. human spaceflight capabilities on-line soon thereafter. We must understand that, given proper goals, human spaceflight is a strategic capability for this Nation, and we must not allow it to slip away. In January, we remembered those whom we have lost in the exploration of space. In the aftermath of the Columbia tragedy, President Bush addressed the NASA workforce, saying, "In your grief, you are responding as your friends would have wished—with focus, professionalism, and unbroken faith in the mission of this agency." We must commit ourselves to the focus of professionalism and unbroken faith every day in order to carry out the tasks before us.

In analyzing not only the root causes, but also the systemic reasons behind the Columbia accident, the Columbia Accident Investigation Board (CAIB) made critical observations that guided the formulation of our present civil space policy. I fear that with the passage of time and the press of other concerns, we may be losing sight of some of these principles, so let me reiterate some of them here today. First, the CAIB noted that, "The U.S. civilian space effort has moved forward for more than 30 years without a guiding vision." Second, "because the shuttle is now an aging system but still developmental in character, it is in the Nation's interest to replace the shuttle as soon as possible as the primary means for transporting humans to and from Earth orbit." Third, "the previous attempts to develop a replacement vehicle for the aging shuttle represent a failure of national leadership." And finally, the board noted that "this approach can only be successful: if it is sustained over the decade; if by the time a decision to develop a new vehicle is made there is a clearer idea of how the new transportation system fits into the Nation's overall plans for space; and if the U.S. Government is willing at the time a development decision is made to commit the substantial resources required to implement it."

Since then, the President, the Congress and NASA have charted a new course in U.S. civil space policy that addresses all of these points, and the President's Fiscal Year 2008 Budget reaffirms that commitment with the necessary funds for the space shuttle and the ISS. NASA will continue forward at the best possible pace with the development of the Orion and Ares I crew vehicles. However, due to the cumulative effect of previously underestimated costs to retire/transition the space shuttle and support the International Space Station, the reduction from the fiscal year 2007 request reflected in the fiscal year 2007 continuing resolution, and the maturing design and integrated flight tests baselined for the Constellation program, it is unlikely that NASA will be able to bring these new exploration capabilities online by 2014. Full funding of NASA's fiscal year 2008 exploration systems request

is critical to ensuring the gap between retirement of the space shuttle and the new U.S. human spaceflight capability does not grow longer. If the gap in our human spaceflight capability extends even further than already planned, I believe our Nation will be ceding leadership in human spaceflight at a time when China and Russia have their own indigenous capabilities and India is developing its own capabilities. If we do not quickly come to grips with this issue, America may have a prolonged gap between the end of the shuttle program and the beginning of Orion and Ares I operational capability, a gap similar to the one that occurred from 1975 to 1981 when our Nation transitioned from Apollo to the space shuttle.

NASA has a lot of hard work ahead of it and many major milestones this year and next. The transition from the space shuttle to the Orion and Ares launch vehicles over the next several years must be carefully managed, and we must be focused, professional and committed to our mission. This is NASA's greatest challenge, and I ask the subcommittee's help in meeting it.

In the important area of Earth science, we recently received the first-ever Decadal Survey for Earth science from the National Academy of Sciences, which NASA, the National Oceanic and Atmospheric Administration (NOAA), and the United States Geological Survey (USGS) requested in 2003. As the first of its kind, the survey has drawn considerable attention, and we will observe the programmatic priorities for Earth Science which it advocates. In addressing the survey's Earth science priorities, and consistent with ensuring that NASA maintains a balanced portfolio of science as directed by the NASA Authorization Act of 2005 (Public Law 109–155), we have added funding to the Global Precipitation Measurement (GPM) mission, the follow-on to the highly successful Tropical Rainfall Measuring Mission (TRMM), to improve our ability to keep this mission on schedule. Our plan is to launch the first core satellite for the GPM mission not later than 2013, followed by the second Constellation spacecraft the following year. The fiscal year 2008 budget request also augments funding for the Landsat Data Continuity Mission (LDCM) and Glory missions in order to help keep those projects on schedule. Within planetary sciences, funding has been identified for Lunar science research project beginning in fiscal year 2008 to leverage the many opportunities for payloads on NASA and other nations' lunar spacecraft, such as India's Chandrayaan-1, as well as to analyze the science data from these missions, including NASA's Lunar Reconnaissance Orbiter. In 2008, we will launch a host of Heliophysics missions, many with international and interagency partners, to analyze the effects of solar flares, coronal mass ejections, and galactic cosmic rays. In Astrophysics, the final Hubble servicing mission is currently planned for a space shuttle flight in September 2008. And, as I advised the Congress and the science community last summer, NASA has reinstated the Stratospheric Observatory for Infrared Astronomy (SOFIA) mission. Though we know of no technical showstoppers in regard to the airworthiness of the aircraft or operation of the telescope, this program has some remaining hurdles to overcome and so remains subject to a management review later this spring. NASA will launch or participate in seven science missions in fiscal year 2007, followed by 10 missions in fiscal year 2008, resulting in many new Earth and space science discoveries in the years ahead.

The fiscal year 2008 budget request increases the budget profile for Aeronautics Research over the President's fiscal year 2007 request, aligns our aeronautics activities with the President's recently issued Aeronautics Research and Development Policy, and advances U.S. technical leadership in aeronautics. NASA has made significant progress in reformulating its approach to aeronautics research by collaborating with the broad research community including industry, academia, and other government agencies including the Federal Aviation Administration (FAA) and the Department of Defense (DOD). Through these changes, NASA will help ensure that America continues to lead the way in aeronautics research.

NASA continues to monitor and manage our "uncovered capacity" (employees not directly assigned to specific projects and programs). A little over 18 months ago, nearly 3,000 of NASA's 19,000 employees were designated as "uncovered capacity." Today, largely with the work defined in the Constellation program, we have greatly reduced that problem to manageable levels. As of February 2007, we have fewer than 200 uncovered capacity employees in fiscal year 2007 and fiscal year 2008. More importantly, many of our best engineers are working diligently on the great challenges before us. Every NASA center is now vested in our space exploration mission. While we are proud of the progress that has been made, significant human capital challenges remain. These include matching available skills with the important work to be done, managing attrition, retraining and hiring, and improving our workforce planning for future years in fiscal year 2009 and beyond. To address these challenges and any potential impacts resulting from the fiscal year 2007 funding re-

ductions, we have established a new intra-agency Workforce Planning Technical Team.

In addition, beginning in fiscal year 2007, the agency revised overhead allocations to simplify how we manage under full cost accounting. These changes will ensure a uniform cost rate for all NASA civil servants across the agency's government field centers. All changes are revenue-neutral to programs and projects; none of NASA's missions gain or lose funding as a result of this accounting change. At first glance, this accounting change appears to reduce the Aeronautics Research budget because so much of that work is done at our smaller research centers. However, in actuality, NASA's direct spending for Aeronautics Research has increased in the fiscal year 2008 budget runout by $205 million through fiscal year 2011 compared to the fiscal year 2007 budget runout.

Beyond our budget request, NASA is beginning to transition the workforce, infrastructure, and equipment from the space shuttle to new exploration systems. Many of our most experienced people will be considering retirement between now and 2010. We will need the means to manage this attrition in a targeted manner to achieve better alignment of the workforce with our mission without creating unwanted losses and skills imbalances. One tool we may be using is the authority for the agency to be able to re-employ selected retirees without an offset to their annuity—thus giving them an incentive to see a project or program to completion. To assist employees with transition to the private sector, and to ease that upheaval, another tool would authorize NASA to continue their coverage under the Federal Employees Health Insurance for 1 year after departure.

We will also need better tools to manage the transition of our facilities. The agency is proposing slight changes and expansion to existing authority to permit leasing of underutilized facilities and related equipment. The agency would retain the proceeds of those leases to be deposited in a NASA capital asset account and invested in activities to improve and sustain our facilities and infrastructure. We plan to discuss the details of these legislative requests with members of Congress in the weeks and months ahead.

The remainder of my testimony outlines the fiscal year 2008 budget request for NASA in greater detail.

*Science Mission Directorate*

This past year was truly remarkable for science discovery about the Earth, Sun, solar system, and universe. NASA was responsible for 11 percent of Science News magazine's top stories (covering all fields of science) for 2006, which is an all-time record in the 34 years of tracking this metric. NASA's findings ranged from new observations of familiar phenomena like hurricanes, thunderstorms, and rainfall, to the identification of 16 new extra-solar planets orbiting distant stars near the center of our galaxy. As NASA continues to add observations from long-lived assets such as the Spirit and Opportunity Mars Exploration Rovers, it continues to successfully develop and launch the next generation of missions and to support a vigorous scientific community.

In 2006, NASA launched four new science missions, one technology demonstration mission, and partnered with other Federal and international agencies to launch three other science and technology missions, as well as the GOES–O satellite, to bring the current total number of operational science missions to 52. In January 2006, we launched the New Horizons spacecraft to the planet Pluto. Scheduled to arrive at Pluto in 2015, the spacecraft made its closest approach to Jupiter in late February. With the April 2006 launch of the CloudSat and Cloud-Aerosol Lidar and Infrared Pathfinder Satellite Observations (CALIPSO) spacecraft, NASA added to the "A-train" of satellites flying in close proximity around Earth to gain a better understanding of key factors related to climate change. In October 2006, NASA's twin Solar Terrestrial Relations Observatories mission (STEREO) spacecraft were launched to help researchers construct the first-ever 3-dimensional views of the Sun. Although the two spacecraft will not return images until later this year, initial results from STEREO have provided us with an unprecedented look at solar activity. On February 17, 2007, we launched five Time History of Events and Macroscale Interactions during Substorms (THEMIS) microsatellites to study the Earth's magnetosphere, and we are on track to launch the Dawn mission to main belt of asteroids between Mars and Jupiter and the Phoenix Mars mission later this year.

NASA's fiscal year 2008 budget requests $5.5 billion for the agency's science portfolio. This represents an increase of $49.3 million (or 1 percent) over the fiscal year 2007 request and it will enable NASA to launch or partner on 10 new missions, operate and provide ground support for more than 50 spacecraft, and fund scientific research based on the data returned from these missions. For fiscal year 2008, NASA separated the Earth-Sun System theme into two themes: Earth Science and

Heliophysics, and programmatic responsibility for studies of Near Earth Objects is transferred to the Exploration Systems Mission Directorate.

The Earth science budget requests $1.5 billion—an increase of $27.7 million over the fiscal year 2007 request—to better understand the Earth's atmosphere, lithosphere, hydrosphere, cryosphere, and biosphere as a single connected system. This request includes additional funding for the Global Precipitation Measurement (GPM) mission to improve schedule assurance in response to the high priority placed on GPM in the Decadal Survey. As the follow-on to the highly successful Tropical Rainfall Measuring Mission, NASA's plans to launch GPM's first Core satellite no later than 2013, followed by the second Constellation spacecraft the following year. The Earth science budget also includes increased funding for the Landsat Data Continuity Mission and Glory in order to help keep them on their schedules, and provides funds for the National Polar-orbiting Operational Environmental Satellite System (NPOESS) Preparatory Project (NPP) to reflect instrument availability and launch delays. Funds are requested for continued development and implementation of the Ocean Surface Topography Mission to launch in 2008, the Aquarius mission to measure the ocean's surface salinity to launch in 2009, and the Orbiting Carbon Observatory mission planned for launch in 2008. NASA will continue to contribute to the President's Climate Change Research Initiative by collecting data sets and developing predictive capabilities that will enable advanced assessments of the causes and consequences of global climate change. Over the coming months, NASA will evaluate opportunities for implementing the recommendations of the National Research Council's Earth Science Decadal Survey and responding to challenges to the continuity of climate measurements resulting from the Nunn-McCurdy recertification of the NPOESS program.

The Heliophysics budget request of $1.1 billion will support 14 operational missions to understand the Sun and its effects on Earth, the solar system, and the space environmental conditions that will be experienced by astronauts, and to demonstrate technologies that can improve future operational systems. During fiscal year 2008, the Explorer Program will launch the Interstellar Boundary Explorer (IBEX) mission, focused on the detection of the very edge of our solar system, and the Coupled Ion-Neural Dynamics Investigation (CINDI) Mission of Opportunity conducted by the University of Texas. The Solar Dynamics Observatory (SDO) to study the Sun's magnetic field will complete launch readiness milestones in fiscal year 2008 and is presently scheduled for launch in August of 2008. The Geospace Radiation Belt Storm Probes (RBSP) mission, presently in formulation, will undergo a preliminary design review and a non-advocate review in fiscal year 2008 in preparation for entering development in early fiscal year 2009. RBSP will improve the understanding of how solar storms interact with Earth's Van Allen radiation belts. While the ST–7 and ST–8 missions are on track for launches in 2009, the New Millennium ST–9 mission, along with follow-on missions, is delayed.

The planetary science budget request of $1.4 billion will advance scientific knowledge of the solar system, search for evidence of extraterrestrial life, and prepare for human exploration. NASA will get an early start on Lunar science when the Discovery Program's Moon Mineralogy Mapper (M3) launches aboard India's Chandrayaan-1 mission in March 2008, along with the Mini-RF, a technology demonstration payload, supported by NASA's Exploration and Space Operations Mission Directorates and the Department of Defense, which may glean water in the Moon's polar regions. In addition, the budget requests $351 million from fiscal year 2008 to fiscal year 2012 for new Lunar science research, including missions of opportunity, data archiving, and research. The budget supports the Mars Exploration Program by providing for a mission every 26 months, including the Phoenix spacecraft, scheduled for launch in 2007, and the Mars Science Laboratory, with a launch scheduled for 2009. The Discovery Program's Dawn Mission is scheduled to launch later this year, and the Mercury Surface, Space Environment, Geochemistry and Ranging (MESSENGER) spacecraft is already on its way to Mercury. Three Discovery Mission proposals and three Missions of Opportunity were selected in 2006 for Phase A studies, and the Discovery Program will invite proposals for additional new missions in 2008. With the New Horizons spacecraft continuing on its way to Pluto, the New Frontiers Program's Juno Mission will undergo a preliminary design review and a non-advocate review in fiscal year 2008 in preparation for entering development. The New Frontiers Program will release its third Announcement of Opportunity (AO) in late 2008.

The Astrophysics budget requests $1.6 billion to operate NASA's astronomical observatories, including the Hubble Space Telescope (HST), Chandra X-Ray Observatory, and Spitzer Space Telescope, and to build more powerful instruments to peer deeper into the cosmos. HST is scheduled for a final servicing mission in September 2008 using the space shuttle Atlantis. Along with service life extension efforts, two

new instruments will be installed during the servicing mission that are expected to dramatically improve performance and enable further discoveries, including enabling some science observations that have been affected by the recent failure of the Advanced Camera for Surveys. After the servicing mission, HST will once again have six fully operational instruments (including a suite of cameras and spectrographs that will have about 10 times the capability of older instruments) as well as new hardware capable of supporting at least another 5 years of world-class space science. The ESA Herschel and Planck missions, both of which include contributions from NASA, will launch in fiscal year 2008 aboard an ESA-supplied Ariane-5. Kepler instrument and spacecraft integration and test will be completed in preparation for launch in November 2008, to determine the frequency of potentially habitable planets. The Gamma-ray Large Area Space Telescope (GLAST) will launch in fiscal year 2008 to begin a 5-year mission mapping the gamma-ray sky and investigating gamma-ray bursts. The James Webb Space Telescope will undergo preliminary design review and a non-advocate review in fiscal year 2008, in preparation for entering development. The SOFIA observatory has been reinstated. Though we know of no technical showstoppers in regard to the airworthiness of the aircraft or operation of the telescope, this program has some remaining hurdles to overcome and so remains subject to a management review later this spring chaired by the NASA associate administrator. The SOFIA program baseline will be finalized at that time.

*Exploration Systems Mission Directorate*

The fiscal year 2008 budget request for the Exploration Systems Mission Directorate (ESMD) is $3.9 billion to support continued development of new U.S. human spaceflight capabilities and supporting technologies, and to enable sustained and affordable human space exploration after the space shuttle is retired in 2010. With this budget, ESMD will continue to develop our next-generation crew exploration vehicle, while also providing research and developing technologies for the longer-term development of a sustained human presence on the Moon. However, due to the cumulative effect of previously underestimated costs to retire/transition the space shuttle and support the International Space Station, the reduction from the fiscal year 2007 request reflected in the fiscal year 2007 continuing resolution, and the maturing design and integrated flight tests baselined for the Constellation program, it is unlikely that NASA will be able to bring these new exploration capabilities online by 2014. ESMD will also continue to work with other nations and the commercial sector to leverage its investments and identify opportunities for specific collaboration on lunar data and lunar surface activities. New human spaceflight development of this magnitude, such as the Orion Crew Exploration Vehicle, occurs once in a generation. The next 5 years are a critical period in our Nation's space flight efforts.

The Constellation program includes the Orion Crew Exploration Vehicle; Ares I, a highly reliable crew launch vehicle; Commercial Orbital Transportation Services (COTS) demonstrations of cargo and crew transport to the International Space Station; Ares V, a heavy-lift launch vehicle; spacesuits and tools required by the flight crews and; associated ground and mission operations infrastructure to support either lunar and/or initial low-Earth orbit (LEO) missions.

For fiscal year 2008, pending a full analysis of the fiscal year 2007 budget impacts, ESMD is on track to maintain its commitments for Ares I and Orion, and to continue meeting major milestones. This year Constellation will continue to mature and develop overall. Formulation of the Constellation elements will continue, leading to the preliminary design review in 2008, at which time the program will be baselined. NASA will conduct an update for the overall Constellation Systems Requirements Review (SRR) in 2007 after the completion of all the Program Element SRRs—the Orion Project recently completed its SRR on March 1, 2007. ESMD released the Ares I Upper Stage Request for Proposals (RFP) on February 23, 2007. The RFP for the Ares I Avionics Ring is scheduled for release in May 2007, with selection and contract award scheduled for November 2007.

Facility, equipment, and personnel transitions from space shuttle to Constellation will be the major emphasis of the fiscal year 2009 budget process. NASA transition activities are focused on managing the evolution from current operations of the space shuttle to future operations of Constellation and emerging commercial services, in a safe, successful and smooth process. This joint effort between the Space Operations Mission Directorate (SOMD) and ESMD includes the utilization and disposition of resources, including real and personal property, personnel, and processes, to leverage existing shuttle and International Space Station assets for NASA's future exploration activities. Formalized transition boards are working to achieve this outcome. A Human Spaceflight Transition Plan was developed in 2006; updates are

in work, and metrics for the plan are being refined and will be implemented in 2007.

In August 2006, NASA signed Space Act Agreements with Space Exploration Technologies Corporation, of El Segundo, California, and Rocketplane-Kistler, of Oklahoma City, Oklahoma, to develop and demonstrate COTS that could open new markets and pave the way for commercial providers to launch and deliver crew and cargo to the ISS. The Space Act Agreements establish milestones and identify objective criteria to assess their progress throughout Phase 1 of the demonstrations. In the fiscal year 2008 budget, funding for the purchase of crew and cargo transportation services, either from international partners or preferably from commercial providers, is transferred from ESMD to SOMD. COTS demonstration funding remains in ESMD to better exploit potential synergies with the Constellation Program.

With activities in the Advanced Capabilities program, NASA seeks to understand the space environment as it relates to human performance by addressing respective recommendations from the Exploration Systems Architecture Study that was conducted 2005. This included refocusing biomedical research and human life-support activities through new milestones and requirements to target the timely delivery of research products. Accordingly, ESMD created two new programs under Advanced Capabilities: the Human Research Program (HRP) to study and mitigate risks to astronaut health and performance and the Exploration Technology Development Program (ETDP) to enable future exploration missions and reduce cost and risk. Plans for 2008 include:

—Testing of prototype ablative heat shield materials, low-impact docking systems, and landing attenuation systems;
—testing of advanced environmental control systems on the ISS;
—developing a lightweight composite command module test article for the Orion;
—conducting studies to assess risks of long-term radiation exposure and continuing the use of the ISS as a testbed for studying human health and safety in space;
—spacecraft integration and testing in preparation for the Lunar Reconnaissance Orbiter (LRO) launch in October 2008;
—next-generation spacesuit capable of supporting exploration; and
—developing jointly with the U.S. Air Force the RS–68 engine that will be used on the Ares V.

Finally, the LRO and the Lunar Crater Observatory Sensing Satellite (LCROSS) to the Moon is planned to be launched in early fiscal year 2008. These dual-manifested spacecraft have completed critical design review and are currently in development. The science yielded from these missions will enable future outpost site selection and new information about the deep craters at the lunar poles. The LRO/LCROSS missions represent NASA's first steps in returning to the Moon.

*Aeronautics Research Mission Directorate*

In 2006, NASA's Aeronautics Research Mission Directorate (ARMD) conducted a significant restructuring of its aeronautics program, allowing NASA to pursue high-quality, innovative, and integrated research that will yield revolutionary tools, concepts, and technologies to enable a safer, more flexible, environmentally friendly, and efficient national air transportation system. As such, ARMD's research will continue to play a vital role in supporting NASA's human and robotic space activities. The reshaped Aeronautics Program content and direction is consistent with the National Aeronautics Research and Development Policy, signed by the President on December 20, 2006.

A primary goal across all of the programs in ARMD is to establish strong partnerships involving NASA, other government agencies, academia, and industry in order to enable significant advancement in our Nation's aeronautical expertise. Because these partnerships are so important, NASA has put many mechanisms in place to engage academia and industry, including industry working groups and technical interchange meetings at the program and project level, space act agreements for cooperative partnerships, and the NASA Research Announcement (NRA) process that provides for full and open competition for the best and most promising research ideas. During 2006, ARMD's NRA solicitation resulted in the selection of 138 proposals for negotiation for award from 72 different organizations representing 29 different States plus the District of Columbia. NASA's fiscal year 2008 budget request for aeronautics includes $51 million for NRA awards.

In fiscal year 2008, the President's budget for NASA requests $554 million for aeronautics research. This budget reflects full cost simplification, which significantly reduces the center overhead and infrastructure allocated to the aeronautics programs.

NASA's Airspace Systems Program (ASP) has partnered with the Joint Planning and Development Office (JPDO) to help develop concepts, capabilities and technologies that will lead to significant enhancements in the capacity, efficiency and flexibility of the National Airspace System (NAS). Such improvements are critical to meet the Nation's airspace and airports requirements for decades to come. In fiscal year 2008, NASA's budget request would provide $98.1 million for ASP to conduct further research in operational concepts and human-in-the-loop simulation modeling that supports advancements in automated separation assurance capabilities. In addition, ASP will pursue enhanced development of airport surface movement trajectory models to provide a basis for optimized use of super density airports, integrated airport clusters, and terminals where demand for runways is high. Last year, ASP took an important step toward this goal by completing development of a system-wide operational concept that provides a detailed description of future NAS capacity enhancements while assessing the benefits of such system improvements. Key to the analysis of the operational concepts was program-developed tools such as the Airspace Concepts Evaluation System and the Future Air Traffic Management Concepts Evaluation Tool, both of which have successfully transitioned from NASA to the Federal Aviation Administration and the JPDO.

NASA's Fundamental Aeronautics Program (FAP) conducts research in the engineering and scientific disciplines that enable the design of vehicles that fly through any atmosphere at any speed. The fiscal year 2008 budget request, amounting to $293.4 million, will enable significant advances in the hypersonics, supersonics, subsonic fixed wing, and subsonic rotary wing projects that make up the FAP. These projects focus on creating innovative solutions for the technical challenges of the future: increasing performance (range, speed, payload, fuel efficiency) while meeting stringent noise and emissions constraints; alleviating environmental and congestion problems of the Next Generation Air Transportation System (NGATS) through the use of new aircraft and rotorcraft concepts; and, facilitating access to space and reentry into planetary atmospheres. A wide variety of cross-cutting research topics are being pursued across the speed regimes with emphasis on physics-based multidisciplinary analysis and design, aerothermodynamics, materials and structures, propulsion, aero-servo-elasticity, thermal protection systems, advanced control methods, and computational and experimental techniques. A number of key activities are planned for fiscal year 2007 and fiscal year 2008 including the launch of a suborbital rocket to conduct flight experiments in hypersonic boundary layer transition and re-entry shapes, the flight test of scale models of the X–48B Blended Wing-Body concept to assess this advanced unconventional airframe configuration for its potential to decrease aircraft noise while also improving performance, the evaluation of radical new concepts for variable-speed rotor technologies that can result in highly improved performance, and the evaluation of actively-controlled inlets for supersonic transports.

The fiscal year 2008 budget request for NASA's Aviation Safety Program (AvSP) is $74.1 million. The four projects within the program (Integrated Intelligent Flight Deck, Integrated Resilient Aircraft Control, Aircraft Aging and Durability, and Integrated Vehicle Health Management) will develop cutting-edge tools, methods, and technologies with close coordination among them to improve the intrinsic safety attributes of current and future aircraft that will operate in the NGATS. In fiscal year 2008, the program will complete a study of human-automation technology that will improve safety during approach and landing operations by allowing for active operator assistance that maintains appropriate levels of workload and will be conducted to evaluate neural networks for direct adaptive control that will maximize adaptation to simulated in-flight failures while minimizing adverse interactions. At the same time, onboard sensor technology will be developed and validated to achieve significant improvement in measuring atmospheric water content that will improve the ability to detect the onset of potential icing hazards. Challenges related to aircraft aging and durability will also be addressed by developing models capable of simulating the initiation and propagation of minute cracks in metallic materials.

Finally, NASA's Aeronautics Test Program (ATP) will continue to safeguard the strategic availability of a critical suite of aeronautics test facilities that are deemed necessary to meet agency and national aeronautics needs. The fiscal year 2008 budget request for ATP is $88.4 million, which will enable strategic utilization, operations, maintenance and investment decisions for major wind tunnel/ground test facilities at Ames Research Center, Glenn Research Center and Langley Research Center and for the Western Aeronautical Test Range support aircraft and test bed aircraft at Dryden Flight Research Center. In fiscal year 2006, NASA implemented procedures to ensure affordable and competitive pricing of its aeronautics facilities for use by other parties, including industry and university researchers. In fiscal year 2008, ATP plans to continue ensuring competitive prices for ATP facilities, reducing

a backlog of maintenance issues and investing in advanced technologies such as installing consistent angle of attack instrumentation at the research centers.

*Space Operations Mission Directorate*

This was an extraordinary year for the space shuttle and International Space Station (ISS) programs. NASA celebrated Independence Day 2006 by launching space shuttle Discovery on the STS–121 mission. The second of two test flights (the first was STS–114 in July/August 2005), STS–121 helped validate the improvements made to the space shuttle system since the loss of Columbia on February 1, 2003. The mission also marked the return of a complement of three crewmembers to the ISS. The space shuttle Atlantis (STS–115), which launched on September 9, marked a return to sustained space shuttle operations and placed NASA on track to completing assembly of the ISS by 2010. STS–115 delivered the critical P3/P4 truss to the ISS, which will provide a quarter of the power services needed to operate the completed research facility. The last flight in December 2006, STS–116, was devoted primarily to deactivating the electrical power systems on the U.S. segment of the ISS and making a series of electrical and coolant connections between the P3/P4 truss segment and the rest of the station. To do this, flight controllers at the mission control centers in Houston and Moscow uplinked over 17,900 commands to the ISS during the mission—all without a single unplanned or command error. STS–116 crewmember Robert Curbeam also set a record for the most spacewalks ever conducted by an astronaut on a single space shuttle mission, with four excursions totaling over 25 hours.

Operational activities onboard the ISS have continued into 2007, with a series of spacewalks that reconfigured the thermal system on the station and prepared us for future assembly tasks. The station is now able to provide additional power to the space shuttle, allowing two extra docked days, and we have connected permanent systems in place of temporary ones. The sequence of three complex spacewalks within 9 days also demonstrated capabilities we will need later this year to fully install Node 2 following its delivery on STS–120.

These mission achievements reflect the NASA team's dedication to safely and successfully flying out the space shuttle program and meeting our Nation's commitments to our international partners. The program's successes also led to the decision in October 2006 to move forward with plans for a final servicing mission to the Hubble Space Telescope (HST). Following an extensive review by the relevant NASA offices of all safety and technical issues associated with conducting such a mission, it became clear that an HST servicing mission could be carried out effectively and safely. While there is an inherent risk in all spaceflight activities, the desire to preserve a truly international asset like the HST makes doing this mission the right course of action.

The space shuttle fiscal year 2008 budget request of $4.01 billion would provide for five shuttle flights, including four ISS assembly flights as well as the HST servicing mission. The ISS assembly flights include the launch of major research facility modules from the European Space Agency and Japan. The Canadian Special Purpose Dexterous Manipulator robotic system will also be flown in 2008. These flights are a major step towards fulfilling U.S. commitments to NASA's international partners as specified in the ISS agreements and the Vision for Space Exploration.

The fiscal year 2008 budget request includes $2.24 billion for ISS activities. NASA has consulted with our international partners on the configuration of the ISS, and is working closely with them to determine the detailed plans for logistics required during and after assembly. The fiscal year 2008 budget request provides the necessary resources to purchase Soyuz crew transport and rescue for U.S. astronauts as well as progress vehicle logistics support for the ISS from the Russian Space Agency.

As the shuttle approaches its retirement, the ISS Program intends to use alternative cargo and crew transportation services from commercial industry. Once a capability is demonstrated in phase 1 of the Commercial Orbital Transportation Services (COTS) Space Act Agreements, NASA plans to purchase cargo delivery services competitively in phase 2 and will decide whether to pursue crew demonstrations. In the fiscal year 2008 budget, funding for the purchase of crew and cargo transportation services, either from international partners or preferably from commercial providers, is transferred from the Exploration Systems Mission Directorate to the Space Operations Mission Directorate. One item of significance in the fiscal year 2008 budget runout, especially in the out-years, is that it allows for increases to our previously estimated costs for purchasing commercial cargo and crew services to support the ISS, assuming these commercial services are successfully demonstrated and are cost-effective. Should costs for those services be greater than what is presently budgeted, NASA has accepted a management challenge to scale back on our

space operations costs and will curtail some of our robotic lunar exploration or long-term exploration technology development in the out-years. COTS demonstration funding remains in ESMD to better exploit potential synergies with the Constellation Program.

The space shuttle program's highest priority is to safely complete the mission manifest by the end of fiscal year 2010, using as few flights as possible. Working through formalized transition control board processes, the space shuttle program will also play a key role in coordinating the smooth transition of space shuttle assets and capabilities to the next generation of exploration systems without compromising the safety of ongoing flight operations. The greatest challenge NASA faces is safely flying the space shuttle to assemble the ISS prior to retiring the shuttle in 2010, while also bringing new U.S. human spaceflight capabilities on-line soon thereafter. There are a number of major transition milestones set for fiscal year 2008, including the transition of one of the four high bays in the vehicle assembly building and launch pad 39B to the Constellation Systems Program. Space shuttle Atlantis may also be retired in fiscal year 2008 after the HST SM–4 mission and its systems and parts would be used to support the remaining space shuttle orbiters, Discovery and Endeavour, during the program's last 2 years of operations. The fiscal year 2008 budget request reflects the current assessment of costs to retire the space shuttle. Over the next year, NASA will develop additional detail and refine our cost estimates for the transition.

The fiscal year 2008 budget also provides for the procurement of two additional Tracking and Data Relay Satellite System (TDRSS) satellites to replenish the Constellation. NASA projects that the availability of aging TDRSS satellites to support overall user demand will be reduced by 2009 and depleted by 2015. In order to continue to support all users, NASA must begin the procurement process immediately, with planned launches in fiscal year 2012 and fiscal year 2013. By replenishing the satellites, NASA will be able to meet overall user demand through 2016. The Space Operations Mission Directorate has partnered with non-NASA users to provide a proportionate investment in the replacement capabilities.

*Cross-Agency Support Programs*

The fiscal year 2008 budget request for activities within the Cross-Agency Support Programs (CASP)—education, advanced business systems, innovative partnerships programs, and Shared Capabilities Assets Program—is $498.2 million. Within this amount, $34.3 million is for the Shared Capability Assets Program (SCAP), which is designed to ensure that critical capabilities and assets (e.g. arc jets, wind tunnels, super computing facilities, rocket propulsion testing, etc.) required agency-wide are available to missions when needed. The fiscal year 2008 budget request for Advanced Business Systems, comprising the Integrated Enterprise Management Program (IEMP), is $103.1 million. Fiscal year 2007 and fiscal year 2008 funding will support IEMP in implementing capabilities that improve NASA's tracking and accountability of its property, plant, and equipment; integrate human capital information, providing employees and management with new, secure tools for accessing personnel data, and planning and budgeting NASA's workforce; and, provide more relevant and accurate financial information in support to NASA's programs and projects. This funding also supports ongoing operations and maintenance of NASA's financial system and other agency-wide business systems.

For NASA's education activities, the fiscal year 2008 budget request totals $153.7 million and sustains our ongoing commitment to excellence in science, technology, engineering, and mathematics (STEM) to ensure that our agency is equipped with the right workforce to implement the Vision for Space Exploration. NASA will continue the tradition of investing in education and supporting educators who play a key role in preparing, inspiring, exciting, encouraging, and nurturing the youth who will manage and lead the laboratories and research centers of tomorrow. NASA education is committed to three primary objectives to help improve the state of STEM education in our country: strengthen the Nation's and NASA's future workforce; attract and retain students in the STEM discipline and; engage the American people in NASA's missions through partnerships and alliances.

The Innovative Partnerships Programs (IPP) provides leveraged technology investments, dual-use technology-related partnerships, and technology solutions for NASA. The fiscal year 2008 budget request for IPP activities is $198.1 million. The IPP implements NASA's Small Business Innovative Research (SBIR) and Small Business Technology Transfer (STTR) programs that provide the high-technology small business sector with an opportunity to develop technology for NASA. Recently, NASA has made some changes to the management structure of these two programs to better enable technology infusion and to increase the efficiency of the operations. IPP also manages the Centennial Challenges Program. NASA has already benefited

from the introduction of new sources of innovation and technology development even though the program is relatively new and no prizes have yet been awarded. In addition, ongoing and future prize challenges will continue to inspire brilliant young minds.

CONCLUSION

NASA has many challenges ahead of us, but we are on track and making progress in managing these challenges. The fiscal year 2008 budget request demonstrates commitment to our Nation's leadership in space and aeronautics research, and while we may face a significant funding reduction for fiscal year 2007, we will carry on, though not at the pace we had previously hoped.

I ask your help to ensure this Nation maintains a human spaceflight capability. Without stable funding as requested in this budget, we face the very real possibility of allowing that capability to slip away for the foreseeable future—even as other nations continue to develop similar capabilities.

I also need your help to effectively transition key elements of our space shuttle workforce, infrastructure, and equipment to our Nation's exploration objectives. The provisions I referenced earlier, as well as stable funding, will help ensure we preserve a critical and unique industrial base capability that has allowed the United States to lead the world in space exploration.

Again, thank you for the opportunity to appear before you today. I would be please to respond to any questions that you may have.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION PRESIDENT'S FISCAL YEAR 2008 BUDGET REQUEST

[Budget authority, dollars in millions]

| By Mission Directorate | Fiscal year 2007 | Fiscal year 2008 | Fiscal year 2009 | Fiscal year 2010 | Fiscal year 2011 | Fiscal year 2012 |
|---|---|---|---|---|---|---|
| Science, Aeronautics and Exploration: | | | | | | |
| Science: | | | | | | |
| Earth Science | $1,469.6 | $1,497.3 | $1,539.7 | $1,500.7 | $1,411.2 | $1,353.2 |
| Heliophysics | $1,028.1 | $1,057.2 | $1,034.5 | $1,107.1 | $1,241.2 | $1,307.5 |
| Planetary Science | $1,406.1 | $1,395.8 | $1,676.9 | $1,723.9 | $1,738.3 | $1,748.2 |
| Astrophysics | $1,563.0 | $1,565.8 | $1,304.2 | $1,268.9 | $1,266.2 | $1,393.8 |
| Subtotal, Science | $5,466.8 | $5,516.1 | $5,555.3 | $5,600.6 | $5,656.9 | $5,802.7 |
| Exploration Systems: | | | | | | |
| Constellation Systems | $3,232.5 | $3,068.0 | $3,451.2 | $3,784.9 | $7,666.0 | $7,993.0 |
| Advanced Capabilities | $920.0 | $855.8 | $861.6 | $973.0 | $1,059.1 | $1,083.9 |
| Subtotal, Exploration Systems | $4,152.5 | $3,923.8 | $4,312.8 | $4,757.8 | $8,725.2 | $9,076.8 |
| Aeronautics Research: Aeronautics Technology | $529.3 | $554.0 | $546.7 | $545.3 | $549.8 | $554.7 |
| Cross-Agency Support Programs: | | | | | | |
| Education | $167.4 | $153.7 | $152.8 | $152.7 | $149.8 | $149.6 |
| Advanced Business Systems | $97.4 | $103.1 | $69.4 | $71.6 | $67.6 | $67.5 |
| Innovative Partnerships Program | $215.1 | $198.1 | $197.2 | $199.8 | $200.0 | $200.0 |
| Shared Capability Assets Program | $22.1 | $34.3 | $34.2 | $36.2 | $37.3 | $37.2 |
| Continuing Resolution Rate [1] | ($555.60) | ..... | ..... | ..... | ..... | ..... |
| Subtotal, Cross-Agency Support Programs | $502.0 | $489.2 | $453.5 | $460.4 | $454.7 | $454.4 |
| Total, Science, Aeronautics and Exploration | $10,650.6 | $10,483.1 | $10,868.4 | $11,364.2 | $15,386.5 | $15,888.6 |
| Exploration Capabilities: | | | | | | |
| Space Operations: | | | | | | |
| Space Shuttle | $4,017.6 | $4,007.5 | $3,650.9 | $3,634.4 | $116.2 | ..... |
| International Space Station | $1,762.6 | $2,238.6 | $2,515.1 | $2,609.2 | $2,547.5 | $2,600.8 |
| Space and Flight Support | $328.1 | $545.7 | $544.3 | $382.0 | $372.9 | $377.2 |

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION PRESIDENT'S FISCAL YEAR 2008 BUDGET REQUEST—Continued

[Budget authority, dollars in millions]

| By Mission Directorate | Fiscal year 2007 | Fiscal year 2008 | Fiscal year 2009 | Fiscal year 2010 | Fiscal year 2011 | Fiscal year 2012 |
|---|---|---|---|---|---|---|
| Continuing Resolution Rate [1] | ($40.9) | ..... | ..... | ..... | ..... | ..... |
| Total, Space Operations | $6,108.3 | $6,791.7 | $6,710.3 | $6,625.7 | $3,036.6 | $2.978.0 |
| Inspector General | $33.5 | $34.6 | $35.5 | $36.4 | $37.3 | $38.3 |
| Continuing Resolution Rate [1] | ($2.0) | ..... | ..... | ..... | ..... | ..... |
| Total | $16,792.3 | $17,309.4 | $17,612.2 | $18,026.3 | $18,460.4 | $18,905.0 |
| Year to Year Change [2] (percent) | ..... | 3.1 | 1.8 | 2.3 | 2.4 | 2.4 |

[1] Fiscal year 2007 column represents the 2007 President's Budget in full-cost simplification and shown in the new Theme structure.
[2] Modification to fiscal year 2007 if current continuing resolution is extended for entire year, and assuming $126.1 million institutional mission support transfers from Exploration Capabilities to Science, Aeronautics and Exploration not included in totals.

Totals may not add due to rounding.

Senator MIKULSKI. I have also read your written oral testimony particularly, and I appreciate, in the interest of time, pages 4, 5, and 6, which I think go to the meat of the issues around the continuing resolution, the way forward, flashing yellow lights about what will be done when, and workforce impact issues, which I know are of keen impact to not only those who are currently here, but to certainly extensive conversations with Senator Shelby, Senator Sessions, Senator Hutchison, and Senator Nelson, which goes to essentially where we are in this year's appropriation.

I am going to ask you a question and if you feel comfortable answering it, fine. If not, I understand. But my question is, when we look at 2008 what did you ask for from the Office of Management and Budget (OMB) and therefore what did you get that we would also have to take into consideration, not only in terms of the increase that was in the President's budget? Because the 3 percent just kind of keeps us almost at inflation.

Dr. GRIFFIN. That is correct, ma'am. I am not able to delve into discussions that go on within the Executive Office of the President. I will say that everyone gets a full opportunity to air their views. I've got mine. Ultimately decisions are made and when the President signs his name to that budget it becomes his submission, and I work for him and must support that.

Senator MIKULSKI. Dr. Griffin, I respect that and I respect that confidentiality. But that is also—see, I think the President has a vision of where he wanted to go and I think you are in alignment with that vision. But I think that there is a gap here with the OMB view of the vision, which is why I would like us all to get in the room as kind of a space summit. And I say that in the most friendly way. It worked so well with the President's father and Vice President Quayle.

Let me move—so just know, I think we all know where we want to go. It is how can we get there.

Dr. GRIFFIN. I admire and am very grateful for the support that you have given to the space program on a bipartisan basis, regardless of who is in charge when, and I know that that will continue.

Senator MIKULSKI. Sure.

Dr. GRIFFIN. Thank you.

HUBBLE SPACE TELESCOPE

Senator MIKULSKI. Let us go to the Hubble telescope. What is the current launch date for the Hubble servicing mission and does your fiscal year 2008 budget fully fund the servicing mission?

Dr. GRIFFIN. Well, the current date is September 2008 for the Hubble servicing mission. The fiscal year 2008 budget, of course, does not support that because the fiscal year 2008 budget was prepared and submitted by me and determined by the OMB before we had ascertained that we could do the Hubble servicing mission. You were with me. We announced——

Senator MIKULSKI. I remember it.

Dr. GRIFFIN [continuing]. That last October. We had been hoping for a spring 2008 launch and what we have is a September 2008 launch, which is 4 months different, because of the necessity to first of all be certain that we could get the servicing mission hardware to the pad in time, and April or May would have been very dicey. Then second of all, we wanted to have a launch on need capability if there were a rescue mission.

Senator MIKULSKI. Dr. Griffin, I know we have talked about this.

Dr. GRIFFIN. Right, okay. Sorry.

Senator MIKULSKI. Safety of the astronauts. What I hear is that you have the financial resources——

Dr. GRIFFIN. So I need to find $40 million in the astrophysics budget and I will do that.

Senator MIKULSKI. But it is a $40 million price tag which is not now currently in the 2008 framework; am I correct in that?

Dr. GRIFFIN. That is correct, ma'am.

Senator MIKULSKI. So we will have to work together on that. And again, we are just identifying kind of a must-do list that we need to go down.

EARTH OBSERVING SENSORS

Now, I found interesting your commentary on the science budget, now 32 percent, which carries us through, of course, 2012. But at the same time, what we are concerned about is these years into the future, one of which is 40 percent—now let us go to Earth observing. Forty percent of the Earth observing sensors now in orbit are going to kind of end by the end of the decade unless they are replaced.

As you look ahead, is there money now in this year's appropriation to make a down payment on replacing these sensors? Do you see replacing these sensors? Where do you see going with that?

Dr. GRIFFIN. You, of course, ask a very good question.

Senator MIKULSKI. That is our bread and butter, am I correct, apart from new ideas and new National Academy of Sciences recommendations?

Dr. GRIFFIN. We certainly have to keep in place the Earth sensing, climate resource programs and the data. The continuity of the data is crucial and we have to keep that in place. Now, I need to take you back for just a moment to decisions made some years ago that all of this climate research capability would be put on the national polar-orbiting operational environment satellite system

(NPOESS) program, which is a Department of Defense (DOD), NOAA, and NASA program. So NASA climate research dollars were diverted to NPOESS.

Now, NPOESS breached the Nunn-McCurdy and so the climate research sensors will not be on that. So we have asked the National Academy of Sciences for a study; and we are doing ourselves a study to determine, for OSTP, how we are going to recover from the loss of climate information that was to be provided by NPOESS and how we are going to incorporate that into the Earth science program.

We will have those studies by some time this spring. We will be factoring that into our planning for the 2009 request and beyond, because we have to adapt now to a changed set of circumstances that we did not anticipate.

Senator MIKULSKI. Well, I know my time has expired, but with the indulgence of my ranking member, because he and I thought—we had NOAA in here last week, I think, and we were pretty robust in our questioning around the need for accountability on NPOESS. We are very disappointed at the enormity of the overrun, the fact that we were glad that the McCurdy stepped in, but now we asked Admiral Lautenbacher, what are you going to do about this and how are you going to implement the recommendations.

But as you know, it was a three-headed thing. It was NOAA, NASA, and the Air Force. I do not think we would ever go for that kind of thing again. But where do you see yourselves coming in, not only with the loss of Earth science capability, but then also for the fiscal stewardship necessary for both your role that when NPOESS flies you are still going to be involved, "you" meaning NASA, is still going to be involved with NPOESS.

So where do you see your fiscal stewardship? And then when this happens in May, we do want to talk to you about climate change, the climate crisis, because I think we all agree this is where the American people want us to be working as well.

Can you help us out here?

Dr. GRIFFIN. Well, we absolutely intend to discuss with you the recommendations that come out of these two studies in connection with how we will continue our climate research.

Senator MIKULSKI. That is how we are going to continue the research. But you know, it was not only NOAA that dropped the ball on the NPOESS. The Air Force played a big role in this and so did NASA.

Dr. GRIFFIN. NASA does not have money in the NPOESS program.

Senator MIKULSKI. But you were all part of developing the NPOESS and they, as they look at some of the issues here, feel that it was also NASA that played a role, as did the Air Force, in part of these overruns. Are you with me?

Dr. GRIFFIN. I hear what you say and I understand you, but I do not think that NASA had any role in the NPOESS overruns and shortfalls.

Senator MIKULSKI. Well, I do not want to use my time going down this path, but when we talked with Admiral Lautenbacher last week, and we talked with him both publicly and I had a conversation with him about it, because this is really a big ticket item,

as you know, about what was our way forward. He seemed to also feel that there was a NASA role. So we need to be able to talk about this and talk about it, so it is not only about the climate change.

But I am going to turn to Senator Shelby and Senator Alexander. I will come back with some more of this.

MANNED FLIGHT OF ORION VEHICLE

Senator SHELBY. Thank you, Madam Chairman.

Dr. Griffin, you have indicated that unless there are additional funds provided in the next few fiscal years to NASA that the first manned flight of Orion will not be until 2015 perhaps, instead of 2014 as called for in the recent NASA authorization bill. The additional funds beyond those already in the budget that would be required to have an operable replacement for the Shuttle I understand would be $350 million in 2009 and an additional $400 million in 2010.

In response to the funding levels provided by NASA for 2007, does NASA anticipate making any supplemental requests or sending a budget amendment to the subcommittee in the months ahead to try to make up this shortfall?

Dr. GRIFFIN. We are discussing within the administration what the way forward is, but I cannot say at this time. I simply do not know whether we would be making an amended request or change plans going forward.

PRECURSOR PROGRAM FOR LUNAR EXPLORATION

Senator SHELBY. Senator Mikulski and a number of us that support NASA believe you need more money for what you are called upon to do. Lunar precursor missions. In 2005 the NASA authorization act directed NASA to institute a robust precursor program for lunar exploration. In December 2005, NASA awarded a follow-on mission, the RLEP as it was called then, to a team from the Marshall and Goddard Space Flight Centers, with Marshall as the lead.

Last year before the subcommittee you stated that this mission would be done in a timely way as a precursor mission, but would not start until 2007. In your hearing with the House Appropriations Committee early this week, it was my understanding that you mentioned that all the information NASA will need for a return to the Moon can be obtained from orbit. This seems to indicate that the precursor mission will never happen. If I am wrong, can you correct me on that?

Can you explain if the requirements have changed between 2005 and today and align that position with the direction of NASA's authorization language for having a robust precursor program? In other words, what is the current status of this?

Dr. GRIFFIN. The information that we feel that we need—and this conclusion has been reached in discussion with our NASA advisory councils, science groups, as well as internally—the conclusions we have reached are that the information we need before putting people back on the Moon can be obtained with lunar reconnaissance orbiter. The surface science and technology that we

would like to do is something we would like to do, but it is not essential.

Because funding is very tight, we have a choice between doing lunar surface science and technology with robotic precursors early on. If we do that, we will delay the development of the Ares launch vehicle and the Orion crew vehicle by another 6 months. So if I undertake that work, I will delay Orion and Ares even further. That is work not yet started, and so when budgets are tight my normal first choice is to delay work not yet started rather than to cancel work, and my normal choice is to delay work which is nice to have but not essential, and that is what we will be doing here.

PROPULSION RESEARCH AND DEVELOPMENT

Senator SHELBY. In the area of propulsion, we talked about this before. The Vision for Space Exploration will require many new technologies and systems to be developed in order to maximize our investment on returning to the Moon. One of these areas will require ongoing research and development in this area of propulsion. Marshall Space Flight Center has expertise in this area and has continued working on propulsion systems from the time of the last missions to the Moon to the present.

As the work continues on the research and development on Vision-related vehicles and systems, what do you anticipate will be the need for propulsion research and development this year and in the future?

Dr. GRIFFIN. I do not need propulsion research to get back to the Moon. I need propulsion systems development, if you will, and that is going on at the Marshall Space Flight Center and through its contractors, and they are doing, frankly, a very good job. I am quite pleased with them. They will be busy with the redevelopment of the Nation's space propulsion capabilities for an upper stage and rocket capabilities for the foreseeable future.

So Marshall is fully occupied helping us first replace the Shuttle and then after that return to the Moon. I would like to say, believe me, I would very much like to be doing advanced research in propulsion. But as with other things in the budget, there is a difference between must have and nice to have, and right now what I must have is working propulsion systems, and what would be nice to have is advanced propulsion research.

AGING NATIONAL AERONAUTICS AND SPACE ADMINISTRATION INFRASTRUCTURE

Senator SHELBY. Dr. Griffin, a lot of the NASA facilities have aged and deteriorated, as you well know. A lot of us believe there is significant need for infrastructure. Do you have any plan for that? What can we do to help you? I know we are the money Committee to appropriate money. We have those challenges at Marshall. You have them at Goddard, you have them at Kennedy Center, you have them in Florida.

Dr. GRIFFIN. Sure. Sir, most of the NASA infrastructure, as you know, is 40 some years old and more. Even at that, it is not as old as many other Government facilities, but that is as it is. We are working on an agency-wide facilities plan right now. It will be done shortly. We are working with the Office of Management and Budg-

et to finalize that, and it will cover the detailed data for the fiscal year 2008 construction of facilities, including repair, rehabilitation, renovation, replacement on existing systems, as well as any new things that we need.

It will describe about a little more than a $6 million strategic initiative to address our facilities repairs and upgrades that are needed. Now, with regard to returning to the Moon, we are going to make every effort to use existing facilities. We would only propose building a new facility if something that the U.S. Government already owns just does not make the grade. But we will discuss that, the strategic plan, with you just as soon as we have it.

Senator SHELBY. Thank you very much.

Senator MIKULSKI. Senator Alexander.

EDUCATION PROGRAM

Senator ALEXANDER. Thank you, Madam Chairman.

Mr. Griffin, I want to ask you about a $153 million item in the budget that is labeled "Education." I see that NASA's education themes are: one, to contribute to the development of science, technology, engineering, and math workforce in disciplines needed to achieve NASA's strategic goals; and two, to attract students and retain them in those disciplines. So it is teachers, workers, students—and students, I guess is what we are talking about.

Two years ago a group of us, including the chairman of this subcommittee, asked the National Academy of Sciences and the National Academy of Engineering, of which you are a member——

Dr. GRIFFIN. Yes, sir.

Senator ALEXANDER [continuing]. To tell us what are the top things we need to do in priority order to keep our brainpower advantage in this country. They assembled a distinguished group and gave us 20 specific items in priority order. And items A–1 and A–2 were the same things as your themes. In other words, one, is annually recruit 10,000 science and math teachers by awarding scholarships, et cetera; and two, is strengthening the skills of 250,000 existing teachers through training and education programs. So what I want to ask you is, in order to keep our jobs in this country, keep growing them, if we wanted quickly to recruit more math teachers and strengthen the skills of existing math teachers and inspire students in math and science, your $150 million is already at work toward that objective. How effective are you at that? And specifically, how many teachers, how many students, do you touch each year? And do you have any measures of how much they learn or what progress, how effective the programs are toward these goals? And have you invited your Academy of Engineering or scientists or other outside groups to look at this $150 million and say, in light of these goals, which are now being incorporated into legislation that has been introduced and is likely to pass here by big bipartisan numbers, are we getting the biggest bang for our buck on this $150 million in terms of new math and science teachers and outstanding teachers, especially with summer institutes and academies, which were highly recommended here as some of the most effective programs for training math and science teachers and aspiring students?

Dr. GRIFFIN. I do not know that we are. I have a new Assistant Administrator for Education. She has taken on the task of trying to link our spending to measurable goals and outcomes. When I rejoined NASA as Administrator, I too was unhappy with the indefinite nature of our education program. We are spending, as you see there, in round numbers around $150 million or so every year on direct education, and we are spending another very substantial sum, in the low hundreds of millions, on education and public outreach as a part of our normal missions. So from all sources, NASA is spending literally hundreds of millions on education, and it would be nice to have it strategically oriented. I do not know that it is right now, but we are working on it and I would be more than pleased to provide an answer to you for the record on exactly what we are doing or a briefing to you or your staff.

[The information follows:]

SCIENCE, TECHNOLOGY, ENGINEERING AND MATHEMATICS (STEM)

NASA is continually looking for ways to support science, technology, engineering and mathematics (STEM) education to compete effectively for the imaginations and career ambitions of America's young people. NASA also provides teachers with supplemental curricular materials for the learning environment in communities.

NASA has developed a number of innovative programs that use NASA's unique content, people and facilities to support educators in science, technology, engineering, and mathematics fields, and to inspire the next generation of explorers and innovators through the Vision for Space Exploration. Specific examples include:

*Attracting students to the teaching profession*

The NASA Educator Astronaut project uses the visibility and educational opportunities created by the activities of the Educator Astronauts to inspire greater K–12 STEM achievement, promote STEM careers, and elevate public esteem for the teaching profession. In selecting our Educator Astronauts, we identified hundreds of our country's top educators. We have captured their energy through the Network of Educator Astronaut Teachers (NEAT). Approximately 180 NEAT members are now in communities all across America conducting workshops (three annually) reaching about 90 educators per session. These efforts result in strengthening STEM skills of approximately 10,000 teachers annually. Additionally, professional development training engaging educators, their schools and communities in NASA education activities and informing them of NASA resources has taken place in 280 NASA Explorer Schools (NES) 17 Science, Engineering, Mathematics, Aerospace Academies (SEMAA), and 31 Aerospace Education Laboratories (AEL).

*Providing pre- and in-service teacher training*

NES provide intensive teacher training, the Aerospace Education Support Project (AESP) provides on site professional development to teachers in classrooms across the country. NES assist middle schools with improving teaching and learning in STEM education through significant structural (professional development, stipends, grants) and curricular support based on NASA resources. In 2006, 5,339 teachers received intensive training as part of the NES project. Additionally the AESP conducted sessions across the Nation, reaching 13,938 educators.

—Research Academy provides leading-edge research opportunities for faculty and students from Minority Institutions (MI) that compliment NASA's research programs and make original contributions to NASA in astrobiology, biotechnology, information technology, and nanotechnology. Faculty and students from MI collaborate with the scientists at NASA's Ames Research Center, industry, academia and nonprofit organizations on research that helps prepare the next generation of explorers for NASA missions.

—In addition to in-service workshops based on our missions, NASA is committed to the pre-service training of our future educators. Through the National Pre-Service Teacher Conference, Pre-Service Teacher Institutes and Online Professional Development, NASA recruits STEM teachers to develop the confidence and skills to effectively teach mathematics and science using cutting-edge technology and educational materials. Such efforts have led to 200 STEM-enhanced teachers instructing an average of 25 students per classroom times 3 years, impacting a projected total of 15,000 students.

—NASA's Digital Learning Network (DLN) fosters the effective use of interactive instructional technologies through the delivery of NASA educational content for the benefit of its students and educators. It also contributes to the professional development of internal and external educators through the delivery of face-to-face and distance learning-based events. Over 74,000 students, teachers and other participants were engaged in a DLN event last year.

*Developing and distributing curricular support materials*

Curriculum Improvement Partnership Award, a three-year undergraduate curriculum improvement program for minority institutions (MI), including Historically Black Colleges and Universities, Hispanic Serving Institutions, Tribal Colleges and Universities, and other MI, emphasizes improvements that are directly related to the NASA mission by infusing innovative learning experiences in STEM into the curriculum. NASA's Educator Resource Centers (ERC) conducted educator Resource Center Network 362 workshops in fiscal year 2006, helping 23,819 teachers learn about and use NASA's educational resources. Personnel at ERCs located throughout the United States work with teachers to find out what they need and to share NASA's expertise. The ERCs provide educators with demonstrations of educational technologies such as NASA educational Web sites and NASA Television. ERCs provide in-service and pre-service training utilizing NASA instructional products. Educators also have the opportunity to preview, copy and receive NASA instructional products.

Through an innovative partnership, NASA is collaborating with OfficeMax to provide educators with a convenient way to access NASA materials in the most economical, productive and efficient way. If educators require a document or material that is large quantity (number of pages), and doesn't have the resources to print them, OfficeMax will print materials and make them available at any of their nearly 1,000 stores across the country, including Puerto Rico and the Virgin Islands.

*Supporting informal learning*

The Museum Alliance provides near real-time access to NASA information from missions such as Cassini, Hubble and Mars, as well as Earth science resources, for use in museums and science centers across the country.

In collaboration with the American Museum of Natural History, dozens of activities and curricular support materials and lessons were adapted for use by the after school community.

Other examples of the unique innovative projects that NASA makes available to support students across our Nation and to inspire more students to pursue higher levels of study in STEM courses include:

—The Science Engineering Mathematics and Aerospace Academy Program (SEMAA) reaches K–12 minority students that are traditionally underrepresented in careers involving STEM. Students meet during school, after school or on Saturday mornings and during the summer to engage in hands-on, interactive learning sessions that are specifically designed for each grade level.

Between the International Space Station, the space shuttle, sounding rockets and high altitude balloons, NASA's Education Flight Projects provide hands-on experiences to inspire and motivate students to pursue studies and careers in STEM through participation in NASA research applications. NASA is using its unique assets like the C–9 to allow students to study microgravity; we are launching student experiments more than 25 miles above the Earth on sounding rockets; and our astronauts make phone calls from 240 miles above Earth's atmosphere to students to involve them in current research aboard the International Space Station. All these opportunities take advantage of our flight hardware projects provide real, hands-on experiences to inspire the minds, imaginations, and career ambitions of America's young people.

—Teacher training for Worlds Beyond Our Own captures the excitement and discovery surrounding planetary exploration. NASA and the Johns Hopkins Applied Physics Laboratory developed workshops and materials to assist educators in capturing the excitement surrounding NASA's New Horizons mission to Pluto that launched in January 2006. New Horizons is the fastest spacecraft ever launched from Earth, on board one of America's most powerful rockets, and will be traveling the farthest distance of any NASA spacecraft to begin its primary mission. Students will grow up with this project. Today's elementary school students will be in college when this spacecraft encounters Pluto.

—Museums and Science Centers are developing activities and materials to inspire, educate, and engage students, educators and the general public. They are also hosting professional development opportunities for formal and informal education professionals across the Nation. For example, in 2005 NASA and the

Children's Museum of History, Natural History, Science and Technology in Utica, NY unveiled two new exhibits at the museum. The exhibits "Why We Explore" and "Space Station Imagination" provided an overview of the history and future of space exploration. Astronaut Ed Lu, a veteran Space Station astronaut, who spent six months aboard the International Space Station, hosted the unveiling.

—NASA's Great Moonbuggy Competition allows high school and college students' to race into the future and cross the surface of the moon without leaving the Earth. Teams from the United States and Puerto Rico design human-powered vehicles to compete in NASA's annual Great Moonbuggy Race. The race was inspired by the lunar rover vehicles astronauts drove on the moon during three Apollo missions. This year's event, opened to the media and public, was held April 13–14 at the U.S. Space & Rocket Center in Huntsville, Alabama.

In fiscal year 2005, through a variety of venues (distance learning, videoconferencing, events, competitions, face-to-face, Space Shuttle and ISS downlinks, workshops, and other activities NASA has reached more than 2.9 million students, (776,000 K–12; 50,000 higher education; 2,151,380 distance learning students) and 855,000 teachers. (Please note: the number of teachers represents not a number of the individuals that participated but a number of participation opportunities that were taken, many of which were taken multiple times by the same individuals.)

Educators who participated in NASA workshops and events provided feedback via the NASA Education Evaluation Information System (NEEIS) regarding the effectiveness and relevance of our efforts. With a 5.0 Liken scale in which "5" is the highest value, the average of the teacher participant ratings of NASA's workshops and resources was 4.67.

NASA's resources (teacher training programs, supplemental curricular materials, etc.) are aligned to national standards and complement other agencies efforts. Interagency forums, e.g. the National Science and Technology Council enable all STEM education focused agencies and departments to share information and best practices to promote complementary activities.

Additionally, NASA uses objective and verifiable performance metrics, regular management insight and review processes, and defined tools to assess its performance at all levels—portfolio, outcome, and the individual program/project/product/activity.

The Agency is working with other agencies, e.g., National Science Foundation to examine their evaluation techniques to determine applicability and best practices for assessing NASA's education portfolio, strategic outcomes, and projects.

In fiscal year 2006, the National Research Council (NRC) Board on Science Education began work under a contract with NASA to conduct an evaluation of NASA's precollege education program. An expert panel was convened and the first committee meeting was held Nov. 15–17, 2006. A second meeting held on January 18–19, 2007. Three additional committee meetings will be held prior to the submission of the NRC's report, scheduled for November 2007. The NRC does not release preliminary results prior to submission of their report.

In addition to the NRC evaluation, other independent assessments, evaluations and program reviews of projects such as NES, AESP, EarthKam, and SEMAA are conducted annually by Paragon Tec Inc. (NES), Western Michigan University (AESP), Education Development Center for Child and Technology (EarthKam), and Benson Penick and Associates (SEMAA).

Senator ALEXANDER. Well, no, I would be—you can provide it to me, because I am very interested in it and would like to work with you. My son went to the space camp in Huntsville and that's an attractive way to inspire students. But if I may suggest, one outside group that may be useful to your assistant and to you as you measure the $150 million might be the Augustine Group in the National Academies, because they spent a summer looking over a great many programs, looking at their effectiveness. That would be one source of input.

For example, the legislation that we have would increase the number of summer institutes at national labs. Well, I can think of no more inspiring place for math and science teachers in Tennessee to go for a 2-week session than an academy in Huntsville, to learn

new techniques for teaching math and science and to inspire them to do a better job.

You have so many degrees that you have enough degrees for the whole room here, so I know I am preaching to the choir. But just as an example, we are talking about very measurable numbers here. Governor Hunt of North Carolina, former Governor, told us that the University of North Carolina College of Education graduated three physics teachers last year for the entire State of North Carolina. I am sure the number in Tennessee is not much more. But just in our own region with that one activity in Huntsville, we could probably quadruple or double or even by a factor of more the number of teachers through summer institutes, academies, a variety of ways.

So I would look forward to working with you on that and following it over time, and I am delighted that you are there and that it is a priority of yours.

Dr. GRIFFIN. I would be interested in working with you on it and I am certain that if legislation is passed increasing the number of summer academies and institutes that we would be happy to be part of that. We would be thrilled.

MATH AND SCIENCE INSTITUTIONS

Senator ALEXANDER. Madam Chairman, and I am also suggesting that since they have recommended this as the single most important thing we could do to keep our competitive edge, ahead of research, ahead of the R&D tax credit, ahead of everything else, we might take some of that $150 million you have now got and have some summer institutes for math and science teachers and students.

Dr. GRIFFIN. Well, much of the money that we are spending today is set aside for member preferences on how the education dollars are to be spent, and if it could be spent more strategically I would be, for one, I would be much in support of that.

Senator MIKULSKI. Dr. Griffin, now you know why Senator Shelby and I were so excited that Senator Alexander joined the subcommittee. We worked with he and Senator Domenici and Senator Bingaman last year to literally put into a legislative framework the rising above the gathering storm, and he came on this particular subcommittee because of his passion really to implement the triad of increased research, increased opportunities in education to get people excited about science, and number three, a more innovation-friendly government.

Who is your new assistant for education?

Dr. GRIFFIN. Her name escapes me right now.

Senator MIKULSKI. Mary, do you want to?

Dr. GRIFFIN. Oh, thanks. Dr. Joyce Winterton. I am sorry. She just recently came on board and I met her only once.

Senator MIKULSKI. No, I know you've got a lot on your mind. This is like sitting for your oral exams for your doctorate. We go from one topic—no, we understand.

Dr. GRIFFIN. No, that was easy. This is much tougher.

Senator MIKULSKI. What we would like to suggest is that the new Administrator meet with Senator Alexander, because you are right, in previous years education has been gushy and where there

is a vacuum members step in. So now I think we would like to make wise and prudent use of that $150 million and we can see the benefits. Certainly the NASA relationship with the Maryland Science Center has been a cornucopia of running opportunities both for teachers and for students.

But we would like to really make good use of this because, again, NASA is where it is at. It is—what I said to the President about being in the innovation-competition agenda, competitiveness agenda. It is NASA through its technology, through Hubble, to its space exploration program, that really excites people about science. And we have got all these young little geniuses out there who want to participate in October Sky, while we, of course, do our appropriations.

SPACE SHUTTLE RETIREMENT

So moving on, though, to like some nuts and bolts again, Shuttle retirement. What I am concerned about is what happens if the Space Station is not finished by 2010 and you are ready to retire the Shuttle? Do we anticipate that the Shuttle really will be done by—excuse me, the Space Station, that the Space Station will be done by 2010? And do you really believe that it will, but do you have a contingency plan? What is the consequences of the contingency plan?

Dr. GRIFFIN. We have dealt with that in a couple of ways. First of all, I do believe that the assembly schedule accommodates ample margin to finish the assembly of the Space Station with the Space Shuttle by 2010. It was planned that way. When I came back to NASA, we did not have a plan that accommodated a reasonable schedule reserve to finish the Space Station by 2010, nor did we have the budget for it. So we tightened our belt on the human space flight side of the house and we deferred, as many have regretted and as I regret, we deferred some of the utilization of the Space Station in the next few years in order to focus on assembling it.

So our average flight rate over the years, including time out for two losses due to accidents, has been 4½ flights per year. We are on that pace now again. We are doing well, and if we continue that pace we will finish with ample margin. So I do believe we can do that.

Now, the consequences——

Senator MIKULSKI. Do you envision any scenario that would keep the Shuttle going after 2010?

Dr. GRIFFIN. I do not. In fact, at some point years ahead of your last flight you have to buy your last tank, your last solid rocket boosters. We've done that. So we do not envision a scenario in which we would continue to fly past 2010. Now, the last couple of flights have been arranged so that they are the least crucial flights, and so if it were necessary to drop a flight or two we would still have the assembly complete. Some of our logistics would not be delivered and we would have to find some other means of commercial transport to put those up. In fact, that is what we plan to rely on between 2010 and when the crew exploration vehicle (CEV) comes along, is commercial transportation to the Space Station to deliver our supplies and other cargo.

ORION CREW RETURN VEHICLE/ARES LAUNCH VEHICLE

Senator MIKULSKI. We could have a robust conversation just on that. But I would like to give you the opportunity, because I know Senator Shelby as our other colleagues are very keenly interested in, of course, the Orion crew return vehicle and the Ares launch vehicle. That is the bread and butter. I mean, that is the—without that, space exploration will really just sputter.

The Orion of course, the safety of our astronauts, the crew return vehicle, and of course the launch vehicle. In your fall testimony, which was the part that I was reading, you talk about how, based on everything I know, due to the cumulative effect of reductions in the exploration system to pay for the Space Shuttle return, previously underestimated costs to fly the Shuttle until 2010, and the reduction in fiscal year 2007, you were concerned about, number one, the schedule that you now had, and number two, you also comment that you are not sure about what will be the workforce implications of all of this.

What I would like to do today with Senator Shelby and I here, do you want to elaborate on that, so we just kind of get it all out into the air? Right now we have just identified Hubble costs $40 million. That is a chunk of money. Let us really talk about what it is going to take and what you would like to see in order that we meet—we understand, we do want Orion. We do want Ares, and we want it in as well-paced a way as you would, and I think the mission calls for.

So do you want to elaborate on your testimony, because I think this is the nuts and bolts of what colleagues are asking and what we are asking. So tell us how you see this and for you to elaborate on your testimony, and particularly also the work force implications, because some of our colleagues are apprehensive.

Dr. GRIFFIN. Yes, Madam Chairman. Would you like me to sort of walk you through how we got where we got?

Senator MIKULSKI. No, we know how we got where we are.

Dr. GRIFFIN. You know how we got there, okay. So you want to know what we need to go forward.

Senator MIKULSKI. Yes. We know how—it is kind of that same, we are where we are. So we know where we got, but we have got to get going. So let us talk about the got to get going.

Dr. GRIFFIN. Yes, Madam Chairman. I just wanted to make sure I understood what you wanted me to talk about. Accepting the intent of the Congress on the fiscal year 2007 continuing resolution, Senator Nelson and Senator Hutchison asked me what it would take to get back into 2014 with the CEV and the Ares and Orion. I said, after we studied it carefully, to replace the money that was not appropriated in 2007 would require $350 million in fiscal year 2009 and $400 million in fiscal year 2010, as close as we can estimate it. That would get us back to September 2014. I was also asked what it would take to get back into 2013 and, considering that again as carefully as we can, we believe that it is about $100 million a month. So that should just be the way that you should think about it. Every month that you want to pull the schedule in is $100 million.

The best we could do at this point would be to bring it back to June 2013. So June 2013 is where we are on a technical schedule.

Senator MIKULSKI. Technical. But as it stands now, based on the 2014, knowing earlier is always nice to hear, but we would be concerned about two things. Number one, what now as we look at 2008 in order to meet responsibilities, meet our responsibilities in 2008, and also what you need to do in terms of the fiscal mechanisms, not to be sure that we do not get into the overrun problem.

Dr. GRIFFIN. Of course, now——

Senator MIKULSKI. What do you need in 2008 to, say, meet a 2014?

Dr. GRIFFIN. I do not need anything additional in 2008.

Senator MIKULSKI. But for us to stay the course?

Dr. GRIFFIN. For us to stay the course. If you wished to pull the schedule in and stay the course and be in 2014, we would need money in 2009 and 2010. Of course, you know better than anyone that fiscal year 2009 preparation starts next month. So fiscal year 2009 is already upon us. But I do not need additional funds in fiscal year 2008. But I would need to know that funding would be coming along in fiscal years 2009 and 2010.

Senator MIKULSKI. But your point, though, is that in 2008, that if there is any shrinkage in 2008—and, of course, we are looking forward to what our allocation is going to be. This is why we are looking—you know, we are so glad the budget is going to be on the floor, that we know what our allocation is, because we presume that some time in May we will need additional conversations. We will know what our allocation is, we will know the direction.

But to be clear, if we stay the course in 2008 as recommended here, you will be moving while you are looking at 2009. And that is also if something unforeseen does not happen.

Dr. GRIFFIN. That is exactly correct, Senator. If I get the President's budget in 2008 and if the funding I mentioned in 2009 and 2010 were to be supplied, if you chose to do that, then we would be back on track. I will say for the record, our technical planning on these systems is very conservative. We are budgeting with new levels of conservatism. I have spoken of 65 percent confidence level budgeting. Paul has heard me and Art has heard me on this. So I strongly believe, that we can avoid future technical surprises in this. We are not developing new technology here. We are striving to restore lost capability. So this is not the time to develop new technology.

INDEPENDENT PROGRAM ANALYSIS ORGANIZATION

Senator MIKULSKI. Well, first of all, I know that many are talking about even if we could accelerate it another year. I want to be sure that there are mechanisms in place to make sure that Orion and Ares are properly managed. And I know you share that.

Do you have an independent oversight mechanism to verify cost, design, and technical feasibility?

Dr. GRIFFIN. Yes, we do. We have an entire independent program analysis organization that, in fact, does just such cost analyses, that is independent of the programs.

Senator MIKULSKI. I am sorry; who does that?

Dr. GRIFFIN. Again, it is our independent program analysis organization.

Senator MIKULSKI. So you have an internal red team?

Dr. GRIFFIN. Yes, Madam Chair.

Senator MIKULSKI. Is that kind of that in a nutshell?

Dr. GRIFFIN. We do. They are located at Langley or they are headquartered at Langley. They are independent of the programs and their estimates in fact have been quite reliable. It was they who brought to me the correct information regarding the underfunding of the James Webb Space Telescope a couple of years ago. So I have found them to be very good.

Senator MIKULSKI. We just needed to know what it was.

I just—I do not know if Senator Shelby has more questions, but when Shelby—when Senator Shelby moved the bill last year, I think, Senator, you had $3.7 billion in there for this, which of course is very close to the President's budget. Had we been able to move our bill, I think we would be in good shape.

I know with the continuing resolution—and it has given heartburn to many of us, even the idea that we had to do one—there was $400 million, so it was not a total loss. But it was enough of a loss for you to lose time, but you do not want to lose ground; is this right? And if we get back to where we are, I think we will have a way forward.

Dr. GRIFFIN. That is correct, Madam Chairman. I would again emphasize we will soon be making decisions with our contractor based on what money we can expect when. So if it is your intention——

Senator MIKULSKI. You know, when you talk about 2009 and 2010, I do not dispute this. I am glad to hear. Also there is the red teaming, which means—but we are not the only ones that need to hear this. And I know you are starting next month. This is why I would like for us to be in the room and say, we have got to talk about a couple of years here, how we can retire the Shuttle with honor and say goodbye, not be sitting on the launch pad for a prolonged period of time, but do it in a well-paced way, as well as to meet important scientific objectives that have been identified by both your team and the national academies.

AMERICAN COMPETITIVENESS INITIATIVE

Senator SHELBY. Thank you. Madam Chairman, I think we do need some type of summit with Dr. Griffin and others where we can just talk about what we really need, where you really want to go, and so forth, and see how we can help.

Dr. Griffin, ACI. I was surprised to see that NASA was not included as part of the American competitiveness initiative, ACI. The goals for the education component of NASA's budget are to strengthen the Nation's future workforce, attract and retain students in science and engineering, and to engage Americans in NASA's mission. Coupled with the high public visibility and recognition that you enjoy, it seems that NASA would be a natural fit for such an initiative.

It is troubling why NASA was not included in this initiative. It seems like it is a pretty good fit.

Dr. GRIFFIN. Well, yes, sir. In fact, much of what we do fits very naturally within the goals of the ACI. There may be some semantics involved here, but I think in a way that is a reason why NASA was not specifically included. We are already doing many of those things.

The ACI was also intended to provide additional budget for agencies which had not been receiving it, and from the administration's point of view NASA is already above the average level for domestic non-defense discretionary agencies.

Senator SHELBY. You have got a lot of brainpower, I think, that we could use.

Dr. GRIFFIN. Well, I hope we do.

Senator MIKULSKI. I would agree.

Dr. GRIFFIN. Well, we support your view that we at NASA do many things that are closely related to the goals of the ACI and we intend to keep doing those things.

CHINESE ASAT TEST

Senator SHELBY. China. I know that last summer you were in China to talk about their space program and so forth.

Dr. GRIFFIN. Yes, sir.

Senator SHELBY. As we are all aware, China recently conducted a test that destroyed a weather satellite in an orbit about 500 miles above the Earth. This test had to have created some space debris that eventually will fall or could fall to the Earth. But it would first have to pass through space occupied by the International Space Station and other valuable NASA assets. That is what I have been told.

I do not want you to touch on any classified information here, but what risk to NASA's assets was created by this test and could you relate that here, or would you rather defer that?

Dr. GRIFFIN. No, I can discuss that here, Senator. For the first few weeks after the Chinese ASAT test, the risk to the Space Station approximately doubled. Now, I would state correctly for the record that the average daily risk to the Space Shuttle from orbital debris is about 1 in 100,000. So the risk doubled from about 1 in 100,000 to 1 in 50,000.

After a few weeks, the debris had spread out and retreated into what the analysts refer to as the background. So after a few weeks that debris posed no measurable additional risk over the existing background that was already there. Nonetheless, of course, we deplore such tests because we now understand in a way that we did not some decades ago how dangerous that debris can be, and in fact China is part of international coordinating bodies whose goal is to mitigate such debris. So we do regret that test, but at this point it does not pose an additional threat to any space assets that we have.

STATUS OF THE EXPLORATION ACTIVITIES

Senator SHELBY. Dr. Griffin, for the record, could you give us a status of the exploration activities such as the Constellation program are progressing, would you specifically focus on crew exploration vehicle, the crew launch vehicle, and the launch operation aspects of the program? Could you do that?

Dr. GRIFFIN. Yes, Senator. The crew exploration vehicle—when I sat here with you a year ago we were in the middle of source selection. We said that we would select a winning contractor by Labor Day of that year, and we did. That winning contractor is Lockheed. We have spent the last few months working with them to scrub the design and definitize the requirements. That has gone quite well. They are on track and they are on target.

We with Senator Mikulski already discussed the impact of various delays, including the need to find additional money for the Space Shuttle last year and the continuing resolution this year. The accumulated effect of delays is to put us into 2015, which none of us want to be in, and both of you have expressed your desire to help with that and I appreciate it.

But the technical work on the CEV is on target. The Ares launch vehicle, which, as I think you know, is being developed under the leadership of a team at the Marshall Space Flight Center, is equally on target. They are doing just a great job. They have released the RFP, the request for proposals. Industry is now bidding on the upper stage development work for that vehicle. The first stage uses an existing development, the Shuttle solid rocket booster, which the project office for that exists at Marshall Space Flight Center. So we will be combining a second stage with an old first stage, and that will be the new crew vehicle.

The instrument unit for that will be procured in an RFP this October. So by the time the new fiscal year starts, we will have all the elements of Shuttle replacement under contract and in work. I am very pleased. We have teams at Marshall Space Flight Center and Johnson Space Center on that. I am very pleased.

Launch pad work has already started on Complex 39B to transition that from a Shuttle pad to a new Orion and Ares pad. Now, Senator Mikulski, as you and I have discussed, we will preserve the launch on need capability during the Hubble Space Telescope servicing mission. So we will not make modifications to Complex 39B which would interfere with the Shuttle launch, but we have started those modifications in non-interfering ways.

The team is excited. They are energized. This is affecting our educational posture because I spent 13 years as an adjunct professor. If I ever again have a life to call my own, I will go back to doing it. But my academic friends are telling me that their college students are excited and they are energized because they see a space program being reborn out there that they can join when they graduate from college, and they look ahead and they say, well, when I am 45 we will be going to Mars, and that is true. If we keep going with what we are doing, that is true. So work is going very well.

Senator SHELBY. Dr. Griffin, I do not believe you will be an adjunct professor unless you want to by choice. You will be a chaired professor somewhere.

Madam Chairman, thank you.

NATIONAL ACADEMY OF SCIENCES REPORT ON EARTH SCIENCE

Senator MIKULSKI. Thank you, Mister—thank you, Senator Shelby.

I just have one last question before we go. I know there are votes. I want those college kids when they are 45 knowing that we are on Mars, but I do not want them sitting at a kayak at Goddard because the bay has risen that far because of global warming.

Which takes us to the National Academy of Sciences report on Earth science. Dr. Griffin, as you know, they have recommended a robust agenda of 17 different projects to study climate and atmospheric and oceans issues along with NOAA, to really also focus on those things that would have societal benefit.

Do you want to tell us your reaction to this and how you would see—I know it is not in 2008, but how you would see incorporating this? And also, one of the things it calls for is a memorandum of agreement with NOAA to really maximize and leverage the respective work that both agencies are doing. Do you want to comment on that?

Dr. GRIFFIN. Yes, Madam Chairman, I would like to. I think the NASA–NOAA relationship is as good or better than it has ever been. Admiral Lautenbacher and I and our staffs talk frequently. We, as I said in an answer to one of your earlier questions, we recognize the need to replan our Earth science and observation and climatology work together, given the restructuring of NPOESS, and we will be doing that over this summer and we will be keeping you and your staffs informed as to how that is going.

We have a National Research Council study which is due to us to help with this issue, as well as a study that we are preparing for OSTP. We will factor in the results of the new decadal, which I would remind you, we asked for that decadal. So we now have their priorities for the work which should be done within Earth science, and in fact we used the midterm report on that to increase money to the global precipitation measurement mission, the GPM, which we will be doing in conjunction with the Japanese. So we are paying attention.

Senator MIKULSKI. I want to be very clear that the recommendations of the National Academy on Earth science for the climate crisis does not mean in any way to imply that you, meaning NASA and the Earth sciences have not already been looking at it.

Dr. GRIFFIN. Right.

Senator MIKULSKI. This is the look ahead. That is why they call it the decadal. That is like we are in the decathlon.

Dr. GRIFFIN. So we will be restructuring our Earth science portfolio, or we will be making certain that our Earth sciences portfolio over the budget planning horizon starting with the fiscal year 2009 budget does reflect the input of the decadal, and we will share that with you.

Senator MIKULSKI. Well, I am really excited to hear about that and, as both Senator Shelby and I have said, we have got a long road ahead. I think we are very clear that in 2008—ordinarily phrases like "stay the course" do not usually mean something, but we understand how—what we need to be doing in 2008. But we also want to look ahead to the longer issue, the NASA trend lines, as well as ensuring that we do have a reliable space transportation system as promptly as the Nation can afford to do it, as well as keeping other important projects.

I think we have really gone through quite a bit of our questions. Senator Shelby, do you have a last one?

RANKING MEMBER SHELBY CLOSING REMARKS

Senator SHELBY. I just have one brief comment since we have Dr. Griffin here again.

Dr. Griffin, we want to work with you, both of us. I work now as the ranking Republican, former chairman. Senator Mikulski was the former ranking Democrat, now chairman. But I do not believe that NASA has two bigger supporters than the two of us here on this subcommittee. We are going to continue to work with you to make NASA what it wants to be.

Dr. GRIFFIN. Thank you, Senator. I know that you have been my biggest supporters and I very much appreciate it.

SUBCOMMITTEE RECESS

Senator MIKULSKI. This subcommittee is recessed. We will return on April 12, when we will take testimony from the Attorney General.

[Whereupon, at 3:18 p.m., Thursday, March 15, the subcommittee was recessed, to reconvene subject to the call of the Chair.]

# COMMERCE, JUSTICE, SCIENCE, AND RELATED AGENCIES APPROPRIATIONS FOR FISCAL YEAR 2008

**THURSDAY, APRIL 19, 2007**

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

The subcommittee met at 10 a.m., in room SD–192, Dirksen Senate Office Building, Hon. Barbara A. Mikulski (chairman) presiding.

Present: Senators Mikulski, Lautenberg, Shelby, Stevens, and Domenici.

## DEPARTMENT OF JUSTICE

### BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND EXPLOSIVES

**STATEMENT OF MICHAEL J. SULLIVAN, ACTING DIRECTOR**

STATEMENT OF SENATOR BARBARA A. MIKULSKI

Senator MIKULSKI. Good morning. The Subcommittee on Commerce, Justice, Science, and Related Agencies will come to order. Today we will be taking the testimony of the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), the Drug Enforcement Administration (DEA) and the United States Marshals Service.

We want to extend a warm welcome to our witnesses today and let our witnesses know how important we think their job and their mission is to this country.

When we planned this hearing a few months ago, it was to examine the budget of these very dedicated law enforcement agencies and to discuss how the Commerce, Justice, Science Subcommittee could work with them to make sure they had the tools they needed to protect our national security and keep our communities safe.

Yet, this week, a very grim and very melancholy event occurred on the campus of one of our universities. On Monday we watched in shock and horror as Virginia Tech came under fire with over 32 dead and many more injured. The terrible tragedy highlights how important it is for our Federal law enforcement agencies to be able to work together with our local law enforcement at a time of great tragedy.

What we know is that ATF was immediately on the scene sending 12 ATF experts to Virginia to secure the crime scene, and make sure that the integrity of the evidence at the crime scene was not compromised. In fact, Maryland is home to a very unique ATF fo-

rensic lab. I know the subcommittee will be interested to hear about this facility because it is where ATF identified the ballistics evidence to determine if there was a single killer or multiple killers. But at the same time we know that DEA and the Marshals Service also answered the call.

In the briefing that you've provided me before this hearing it was clear there was an outstanding effort by Federal agencies in supporting and augmenting the local community so they knew they were not alone. While they were making the best of a terrible situation, you were doing your best, which was making sure needs were met. We will be asking you today questions along these lines.

We also want to then focus on each of your very unique missions. We know that the DEA is an integral part of fighting the global war against terrorism. Terrorism, whether it's been growing poppies in Afghanistan to fund the Taliban or to what is happening in our own community with the cyber distribution of highly addictive substances or to working with State and local law enforcement to shut down and clean up toxic meth labs. We want to know more about what you're doing and what we can do to help you do it.

Also for our Marshals Service, the Marshals Service plays a unique role. Right this minute on the Senate floor we're debating court security. We ask the Marshals Service to provide court protection to both witnesses and to our judges. We also ask them to guard fugitives. We also ask them to provide unique and special protection in high profile trials where there is a drug kingpin or a terrorist. At the same time we want them to enforce the Adam Walsh Act and make sure they apprehend the sexual predators who refuse to register while making sure you catch them before they commit another repugnant act.

So we want to listen to all of you today. Our ATF, whose unique job is to enforce laws related to alcohol, tobacco, and firearms. This is not the old days of breaking up stills. There is nothing still about ATF in terms of its modern mission. They're on the scene investigating arsons, illegal trafficking of guns both internationally and nationally while providing unique forensic capability that often local communities cannot afford particularly those in rural America.

Threats have changed since your agencies were created. Technology is in demand and at the same time the very people that work in these agencies need to have even better and unique training. So the job today is to listen to what you are doing and to tell us what resources you need to be able to do it better, to make sure that we're protecting our national security and our community security.

With that I would like to then yield to my ranking member, Senator Shelby.

STATEMENT OF SENATOR RICHARD C. SHELBY

Senator SHELBY. Thank you, Chairman Mikulski. I want to thank all of the participants for joining us to discuss the 2008 budget for the Bureau of Alcohol, Tobacco, Firearms and Explosives, the Drug Enforcement Administration, and U.S. Marshals Service.

The total Department of Justice request for 2008 is a little over $20 billion. This is a $771 million decrease below the 2007 joint resolution funding level. The Department faces a $500 million shortfall in the 2008 budget. Just as I said last year, the budget constraints placed upon us by the war on terror and the recent hurricane seasons will once again force us to make tough decisions.

I would be remiss though if I didn't, as Senator Mikulski has already done, mention the tragedy that took place on the Virginia Tech campus Monday morning. My heartfelt thoughts go out to everyone that was affected by this horrible event.

The ATF has been one of the lead investigative agencies in this horrible disaster and it has done an outstanding job. ATF agents quickly identified ballistic evidence linking a weapon used in the first shooting to the second shooting. Acting Director Sullivan, I commend your personnel in the labs and on the ground for their quick and professional response. This somber day will be one mourned and remembered by all of us for years and years to come.

I also once again want to commend the ATF for its contributions to the quick capture and conviction of the Alabama church fire arsonist that was sentenced to prison last week, remember that horrible situation there, where they were burning churches.

The ATF's 2008 request is a little over $1 billion. The request is $29.8 million over the 2007 joint resolution total and you'll need it. The ATF as we all know is the premier agency for gun crimes, gang activity, arson, and explosive related crimes. I'm committed, as the chairman is, to ensure that you have the tools and training facilities to fulfill your explosives mission.

The National Center for Explosives Research will be a world-class addition to the Redstone Arsenal in Huntsville, Alabama, which is already home of the Federal Bureau of Investigation's (FBI) hazardous devices school.

I'm working collaboratively here to expand the Federal Government's explosive infrastructure and expertise there. This will assist in our number one priority of terrorism prevention and ensuring a safe homeland.

Redstone Arsenal should and will be the law enforcement capital of explosives research and training. We have the personnel. You have them there.

Director Sullivan, I would like to offer you congratulations again on your nomination to be the permanent Director of ATF. We believe you will sail through. We all want to help you. You bring a lot of experience as a former U.S. attorney in Massachusetts and I believe that you will serve the ATF and the Nation well in this regard.

Administrator Tandy, thank you for coming today. The Drug Enforcement Administration's budget request for 2008 is $1.8 billion, a little over a $57 million increase over the 2007 joint resolution total.

The role of the DEA has shifted from being solely focused on narcotics to include an intelligence mission and a position on the front line on the war on terror. As former chairman on the Select Committee on Intelligence, I know all too well the link between global drug trafficking and terrorism.

I understand the detrimental impact that a hiring freeze has on your ability to carry out your mission. Senator Mikulski and I will be working with you on the 2008 process to see that you, the DEA, have the manpower that you need to carry out your mission. I think it's critical.

By the same token, while we're addressing the budget shortfalls and hiring freeze, I received this disturbing letter from the Department of Justice on March 6, stating that the cost of the clandestine laboratory training facility has doubled from $8 million to $16 million.

This letter combined with the disastrous cost escalations, poor estimations, and project management of the DEA's information technology center that jumped from $7.1 million to $38 million show a disturbing and, I think, unacceptable trend that we'll have to put our hands on in this subcommittee.

I will reserve any further judgment because we don't know all the facts until we hear from the recommendations of the inspector general and the Government Accountability Office (GAO).

Meth, as the chairman has mentioned, use continues to poison our Nation, knowing no boundaries of age, gender, class or race. The majority of this drug is shipped into our country from Mexico and I want to commend the DEA and the Department of Justice in their recent success of Operation Imperial Emperor, where more than 400 individuals were arrested and $45 million in U.S. currency and 18 tons of illegal drugs were seized from a Mexican drug cartel. That's progress.

Violent Mexican drug cartels have turned our Southwest border into a battle zone where our DEA agents put their lives on the line everyday. These cartels have their own advanced telecommunications towers and encrypted radios making their communications system virtually impenetrable with our current surveillance quota.

I hope, Senator Mikulski, that we will be able to help fund with the modern technology that the DEA needs here to have the right technology in the hands of our agents so that they can fight this battle.

Director Clark, the U.S. Marshals Service budget request is $899.8 million. This is an $80 million increase over the 2007 joint resolution total. The core responsibilities of the Marshals Service include providing judicial and courthouse security, safeguarding witnesses, transporting prisoners for court proceedings, seizing forfeited property and apprehending fugitives. That's a lot.

The National Center for Missing and Exploited Children estimates that over 600,000 sex offenders in the United States, more than 100,000 of them have failed to register. With the enactment of the Adam Walsh Act, marshals are tasked with removing those unregistered offenders from our streets which is a daunting task.

Last year the U.S. Customs and Border Protection Agency received funding to hire an additional 2,000 border patrol agents. Marshals bare the primary burden of transporting illegal alien prisoners taken into custody by these border patrol agents meaning there will be fewer marshals removing unregistered sexual offenders from our neighborhoods and streets. This is a problem, I think, Madam Chairman, we've got to address.

The Presidential Threat Protection Act of 2000 authorized the permanent creation of fugitive apprehension task forces which are comprised of Federal, State, and local law enforcement authorities in designated regions. Through this act, the gulf coast regional fugitive task force, headquartered in Birmingham, Alabama, was created last May.

At approximately 8 a.m., a young female lawyer was kidnapped at gunpoint in the parking lot just a few blocks from my office in downtown Birmingham. Some of you might remember seeing video of this as it was captured on a security camera and shown on network news channels all over the Nation.

Through the efforts of the gulf coast regional fugitive task force, the kidnapper was captured and the woman returned to her family without serious bodily harm. That is good, good work. This is just one example of what you're doing and how you're doing it.

Last, the reprehensible working conditions and inadequate security resources that our marshals endure in the District of Columbia Superior Court building have recently been brought to my attention. Stale ventilation, flooding hallways, poor plumbing, malfunctioning lights that are needed to illuminate prisoner traffic areas monitored by security cameras and archaic prisoner tracking system and antiquated prisoner scanning devices are conditions that are not acceptable, that you need better funds for better equipment.

Director Clark, I understand you visited this facility last week and I look forward to hearing from your visit and what we can do, this subcommittee, to resolve this very, very serious matter and I want to thank you for the job you do and I want to thank the men and women who work at the Department of Justice for what they do everyday. Thank you.

Senator MIKULSKI. Thank you very much, Senator Shelby. The way the subcommittee is going to proceed is we're now going to turn to our witnesses and then for those who colleagues who also had opening statements, you can incorporate that in your question and we'll add some additional moment or two so there would be no penalty.

Our colleague Senator Domenici, I know, has to go to another hearing and we're going to work to accommodate him after the testimony of our three people.

Does that meet your needs, Senator Domenici?

Senator DOMENICI. I have an entire delegation in my office now in 5 minutes so I will hope that I'll be finished in time to come back. I'll try my best.

Senator MIKULSKI. Well, Senator, we'll certainly reserve the time for you and I can assure you along with Senator Shelby if you have questions for the record or if your staff would even want us to be sure we cover any ground this morning.

Senator DOMENICI. We have had a very important set of activities regarding meth in New Mexico and I wanted to follow up on them and I hope I get back in time to do that.

Senator MIKULSKI. And any way we can support you in doing that, fine.

Why don't we then turn to, excuse me, turn to our panel to present their testimony. What I'd like to suggest is Mr. Sullivan,

we start with the Bureau of Alcohol, Tobacco, Firearms and Explosives then go to Ms. Tandy and our very able Marshals Service will be the wrap up.

SUMMARY STATEMENT OF MICHAEL J. SULLIVAN

Mr. SULLIVAN. Good morning Chairman Mikulski, Ranking Member Shelby, and distinguished members of the subcommittee. I have submitted a detailed statement that I'm asking to be made part of the record so I only have a few brief remarks.

This is my second time testifying before a congressional Appropriations Committee and my first time before the Senate and I'm very pleased to be here to speak on the President's fiscal year 2008 budget request for ATF.

I want to thank you Chairwoman Mikulski and Ranking Member Shelby for your recognition of ATF. It has been my personal and professional honor to lead this agency for the past 7 months.

I'm also pleased to be sitting here with Administrator Tandy and Director Clark, two individuals I have tremendous respect for.

ATF has a long and successful history of working closely with DEA and the U.S. Marshals Service as well as our other Federal law enforcement partners including the FBI and the Bureau of Prisons. Such partnerships are vital to accomplishing our mission and serving the interests of our fellow citizens.

As the United States attorney in Massachusetts and a former local prosecutor, I came through the door at ATF with a tremendous respect for the work that our people do, day in and day out, to fight violent crime, combat gang violence, and improve the quality of life in the neighborhoods throughout our country.

I must admit however, that I was unaware of the full depth and breadth of the agency's mission, responsibilities and contributions to the safety and security of our country. I very much appreciate the subcommittee's support of our agency, in particular the interest you have taken in our mission and our programs.

Thanks to the leadership of this subcommittee and the dedication and diligence of the men and women of ATF, our efforts are producing real results that make our neighborhoods, our country, and our world safer for everyone.

Finally before we proceed, like many others, I would like to take a moment to offer my condolences to the victims, their families, and the university community at Virginia Tech. This truly was a national tragedy.

I have three college-aged children. As a parent and as a citizen of the greatest country in the world, it horrifies me that one of our Nation's top universities could serve as the setting for such a horrendous and unthinkable crime of violence. As you know and as you have pointed out, Chairwoman Mikulski, State and local law enforcement authorities in Virginia worked around the clock to investigate the matter and find answers for the victims and their families.

ATF, along with our Federal partners, FBI, DEA, and the U.S. Marshals Service, has been lending support to those State and local agencies as requested and will continue to provide any and all assistance that is asked of us.

PREPARED STATEMENT

Chairwoman Mikulski, I look forward to working with this subcommittee and with you and will be pleased to answer any questions you might have in the course of this hearing. Thank you.

Senator MIKULSKI. Thank you Mr. Sullivan.

[The statement follows:]

PREPARED STATEMENT OF MICHAEL J. SULLIVAN

Madam Chairman, Senator Shelby, and distinguished Members of the Subcommittee, I am pleased to appear before you for the first time to discuss the President's fiscal year 2008 budget request for the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF). I very much appreciate the Subcommittee's support of ATF and the interest you have taken in our mission and programs. Thanks to the leadership of this Subcommittee, and the dedication and diligence of the men and women of ATF, our efforts are producing real results that make our neighborhoods and country safer.

ATF'S MISSION

As you know, ATF is a principal law enforcement agency within the Department of Justice dedicated to reducing violent crime, preventing terrorism and protecting our Nation. The men and women of ATF perform the dual responsibilities of enforcing Federal criminal laws and regulating the firearms and explosives industries. The combined efforts of special agents and industry operations investigators allow ATF to effectively identify, investigate, and recommend for prosecution violators of Federal firearms and explosives laws; additionally, their teamwork enables ATF to ensure that licensees are operating within established laws and regulations. We are committed to pursuing our mission by working both independently and through partnerships with industry and other Federal, State, local and international law enforcement agencies.

ACCOMPLISHMENTS

Over the past fiscal year, ATF has initiated criminal investigations in the following areas: 29,166 firearms cases; 4,060 arson and explosives cases; 2,023 gang-related cases; 135 alcohol and tobacco diversion cases; and 47 explosives thefts, which included 3,977 pounds of explosives, 3,627 detonators and 25,107 feet of detonator cord.

In addition, in fiscal year 2006, ATF conducted 12,148 inspections of Federal Firearms Licensees (FFL) and 6,392 inspections of Federal Explosives Licensees (FEL). We also processed: 401,792 National Firearms Act (NFA) weapons registrations; 284,443 firearms trace requests; 37,390 FFL applications and renewals; 5,524 FEL applications and renewals; and 11,001 import permit applications.

ATF also provided important training not only for our own personnel, but for our local, State, Federal and international law enforcement partners. For instance, in fiscal year 2006, we provided training for 816 members of the international law enforcement community. We provided Project Safe Neighborhoods (PSN) training for 5,816 Assistant U.S. Attorneys, State and local prosecutors, State and local police officers and sheriffs, and ATF Special Agents. We also trained:

—Over 1,100 personnel, including 500 State and local investigators and bomb squad personnel, in explosives-related courses, including post-blast investigations;
—Over 700 explosives detection canine teams on peroxide-based explosives;
—450 U.S. Marshal Court Security Officers on improvised explosive device (IED) familiarization and security; and
—402 personnel in arson-related courses.

FISCAL YEAR 2008 BUDGET REQUEST

For fiscal year 2008, ATF requests $1,013,980,000 and 5,032 positions, of which, 2,468 are agents. This request includes $995,023,000 and 4,984 positions for current services and $18,957,000 and 48 positions for program improvements.

The program improvements include $8.9 million in increased funding for the successful PSN initiative, ATF's firearms trafficking enforcement teams, and participation in the National Gang Targeting, Enforcement, and Coordination Center (GangTECC). These programmatic increases would be an important investment in the pursuit of violent offenders and the reclamation of communities from the

scourge of gangs, gun crime, and local, national and international gun trafficking organizations.

An additional $10 million is being requested for continuation of our current explosives programs which will further fulfill our responsibilities under the Safe Explosives Act. These funds will ensure that explosives industry members continue to receive their licenses in a timely manner and will allow ATF to provide appropriate oversight concerning the safe and secure storage of explosives.

PROJECT SAFE NEIGHBORHOODS AND ANTI-GANG EFFORTS

The fiscal year 2008 budget request for ATF includes six additional FTE (12 positions) and $2.2 million to enhance the Bureau's gang and firearms enforcement efforts supporting PSN nationwide. ATF will apply these resources to locations that have experienced an increase in firearms violence and will focus them on multi-defendant conspiracies and criminal organizations in an effort to take violent criminals off the street.

ATF has been the lead Federal law enforcement agency for PSN since its inception in May 2001, focusing on a wide range of firearms cases—those involving Racketeer Influenced Corrupt Organization (RICO) violations, firearms trafficking and the criminal possession of firearms by convicted felons and other prohibited persons. As the only Federal agency that focuses primarily on violent crime and the regulation of commerce in firearms and explosives, ATF exercises unique statutory authority over the "tools of the trade" that make gangs a threat to public safety.

Nearly 2,000 of ATF's special agents are exclusively dedicated to investigating violent crime and gangs. These agents work closely with State and local law enforcement to investigate the most egregious violent criminals and violent criminal organizations. This strategy is employed effectively through ATF-led Violent Crime Impact Teams (VCIT), which are currently deployed in 25 cities across the nation. During fiscal year 2007, this number will expand by 5 additional cities bringing the total number to 30. In addition, ATF participates with State and local police and other Federal agencies on 110 anti-gang task forces.

This past year ATF aggressively investigated and made significant strides in combating violent gangs. In fiscal year 2006: 2,023 gang-related cases were initiated by ATF—an increase of 157 percent from 2002, the first full year of PSN; 1,680 defendants referred by ATF in gang-related cases were convicted—an increase of 289 percent from 2002; and 779 defendants in gang-related cases were sentenced, with an average sentence of 107 months.

An outstanding example of our anti-gang efforts is Operation Mano Dura, an investigation of the MS–13 gang conducted by our Baltimore Field Division. Those indictments included charges of various RICO predicate acts, including seven homicides and numerous other shootings, beatings and other violent crimes in aid of racketeering. To date, 15 of the defendants have been convicted and 12 are awaiting trial. Nine of these defendants are eligible for the death penalty.

Another noteworthy example is the arrest and indictment of 13 members of the MS–13 street gang in January following a year-long joint investigation by ATF and the Nashville Metropolitan Police Department. During the investigation, information was developed linking Nashville-based MS–13 members and associates with seven shootings, three alleged murders, several planned murders, threats, intimidation and many other significant violent crimes, all of which occurred in 2006. The defendants were indicted on RICO charges. Several of these defendants also are eligible for death sentences.

The President has identified violent street gangs as a national problem and has instructed the Department to institute strategies to address this problem. ATF has been successful in targeting high crime areas and dedicating investigative, inspection, analytical and technological resources to reduce violent crime. Through these strategies, ATF and the Department are acting decisively to demonstrate to the American public that Federal law enforcement agencies are working strategically to investigate, reduce and prevent violent crime. The additional PSN funds we are requesting will build upon proven, successful tactics: integrating regulatory enforcement, aggressive investigation techniques and the utilization of technology to impact violent crime.

ATF also is requesting two positions, two agents, and $373,000 to dedicate to GangTECC. Established by the Attorney General, this new national anti-gang force serves as a coordinating center for multi-jurisdictional gang investigations involving Federal law enforcement agencies. It also provides a clearinghouse for gang-related intelligence data, assists in developing a refined understanding of the national gang problem, proposes appropriate countermeasure strategies, and supports the National Gang Intelligence Center. Currently, three ATF special agents are supporting

GangTECC. These agents are facilitating the coordination of overlapping racketeering investigations and ensuring that tactical and strategic intelligence is shared between law enforcement agencies. Moreover, an ATF agent is currently serving as the initial Deputy Director of GangTECC. GangTECC provided important assistance in the aforementioned arrests and indictments of the Nashville-based MS–13 gang members. Specifically, it facilitated communications among the various law enforcement agencies involved in the case, arranged for other Federal agents to support the investigation as needed, and arranged an urgent translation and transcription of communications that were garnered through undercover operations.

FIREARMS TRAFFICKING

Street gangs are often involved in firearms trafficking in order to supply guns to gang members and criminals in furtherance of drug trafficking and in the commission of other violent firearms-related crimes. To successfully fight violent crime, it is essential to prevent the illegal flow of firearms to criminals. ATF's firearms trafficking interdiction efforts advance this goal by identifying and arresting those persons who illegally supply firearms to gang members and prohibited persons such as felons and juveniles.

ATF is requesting 34 positions, of which all are agents, and $6.3 million to expand its domestic firearms trafficking enforcement efforts along the Southwest Border and nationwide to target efforts on certain gun trafficking corridors. With this funding, ATF will establish investigative teams that will be devoted to firearms trafficking interdiction efforts in areas of the country with the highest levels of out-of-State guns recovered in crimes.

ATF will use its analytical resources to strategically deploy these teams. To date, ATF has determined that the following routes are significant regional, national and international trafficking corridors: The Southwest Border; the I–95 corridor between Miami and Boston; Northern rural Mississippi to Chicago; Northern Indiana to Chicago; the triangle between Los Angeles, Las Vegas and Phoenix; and Birmingham to Chicago.

Several of these trafficking routes impact not only local and regional crime patterns, but also have international significance, affecting our neighbors in Canada and Mexico, as well as other Central and South American nations.

In fiscal year 2006, 1,526 ATF-referred defendants in firearms trafficking cases were convicted. This represents an increase of 166 percent from 2002, the first full year of PSN.

A noteworthy example of a firearms trafficking case is Operation Flea Collar, a complex, 2-year undercover investigation during which ATF learned that two suspected traffickers were purchasing firearms at an FFL in Alabama and then selling them at flea markets and gun shows in northern Alabama. Further investigation identified unlicensed firearms dealers at those flea markets. It also revealed a recurring scheme whereby gang members or their designees were routinely dispatched to the Alabama flea markets and gun shows to purchase firearms in bulk for use by various street gangs. Ultimately, ATF agents estimated that the various suspects had sold thousands of firearms over the last several decades. At least 12 of the trafficked firearms have been associated with homicide investigations, including one linked to the attempted murder of a Chicago police officer. Many of the trafficked firearms also have been linked to robberies, assaults, drug crimes and sex crimes throughout the United States. The firearms have been recovered in numerous States, including Alabama, California, Georgia, Illinois, Maryland, Michigan, New York, South Carolina, Tennessee, Texas and Washington, DC. Operation Flea Collar concluded with the seizure of 556 firearms and the arrest of 18 individuals on charges stemming from the illegal sale of firearms without a license and the illegal sale of firearms to convicted felons and out-of-state residents. All 18 suspects have been convicted and sentenced, and the investigation is ongoing.

Another example of a significant trafficking case involved guns and drugs moving between West Virginia and New York City. In 2004, our Wheeling Field Office opened a firearms trafficking investigation of two corrupt pawn dealers located in Fairmont, West Virginia. During the course of these investigations, special agents uncovered an interstate conspiracy to traffic crack cocaine in Fairmont and illegally traffic firearms to New York City. This investigation resulted in the Federal conviction of three individuals for conspiracy and three other persons for Federal firearms and narcotics charges.

One final noteworthy example of a firearms trafficking case involved members of the "Bloods" street gang in New Jersey arranging for students at Wilberforce University in Ohio to conduct straw purchases of firearms in Ohio and transport them to New Jersey. The gang members who received the firearms used them for an as-

sortment of violent crimes in New Jersey, including a drive-by shooting, armed robbery, crack cocaine distribution and an attempted home invasion. This 2-year investigation resulted in the conviction of 12 defendants for Federal firearms violations for trafficking 146 firearms.

ATF is attempting to balance the resources it devotes to fighting violent crime and addressing the supply of firearms to criminals. Successfully tackling the problem of firearms trafficking requires a comprehensive effort and a multifaceted approach utilizing court-authorized electronic surveillance, undercover operations, source development and cooperation with other law enforcement entities in order to be truly effective in shutting down illegal firearms markets.

OTHER PROGRAMS AND ACTIVITIES

In addition to PSN and firearms trafficking enforcement, ATF has other significant operations that are essential to carrying out our mission. Our law enforcement and regulatory responsibilities require ATF to maintain a host of efficient and effective activities, programs and facilities. I would like to take this opportunity to highlight a few important initiatives.

*Firearms Enforcement and Investigation*

In response to firearms trafficking and related violence on both sides of the border with Mexico, ATF has developed a Southwest Border Initiative. This initiative coordinates the resources of ATF's Dallas, Houston, Los Angeles and Phoenix Field Divisions, as well as Violent Crime Impact Teams (VCIT) in Laredo, Houston, Albuquerque and Tucson. The initiative focuses regional and cross-border violence and firearms trafficking by employing geographic targeting, partnerships, technology and training. In addition to working with local law enforcement, ATF also is collaborating closely with Immigration and Customs Enforcement (ICE) and Mexican officials. In fact, ATF meets regularly with its U.S. and Mexican law enforcement partners to discuss strategies, share intelligence, and initiate cooperative efforts to combat crime along the southwest border. One important effort we are undertaking through partnership with the Mexican government is ensuring that U.S.-sourced firearms recovered in Mexico are properly identified, documented and submitted to ATF for tracing. ATF uses the trace results to identify and investigate firearms traffickers who illegally divert firearms to drug traffickers. To this end, we will deploy across Mexico our eTrace system, an Internet-based system for submitting firearms trace requests.

In order to reduce violent crime, ATF has and will continue to develop technology to assist law enforcement at all levels. Through our National Integrated Ballistic Information Network (NIBIN), ATF deploys automated ballistics comparison equipment to participating Federal, State, and local law enforcement forensics laboratories—230 sites in total—which provides the ability to identify ballistic links between crimes that might not otherwise be connected. As of December 2006, NIBIN had nearly 1.25 million images of casings and bullets in its database with nearly 19,000 "hits." NIBIN has many success stories, including a recent one from Buffalo, New York. In this case, the ballistics evidence gathered at eleven separate shooting scenes between June 2003 and October 2006 was linked to a single .45 caliber handgun using the NIBIN ballistic imaging system at the Erie County Forensic Laboratory. On November 13, 2006, the Buffalo Police Department executed a narcotics search warrant and recovered narcotics, firearms and ammunition. A recovered firearm was processed by the Erie County Laboratory and identified as the handgun used in the eleven shootings.

*Explosives and Arson*

ATF's arson and explosives National Response Teams (NRT) provide expert assistance at the scenes of significant fire or explosives incidents. The NRT is comprised of veteran special agents with expertise in conducting post-blast investigations and determining the origin and cause of fires. In addition, the NRT is supported by all of ATF's arson and explosives assets, such as the Fire Research Laboratory (FRL), accelerant detection canines and audit services. In 2006, the NRT was deployed 17 times. For example, in February 2006, it was deployed to assist in the investigation of nine fires that occurred in churches in western Alabama. After a month of intense investigation, three suspects were arrested for the church fires.

ATF's technical expertise is also evidenced by our three state-of-the-art forensic laboratories and one-of-a-kind FRL. In fiscal year 2006, our National Laboratory Center in Ammendale, Maryland, added DNA analysis capability to its already impressive collection of forensic tools. The FRL, also located at our National Laboratory Center, has the capability of simulating fire scenarios approaching a quarter-acre in size, under controlled conditions, allowing for detailed analysis. It is the only

such facility in the United States dedicated to providing case support in fire investigations using forensic fire science.

The U.S. Bomb Data Center (USBDC) is the Department's comprehensive repository of data pertaining to arson and explosives incidents. The information within the USBDC is accessible to our law enforcement partners and can be analyzed to determine trends, patterns, criminal methodologies, and, in some cases, suspects. The USBDC contains more than 140,000 records. Law enforcement officials can query the characteristics of an explosive device and match it to others with similar characteristics. USBDC houses several databases, including the Bomb and Arson Tracking System (BATS), which facilitates and promotes the collection and dissemination of data among local law enforcement on arson and explosives incidents, and DFuze, which allows international law enforcement agencies to compare and exchange information on incidents within their jurisdictions. The USBDC has adopted a new "Concept of Operations" to guide it into the future. Under this plan, USBDC will become a Center of Excellence, hosting not only law enforcement officials, but also members of the intelligence community as well as representatives from academia and industry. USBDC will continue to consolidate all explosives incidents information and databases in an effort to be the "one-stop shop" for explosives incident information.

Our regulatory responsibilities include enforcement of the Safe Explosives Act of 2002, which mandates a field inspection on all original and renewal applications for explosives licensees or permitees. Because most licenses and permits expire every 3 years, ATF is mandated to perform one inspection per licensee/permit user every 3 years. Over 5 billion pounds of explosives are manufactured, imported and sold annually in the United States. ATF uses existing resources to ensure that all violations noted in such inspections are appropriately resolved. ATF also will continue to investigate all reported explosives thefts, respond to and investigate bombings and other explosives incidents, and assist local, State and other Federal agencies with explosives related issues.

*Sharing Our Expertise through Partnerships and Training*

We are committed to pursuing our mission by working both independently and through partnerships with industry and other Federal, State, local and international law enforcement agencies. For instance, our "Don't Lie for the Other Guy" program is a partnership with the National Shooting Sports Foundation which helps educate FFLs on how to identify and prevent straw purchases of firearms. We also have partnered with The Fertilizer Institute to launch voluntary campaigns to raise awareness of the sale, security, storage, and transportation of ammonium nitrate, the substance that was mixed with fuel oil in the Oklahoma City bombing. In addition, ATF has maintained outstanding relationships with a number of influential professional organizations including the International Association of Chiefs of Police, the International Association of Bomb Technicians and Investigators, the National Sheriffs' Association, Major Cities Chiefs Association, and the National Bomb Squad Commanders. ATF also has collaborative research partnerships with the U.S. Army Engineer Research and Development Center; Oak Ridge and Lawrence Livermore National Laboratories; the University of Missouri, Rolla; and the University of Massachusetts, Lowell. Moreover, ATF closely and regularly collaborates with the Departments of State, Defense and Homeland Security; and other components of the Department of Justice. We also work with INTERPOL and EUROPOL; and representatives of foreign governments, including the United Kingdom, Mexico, Colombia, Israel and Canada.

At ATF's Canine Training Center in Front Royal, Virginia, ATF trains explosives detection and accelerant detection canines for use by Federal, State, international and local law enforcement and public safety officials. ATF is committed to ensuring that DOJ's canines conform to applicable ATF standards. In order to keep canine capabilities able to meet current threats, ATF has initiated a program to offer advanced training in the detection of organic peroxide-based explosives to law enforcement canine teams. At the request of the National Bomb Squad Commanders Advisory Board, ATF developed National Odor Recognition Testing to verify that explosives detection canines meet a national standard. During fiscal year 2006, the project certified approximately 150 non-DOJ canine teams, and has already certified 124 canine teams in fiscal year 2007. In addition, ATF has trained more than 350 explosives detection canines in 16 countries.

With respect to training, the National Center for Explosives Training and Research (NCETR) offers numerous advanced courses related to explosives disposal and post-blast investigation techniques. NCETR provides training for State, local and international law enforcement, the U.S. Department of State and all branches of the Armed Forces. It also provides training for Army explosives units prior to their deployment in Iraq. NCETR has trained almost 6,000 bomb technicians and

investigators in explosives disposal and investigative techniques. Each year, requests for explosives-related training have increased, and present demand exceeds our capability. The fiscal year 2006 Conference Agreement (Public Law 109–108) directed ATF to plan for the construction of a permanent facility co-located with other law enforcement and Federal government entities that provide similar training and research. Subsequently, we have selected a site at Redstone Arsenal in Alabama. To date, ATF has received a letter of intent memo from Redstone Arsenal for a commitment of resources, such as ranges, classrooms, explosives storage bunkers, land to build an administration/classrooms building and housing billets. ATF also has an interagency agreement with the Army Corps of Engineers (COE) for design and planning of the NCETR. This planned permanent facility for NCETR will promote efficiency by consolidating other Department of Justice and Department of Defense explosives training and research in one location. These collective resources will provide a unique opportunity to leverage assets, knowledge and expertise in the field, providing Federal, State, local and international law enforcement explosives expertise in one location.

*Alcohol and Tobacco Diversion*

ATF also combats the illegal diversion of alcohol and tobacco products by criminal gangs, organized crime, and terrorist groups. The illicit sale of these commodities causes a substantial loss of excise tax revenue to both the Federal and State governments. Moreover, there have been instances in which terrorist groups are using proceeds from tobacco trafficking to finance their organizations and activities. By utilizing the Contraband Cigarette Trafficking Act, RICO, wire fraud, mail fraud, and money laundering statutes, ATF has built complex cases against individuals who have used proceeds from the illegal trafficking of cigarettes to fund organized crime and terrorism. ATF's investigations into illicit trafficking of tobacco products and enforcement of existing statutes continue to become more refined. In fiscal year 2002, 18 defendants were convicted on tobacco diversion-related charges. Every year since, there has been an increase in the number of defendants convicted of these crimes as a result of ATF's efforts. In fiscal year 2006, 108 defendants were convicted of tobacco diversion-related offenses as a result of ATF's work—that is a 600 percent increase in defendants convicted over a 5-year period. ATF will continue to fight the illicit trafficking of both alcohol and tobacco products, whether the means of illicit trafficking are more traditional in nature or contemporary such as Internet sales.

*International Programs*

In addition to the training NCETR provides to Army explosives units prior to their deployment to Iraq, ATF is lending its expertise to U.S. efforts in Iraq in a variety of ways. Since March 2005, ATF has deployed Special Agent Certified Explosives Specialists and Explosives Enforcement Officers to support the Iraq Combined Exploitation Cells (CEXC) within the U.S. Military Central Command. ATF explosives experts provide onsite investigative assistance in processing post-blast incidents directed at United States and allied forces and we also provide post-blast training for the Iraqi National Police. In addition, ATF employs explosives detection canine teams in Iraq and throughout the Middle East—these teams often are directly responsible for locating hidden explosives and weapons in enforcement actions conducted by host governments against terrorist groups. Moreover, ATF has special agents assigned to the Regional Crimes Liaison Office and the Major Crimes Task Force in Iraq to assist in the investigation and prosecution of war crimes and other criminal activity. ATF will establish a temporary duty presence of four ATF agents at the new U.S. Embassy in Baghdad later this year.

Finally, ATF is a managing partner in the Terrorist Explosive Device Analytical Center (TEDAC). This joint DOJ–DOD program is housed at the FBI Laboratory in Quantico, Virginia, with an ATF special agent serving as the Deputy Director. At the TEDAC, ATF and other partners analyze IEDs from Iraq and Afghanistan in an effort to identify bombers and prevent further attacks. TEDAC's evaluation of terrorist IED components to identify similarities and its collection of latent prints and DNA from those devices helps identify bombing suspects and provides vital intelligence to military and law enforcement officials.

CLOSING

Chairman Mikulski, Senator Shelby, distinguished Members of the Subcommittee, on behalf of the men and women of ATF, I thank you and your staff for your support of our crucial work. While the list of ATF programs and facilities I have noted today is far from comprehensive, it is intended to provide the Subcommittee with a sampling of the depth and breadth of our activities.

ATF is protecting the American public from the threats of violent crime and terrorism. As noted previously, we initiated over 2,000 gang-related cases in fiscal year 2006. That is an increase of over 157 percent from 2002, the first full year of PSN. We will continue to enforce the Safe Explosives Act and provide the education and regulatory oversight to an industry that manufactures, imports, and sells over 5 billion pounds of explosives every year. ATF will continue to investigate incidents involving nearly 4,000 pounds of stolen explosives, and we will continue to inspect approximately 12,000 Federal Explosives Licensees and Permitees. We also will continue to share our expertise with our partners and provide invaluable training in a number of areas, including courses on post-blast investigative techniques and courses for explosives detection canine teams.

With the backing of your Subcommittee, ATF can continue to build on these accomplishments, making our nation even more secure. The $2.2 million we have requested to expand PSN and the $6.3 million to establish firearms trafficking teams are two important investments in this cause. We look forward to working with you in pursuit of our shared goals.

---

BIOGRAPHICAL SKETCH OF MICHAEL J. SULLIVAN

Michael J. Sullivan was designated the Acting Director of the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) in August 2006 by President George W. Bush. In this position, Sullivan oversees nearly 5,000 ATF employees and an annual budget of close to $1 billion. He ensures that ATF fulfills its mission of preventing terrorism, reducing violent crime, and protecting our Nation.

As United States Attorney for the District of Massachusetts since September 2001, Sullivan has worked aggressively to combat terrorism. He established a counterterrorism unit in his office; formed an Anti-Terrorism Task Force comprised of federal, state and local law enforcement to prevent future terrorist attacks; and prosecuted the so-called "shoe bomber" Richard Reid.

In addition to combating terrorism, Sullivan has focused on protecting youth and safeguarding communities from the threat of violence. As U.S. Attorney, Sullivan followed through on the President's Project Safe Neighborhoods Initiative to safeguard our communities by developing a Community Prosecution and Crime Reduction Unit to enforce the federal gun laws and develop highly targeted gun crime reduction strategies. Through his innovative efforts, Sullivan has elicited unprecedented cooperation among federal, State and local law enforcement agencies to target gun crime in Boston and across the State. From fiscal year 2000–2005, Sullivan increased federal gun prosecutions under existing laws by 114 percent in Massachusetts.

Sullivan also created a unit within his office to target computer hacking and high technology crimes, including identity theft, Internet auction and credit card fraud, economic espionage, copyright and trademark violations. Under his leadership, the U.S. Attorney's Office in the District of Massachusetts has recovered more than $3 billion for the federal government. Sullivan serves on the Attorney General's Advisory Committee and chairs the Health Care Fraud Subcommittee.

Before serving as U.S. Attorney, Sullivan was appointed District Attorney of Plymouth County by Massachusetts Governor William F. Weld in May 1995. He was elected to the position in November 1996 and again in 1998. One of Sullivan's top priorities during his tenure as District Attorney was to address the issue of unsolved homicides in the county. This initiative resulted in the resolution of a significant number of murders. In addition, he became known as a leader in the fight against child abuse, domestic violence and elder abuse.

Sullivan began his public service in 1990 when he was elected to the Massachusetts State House of Representatives, where he served for three terms. As a legislator, Sullivan was a strong proponent of criminal justice reform.

Prior to his public service, Sullivan worked at the Gillette Company for 16 years. He started as a stock clerk at the age of 18 and rose to positions in human resource management and quality operations before becoming assistant to the president. While employed at Gillette, Sullivan graduated from Boston College cum laude and Suffolk University Law School cum laude.

## DRUG ENFORCEMENT ADMINISTRATION

### STATEMENT OF HON. KAREN P. TANDY, ADMINISTRATOR

Senator MIKULSKI. Ms. Tandy.

Ms. TANDY. Madam Chairman and members of the subcommittee and Ranking Member Senator Shelby, it is my pleasure to discuss the President's 2008 budget request for the Drug Enforcement Administration.

I want to thank this subcommittee for its support of DEA as we lead the Nation's fight against drugs and Senator Mikulski, we are particularly grateful to you for including the $25 million in the supplemental spending bill that would lift our hiring freeze at DEA and fund our counterterrorism initiatives.

In unprecedented numbers, DEA has been toppling cartel kingpins and stripping their drug trafficking organizations, not only of massive amounts of drugs, but also their illicit revenues. By 2009, our goal is to take $3 billion each year from these international drug trafficking networks that are operating in this country.

In the last 2 years combined, we stripped drug trafficking organizations of $3.5 billion in revenue through the seizure of assets and drugs and already, just halfway through this fiscal year of 2007, we have seized an astounding $1.1 billion. This figure includes $90 million in cash and gold that DEA and our Colombian partners stripped from the North Valley cartel in January. For 60 days thereafter this was the world record for cash seizures until our Mexican partners, with whom we have been working more closely than ever over the past year, made the single largest cash seizure that the world has ever seen stripping methamphetamine chemical traffickers of $207 million in cash. That is the cash that's reflected here in this poster before the subcommittee.

Two days later DEA information resulted in another record setting seizure. This time instead of cash it was drugs, 21 tons of cocaine off of the coast of Panama that was worth more than $300 million wholesale which is the photo on the two posters to my left.

Senator MIKULSKI. So it's one that, trifocals, always there where you don't need them but is that like a container ship? Where the cargo was literally drugs?

Ms. TANDY. That is correct. It was a container ship off of Panama. The actual 21 tons of cocaine was brazenly on top of the deck of the container ship without concealment.

With these unrelated operations, DEA dealt Mexican traffickers a one, two punch. They're down more than $500 million in blood money in simply 48 hours. Other enforcement actions have impacted these traffickers as well.

In January, DEA agents took custody of 10 major drug traffickers on U.S. soil in an unprecedented extradition from Mexico. These extraditions included violent kingpins and leaders from all four of Mexico's major drug cartels and with us, as we took custody, were the United States Marshals to whom we turned these traffickers over.

Less than 2 months ago, DEA dismantled the United States infrastructure of a powerful Mexican drug cartel that Senator Shelby referenced in his opening statement. As the Senator noted, that included the arrest of more than 400 members of this organization throughout the United States, the seizure of $46 million in cash as well as 18 tons of marijuana, cocaine, meth, and heroin and thanks to Federal legislation that was passed by Congress, as well as State legislation and toughened enforcement efforts over the last 5 years,

we've slashed the number of small toxic meth labs in this country by 61 percent and super lab seizures are down in the United States, plummeting 94 percent.

All of these efforts by DEA and our partners are affecting drug organizations financially and operationally. According to recent intelligence, some trafficking organizations are now having difficulty finding transportation groups to move cocaine from Mexico to the United States. That in turn has led to a significant surcharge to the price of a kilogram of cocaine and in addition to that are some U.S. based meth traffickers that are having difficulty acquiring meth from some sources of supply in Mexico.

I believe I'm taking the hint here that I am.

Senator MIKULSKI. First of all what you've just told us is a phenomenal set of accomplishments. They're breathtaking and you go ahead and you finish your testimony, don't worry about some little huchipoo red light going off.

You've got the green light after what you're telling us to do anything you want to do here today.

Ms. TANDY. You are very generous, Senator. Thank you so much.

These DEA victories in reducing the drug supply have also contributed to the 23 percent drop in our Nation's drug use over the past 5 years because as this subcommittee well knows, if drugs are plentiful, the demand reduction education efforts will not take root and drug treatment won't succeed.

Despite these achievements though, DEA does face challenges fighting an evolving drug trade. First, we no longer just fight traditional drugs of abuse. In just 5 years the number of Americans abusing prescription drugs rose more than two-thirds, from 3.8 million abusers to 6.4 million and fueling this increase is the proliferation of illicit Internet web sites that make it possible with one simple click to purchase controlled substances. With additional funds DEA can do more of these online diversion investigations.

Second, we need to increase our enforcement along the Southwest border where approximately 85 percent of the drugs are smuggled into this country. Additional funds will allow us to step up our fight there with improvements to our aviation, surveillance, and communication systems.

A third challenge is our limited intelligence infrastructure. For example, if a multi-ton load of cocaine is seized off the African coast and DEA received classified intelligence about it, we need to pass that classified intelligence and work that information via our classified backbone which is known as our Merlin System.

The problem is that we do not have the Merlin System in computer terminals anywhere in Africa or the Middle East. These computers are in limited places in South America and Europe. The ones we do have in the United States are aging and in dire need of upgrades and without an enhancement DEA cannot readily share and investigate the kind of information that's necessary to take down the drug trafficking cartels or to fulfill our responsibilities in the intelligence community.

Finally, intercepting traffickers' communications has been DEA's most valuable weapon and traffickers now have the Internet and encrypted communications technology at their disposal. Consequently we are seeking an enhancement to expand our Internet

capabilities so that we can get a trafficker's encrypted communications in the same way as we now get the trafficker's land line and cell phone conversations through a court order.

PREPARED STATEMENT

These budget enhancements would allow DEA to fight the drug trade across our Nation, the globe and cyberspace and it will also help put the DEA back on a solid financial footing that's necessary to carry out these responsibilities and on behalf of the almost 11,000 men and women of the Drug Enforcement Administration, I thank this subcommittee for all of your support throughout the years that we have been undertaking these challenges. Thank you.

Senator MIKULSKI. Thank you very much, Miss Tandy. I think it shows how important this hearing is and Mr. Clark why don't you tell us how the marshals ride a different kind of posse but still come in to save Miss Kitty and a lot of other people in the community.

[The statement follows:]

PREPARED STATEMENT OF HON. KAREN P. TANDY

Madam Chairman and Members of the Subcommittee: Good morning, and thank you for inviting me to testify on behalf of the President's fiscal year 2008 budget request for the Drug Enforcement Administration (DEA). I have had the pleasure of working closely with some of you over the last four years. To those Members who are new to this panel, I welcome the opportunity to share the DEA story and to express my appreciation to you in advance for supporting the courageous men and women of the DEA.

I am privileged to lead a worldwide drug law enforcement organization of more than 10,000 people, including over 700 people stationed in 62 countries. DEA employs a time-tested, multi-front strategy to fight global drug traffickers that are motivated solely by the desire for profit—profits that are generated by human misery. We must battle these well-organized, highly sophisticated organizations at every juncture: from the cultivation or manufacturing stage, through the transit zones to final distribution in our nation's communities; and, finally, we must be there when they launder the proceeds of their operations.

The criminals we investigate are located throughout the world and we search them out wherever they are: in both hemispheres and increasingly in the ever-expanding realm of the Internet. We attack the economic basis of the drug trade and reduce the diversion of licit drugs. We support counterterrorism activities, assist our state and local law enforcement partners, and serve as an information resource for state and local communities to help them reduce the demand for illicit drugs.

The support that this Committee provides allows us to work toward making America's neighborhoods safe and drug-free, and for that, we at DEA are very grateful.

I would like to begin my testimony by sharing two pieces of good news with the Committee: First, teenage drug use is down; and second, DEA is hitting the world's drug traffickers harder than ever before.

TEENAGE DRUG USE IS DOWN

In 2002, the President set ambitious goals to reduce drug use: a 10 percent reduction over two years and a 25 percent reduction over five years. We have exceeded the first goal: drug use by young people is down 11 percent. And the second goal has nearly been reached: since 2001, overall illicit drug use among teens has declined by 23 percent. This data, released in December 2006 by the National Institute on Drug Abuse (NIDA) means that 840,000 fewer teenagers have been damaged by the corrosive effect of drugs.

Some specifics from the Substance Abuse and Mental Health Services Administration (SAMHSA) report include: marijuana use among teenagers has dropped by 25 percent since 2001; methamphetamine use by teenagers is down by 50 percent since 2001; ecstasy use by 8th graders decreased by 61 percent and dropped by 54 percent for 10th and 12th graders since 2001; cocaine use among high school seniors declined by 55 percent between 1986 and 2006; steroid use by teenagers decreased by

20 percent; LSD use fell by 60 percent for 8th graders, by 53 percent among 10th graders, and by 74 percent among high school seniors.

Madam Chairman and Members of the Subcommittee, DEA works 24/7 to enforce our country's federal drug laws. Aggressive enforcement not only limits supply and increases the price of drugs, it provides a deterrent effect that may contribute to the decline in drug use. We who fight very hard to keep the poisonous chemicals from reaching young people see the statistics I just cited as a very positive trend. We hope it represents a fundamental and lasting downward shift in illicit drug use among young Americans.

ENFORCEMENT SUCCESSES OVER THE LAST 12 MONTHS

I would also like to share with you some of DEA's most significant accomplishments during the past year. For example, just one month ago, our partners in Mexico, with whom we have been working over the last year on a pseudoephedrine investigation, made the single largest worldwide cash seizure—$207 million in U.S. currency. Forty-eight hours later, as a result of joint DEA and Panama law enforcement intelligence, the U.S. Coast Guard made the largest maritime seizure on record—21 metric tons of cocaine bound for Mexico. The seizure denied Mexican drug lords $300 million in drug revenue and severely disrupted their transportation network.

In the information that follows, I will highlight some individual cases and discuss the underlying strategies that led to such successful operations. An attachment to my statement provides an overview of the leading drug threats facing the United States and some additional examples of DEA's work against each of these threats.

*Attacking the Economic Basis of the Drug Trade*

Successes include:

—Indicting 50 leaders of a designated Colombian foreign terrorist organization on charges of importing more than $25 billion worth of cocaine into the United States. This represents more than 60 percent of the cocaine entering the country.

—Dismantling the Cali Cartel of Colombia, which is responsible for the export of multi-ton maritime shipments of cocaine to the United States. High ranking cartel members were sentenced in 2006, with resulting forfeitures of more than $300 million. During the 1990s, the cartel was one of the world's most powerful criminal organizations, estimated at one time to be responsible for up to 80 percent of the cocaine smuggled into the United States.

—Arresting more than 400 individuals nationwide, following a 20-month, DEA-led investigation into a Mexican drug syndicate and its U.S.-based distribution cells. The investigation has resulted in the seizure of approximately $45.2 million in U.S. currency, 27,229 pounds of marijuana, 9,512 pounds of cocaine, 705 pounds of methamphetamine, 227 pounds of pure methamphetamine or "ice", 11 pounds of heroin, $6.1 million in property and assets, and 100 weapons and 94 vehicles.

—Arresting a Canadian international money manager who, subsequently, was indicted for conspiracy to launder $1 billion in proceeds from narcotics trafficking and securities and bank fraud.

—Dismantling a Brazilian Consolidated Priority Organization Target (CPOT)—the world's "Most Wanted" drug trafficking and money laundering organizations that was responsible for smuggling into the United States more than 15 tons of cocaine each month from Colombia. The dismantlement resulted in 100 arrests and the seizure of 52 tons of cocaine and nearly $70 million in assets, including three islands off the coast of Panama.

—Extraditing a Colombian drug kingpin to the United States who had been indicted for importing cocaine and heroin worth an estimated $100 million.

—Dismantling a Canadian-based trafficking organization that smuggled more than $5 million worth of ecstasy from Canada into the United States.

—Arresting 26 members of a Colombian organization that laundered millions of Colombian dollars through the Black Market Peso Exchange. As part of the operation, more than $10 million in drug proceeds and $6.5 million in cocaine, heroin, and marijuana were seized.

—Arresting three Colombian traffickers who laundered $3 million in proceeds that were derived from cocaine distribution rings that operated internationally in Colombia, Mexico, and Europe.

*Reducing the Diversion of Licit Drugs*

Successes include:

—Immediately suspending the DEA registrations of 13 pharmacies that used their DEA registrations to fill controlled substances orders for rogue Internet pharmacies. Eight of the 13 suspensions were issued in February 2007. The pharmacies suspended were responsible for distributing more than 75 million dosage units of controlled substances in 2006, the vast majority of which was distributed based on invalid prescriptions originating with rogue Internet pharmacy websites. Ten of the pharmacies together purchased 45 million dosage units of hydrocodone, which is 64 times the amount ten average pharmacies would annually dispense.

—Overseeing the largest steroid enforcement operation in U.S. history. On December 14, 2005, Operation Gear Grinder resulted in the arrest of five individuals who were responsible for importing anabolic steroids into the United States. This international investigation targeted the eight largest anabolic steroid manufacturing companies in Mexico, including three of the world's largest that conducted their sales via the Internet. Nearly 82 percent of the steroids seized and analyzed in 2003 are of Mexican origin and the majority of this 82 percent originated from the eight companies charged in Operation Gear Grinder.

—Arresting four individuals in Miami, Florida, who have been charged with the nationwide Internet distribution of large quantities of Schedule III and Schedule IV controlled substances. Sales exceeded $200 million over a three-year period. The investigation included the seizure of $817,000 in cash, $4.2 million worth of property, two automobiles, and one marine vessel.

—Indicting 11 individuals and an Atlanta-based company on charges of mail fraud, distribution of controlled substances, and the introduction of adulterated and misbranded drugs. The defendants allegedly manufactured millions of pills—approximately 24 different drugs—that were marketed through Internet "spam" advertisements. In addition to the forfeiture of numerous properties, automobiles and bank accounts, the indictment is seeking a monetary judgment of not less than $19.8 million.

—Arresting five individuals in the Chicago, Illinois area, as part of an operation involving the illegal Internet distribution of prescription drugs and anabolic steroids. The diversion scheme included the wire transfers of thousands of dollars, and the Internet distribution of thousands of dosage units of controlled substances lacking valid prescriptions.

*Working With State and Local Law Enforcement Organizations*

Successes include:

—Dismantling the largest marijuana-laced candy manufacturing organization in the western United States. The five-month investigation resulted in the arrest of the organization's leader, and the seizure of more than 4,000 marijuana plants, $100,000 in U.S. currency, three firearms, and hundreds of marijuana-laced food products. The marijuana-laced products, packaged to mimic legitimate food products, included labels such as "Buddafingers," "Munchy Way," and "Pot Tarts." The items were packaged in large boxes for distribution to cannabis clubs throughout the West Coast and over the Internet.

—Working with the St. Paul, Minnesota Police Department on an operation that resulted in the arrest of 26 individuals associated with the Latin Kings street gang. The arrests, one of the largest drug takedowns in Minnesota history, were based on narcotics and firearms conspiracy violations and the possession and distribution of methamphetamine, cocaine, and marijuana.

—Working with the New York City Police Department on an operation that resulted in the arrest of 20 individuals involved in a Panama/U.S. heroin drug smuggling operation. The smuggling was carried out by dozens of "swallowers" who were paid a fee plus reimbursements for airfare and hotel expenses. Over three kilograms of heroin were seized in the New York City area, and $300,000 in wire transfer receipts was recovered.

—Working with Seattle, Washington area law enforcement agencies on an operation that targeted violent methamphetamine traffickers, resulted in the arrests of 38 individuals. The investigation netted the seizure of methamphetamine, marijuana, cocaine, crack cocaine, oxycodone, eight weapons, and 10 vehicles.

—Working with St. Louis, Missouri area law enforcement agencies on an operation that resulted in the indictment of 30 individuals on charges of distributing approximately 50 kilograms of cocaine with a street value of $1 million.

The accomplishments just listed are impressive on their own. But, they are the result of a carefully planned strategy that guides DEA operations around the world.

*Attacking the Drug Syndicates.*—Significantly reducing the supply of illicit drugs is attainable if we disrupt or dismantle the drug trafficking and money laundering

organizations that are primarily responsible for supplying them. At DEA, we refer to this approach as priority targeting. By using intelligence that we meticulously gather to identify the syndicates and coordinating our investigations against all levels of the drug and money supply chain, we are able to focus on the most important links in the supply chain.

We are proud of our successes. In fiscal year 2006, 85 percent (39 of 46) of the leaders of the most wanted international drug organizations (CPOTs) were indicted and 37 percent (17) were arrested. Terrorist-linked Priority Target Organization (PTO) investigations increased by 16 percent, comparing fiscal year 2005 investigations (82) to fiscal year 2006 investigations (95). Furthermore, between fiscal years 2003 and 2006, 13 drug organizations with terrorist links were disrupted and 20 were dismantled.

*Attacking the Economic Basis of the Drug Trade*.—As a federal prosecutor, I saw firsthand the importance and value of stripping drug traffickers of their revenue. It works. I brought that experience with me when I came to DEA and shortly thereafter developed a five-year revenue denial plan. In the first two years, DEA has denied more than $3.5 billion through the seizures of both assets and drugs. This total amount exceeds the goal for the first two years of the plan by $1 billion. The $1.6 billion denied in fiscal year 2006, includes $1.1 billion in total assets and cash seized. With regard to high-value cash seizures (those over $1 million), 63 were made in fiscal year 2006, which represents a 44 percent increase since fiscal year 2004. DEA's Money Trail Initiative, launched in 2005, is a financial crime strategy that focuses on identifying and disrupting the flow of money back to the sources of drug supply, thereby crippling the ability of criminals to operate. In 2006, Money Trail operations resulted in more than 400 arrests and the seizure of approximately 10,000 kilograms of cocaine, 60,000 kilograms of marijuana, 9 kilograms of heroin, approximately 300 pounds of methamphetamine, more than 60 dosage units of MDMA, 250 vehicles, approximately 80 weapons, $65 million U.S. currency, and $14.6 million in other assets. Our fiscal year 2006 financial investigations of PTOs increased by 28 percent over fiscal year 2005 (117 active cases in fiscal year 2005; 150 active cases in fiscal year 2006). The number of financial investigation cases in fiscal year 2006 that led to the disruption of a PTO increased by 100 percent over fiscal year 2005 (9 cases in fiscal year 2005; 18 cases in fiscal year 2006). The number of financial investigation cases in fiscal year 2006 that led to the dismantlement of a PTO increased by 138 percent over fiscal year 2005 (8 cases in fiscal year 2005; 19 cases in fiscal year 2006).

*Forging International Partnerships—Mexico*.—Experience has shown that strong international partnerships are vital in the drug law enforcement arena. A robust U.S./Mexico partnership, for example, is key if we are to reduce significantly the flow of drugs to the United States from Mexico, and halt the smuggling of the millions of pounds of bulk cash into Mexico that were generated from the sale of billions of dollars worth of illicit drugs in the United States. The 2007 National Drug Threat Assessment, which is prepared by the Justice's National Drug Intelligence Center, states that "The Southwest Border remains a serious area of concern for U.S. drug money laundering." Furthermore, the assessment states that "Mexican and Colombian Drug Trafficking Organizations (DTOs) together generate, remove, and launder between $8.3 billion and $24.9 billion in wholesale distribution proceeds from Mexico-produced marijuana, methamphetamine, and heroin and South American cocaine and heroin annually." Working with the Mexican and Colombian governments will help address this major problem. In May 2006, the Attorney General unveiled a strategy to combat methamphetamine that calls for joint DEA/Mexico initiatives including: establishing specialized methamphetamine enforcement teams on either side of the border; developing a list for targeting the Most Wanted chemical and drug trafficking organizations; donating refurbished DEA clandestine laboratory enforcement trucks to Mexico for specialized enforcement teams' use. Since the launch of the strategy, over 2,100 Mexican police officers have been trained to improve their methamphetamine trafficking investigative and enforcement skills.

The U.S./Mexico partnership has already begun paying dividends. In August 2006, Mexican authorities seized a large-scale clandestine methamphetamine laboratory. The seizure netted 100 kilograms of finished methamphetamine, 3,000 liters of various solvents and chemicals, and four barrels of iodine. Due to its size and production capability, the laboratory is classified as a "super lab". More recently, a DEA-trained unit of Mexican police officers discovered an operational super methamphetamine laboratory in December 2006, that, based on the amount of equipment, chemicals and resources discovered, is likely the largest laboratory to be found in Mexico to date.

With regard to major arrests, a DEA-led Organized Crime Drug Enforcement Task Force (OCDETF) investigation led to the August 2006 apprehension of the leader of a Mexican narcotics trafficking organization that, over the past decade, has flooded our country with hundreds of tons of cocaine and marijuana, as well as very large quantities of methamphetamine and heroin. The leader, Francisco Javier Arellano-Felix, and one of his lieutenants, Manuel Arturo Villarrel-Heredia, have been charged with racketeering, drug trafficking, and money laundering offenses, and if convicted will be eligible for the death penalty.

The January 2007 extradition of 15 violent Mexican criminals, including the leaders from all four of Mexico's major drug cartels, was a watershed event in the annals of U.S./Mexico relations. The extraditions mark the reversal of a long-standing Mexican government policy of not extraditing jailed citizens until the sentences handed down by Mexican courts had been served. One of the extradited kingpins commanded a drug cartel considered to be among the most brutal and powerful in the world. He directed the smuggling of between four and six tons of cocaine per month over the U.S. border. It is a drug law enforcement development of enormous significance, and we view it as major progress on more than one front.

*Forging International Partnerships—Afghanistan*.—Combating the world-wide threat posed by heroin production in Afghanistan is a major challenge. A flourishing narcotics trade further weakens an already fragile country, and it must be attacked aggressively. For our part, DEA and the government of Afghanistan have formed a partnership with the goal of developing and expanding the capabilities of its law enforcement community. Our five Foreign-deployed Advisory and Support Teams advise, train, and mentor their Afghan counterparts in the National Interdiction Unit of the Counter Narcotics Police—Afghanistan. This program supplements our Kabul Country Office as well as "Operation Containment", a successful DEA initiative that was launched post September 11, 2001. It emphasizes coordination and information-sharing among 18 countries. Its aim is to choke the flow of drugs, precursor chemicals, and money into and out of Afghanistan. Madam Chairman and Members of the Subcommittee, we are seeing results from taking a regional, multi-national enforcement approach to a threat with worldwide implications. Over the last two years, Operation Containment has resulted in the seizure of approximately 17 metric tons of heroin, more than 170 metric tons of marijuana, and nearly 300 opium-to-heroin conversion laboratories. Additionally, more than 900 suspects have been arrested, and of those arrests, four of the six Most Wanted Operation Containment targets are now incarcerated. Moreover, intelligence developed by DEA in conjunction with other agencies has helped to thwart rocket and Improvised Explosive Device attacks on Afghan and coalition forces in Afghanistan. The 2006 convictions and sentencing of three major Afghan traffickers are yet another important byproduct of the DEA/Afghanistan partnership.

As I conclude the discussion of international partnerships, I want to add a few words about the International Drug Enforcement Conference (IDEC). As you may know, this global forum was established in 1983, to bring together high-level drug law enforcement officials from throughout the Western Hemisphere. Its purpose is to share drug-related information and to develop a coordinated approach to law enforcement efforts against international drug organizations. As the DEA Administrator, I am the Co-President of the IDEC. In May 2006, I had the pleasure of addressing the conference's 24th gathering, which has grown to include representatives from 76 countries located in both hemispheres. Seven countries became new members in 2006: Afghanistan, Indonesia, Malaysia, New Zealand, Poland, South Africa, and the United Kingdom. The 2006 IDEC was a great opportunity to discuss our respective challenges and frustrations and to talk about how we could build on our accomplishments through even stronger multi-lateral partnerships that are beneficial to all parties.

*Fighting Methamphetamine—A Drug of Special Concern*.—Before I begin a discussion of our fiscal year 2008 budget request, I would like to take a minute to talk about a drug of special concern to many Members of Congress: methamphetamine.

As I mentioned in my opening comments, a 50 percent decline in methamphetamine use by teenagers since 2001, as reported by the National Institute on Drug Abuse (NIDA) in December 2006, is a dramatic and much-welcomed development. At the same time, this deadly drug remains a problem. DEA takes a comprehensive approach to fighting the drug—domestic and international enforcement and precursor chemical control, the identification and cleanup of large and small toxic laboratories, and an aggressive attack on the money flow. In fiscal year 2006, DEA spent an estimated $217 million for methamphetamine-related activities. This included approximately $196 million for methamphetamine investigations and $21 million for clean-up, safety, and training programs. DEA also provided clandestine

laboratory training to more than 1,000 state and local law enforcement officers during fiscal year 2006.

*Implementing The Combat Methamphetamine Epidemic Act of 2005*.—The provisions of the law aimed at the domestic and international regulation of precursor chemicals make it possible to place reasonable, common sense limitations on the availability of the products used in the manufacturing of methamphetamine. Sales at the retail level are controlled through such measures as keeping products stored in locked containers, requiring face-to-face sales and photograph identification, establishing additional record-keeping requirements for mail-order sales, and requiring producers of Scheduled Listed Chemical Products to make annual estimates of the quantities of the products needed for legitimate use. These domestic regulatory requirements, coupled with the enforcement actions being taken by states should lead to a decline in the number of domestic operational clandestine laboratories. Limiting sales at the wholesale level is another important part of the equation. Under the law, foreign distributors are required to disclose all known information to the importer on the chain of distribution of such chemicals from the manufacturer to the importer. Furthermore, the State Department is required to identify annually the five largest exporting and importing countries of Scheduled Listed Chemical Products, and DEA is given the authority to issue importation prohibition orders. Taken together, these actions are expected to help greatly on the international regulatory side. Effective methamphetamine enforcement calls for a balanced approach that addresses the drug law enforcement issues, while ensuring the availability of an adequate supply of controlled substances to meet consumers' legitimate medical needs.

DESPITE THE ACCOMPLISHMENTS, THE CHALLENGES REMAIN

Madam Chairman, DEA carefully manages the resources Congress provides to ensure we wring every penny out of every dollar you give us. And while we are proud of our many accomplishments, we never lose sight of the fact that drug abuse remains a very serious problem facing our country. The most recent data available from the federal Centers for Disease Control and Prevention sadly reveals that in 2004, 30,711 Americans died from drug abuse. This is almost 2,000 more deaths than occurred in 2003.

Compounding the loss of lives is the damage from increased crime and violence, the powerful grip of addiction, lower productivity in the workforce, child abuse and neglect, environmental danger, and the grief of lost promise. Taken together, the effect of these human tragedies eclipses even the very tragic impact of terrorism. And so, while we realize our country faces tight budget times, we are here today to ask you to give us a few more tools, a few more resources, so we can do a little more to drive illegal drugs from our shores.

FISCAL YEAR 2008 BUDGET REQUEST

For fiscal year 2008, DEA is requesting $2.4 billion ($1.8 billion under the Salary and Expenses Account, $239 million under the Diversion Control Fee Account, and $389 million for OCDETF activities and other reimbursable agreements). A total of 10,239 positions, of which 4,811 are Special Agent positions, are requested from these funding sources. This request represents an increase of $110 million over the fiscal year 2007 President's budget, and was developed with the goal of advancing DEA's enforcement strategy in the most efficient and effective manner. It was developed through a planning process of several months duration, calling upon the knowledge, talent, and skills of many DEA professionals with years of experience in drug law enforcement. Under the Salary and Expenses Account, the fiscal year 2008 request would provide funding for three initiatives. Fee Account collections would fund companion initiatives in the diversion control program.

SALARIES AND EXPENSES ACCOUNT

DEA is requesting $39.3 million to expand activities in three key areas:

*Southwest Border and Methamphetamine Enforcement Initiative ($29.2 million and 8 positions)*

DEA is an active participant in the Southwest Border Initiative, a cooperative effort launched in 1994 by federal law enforcement agencies to combat the threat posed by Mexico-based trafficking groups operating along the Southwest border. The Southwest Border and Methamphetamine Enforcement Initiative that DEA is proposing would complement the 1994 initiative in an area of the country recognized as the principal arrival zone for most illicit drugs smuggled into the United States, as well as the predominant staging area for the subsequent distribution of these

drugs throughout the country. With regard to methamphetamine alone, current drug and lab seizure data suggests that approximately 80 percent of the methamphetamine used in the United States originates from larger laboratories operated by Mexican-based organizations on both sides of the border. The data also suggests that the remaining approximately 20 percent consumed is produced in small toxic labs. DEA's Southwest Border and Methamphetamine Enforcement Initiative would help DEA step up the fight on both sides of the border through increases in our aviation assets, and improvements in our surveillance and communications systems and data collection and analysis capabilities.

*Some specifics*.—$15.4 million would be used to purchase, among other things, three helicopters, each equipped with a High Definition camera for complex aerial surveillance activities in support of our major investigations. An additional $3.4 million would fund operational expenses and equipment purchases needed for providing communications coverage of remote areas along the border. Also requested is $3.4 million and two positions to design, develop and implement an advanced digital imagery program for capturing and storing facial and other identifiable images for drug trafficking organizations investigations. To purchase advanced satellite telephone and maritime tracking devices, and sensor and audio/video surveillance equipment, which often act as a force multiplier, DEA is requesting a total of $5.1 million. The El Paso Intelligence Center (EPIC) developed Operation Gatekeeper to research, analyze, and report information on the Mexican drug trafficking organizations that control entry corridors along the border. To expand this important operation, DEA is requesting $612,000 and six positions. And to expand its information sharing capabilities, EPIC is requesting $3.4 million to develop the capacity to share digital images with its Federal, State and local law enforcement partners.

*Counterterrorism and Intelligence Sharing Initiative ($7.1 million and 7 positions)*

In 2006, after a 25-year hiatus, DEA's Office of National Security Intelligence (NN) was designated a member of the Intelligence Community (IC). While the designation does not grant new authorities to DEA, it does formalize the long-standing relationship between DEA and the IC and allows DEA and other IC members to work on issues of national security interest in an integrated fashion. With over 33 years of operational experience in the foreign arena and the largest U.S. law enforcement presence abroad, DEA has made and will continue to make many unique contributions, not only in drug law enforcement, but also in the interest of national security. For example, with over 5,000 confidential sources, DEA possesses substantial human intelligence capabilities. Additionally, DEA conducts 67 percent of all federal domestic law enforcement wire taps.

An Overview Of The United States Intelligence Community—2007, which was prepared by the Office of the Director of National Intelligence, states that "DEA/NN's membership in the Community helps optimize the overall U.S. government counter narcotics interdiction and security effort and furthers creative collaboration between the many organizations involved in countering the threats from narcotics trafficking, human smuggling/trafficking, immigration crimes, and global terrorism." Furthermore, based on available intelligence, there is clear evidence that drug profits are being used to facilitate acts of terrorism and violence. These acts undermine democratic governance and respect for the rule of law, as well as destabilize regional security in countries such as Afghanistan, Colombia, Mexico, Venezuela, and the tri-border area.

The DEA and the IC have a long history of collaborating for purposes of identifying and disrupting illegal drug trafficking. The Counterterrorism and Intelligence Sharing Initiative would bolster those collaborations, allow DEA to enhance its classified information technology (IT) infrastructure, provide start-up funding and positions for studying and analyzing emerging as well as established coca and opium poppy growing regions, and provide resources for DEA to continue its participation in Justice's anti-gang activities.

*Some specifics*.—$6 million would ensure that DEA's classified IT backbone, MERLIN, would be upgraded in every DEA office every four years. Regularly scheduled upgrades would make certain that DEA's IC component has the secure communications infrastructure that is critical to communicating classified IC requests to both domestic and foreign DEA field offices. Presently, DEA is in a precarious situation as it relates to the continued viability of MERLIN. In previous years, requests for operations and maintenance enhancement funding have been denied; with the result that much of our MERLIN equipment is five or six years old and in danger of serious failure. If we are to meet our IC commitments and exploit our intelligence capabilities against transnational threats, DEA must have an infrastructure that makes that possible. Six positions and $950,000 are requested to study regions of the world where coca and poppy are grown to determine the amount of finished cocaine and

heroin that can be produced from a given quantity of plant material. Finally, one position and $204,000 is requested so DEA may assign one Special Agent to the Department's National Gang Targeting, Enforcement, and Coordination Center, which takes part in and coordinates investigations and prosecutions, and develops enforcement and prevention strategies to combat gang violence in this country.

*Online Investigations Initiative ($3 million)*

Drug traffickers are increasingly turning to the Internet to widen their reach and strengthen their criminal enterprises. State-of-the-art Internet investigative technologies are an essential tool if DEA is to attack the command and control communications of organizations, particularly those that operate across jurisdictional boundaries at the regional, national, and international levels. To achieve our objectives, DEA must acquire tailored Internet intercept solutions, arrange for permanent Internet connectivity between DEA's field divisions and the major Internet Service Providers, and purchase needed hardware for computer forensics purposes. With these purchases, DEA could greatly improve the quality, effectiveness, and timeliness of our investigations of these traffickers.

*Some specifics*.—$1 million would be used to develop intercept solutions to counter traffickers who use Yahoo, Hotmail and other electronic mail accounts, as well as advanced Internet communications, wireless handheld devices, instant messaging services, and encrypted electronic mail. $1.5 million is requested to connect DEA field divisions to major Internet Service Providers by means of a secure, dedicated network. The total cost for these connections is $3 million, half of which is requested under the Salaries and Expenses Account and half would be covered by Diversion Control Fee Account to step up our investigations of illegal online pharmacies. Finally, DEA is requesting $520,000 to purchase computer hardware that is designed to aid forensic professionals with recovering and examining data more quickly and from numerous electronic devices.

*Diversion and Control Fee Account (DCFA)*

DEA's fiscal year 2008 request includes $239 million under the DCFA, a $27.1 million increase over fiscal year 2007.

Prescription drugs are diverted for abuse through doctors, pharmacies, thefts and robberies from manufacturers and distributors, and illegal Internet distributors. Throughout the United States, the non-medical use of prescription drugs continues at alarming rates. The 2005 National Survey on Drug Use and Health, released in September 2006 by SAMHSA, reports that an estimated 6.4 million Americans abuse prescription drugs, compared to 3.8 million in 2000—a 68 percent increase over five years. Furthermore, they are the second most abused type of drugs—behind only marijuana. Particularly troubling is the data showing that nearly one out of every ten high school seniors abuses dangerous painkillers. Fueling this increase is the proliferation of illicit websites that make it possible, with one simple click, to purchase controlled substances. Furthermore, buying a medicinal product through an illegal Internet pharmacy exposes individuals who make these purchases to serious health risks.

DEA is actively pursuing those who divert pharmaceutical controlled substances. On the Internet and non-Internet sides combined, DEA initiated 1,840 criminal, complaint, and regulatory pharmaceutical investigations in fiscal year 2006. 857 of those investigations targeted Schedule III–V pharmaceutical controlled substances, and 237 investigations targeted Schedule II pharmaceuticals. Between fiscal year 2004 and fiscal year 2006, DEA seized $55 million in cash, bank accounts, property, and computers in the course of its investigations, compared to $2.5 million in fiscal year 2003. While we are pleased with our progress, it is imperative that DEA enhance its enforcement work in an area that poses such an immediate public safety threat.

*Some specifics of our DCFA request*.—DEA is requesting $766,000 and seven positions to provide much-needed investigative support for our computer forensics teams. We estimate that online diversion cases will increase the workload of DEA attorneys assigned to these cases by 75 percent for the foreseeable future, and to prepare for this, DEA requests $495,000 and five attorney positions. DEA is requesting $337,000 and two positions (one Special Agent and one Diversion Investigator) to work with the Customs and Border Patrol in Long Beach, California to identify shipments of precursor chemicals from source countries that are destined for Mexico. Additionally, we are requesting $474,000 and one position (Foreign Diversion Investigator) to support existing DEA investigations in Panama City, Panama involving the smuggling of precursors moving through Panama. Finally, DEA has proposed that a new hybrid job series be established which contains the specialized diversion investigator requirements as well as full law enforcement authorities. The

proposal, with an associated cost of $11.5 million, is now under review by the Office of Personnel Management (OPM). Current employees who are interested and eligible may apply. Those who do not apply will continue to perform compliance functions. Through attrition, we will arrive at the appropriate number of diversion investigators to sustain the compliance function. With OPM approval of the proposal, DEA will begin the conversion in fiscal year 2007.

*Program Offsets*

Included in the President's budget is one funding offset proposal: the elimination of the MET program (Mobile Enforcement Teams). This offset would achieve savings of $20.6 million in fiscal year 2008.

Over the years, DEA has valued each and every opportunity to support state and local law enforcement organizations as they combat drug-related violent crimes in our nation's cities and towns. Furthermore, as many of you know from experience in your own communities, our partnerships have yielded positive, and I hope, lasting results. At the same time, greater overall results are achieved when our focus is on targeting the drug trafficking organizations whose activities have the most significant impact on the drug problem in the United States as a whole.

While DEA's field divisions will no longer deploy MET teams to local jurisdictions when we receive a deployment request, we will continue to provide law enforcement assistance to them whenever possible, including our vigorous training programs for state and local law enforcement officers. In fiscal year 2006, DEA trained more than 41,000 officers. Also, during fiscal year 2006, DEA led over 200 State and Local Task Forces, with an on board strength of 1,600 Special Agents and 2,100 Task Force Officers.

CONCLUSION

In closing, let me reiterate that DEA works very hard to manage its resources and finances wisely and efficiently. Nevertheless, as our base budget has gradually eroded over time due to pay raise absorptions, rescissions and program reductions, we have been unable to maintain adequately our infrastructure or agent and support staffing at their previous levels. This has put us at an enforcement disadvantage. We must regain our financial footing. We must have the ability to sharpen and expand the enforcement tools and techniques that have helped us establish our drug enforcement leadership role. The budget before you today sets us on the path to regain that footing.

Madam Chairman and Members of the Subcommittee let me assure you that although we are experiencing fiscal challenges, we at DEA never waver in our firm commitment to public service and public safety.

This concludes my remarks. I would now be happy to answer any questions you or the other Members of the Committee may have.

ATTACHMENT—DRUG THREATS AND ENFORCEMENT CHALLENGES—APRIL 2007

DRUG THREATS TO THE UNITED STATES

*Methamphetamine*

Methamphetamine is the most widely abused and most frequently clandestinely produced synthetic drug[1] in the United States. Methamphetamine appeals to people across all genders, ages, and socio-economic levels. Methamphetamine has a high rate of addiction, a low rate of sustained recovery, and is cheap to manufacture. It devastates users, their families, and local communities. According to the 2005 National Survey on Drug Use and Health (NSDUH), 512,000 persons 12 and older used methamphetamine during the past 30 days (an eighteen percent decrease from 2003) and 1.3 million have used it in the past year, virtually the same number as in 2003. The estimated number of past year methamphetamine users is nearly three and one-half times the number of estimated past year heroin users. In fiscal year 2006, DEA domestic seizures of methamphetamine totaled 2.1 metric tons. Super lab seizures in the United States were reduced by 86 percent through increased enforcement efforts, from 244 in calendar year (CY) 2001 to 35 in CY 2005. The total number of clandestine methamphetamine laboratories seized nationally also decreased, from 10,212 in CY 2003 (the highest total from 2001 to 2005) to 5,840 in CY 2005 (43 percent). Of the 2,134 clandestine methamphetamine laboratories

[1] The term "synthetic drugs" refers to controlled substances such as methamphetamine, MDMA "ecstasy" (and its analogues), GHB (and its analogues), ketamine, and other substances, which are not of primarily organic origin and are usually associated with clandestine manufacture.

seized nationally so far in CY 2006, only 17 are classified as "super labs." Seizures of methamphetamine along the Southwest Border of the United States and Mexico have increased 129 percent, from 1,170 kilograms in CY 2001 to 2,679 kilograms in CY 2005.

By effectively targeting and arresting the main suppliers of bulk precursor chemicals, DEA has successfully reduced the number of super labs[2] in the United States. As a consequence, operators of super labs have shifted their production to Mexico. Current drug and lab seizure data suggests that approximately 80 percent of the methamphetamine used in the United States originates from larger laboratories operated by Mexican-based syndicates on both sides of the border, and that approximately 20 percent of the methamphetamine consumed comes from small toxic labs (STLs) in the United States. STLs generally are unaffiliated with major drug trafficking organizations, but nevertheless present enormous environmental challenges. In recent years, the proliferation of STLs has been fueled by the ready availability of pseudoephedrine, the key ingredient in methamphetamine and by the fact that the manufacturing process is simple, inexpensive, and recipes can be found easily on the Internet. Super lab seizures in the United States declined by 86 percent through increased enforcement efforts, from 244 in calendar year (CY) 2001 to 35 in CY 2005. The total number of clandestine methamphetamine laboratories seized nationally also decreased, from 10,212 in CY 2003 (the highest total from 2001 to 2005) to 5,840 in CY 2005 (43 percent). Of the 2,134 clandestine methamphetamine laboratories seized nationally so far in CY 2006, only 17 are classified as "super labs."

The most promising means of eliminating STLs is to cut off their supply of ephedrine and pseudoephedrine. DEA has removed a number of distributors of grey market drug products (those that can be purchased at truck stops, party/liquor stores, etc.) from the marketplace. Following DEA's success with removing grey market distributors, STLs have become heavily reliant on obtaining precursor chemicals from cold and asthma drug products (usually packaged in blister packs) from traditional retail outlets, such as chain drug stores. Based on clandestine lab seizure statistics, those states restricting the availability of methamphetamine precursor chemicals, like pseudoephedrine, have seen a dramatic decrease in the number of STLs. Implementing the Combat Methamphetamine Epidemic Act of 2005 will further help reduce the number of STLs as it makes pseudoephedrine and ephedrine more difficult to obtain.

*DEA Operational Highlight—August 2006*.—DEA arrested 28 members of two separate cocaine trafficking organizations which were simultaneously distributing methamphetamine in Henderson and Caldwell Counties, North Carolina. The arrests concluded ten-month and 15-month Organized Crime and Drug Enforcement Task Force (OCDETF) investigations that resulted in the dismantlement of the Juan LOPEZ and the Lewis CASAS methamphetamine trafficking organizations. The two organizations were responsible for the distribution of five kilograms of methamphetamine per month in the western part of North Carolina. To date, these two OCDETF investigations have resulted in 47 arrests, including LOPEZ and CASAS, 37 repeat offenders, and the seizure of more than one kilogram of methamphetamine, approximately $50,000 U.S. currency, and six weapons.

*DEA Operational Highlight—May 2006*.—DEA and the FBI arrested 27 individuals, resulting in the dismantlement of two crystal methamphetamine trafficking organizations. During the past ten years, the Rafael RAMIREZ organization was responsible for the distribution of approximately 100 pounds of crystal methamphetamine on a monthly basis from Mexico to the San Francisco area. The RAMIREZ organization supplied methamphetamine to the Kasi POHAHAU organization which, during the past ten years, was responsible for the distribution of more than 50 pounds of crystal methamphetamine from San Francisco to Hawaii. This three-year OCDETF investigation has resulted in the arrest of 37 individuals, including RAMIREZ and POHAHAU, and the seizure of 42 pounds of crystal methamphetamine, 52 kilograms of cocaine, and $1.4 million in U.S. currency.

*Non-medical use of prescription drugs*

Non-medical use of addictive prescription drugs has been increasing throughout the United States at alarming rates. In CY 2005, an estimated 6.4 million[3] Americans age 12 and older reported past month use of prescription drugs for non-medical

[2] "Super labs" are those labs that are capable of producing at least 10 pounds of methamphetamine per cycle.

[3] U.S. Department of Health and Human Services, Substance Abuse and Mental Health Services Administration. (2006). Results from the 2005 National Survey on Drug Use and Health.

purposes compared to 3.8 million in CY 2000[4]—a 68 percent increase in 5 years. Nationally, the misuse of prescription drugs was second only to marijuana in CY 2005.

Individual users can easily acquire prescription drugs through a variety of means, generally dependent on the type of drug. DEA and other data sources reveal that OxyContin® and other Schedule II drugs are most commonly obtained illegally through "doctor shopping" or are sold illegally by registrants (e.g., doctors/pharmacists). On the other hand, Schedule III and Schedule IV drugs (e.g., anti-anxiety medications, hydrocodone, and anabolic steroids) are often purchased through the Internet. Many of these pharmacies are foreign-based and expose the purchaser to potentially counterfeit, contaminated, or adulterated products.

DEA targets its investigations on domestic Internet pharmacies using data from available data bases, such as the Automated Reporting of Completed Orders System (ARCOS), to determine which retail pharmacies are most likely involved in distribution of large quantities of controlled substances over the Internet. In fiscal year 2006, 14.7 percent of investigative work hours dedicated to open diversion cases were Internet cases. This is an increase of 27.9 percent from fiscal year 2005 when Internet cases represented 11.3 percent of the investigative work hours dedicated to open diversion cases, and an increase of 50 percent from fiscal year 2004 when 8.8 percent of case work hours were for Internet cases.

During fiscal year 2006, DEA has initiated over 218 investigations of online sales of controlled pharmaceuticals without a prescription. As a result of Internet investigations, DEA seized approximately $4.9 million in cash, bank accounts, property, and computers during fiscal year 2006.

In fiscal year 2004, DEA established a specialized section within its Special Operations Division (SOD) to coordinate multi-jurisdictional Title III investigations involving the diversion of pharmaceuticals and chemicals over the Internet. During fiscal year 2006, DEA has coordinated over 90 Internet investigations, resulting in the arrest of approximately 128 individuals and the seizure of approximately 14 million dosage units of controlled substances and approximately $52.6 million in U.S. currency.

In 2006, DEA continued to enhance the Online Investigations Project (OIP), which improves DEA's ability to systematically identify, investigate, and prosecute the owners and operators of rogue pharmacies using the Internet to divert controlled substances. During fiscal year 2006, the OIP Configuration Control Board authorized the release of 71 change request items. These improvements made significant changes to the functionality of the OIP system, which enabled Diversion Staff Coordinators assigned to Intelligence to provide effective, ongoing support of significant Internet investigations. The system has also been utilized to provide pertinent Internet data in furtherance of ongoing Internet investigations in the field, as well as to provide new tips and leads. Since the inception of the OIP Web-Check process in March 2005, Web-Checks were performed on 2,425 web sites and e-mail addresses as a result of 455 requests.

*DEA Operational Highlight—January 2007*.—DEA arrested four individuals, resulting in the dismantlement of the Andrew RUSSO internet pharmaceutical drug trafficking organization. The RUSSO organization used illicit internet websites to sell controlled substances directly to consumers without a physician's medical evaluation. From July to December 2005, the RUSSO organization distributed over one million tablets of alprazolam, and six million tablets of phentermine through its two internet pharmacies, United Care Pharmacy and Kwic-Fill. In addition to the arrests, this 20-month Priority Target Organization (PTO) investigation has resulted in the seizure of $2,000,415 in U.S. currency, 11 vehicles valued at $700,000, and the possible forfeiture of real estate valued at $1.5 million.

*DEA Operational Highlight—December 2006*.—DEA arrested seven individuals, resulting in the dismantlement of the Antonio QUINONES internet pharmaceutical drug trafficking organization. The QUINONES organization used illicit internet websites to sell controlled substances directly to consumers without a physician's medical evaluation. During the past two years, the QUINONES organization shipped more than one million dosage units of Vicodin and amphetamines per month from Miami, Florida, to locations throughout the United States. In addition to the arrests, this one-year OCDETF investigation has resulted in the seizure of $935,000 in U.S. currency, real estate valued at $4.2 million, two vehicles valued at $350,000, a watercraft valued at $650,000, and two firearms. The DEA conducted this investigation with the Internal Revenue Service and the U.S. Marshals Service.

---

[4] U.S. Department of Health and Human Services, Substance Abuse and Mental Health Services Administration. (2002). National Household Survey on Drug Abuse: Vol 1. Summary of National Findings.

*Cocaine*

Cocaine remains a major illegal drug of concern throughout the United States based upon abuse indicators, violence associated with the trade, and trafficking volume. After marijuana, cocaine continues to be the most widely used illicit drug among all age categories. The 2005 National Survey on Drug Use and Health (NSDUH) found that 2.4 million Americans used cocaine within the past 30 days and that over 5.5 million Americans used it within the past year. According to the 2004 Drug Abuse Warning Network (DAWN) report, cocaine is the most frequently reported illegal drug in hospital emergency room visits, accounting for 1 in 5 (19 percent) drug related emergency room visits in CY 2004.[5]

Although Colombia is the principal source of cocaine distributed in the United States, most of the wholesale cocaine distribution in the United States is controlled by Mexican drug trafficking organizations and criminal enterprises. Even in areas dominated by Colombian and Dominican drug trafficking organizations, such as the Northeast and Caribbean regions, the influence of Mexican drug trafficking organizations is increasing.

*DEA Operational Highlight—September 2006*.—Consolidated Priority Organization Targets (CPOTs) Miguel and Gilberto RODRIGUEZ-OREJUELA pled guilty in U.S. District Court for the Southern District of Florida to conspiracy to import cocaine, and agreed to plead guilty in the Southern District of New York to conspiracy to commit money laundering. Each brother was sentenced to thirty years in prison. The brothers also agreed to the entry of a $2.1 billion judgment of forfeiture, and the forfeiture of 287 properties. Twenty-eight family members have also agreed to these forfeitures. The RODRIGUEZ-OREJUELA brothers ran the Cali Cartel in Colombia, and since 1990 imported and distributed more than 200,000 kilograms of cocaine from Colombia to the United States.

*DEA Operational Highlight—May 2006*.—The Brazilian Federal Police arrested CPOT Pablo RAYO Montano in Sao Paulo, Brazil, and in an operation coordinated by DEA, law enforcement teams in four U.S. cities and five foreign countries arrested 52 individuals, resulting in the dismantlement of the RAYO Montano cocaine trafficking organization. RAYO Montano started in the narcotics business as a transporter in Buenaventura, Colombia approximately 20 years ago. In the last four years alone, the RAYO Montano organization has been responsible for the transportation of 15 tons of cocaine per month from South America to the United States and Europe. RAYO Montano has been linked to the notorious Norte del Valle Cartel, the Autodefensas Unidas de Colombia (AUC) paramilitary organization, the Fuerzas Armadas Revolucionarias de Colombia (FARC) terrorist organization, and corrupt high-level officials in the Colombian government. On February 22 and March 3, 2006, federal grand juries in the District of Columbia and the Southern District of Florida, respectively, indicted RAYO Montano on money laundering and cocaine trafficking charges. The indictments were the result of Operation Twin Oceans, a three-year OCDETF investigation supported by the DEA Special Operations Division. Operation Twin Oceans has resulted in 138 arrests and the seizure of 47,550 kilograms of cocaine, 700 pounds of marijuana, ten kilograms of heroin, $1.6 million in U.S. currency, and other assets with a total estimated value of $47 million, including three islands near the coast of Panama.

*Heroin*

The overall demand for heroin in the United States is lower than for other major drugs of abuse such as cocaine, marijuana, and methamphetamine.[6] However, one cause for concern is the recent increase in heroin usage. According to the 2005 NSDUH, 379,000 people aged 12 and older reported using heroin during the past 30 days in CY 2005; a slight decrease from 398,000 in CY 2004.[7] Heroin remains readily available in major metropolitan areas and is the third most frequently mentioned illegal drug reported to DAWN by participating emergency departments after cocaine and marijuana, accounting for 162,137 mentions in CY 2004.[8]

Most of the heroin entering the United States is produced in South America and Mexico. Although heroin production in these areas has decreased in recent years,

---

[5] U.S. Department of Health and Human Services, Substance Abuse and Mental Health Services Administration. Detailed Emergency Department Tables from DAWN: 2004. April 2006.

[6] U.S. Department of Health and Human Services, Substance Abuse and Mental Health Services Administration. (2006). Results from the 2005 National Survey on Drug Use and Health.

[7] Ibid.

[8] U.S. Department of Health and Human Services, Substance Abuse and Mental Health Services Administration. Detailed Emergency Department Tables from DAWN: 2004. April 2006.

the production capacity remains sufficient to meet U.S. demand for the drug.[9] In 2004, Afghanistan produced more than 90 percent of the world's heroin supply.[10] However, Afghanistan is not currently a major heroin supplier to the United States; only about eight percent of the U.S. supply comes from that country. The majority of the heroin entering the United States is produced in Colombia and Mexico.

*DEA Operational Highlight—November 2006.*—DEA arrested seven individuals, resulting in the dismantlement of the Shakur MUHAMMAD heroin trafficking organization. This organization distributed fentanyl-laced heroin, brand named "Get High or Die Trying" and "Burn Out," which was directly responsible for six deaths and 27 overdoses. During the past two years, the MUHAMMAD organization distributed over three kilograms of heroin per month in the Pittsburgh, Pennsylvania area. This six-month OCDETF investigation has resulted in the arrest of nine individuals, including MUHAMMAD, and the seizure of one kilogram of heroin and two firearms.

*DEA Operational Highlight—June 2006.*—DEA arrested 12 individuals in Las Vegas, Nevada, Palm Springs, California, Caguas, Puerto Rico, and New York City, resulting in the dismantlement of the Javier MONROY heroin trafficking organization. Since 2004, the MONROY organization has been responsible for importing more than 200 kilograms of heroin into the United States. MONROY is a former Bogotá, Colombia police officer. The MONROY organization used couriers to smuggle heroin from several foreign countries, including Ecuador, Venezuela, Trinidad and Tobago, Colombia, Brazil, and Mexico, to New York for distribution. The organization employed more than a dozen drug couriers, many of whom made multiple drug trips and most of whom were based in the Las Vegas area. Typically, the drug couriers smuggled between three to five kilograms of heroin per trip concealed within the lining of clothes. To date, this ten-month OCDETF investigation has resulted in the arrest of 22 individuals, including MONROY, and the seizure of 28 kilograms of heroin and $220,000 in U.S. currency.

*Marijuana*

Marijuana continues to be a significant threat. The 2005 NSDUH found that marijuana was the most commonly used illicit drug with 14.6 million users (6.1 percent of the population 12 and older) during the past month in CY 2004—the same as in CY 2003.[11] More teens seek treatment for marijuana dependency than for all other drugs combined including alcohol, and marijuana was involved in 215,665 emergency department visits[12] in CY 2004, second only to cocaine among drug-related visits.[13]

Marijuana trafficking is prevalent across the nation, with both domestic and foreign sources of supply. The most recent supply availability estimates indicate that between 10,000 and 24,000 pure metric tons of marijuana are available in the United States,[14] and that Americans spend more than $10.4 billion every year on marijuana.[15] Since the demand for marijuana far exceeds that for any other illegal drug and the profit potential is so high, some cocaine and heroin drug trafficking organizations traffic marijuana to help finance their other drug operations.

Mexican drug trafficking organizations dominate the transportation and wholesale distribution of the majority of foreign-based marijuana available in the United States and cultivate marijuana on U.S. public lands throughout California. High grade marijuana from Canada, commonly referred to as "BC Bud," is also available in every region of the United States.

*DEA Operational Highlight—December 2006.*—DEA arrested two individuals, resulting in the dismantlement of the Shon SQUIRE marijuana trafficking organization. During the past 18 months, the SQUIRE organization distributed 300 pounds of marijuana per month through its store, the Local Patient Cooperative, which was granted a permit to operate as a medical dispensary by the city of Hayward, California. The store serviced 200 customers per day, purchasing marijuana at $4,000

---

[9] U.S. Department of Justice, National Drug Intelligence Center. (2006). 2006 National Drug Threat Assessment.

[10] Ibid.

[11] U.S. Department of Health and Human Services, Substance Abuse and Mental Health Services Administration. (2006). Results from the 2005 National Survey on Drug Use and Health.

[12] A visit to the emergency room is referred to as an episode, and every time a drug is involved in an episode it is counted as a mention.

[13] U.S. Department of Health and Human Services, Substance Abuse and Mental Health Services Administration. Detailed Emergency Department Tables from DAWN: 2004. April 2006.

[14] Drug Availability Steering Committee, Drug Availability Estimates in the United States, December 2002.

[15] Executive Office of the President, Office of National Drug Control Policy. What Americans Spend on Illegal Drugs 1988–1998. December 2000.

per pound and selling it at $6,500 per pound, in various products and quantities, for a gross profit of $750,000 per month. In addition to the arrests, this one-year investigation resulted in the seizure of 725 marijuana plants, $2 million in U.S. currency, five luxury vehicles and five firearms.

*DEA Operational Highlight—September 2006.*—DEA arrested 30 individuals, resulting in the dismantlement of the Manuel CARO marijuana trafficking organization. During the past 18 months, the CARO organization distributed 1,000 pounds of marijuana per month in Florida, New Jersey and New York. To date, this six-month OCDETF investigation has resulted in the arrest of 60 individuals, including CARO, and the seizure of 4,000 pounds of marijuana, $170,000 in U.S. currency, and a large amount of sophisticated indoor hydroponic grow equipment. Additionally, sixty residential properties are being reviewed for possible forfeiture action.

*Enforcement Challenges*

*Transit Zones*

The Southwest Border area is the principal arrival zone for most illicit drugs smuggled into the United States. From that area, the smuggled drugs are distributed throughout the country.

Most cocaine is transported from South America, particularly Colombia, through the Mexico-Central America Corridor via the Eastern Pacific transit zone (50 percent) and the Western Caribbean zone (40 percent). Most of the cocaine transiting these two areas is ultimately smuggled into the country via the Southwest Border. The remaining 10 percent of cocaine transported from South America mostly transits the Caribbean zones to Florida and the Gulf Coast.

According to the 2006 National Drug Threat Assessment, methamphetamine seizures increased from 1.12 metric tons in CY 2002, to 1.73 metric tons in CY 2003, to 1.98 metric tons in CY 2004. Most of the foreign-produced marijuana available in the United States is smuggled into the country from Mexico via the Southwest Border by Mexican drug trafficking organizations and criminal groups, as evidenced by CY 2004 seizures of 1,103 metric tons on the Southwest Border versus 9.2 metric tons on the Northern Border.

In CY 2004, seizures for Southwest Border points of entry included 22.4 metric tons of cocaine, 388 kilograms of heroin, 1,070 metric tons of marijuana, and 2.3 metric tons of methamphetamine. By comparison, seizures in the Florida/Caribbean arrival zone for the same time period included 10.5 metric tons of cocaine, 481 kilograms of heroin, 4.9 metric tons of marijuana and no methamphetamine.

*DEA Operational Highlight—August 2005 through October 2005.*—DEA oversaw Operation All Inclusive (OAI) 2005–1, the first initiative under the DEA-developed, multi-agency International Drug Flow Prevention Strategy. This strategy is designed to cause major disruption to the flow of drugs, money, and chemicals between source zones and the United States through the execution of joint enforcement operations that attack the main arteries and support infrastructure nodes of the drug trade. OAI 2005–1 focused on a predictive intelligence-based attack of the maritime, land, financial, and air smuggling vulnerabilities of drug trafficking organizations operating within the Mexico/Central America corridor. OAI 2005–1's success included nearly 47 metric tons of cocaine seized, which equates to 5 to 10 percent of the estimated quantity of cocaine that was transported through the transit zones to the United States during all of 2005. Additionally, during the 65-day period of the operation, total cocaine seizures in the Mexico/Central American and Caribbean Corridors increased 119 percent compared to the 65-day period preceding the operation, from 36 metric tons to 79 metric tons. At the same time, cocaine seizures by DEA domestic offices decreased 29 percent compared to the 65-day period prior to the operation, from 31,789 kilograms to 22,669 kilograms. Further, as a result of the operation, drug trafficking organizations were forced to delay or suspend their drug operations, divert their routes, change their modes of transportation, and jettison loads. Other results include 346 arrests and additional seizures of 88.56 kilograms of heroin, 26.28 metric tons of marijuana, 990,200 tablets of pseudoephedrine, $16 million in currency, and 104 weapons.

*DEA Operational Highlight—March 2006 through April 2006.*—Building upon some of the lessons learned from OAI 2005–1, the second initiative under the highly effective International Drug Flow Prevention Strategy, OAI 2006–1, was conducted. OAI 2006–1 was comprised of a combination of staggered and simultaneous land, air, maritime, and financial attacks involving synchronized interagency counter drug operations designed to influence illicit trafficking patterns and increase disruptions of drug trafficking organizations. Some of the successes for OAI 2006–1 include over 130 arrests and the seizure of 43.77 metric tons of cocaine; 19.65 metric tons of marijuana; 83.6 kilograms of heroin; 92.6 metric tons of precursor chemicals; and $4,079,894 U.S. currency. During the course of both OAI initiatives, DEA was able

to determine through intelligence sources that traffickers postponed or canceled their operations, modified their methods of conveyance, varied smuggling routes, and jettisoned loads as a result of enforcement efforts.

*Gangs*

Gangs have become an increasing and pervasive threat to our nation's security and the safety of our communities. Seventy-five percent of the United States Attorneys report that parts of their districts currently have a moderate or significant gang problem. Gangs commonly use drug trafficking as a means to finance their criminal activities. Furthermore, many have evolved from turf-oriented entities to profit-driven, organized criminal enterprises whose activities include not only retail drug distribution but also other aspects of the trade, including smuggling, transportation and wholesale distribution.

Criminal street gangs, outlaw motorcycle gangs, and prison gangs are the primary retail distributors of illegal drugs on the streets of the United States and the threat of these gangs is magnified by the high level of violence associated with their attempts to control and expand drug distribution operations. Gangs primarily transport and distribute cocaine, heroin, marijuana, and methamphetamine. Authorities throughout the country report that gangs are responsible for most of the serious violent crime in the major cities of the United States.

DEA is committed to combating the gang problem within the United States. The agency targets gang drug trafficking activity through participation in a number of anti-gang initiatives with other law enforcement components, such as Violent Crime Impact Teams, Project Safe Neighborhoods, Weed and Seed Program, Safe Streets and Safe Trails Task Forces and the Attorney General's Anti-Gang Coordination Committee. In 2006, DEA targeted violent drug gangs, such as the Hell's Angels, Latin Kings, Bloods, Gangster Disciples, and Crips. Through state and local partnerships, DEA is able to target violent drug trafficking organizations in areas where state, local, and tribal law enforcement is challenged. In fiscal year 2006, DEA initiated 31 deployments to state and local jurisdictions. Of these, nine (29 percent) were gang related. Additionally, 6 percent (117) of DEA's total active PTO investigations (2,113) were gang-involved. There was a 36 percent increase in active PTO cases involving gangs (from 86 in fiscal year 2005 to 117 in fiscal year 2006); 57 percent increase in cases initiated (from 56 in fiscal year 2005 to 88 in fiscal year 2006); 120 percent increase in PTOs disrupted (from 10 in fiscal year 2005 to 22 in fiscal year 2006); and 57 percent increase in PTOs dismantled (from 23 in fiscal year 2005 to 36 in fiscal year 2006).

*DEA Operational Highlight—February 2007*.—DEA arrested 47 individuals, resulting in the disruption of the Laton Spurgeon crack cocaine and heroin trafficking organization. Since August 2005, the Spurgeon organization distributed one kilogram of crack cocaine and six ounces of heroin per month at the Hamel Housing Projects, a New York City Housing Authority complex in Queens, New York. Sixteen of the defendants were charged with at least one count of selling drugs within a drug-free school zone. In addition to the arrests, this four-month PTO investigation resulted in the seizure of two firearms.

*DEA Operational Highlight—May 2006*.—DEA arrested 23 individuals, resulting in the dismantlement of the Winfred Lorenzo HUNT and Carlton POTTS crack cocaine trafficking organization. During the past three years, the HUNT/POTTS organization was responsible for the distribution of 8–12 kilograms of cocaine per month in Palm Beach County, Florida. HUNT has been arrested 27 times previously and charged with several violent crimes, including attempted murder. POTTS' record includes 30 prior arrests on charges such as battery on a police officer, aggravated assault, and attempted murder. Among those arrested was an employee of the Palm Beach State Attorney's Office who utilized her position to provide law enforcement information to the HUNT/POTTS organization. To date, this 15-month OCDETF investigation has resulted in the arrest of 53 individuals, including HUNT and POTTS, and the seizure of more than one kilogram of crack cocaine and two kilograms of powder cocaine, $172,000 in U.S. currency, and eight handguns.

## UNITED STATES MARSHALS SERVICE

**STATEMENT OF JOHN F. CLARK, DIRECTOR**

Mr. CLARK. Thank you Madam Chairman, Ranking Member Shelby, and members of the subcommittee. As a career deputy U.S. marshal, I consider it a privilege and an honor to serve as the ninth Director of America's oldest law enforcement agency.

We appreciate your support of the Marshals Service and our programs and, thanks to the funding you have provided over the years together with the work of the dedicated men and women of the Marshals Service, we have made a significant impact on reducing violent crime, protecting the judiciary, and securing thousands of prisoners who are in our custody.

Our fiscal year 2008 budget request addresses the Marshals Services' highest priority needs. In total, we are requesting 140 additional positions and just over $25 million. These resources will be used to maintain the security of our judicial system, to handle the increased court and prisoner workload in the Southwest border region, and to make our streets safer for children.

Protection of the judicial process remains the primary mission of the United States Marshals Service and deputy marshals protect over 2,000 Federal judges, over 5,000 U.S. and assistant U.S. attorneys, and many Federal employees who work within our courthouses. Last year, the Marshals Service safely handled over 200 personal protection details for Federal judges and Supreme Court justices and investigated more than 1,100 judicial threats.

However, in recent times, we have seen very violent acts committed against the judiciary, some resulting in death. Just last month a suspect pled guilty to mailing an actual explosive device to the courthouse in Richmond, Virginia. It was court security officers who discovered and dealt with both the explosive device and its contents, a powdery substance labeled as anthrax.

Also last month, a Houston man began making numerous telephone calls to the chambers of a Federal judge. The man would not accept that his case had been dismissed and became angry and threatening toward the judge. After fully investigating the situation, deputy U.S. marshals and local police determined the man was a danger to himself and others. He was brought before a magistrate judge and, through psychiatric evaluation, was ordered help.

In the last 10 years, the number of reported threats has increased 553 percent. To strengthen our ability to analyze and investigate threats against the judiciary and to adequately provide judicial and courtroom security, we're requesting 16 positions and $5.3 million. The Marshals Service must maintain a secure courtroom environment especially when trials involve high profile and high threat defendants.

Right now, there are 20 high threat trials going on in courtrooms throughout the country, involving defendants such as the Aryan Brotherhood, the Russian mafia, and the MS–13 gang. Last year, the Marshals Service provided security for over 130 high threat trials. In order to continue to provide security at the increased number of high threat trials, the Marshals Service requests 17 positions and $5.1 million.

Every day, our Southwest border districts try to determine how to best use our limited number of deputy marshals to successfully protect the Federal judiciary and safely transport the detainees. The average daily prisoner population at districts along the Southwest border has increased 78 percent from fiscal year 2000 to fiscal year 2006. To address this prisoner increase, the Marshals Service

requests 53 positions and $7.5 million for our Southwest border district offices.

The Marshals Service workload has also increased due to our newest enforcement mission. Last July, the President signed into law the Adam Walsh Child Protection and Safety Act which places the Marshals Service as the lead Federal law enforcement agency responsible for investigating sex offender registration violations. There are more than 500,000 registered sex offenders in the United States and estimates indicate that there are at least 100,000 unregistered or noncompliant sex offenders.

We are requesting 54 positions and $7.8 million to more aggressively investigate violations of the Adam Walsh Act. With the requested resources, we'll also be able to partner with the National Center for Missing and Exploited Children at their national sex offender targeting center.

PREPARED STATEMENT

Madam Chairman, Senator Shelby, and members of the subcommittee, I look forward to working with your subcommittee throughout the appropriation process and on behalf of the men and women of the United States Marshals Service, I thank you for your ongoing support and I'd be happy to answer any questions you have now. Thank you.

[The statement follows:]

PREPARED STATEMENT OF HON. JOHN F. CLARK

Madam Chairman, Senator Shelby, and Members of the Subcommittee, I appreciate the opportunity to appear before you today to discuss the President's fiscal year 2008 budget request for the United States Marshals Service (USMS). As a career Deputy U.S. Marshal, and the former United States Marshal for the Eastern District of Virginia, it is a very great honor to represent the Marshals Service as its Director.

I appreciate this Subcommittee's support for the Marshals Service and our programs. Thanks to the funding that you have provided over the years, and with the good work of the dedicated men and women who wear "America's Star," we are performing our missions with excellent results.

THE MISSION OF THE UNITED STATES MARSHALS SERVICE

As you know, the primary mission of the Marshals Service is the protection of the federal judicial process. The nation relies on us to provide physical security to federal judges and U.S. courthouses; to protect witnesses, jurors, and members of the public; to safely and humanely transport and detain federal prisoners; and to catch violent fugitives. Our missions are diverse, and the challenges we face are significant. Our accomplishments are many, and I welcome the opportunity to share some of those accomplishments with you today.

SUMMARY OF FISCAL YEAR 2006 ACCOMPLISHMENTS

In fiscal year 2006, the Marshals Service:

—Investigated more than 1,100 threats and inappropriate communications to the federal judiciary and others for whom the USMS has protective responsibility;
—Provided more than 230 Personal Protection Details for federal judges and prosecutors under threat, as well as security for nearly 200 federal judicial conferences around the country, all without incident;
—Completed home intrusion alarm surveys and pre-installation plans for more than 1,600 federal judges who requested an alarm system, with more than 90 percent of those installations now complete;
—Cleared more than 39,000 federal felony fugitive cases and more than 55,000 state and local fugitive cases;

—Established and began operating our sixth Regional Fugitive Task Force (RFTF), located in the Gulf Coast states of Alabama and Mississippi; since its inception in July 2006, the Gulf Coast RFTF has made more than 2,140 arrests;
—Conducted two successful Fugitive Safe Surrender operations, resulting in the surrender of more than 2,150 individuals wanted on outstanding warrants;
—Established the Sex Offender Apprehension Program and Sex Offender Investigations Branch to manage the implementation of the Adam Walsh Child Protection and Safety Act and support the Attorney General's "Project Safe Childhood" initiative;
—Completed 685 international extraditions from a record 67 foreign countries;
—Safely handled security operations for 135 high-threat trials nationwide, including the trial of convicted terrorist Zacarias Moussaoui;
—Received more than 263,000 prisoners into our custody, with a daily average prisoner population of nearly 56,000;
—Safely and securely produced an average of 3,000 prisoners every day for court appearances;
—Moved an average of 1,200 prisoners each day through the Justice Prisoner and Alien Transportation System (JPATS);
—Protected more than 17,000 witnesses and their families through the Witness Security Program;
—Hosted the first International Witness Security Symposium, with 17 countries participating;
—Assigned Special Operations Group (SOG) Deputies to Iraq to secure the Saddam Hussein trial, assist in other high-threat trials, and provide court security training;
—Deployed SOG Deputies to Kabul, Afghanistan, providing Judicial and Witness Security training for the Counter-Narcotics Police of Afghanistan, supporting the international effort to combat drug trafficking, narcoterrorism, and related crimes;
—Managed more than $1.3 billion worth of seized assets through the Asset Forfeiture Program;
—Disbursed more than $300 million worth of assets with state and local law enforcement agencies through the USMS Equitable Sharing program; and
—Received and disposed of more than 17,000 seized assets.

FISCAL YEAR 2008 BUDGET REQUEST

For fiscal year 2008, the Marshals Service requests a total of 4,486 positions, including 3,299 Deputy Marshals, and $899.875 million to fulfill its missions. Of this amount, 140 positions and $25.7 million are program enhancements to address critical needs related to judicial threat intelligence and investigations; high-threat trial security; enforcement of the Adam Walsh Child Protection and Safety Act; and handling the increased workload in our Southwest Border district offices.

JUDICIAL THREAT INTELLIGENCE AND INVESTIGATIONS

Protection of the judicial process—with a heavy emphasis on judicial security—remains the primary mission of the USMS. Regrettably, the attitude of a small segment of American citizens toward the judicial process has changed, as is evidenced by an increasing number of threats to federal judges throughout the country. As a result, the workload associated with both judicial and courthouse security has significantly increased in the last six years. This is due, in part, to the judicial families' heightened awareness of potential threats, which has resulted in an increase in reporting of such incidents to the USMS. We cannot forget what happened in March 2005, when the mother and husband of U.S. District Judge Joan Humphrey Lefkow were brutally murdered in retaliation for her rulings. The tragic loss clearly illustrates why there is a real and continuing need to monitor and enhance security for all involved in the judicial process.

Just last month, a Houston man began making numerous telephone calls to the chambers of a federal judge. The man would not accept that his case had been dismissed, and became angry and threatening towards the judge. After fully investigating the incident, Deputy U.S. Marshals and local police determined that the man was a danger to himself and others. He was brought before a magistrate judge on charges of threatening the federal judge and a thorough psychiatric evaluation was ordered.

Potential threats against judicial participants are not always obvious. Because of this, Deputy Marshals must be constantly vigilant. Threats come not only from detainees in custody, but also from litigants in civil matters, members of the general public attending trials, and individuals related to or associated with litigants or trial

participants. In the last ten years, the number of reported threats has increased 553 percent. In fiscal year 2006, the number of threat investigations undertaken by our Judicial Security Division increased 17 percent over 2005. As a result, we are making adjustments to our threat assessment capability to respond to this new reality.

To strengthen our ability to analyze and investigate threats against the judiciary and to adequately provide judicial and courtroom security, we are requesting 16 positions and $5.3 million. The requested resources will allow the Marshals Service to hire 10 additional Deputy Marshals to serve as District Threat Investigators, and five Deputy Marshals and one analyst to be assigned to the Technical Operations Group (TOG) to support judicial security. The requested funding also will allow for enhancements to our secure voice and data communications abilities.

I am steadfast in my commitment to fulfill our primary mission: protecting the federal judiciary. I am pleased to report the Marshals Service has taken aggressive steps to further protect courthouses and secure courtrooms in order to increase our threat intelligence and analysis capabilities. In 2004, we established the Office of Protective Intelligence (OPI) to facilitate the day-to-day sharing of threat intelligence information with federal, state, and local law enforcement agencies. As a result of funds provided by Congress in the fiscal year 2005 Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief, we hired 10 new Deputy Marshals and three intelligence research specialists to provide 24-hours-a-day/7-days-a-week threat response capability and to analyze and investigate all threats to the federal judiciary and others we protect. We appreciate the continuing support the Subcommittee provides us in fulfilling this crucial mission.

In fiscal year 2006, the Marshals Service investigated more than 1,100 judicial threats, staffed more than 230 Personal Protection Details, and provided security for nearly 200 judicial conferences. The year ended without a single violent incident.

Deputy Marshals protect more than 2,000 federal judges, but we also protect Supreme Court Justices when they travel outside of the Washington, DC area. Highly-publicized confirmation hearings and controversial decisions have increased the visibility of these justices, and staged protests at both private and public functions have increased the demand for USMS protective details. We experienced an 80 percent increase in the number of Supreme Court Justice Protective Details in fiscal year 2006 over the previous year. The Marshals Service is in the final stages of constructing our Threat Management Center, which will function as the nerve center for threats and inappropriate communications against judicial officials and other Marshals Service protectees. In addition, during fiscal year 2007, we plan to establish the National Center for Judicial Security (NCJS). The NCJS will provide a wide range of services and support to federal, state, local, and international jurisdictions as they seek advice and assistance on questions of judicial security. The Center will initiate programs and activities directly related to threat assessment, training, information sharing, and technology review.

Outside of the courtroom, the Marshals Service has made tremendous progress in achieving the offsite security initiative funded through the fiscal year 2005 Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief. We are grateful for the support provided by Congress. Through the end of 2006, 1,616 federal judges had requested or expressed interest in having a home intrusion alarm system installed in their residence. Working in conjunction with the Administrative Office of the U.S. Courts (AOUSC), the Marshals Service has scheduled or completed Pre-Installation Plan surveys for all of those residences. Installation has been completed in over 90 percent of these locations. The ongoing cost of these systems has been funded through the enacted fiscal year 2007 Joint Resolution.

We have stepped up our training efforts. In fiscal year 2006, the Marshals Service conducted training in behavioral methodologies of investigation for 190 Deputy Marshals and Judicial Security Inspectors (JSIs) at the Federal Law Enforcement Training Center (FLETC) at Glynco, Georgia. A Judicial Protective Training Conference for 210 Deputy Marshals and JSIs also was held in Baltimore, Maryland. These training seminars were led by experts from within the Marshals Service, as well as the United States Secret Service; the United States Attorneys' Office; the Diplomatic Security Service; the Bureau of Alcohol, Tobacco, Firearms and Explosives; and the Federal Bureau of Investigation.

I am pleased to say that we are also taking a more aggressive approach to training Court Security Officers (CSOs) and exploring new screening technologies that CSOs can use in their efforts to secure federal courthouses. The CSO Orientation Curriculum has been completely updated, and training which formerly occurred on an annual basis is now being conducted quarterly at FLETC. Hands-on training is being conducted on new and current screening equipment, with added emphasis on detecting disguised weapons and explosives, and on response plans for dealing with

weapons of mass destruction. Additionally, selected judicial districts are being asked to test next generation technologies, and the data obtained from these tests will assist the Marshals Service to select and procure the best possible screening equipment to support our judicial protection mission.

HIGH-THREAT TRIAL SECURITY

The Marshals Service also has an obligation to ensure that the highest level of security is provided at U.S. courthouses during trials involving high-profile and high-threat defendants. High-threat trials generally involve international or domestic terrorists, drug kingpins, violent gang members, organized crime figures, or defendants in civil matters with a high degree of notoriety. An increasing number of these trials require enhanced security efforts to secure trial participants from internal and external threats, such as additional personnel, use of armored vehicles, and establishment of security perimeters around courthouses.

Due to the potential for additional terrorist attacks, threats from extremist groups, intense media attention, the general public's concerns, and global interest in these proceedings, high-security, high-profile events require extensive operational planning and support from specially-trained and equipped personnel. The complexity of the operations and threat levels associated with these cases require additional Deputy Marshals for all aspects of USMS work. In order to continue providing the best security for the number of high-threat trials that we must handle, the Marshals Service requests 17 positions, including 15 Deputy Marshals, and $5.1 million for cellblock security enhancements, Supreme Court Protective Details, and our nationwide security maintenance contract.

As the former U.S. Marshal in the Eastern District of Virginia, I can speak firsthand about the planning and resource requirements necessary to prepare for a high-threat trial. In fiscal year 2006, the extended legal proceedings involving terrorist Zacarias Moussaoui came to a close. The USMS provided security for this high-profile trial from 2002 to 2006. Assisted by our Special Operations Group, we were successful in producing the defendant safely and securing the judicial proceedings without incident. In May 2006, Moussaoui was sentenced to life in prison, and on May 13, 2006, the Marshals Service transported him to Florence, Colorado, to begin serving his sentence at the United States Penitentiary Florence Administrative Maximum Facility.

While Moussaoui is perhaps the most visible terrorist to be tried on U.S. soil, he will not be the last. The trial of terrorist suspect Jose Padilla in Miami, Florida, is just another case that will test the resources and resolve of the USMS. Preparations include evaluating logistical requirements such as: increasing perimeter security, setting up additional barricades, coordinating with local authorities to close street traffic, arranging armored motorcades for prisoner transport, upgrading surveillance cameras, and providing additional personnel through several rotations of specially-trained Deputy Marshals.

The increase in gang-related trials also presents many challenges for the Marshals Service. For example, in Santa Ana, California, we have been securing the largest capital murder case in U.S. history. Forty defendants affiliated with the Aryan Brotherhood have been charged with a variety of violent crimes, including conspiracy to commit murder and drug trafficking. Not only were the defendants part of this gang, but so were many of the witnesses and trial observers in the public area of the courtroom. In July 2006, the jury convicted two Aryan Brotherhood leaders on a host of racketeering and murder charges. Both leaders were sentenced to life in prison without parole. Although federal prosecutors continue to achieve record convictions, out of the 40 defendants, 14 are still pending trial and remain in our custody.

Additional gang-related trials are currently taking place in Greenbelt, Maryland, where several very significant prosecutions that involve multi-defendant, high-threat trials of members of the notorious MS–13 gang are underway. The defendants were charged with a variety of offenses, including conspiracy, RICO, murder, carjacking, kidnapping, firearms violations and weapon charges. Many of the defendants also have been charged by U.S. Immigration and Customs Enforcement (ICE) for being in the United States illegally. These defendants are more violent than our average prisoner and require extra security when transporting and producing them for trial and various hearings. One trial involving seven defendants has already been completed and the second trial is currently in progress. The trials are scheduled to continue throughout 2008, and additional arrests are expected as the investigations continue.

Aside from the potential threats within the courtrooms when high-threat trials are underway, the increase in gang-related prosecutions and the growing number

of gang members in federal detention place additional burdens on the Marshals Service. In many instances, we must not only separate co-defendants from one another, but we must also segregate prisoners within the courthouse cellblock due to their history of violence, potential violence with other detainees, or risk of escape. Support for the President's budget request in this area will assist in our ability to meet these additional responsibilities.

High-threat trials provide special challenges for the Marshals Service. However, our Deputy Marshals are hard at work every day in every judicial district handling prisoners for court appearances. Agency-wide in fiscal year 2006, our personnel produced prisoners for 642,000 court proceedings. I am proud to say that these productions were completed without any injury to a judge, witness, or prosecutor.

ADAM WALSH CHILD PROTECTION AND SAFETY ACT

I am personally honored that last July, Congress named the Marshals Service as the lead agency to investigate sex offender registration violations. This important new enforcement role, outlined in the Adam Walsh Child Protection and Safety Act, grants us the authority to protect the most innocent among us—young children. Signed into law on July 27, 2006, the Adam Walsh Act is landmark legislation that will not only change the face of our communities by making them safer for vulnerable women and children, but it will also, in many respects, change the face of the Marshals Service.

The Marshals Service has three distinct missions pursuant to the Adam Walsh Act: to assist state, local, and tribal jurisdictions in the location and apprehension of noncompliant sex-offenders; to investigate violations of non-compliance; and to assist in the identification and location of sex offenders relocated as a result of a major disaster.

To carry out these new missions, we established the Sex Offender Apprehension Program and designated a program management office (the Sex Offender Investigations Branch) to direct and coordinate the implementation of the Act within the agency. The Marshals Service also designated sex offender investigations coordinators in each district office and Regional Fugitive Task Force to establish and maintain effective contacts with sex offender registration authorities, corrections officials, and other law enforcement agencies throughout the country. Last month, we trained 52 of these coordinators at the National Center for Missing and Exploited Children (NCMEC). There are three additional courses scheduled for this fiscal year, which will bring the total number of Deputy Marshals specially trained in sex offender investigations to approximately 200. To date the Marshals Service has opened 149 cases on convicted sex offenders for violations of the Act and we are participating in the Attorney General's "Project Safe Childhood" initiative.

I am proud to say that the Marshals Service has a long-standing and mutually supportive relationship with NCMEC, which has been enhanced by the enactment of the Adam Walsh Act. One Deputy Marshal has been assigned full-time to NCMEC as a liaison to our Investigative Services Division, and this year we will be assisting NCMEC with their media campaign to encourage compliance with sex offender registration laws. In fiscal year 2008, pending the availability of resources, NCMEC and the USMS also will establish a National Sex Offender Targeting Center (NSOTC) to assist in identifying and prioritizing non-compliant sex offenders and to provide analytical support to federal, state, and local law enforcement agencies.

Full implementation and enforcement of all provisions contained within the Act will require additional resources. Therefore, the Marshals Service requests 54 positions, including 43 Deputy Marshals, and $7.8 million to begin staffing areas of the country having large numbers of non-compliant sex offenders and to staff the NSOTC in partnership with NCMEC.

It is estimated that there are nearly 600,000 registered sex offenders in the nation and as many as 100,000 non-compliant sex offenders. The requested resources will allow the Marshals Service to identify and apprehend non-compliant sex offenders—especially those who commit offenses against children—and to provide analytical support to federal, state, and local law enforcement agencies.

SOUTHWEST BORDER ENFORCEMENT

With the recent investment of resources to increase illegal immigrant apprehension along the Southwest Border, the Marshals Service is facing the daily challenge of utilizing our limited number of personnel to successfully protect and secure judicial personnel and federal detainees, and to safely transport those detainees. To alleviate this problem, the Marshals Service requests 53 positions, including 40 Deputy Marshals, and $7.5 million for Southwest Border (SWB) district offices.

The prisoner population levels along the United States' Southwest Border have been an area of particular concern to the USMS since 1994, the start of intensified immigration initiatives in that region. The addition of thousands of agents from both ICE and U.S. Customs and Border Protection (CBP), together with increased enforcement of immigration laws by federal prosecutors, has caused another significant increase in the number of illegal immigrants captured and detained along the Southwest Border, further contributing to increases in the prisoner population. The average daily prisoner population in Southwest Border districts has increased by 78 percent from 2000 to 2006 and there are no signs of this upward trend abating. For example, the Del Rio office in the Western District of Texas is now handling an average of 400 prisoners a day.

The CBP's fiscal year 2008 budget request includes funding to hire an additional 3,000 agents which, if approved by Congress, will drastically increase the Marshals Service workload. Without the resources requested in the President's budget, the USMS will have difficulty managing this increased prisoner population and the prisoner productions that will be required. When additional Border Patrol agents or border enforcement resources are added, the potential exists for creating massive criminal prosecutions in Southwest Border judicial districts. Additional Marshals Service resources, including Deputy Marshals and administrative positions to handle the resulting criminal workload, will be required to meet the growing burden.

Statistics from the Drug Enforcement Administration demonstrate that drug-trafficking and drug-related gang activity along the Southwest Border is increasing, which also affects the USMS workload. The Marshals Service is handling prisoner productions for high-profile prosecutions such as trials involving the Arrellano-Felix drug cartel and the "Mexican Mafia" in Southern California. As a result of stepped-up enforcement and greater cooperation from the Mexican government in returning these individuals for prosecution in the United States, the USMS will continue to play a large role in these proceedings.

FUGITIVE INVESTIGATIONS

The United States Marshals Service is the federal government's primary agency for conducting fugitive investigations. In fiscal year 2006, more than 39,000 federal fugitive felons were apprehended through USMS-led task forces and warrant squads. Working with authorities at the state and local levels, USMS-led fugitive task forces also arrested more than 55,000 state and local fugitives. The "force-multiplier" effect of the Marshals Service's network of six regional and 85 district-based task forces provides results that are unmatched in law enforcement. In all, more than 135,000 federal, state, and local fugitives were apprehended by the USMS and its law enforcement partners during fiscal year 2006.

The Marshals Service has responded to requests from the State Department and the Department of Justice to provide specialized fugitive investigative training to foreign law enforcement agencies. In fiscal year 2006, the USMS conducted seven training missions involving 170 foreign police officials from ten countries. These training missions included courses that ranged in content from basic prisoner handling to advanced electronic and financial surveillance techniques. Since fiscal year 1999, the USMS has trained more than 400 foreign officers from 22 countries in fugitive investigation.

The Marshals Service continues to improve strategies used to apprehend fugitives. In October 2006, we teamed with our state, local, and federal colleagues in the largest national round-up focused on violent sex offenders and gang members. Operation FALCON III (Federal and Local Cops Organized Nationally) resulted in the apprehension of more than 10,700 fugitives, including 1,629 sex offenders and 364 documented gang members. Teamwork was the key during this seven-day initiative. More than 1,060 agencies participated, with an average of 3,000 law enforcement officers working each day in Marshals Service districts primarily east of the Mississippi River. By removing some of the country's most dangerous sex offenders and gang members from the streets, Operation FALCON III made America's communities safer and contributed to the Attorney General's "Project Safe Childhood" initiative. The operation also resulted in the safe recovery of a missing child, the arrest of a convicted sex offender who was babysitting three young children at the time of his arrest, and the seizure of child pornography.

This success followed an earlier initiative, Operation FALCON II, which occurred in April 2006 in districts in the western half of the United States. More than 9,000 fugitives were arrested and more than 10,400 warrants were cleared during Operation FALCON II. Since April 2005, the three FALCON operations have resulted in the arrests of 30,110 fugitives and the clearance of 37,603 warrants. Of those arrested, 3,314 were sex offenders and 681 were gang members. These results are a

clear demonstration of what can be accomplished when law enforcement agencies pool their human resources and investigative assets to achieve a common goal.

The success of these fugitive initiatives has been recognized by the Department of Justice, which will soon announce a series of mini-FALCONs designed to focus on violent gang members in high priority cities. The first of these initiatives occurred the week of February 25, 2007, in Baltimore, Maryland. Coordinated by the USMS Capital Area Regional Fugitive Task Force, we worked with our state and local law enforcement partners to arrest 195 felons in just five days. Of this number, 24 were documented gang members and another 20 were suspected gang members. Task Force officers arrested four individuals who had been listed as among the City of Baltimore's Most Wanted fugitives.

The Marshals Service also is fully engaged in the battle against violent crime perpetrated by gang members. We have assigned a supervisory criminal investigator and a criminal analyst to the National Gang Intelligence Center, and we are a full participant in the newly-formed Gang Targeting, Enforcement and Coordination Center (GangTECC), whose primary goal is to establish national coordination, intelligence, and enforcement mechanisms to disrupt and dismantle the most significant, violent, national and regional gangs.

The Marshals Service's activities with regard to gangs are not limited to enforcement, however. I have directed our district offices to explore creative avenues to address prevention and have encouraged participation in initiatives such as the G.R.E.A.T. (Gang Resistance, Education, and Training) program, which focuses on providing life skills to students to help them avoid using delinquent behavior and violence to solve their problems.

The Marshals Service intends to expand its Fugitive Safe Surrender program in fiscal year 2007 and fiscal year 2008. Authorized under the Adam Walsh Act, Fugitive Safe Surrender is a creative, non-violent, and highly-successful, approach to fugitive apprehension. The goal of Fugitive Safe Surrender is to reduce the risk to law enforcement officers who pursue fugitives, to the neighborhoods in which they hide, and to the fugitives themselves. It encourages persons wanted for non-violent felony or misdemeanor crimes to voluntarily surrender to the law in a faith-based or other neutral setting. Partnering with state and local law enforcement, the judiciary, and the religious community, the Marshals Service has undertaken two successful Fugitive Safe Surrender operations in Cleveland, Ohio, and Phoenix, Arizona, which resulted in the surrender of more than 2,150 individuals wanted on outstanding warrants.

The next Fugitive Safe Surrender operation will take place in Indianapolis, Indiana beginning on April 25, 2007. Additional cities looking to host the program include Milwaukee, Wisconsin; Camden, New Jersey; Louisville, Kentucky; Nashville, Tennessee; Dallas, Texas; Albuquerque, New Mexico; Montgomery, Alabama; Jackson, Mississippi; Richmond, Virginia; and Washington, DC.

WITNESS SECURITY PROGRAM

One of the most critical, and least known, responsibilities of the United States Marshals Service is the administration of the federal government's Witness Security Program. This Program provides for the security, health, and safety of government witnesses and their immediate dependents whose lives are in danger as a result of their testimony against drug traffickers, organized crime members, and terrorists. After the events of September 11, 2001, the Witness Security Program has assisted in the production and relocation of witnesses testifying in terrorism-related cases nationwide and abroad.

Since the inception of the Program in 1970, more than 7,900 witnesses and over 9,700 family members have entered the program and have been protected, relocated and given new identities by the U.S. Marshals Service. The successful operation of this program is widely recognized as providing a unique and valuable tool to the government's war against major criminal conspirators and organized crime, and I appreciate the Subcommittee's continuing support for this critical mission. I am pleased to report that no program participant who has followed the security guidelines of the program has been harmed while under the active protection of the U.S. Marshals Service.

The fundamental principle of the Witness Security Program is the lifelong involvement with the witnesses and their families. As the program has evolved, the services provided to program participants continue to become more complex. For example, approximately 70 percent of new case participants are foreign-born. Relocating foreign nationals and ensuring their assimilation in a new community presents a host of difficult issues to overcome, including language and cultural barriers.

In addition to its primary mission related to the nationwide protection and relocation of witnesses, the Witness Security Program is currently involved in many other foreign initiatives in conjunction with the Department of Justice, the Department of State, and the United Nations. As the recognized experts in this field, during the last three years, personnel assigned to the Witness Security Program have assisted countries such as Austria, Bahamas, Bosnia-Herzegovina, Chile, Colombia, Guatemala, Kosovo, Mexico, Panama, Russia, Serbia, and Thailand in the establishment and training of witness security units.

In July of 2006, the U.S. Marshals Service sponsored the First International Witness Protection Symposium in Washington, DC. Participants included heads of witness security units and Senior Police Officials representing more than 17 countries across three continents. Additionally, the Marshals Service, in coordination with the Department of Justice, has posted a team of witness security specialists at the United States Embassy in Bogotá, Colombia, to facilitate and provide consultation to the Colombian witness security program.

2007 GLOBAL WAR ON TERROR SUPPLEMENTAL

I would like to thank the Subcommittee for your continued support of our law enforcement and training efforts in Iraq and Afghanistan and for the Senate's recent passage of our request in the Global War on Terror Supplemental. The funds you have approved will be used to enhance security for two terrorist trials, the Jose Padilla trial in the Southern District of Florida, and the upcoming Babar Ahmed trial in the District of Connecticut.

Last year, Congress provided $1 million directly to the Marshals Service as part of the Emergency Supplemental to fund our activities in Iraq. Other funding comes to us from the Department of State. Since 2004, we have deployed Deputy Marshals from our Special Operations Group (SOG) to provide expertise in five key areas: security for judges, security for court facilities, security for witnesses, investigations tied to the Regime Crimes Liaison Office and the Major Crimes Task Force, and police training. To date, approximately 70 of our 98 Special Operations personnel have served on deployments of at least six months to Iraq.

When enacted, the additional funding provided in the fiscal year 2007 GWOT supplemental will be used to continue our operations in Iraq, and expand the Marshals Service's role in Afghanistan, where the Department of Justice has a significant role in combating organized crime and drug cartels. Funding will be used for logistical support and equipment to deploy Deputy Marshals to Afghanistan to establish a Judicial and Witness Security Protection Unit within the Counter-Narcotics Police of Afghanistan. The Unit will enable narcotics trafficking cases to be successfully prosecuted under the Afghan Counter-Narcotics law. Until a safe environment is created, Afghan judges may continue to resist holding trials because of the threats made against their lives. Currently, our Special Operations Group has four personnel assigned to Kabul for a six-month rotation.

CONCLUSION

Madam Chairman, Senator Shelby, and Members of the Subcommittee, on behalf of the men and women of the United States Marshals Service, thank you for your ongoing support of our programs. In the last year, we have made significant progress in addressing the legitimate concerns expressed to us by Members of Congress concerning judicial security, and we have built upon our successful track record of reducing the number of violent felons in our communities. We also have achieved positive results in our less visible program areas, such as training of Deputy Marshals, criminal investigators, threat investigators, and administrative employees.

However, I know that there is still much to do. I am committed to ensuring that we are efficient stewards of the resources you have entrusted to us, and I look forward to working with you to improve our performance in areas that are critical to domestic security and to build upon the successes we have already achieved. I would be happy to answer any questions you may have at this time.

---

BIOGRAPHICAL SKETCH OF JOHN F. CLARK

John F. Clark was appointed Director of the United States Marshals Service on March 17, 2006.

Prior to his role as Director of the Marshals Service, Mr. Clark was appointed by President George W. Bush on November 12, 2002 to serve as the United States Marshal for the Eastern District of Virginia, which includes the Alexandria, Richmond,

and Norfolk, Virginia offices. Prior to his appointment as U.S. Marshal, he was the Acting Marshal and Chief Deputy for the Eastern District of Virginia.

Mr. Clark is a veteran of the Marshals Service, with over 20 years of experience. He began his career as a Deputy United States Marshal in the San Francisco, California office and later served in the San Jose, California; Richmond, Virginia; and Alexandria, Virginia offices. In addition to his field experience, Mr. Clark served in the Special Operations Group for seven years. During his tenure with the Marshals Service, Mr. Clark has held numerous senior management positions within the Headquarters organization, including Chief of the Internal Affairs Division and Chief of the International Fugitive Investigations Division. Prior to his employment with the Marshals Service, Mr. Clark was employed by the United States Capitol Police and the United States Border Patrol.

Mr. Clark holds a Bachelor of Science degree from Syracuse University and an Associates degree from Hudson Valley Community College. He has completed the Executive Leadership programs at the Center for Creative Leadership and the Aspen Institute. He is married and lives in Virginia.

Senator MIKULSKI. Well thank you very much, each and every one of your testimonies is much appreciated.

Ordinarily we focus on numbers and the financial aspects of your agencies, but today I think is a little bit different and one of the things about each and every one of your testimonies talks about partnership, partnership, partnership. That your agencies stand sentry at a variety of threats facing the American people.

The marshals from threats to our judges to pedophiles threatening their children on playgrounds, DEA at our borders and outside of our borders, working in world communities and of course, ATF, fighting gun crime, the trafficking of illegal guns, the trafficking of illegal bullets, and their whole effort to contribute to violent crime impact teams.

Let me go to my question because we often talk about how do we connect the dots and how do we connect the people? How do we work together to amplify Federal resources at the local level?

VIRGINIA TECH SITUATION

So I'm going to ask you if you could, tell me what you did in terms of the Virginia Tech situation. People would say what would the marshals be doing there? What about ATF, DEA? I'd like you to tell your story because I think it shows how you work and how you maximize your resources.

Mr. Sullivan, why don't we start with you and just go down the line and then I'll have an additional question or two and then we'll come back to you on the issues related to innovation and staffing.

Mr. SULLIVAN. Thank you, Madam Chairman, and I certainly don't want to understate the role of the State and local law enforcement in an event like that.

Senator MIKULSKI. No, this is where we want to talk. People don't think of you as first responders and also the augmenting and appropriate role where there is no Federalization of the situation so we understand, we acknowledge a campus police force overwhelmed by an event of staggering magnitude, a local sheriff's department, et cetera.

It's a series of circles that went out.

Mr. SULLIVAN. Thank you for the question. ATF was notified shortly after the second event occurred and we responded immediately with 12 special agents from the Roanoke field office. They did a range of things that would typically happen in an event like this, from trying to restore some order in an environment where

there was a lot of panic, a lot of fear, and a lot of chaos, partnering up with State and local partners, and identifying exactly where crime scenes were.

You can imagine an event that took place over a several hour period with victims, both victims that were killed and surviving victims, had a crime scene that was extremely large. We tried to identify where the crime scenes are, what evidence might be available at those crime scenes to help in the investigation, and participated in interviews.

So from a general perspective, we did everything that a general law enforcement response would be expected to do and then we focused in on some very specialized skills that ATF has to support State and local law enforcement in the area of gun tracing. We had identified at the scene two weapons that were believed to be used.

The questions during the early stages of the investigation was whether these two crime scenes were linked, the earlier crime scene that happened in the dormitory and the crime scene that unfolded in the classrooms. So it becomes critically important if there is a connection between the two that you can make those connections with the weapons and also the ballistics evidence.

So the early stages of the investigation were spent looking at the weapons and our ability to trace those weapons in terms of where they were purchased from, who purchased them, and when they were purchased. We also tied in the ballistics evidence, using representative samplings of the ballistics evidence that were secured during the early stages. We had an investigative lead based on evidence that was secured at the crime scene, a receipt in a backpack, that sent us to a FFL in Virginia.

Senator MIKULSKI. What is an FFL?

Mr. SULLIVAN. It's a Federal firearms licensed dealer.

Senator MIKULSKI. Ok, just wanted to be sure.

Mr. SULLIVAN. We had that investigative lead that we explored by going out and interviewing the FFL to determine whether or not there was some additional information that could be helpful. Beyond that, we had the two weapons and as it was reported in the media, the serial numbers on the weapons were obliterated, making it more difficult in the early stages to identify where those weapons were originally shipped to for the purpose of private sale.

The weapons and the ballistics evidence were sent to the laboratory in Ammendale, Maryland, for the purposes of raising the serial number, and to do test firings of the weapons to compare ballistics evidence and establish that the two scenes and the two weapons were, in fact, connected.

Senator MIKULSKI. Well, that's a stunning set of resources and I'm going to come back before our colleagues just to be clear that what ATF provided was people and expertise. They discovered there were multiple guns used in the crime. This was a human tragedy; the scene of human tragedy was also a crime scene.

Now what was the Marshals Service doing there? Why would the marshals be involved in this and what were they doing?

Mr. CLARK. Thank you, Senator.

Yes, we did have the opportunity to send several of our deputy marshals there. Six deputies from our Blue Ridge fugitive task force responded right after the shooting began and before the full

knowledge of the single shooter became apparent. They were sent to help secure the crime scene, to support the State and local investigators that were also responding, and to offer our expertise in the event that this individual had fled the scene, before they realized that he had killed himself.

We had several of our deputy marshals who responded to Virginia Tech. We also offered the assistance of our national headquarters using these additional resources to locate individuals, in case there was a second shooter on the loose. We immediately supplied some of our investigators to help. I would also note that they were very instrumental, during and shortly after the shooting ended, in helping to secure the crime scene, supporting the local officers, and getting injured victims to the hospital.

Senator MIKULSKI. Well, I'm sure they thank you for it. Ms. Tandy, tell us about DEA.

Ms. TANDY. DEA's work through all of our enforcement operations is done in conjunction with State and local law enforcement so as soon as the shootings occurred, DEA contacted the local police department as well as the State police to determine what kind of assistance they needed from us.

We were told that they specifically needed us to assist the SWAT team in providing perimeter security as well as in conducting searches of the buildings and enforcement sweeps of the various campus buildings. DEA's entire Roanoke field office responded to the campus to conduct those two responsibilities. It's actually a small office for us in the Washington division.

Senator MIKULSKI. How many were there?

Ms. TANDY. Ten agents responded and stayed throughout the course until everything was secure.

Senator MIKULSKI. Well, I wanted you to tell your story. I'm really proud of you because this was a terrible thing that happened and just imagine a small campus police force, a local community with a sheriff police force and rural communities who are never overstaffed. They had a tragedy unfolding of enormous proportion and needed outside help.

They had to protect the students. They had to deal with the crime scene. They didn't know if there were multiple killers and they had to deal with the panic that was occurring. The fact that you all work together on a day-to-day basis on other issues, whether it's meth, drugs or other areas related to violent crime. You all knew how to react in mutual response. Is that right?

So when you all came in they weren't suspicious of you. They knew you and were eager to have you.

Well, I think what this shows though is several things, number one, really the job that you do. This is one of the reasons I wanted to have this hearing. I think you're undervalued and often overlooked in the Federal budget.

I'm going to come back, others have questions that will go then to your budget because we need to support you so you can do your national mission and play such a unique role to local communities in terms of our community safety. Whether it's the brilliant forensics that's going on right in Maryland to identify the guns, the bullets and so on with their unique tracing to the staffing that pro-

vided and at the end of the day you could go back to your other jobs while this community is in the process of recovery and healing.

I do have specific budget questions but I wanted you to be able to tell your story and with that I'm going to turn to Senator Shelby.

Senator SHELBY. Thank you Senator Mikulski. Director Clark, I understand that a former marshal's daughter was wounded in the shootings in Virginia Tech last Monday and that also her efforts saved the lives of some of her classmates. I believe the marshal was Jim Carney, former marshal. Tell us that story; tell us what happened from what you know.

Mr. CLARK. It's a remarkable and a scary story. I had a chance to talk to Jim Carney, the retired deputy marshal. His daughter was among the individuals who were in the classroom, a German class, where most of the individuals, regrettably were killed.

His daughter was one of only four who survived in that particular room. She was struck in the hand and one bullet grazed her head. I'm told that she is due to be released from the hospital today so, thankfully, she is making a quick and steady recovery. She also is credited with the other three who survived by helping to block the doorway to the gunman who had returned and was intent on finishing them off. They were able to hold the door back and to stave off his attempts to get back into the classroom.

When I heard the story and I talked to Mr. Carney personally, I just could not believe the story and, of course, was glad that his daughter was going to recover. He was quite broken up by the whole event so my heart went out to him and the many victims of who were caught in that terrible event.

NATIONAL CENTER FOR EXPLOSIVES TRAINING AND RESEARCH

Senator SHELBY. Director Sullivan, the National Center for Explosives Training and Research, what's the status of this project at the moment? I believe that we had gotten $10 million and you need $40 million, is that correct?

Mr. SULLIVAN. I think we've estimated that the total cost for the project is somewhere between $40 to $45 million and the 2006 budget, thanks to your leadership, had $5 million set aside specifically to do some early stages of site selection and development. We're extremely excited. We think this is really visionary.

Senator SHELBY. What will it add to ATF's ability to work in this area?

Mr. SULLIVAN. I think when you're looking at the potential future threat of explosives, we have to do everything we can, within our ability, to protect the American public and we have to do it on multiple fronts.

Obviously, in the whole area of explosives, detection is critically important, as are research, regulation, and post blast investigation. The post blast investigation reflects failures of the regulatory piece that protects the explosives material and the detection piece. The NLETR project brings a wealth of expertise to one location that we can use for research and development and sophisticated training, not only for Federal law enforcement agencies but for all of our State and local partners. There's a huge demand for training in these areas.

Senator SHELBY. Absolutely.

Mr. SULLIVAN. Because locals recognize the vulnerabilities concerning explosives, I think once this center is up and operational, it's going to draw our resources together from all around the country, specialized resources that we can share with others that require this training. Even though this is very preliminary, we haven't even done groundbreaking at this stage of the game, we already have 11 agencies that are committed to sharing their expertise as part of this model. So it's visionary. It's something I hope will be a legacy of mine.

Senator SHELBY. Sure.

Mr. SULLIVAN. Thanks to your leadership, we would hope to have this facility fully funded at some point in time to go forward.

We have done site selection, as you know. We think the location at Redstone is the most appropriate location because of all the other expertise that's there. We have sufficient funding at this point in time to do some work at a range to allow us to use a range facility on site, to construct, not sophisticated classroom space, but a modified building where we could do some classroom training, and we have some money available to do some parking facilities but certainly we don't have sufficient funding at this point in time to do everything that you say that you'd want the site to have.

Senator SHELBY. Absolutely. This would carry you to another dimension at ATF as far as explosives, detection and everything else is concerned. Is that correct?

Mr. SULLIVAN. Absolutely. It recognizes the expertise that the ATF has developed in this area over the last number of decades, focusing on explosives detection because of the threats posed by domestic and international terrorism. The NLETR project would bring us to that next significant level in terms of continuing to develop that expertise, staying several steps ahead of those folks that have an interest in posing a threat to us and to our country and capitalizing and sharing our resources and expertise with our partners at the State, local, and Federal levels.

Senator SHELBY. And also you have synergy with the Army there and the FBI. Is that correct?

Mr. SULLIVAN. Absolutely and both have been extremely supportive with regards to the concept, the location and willingness to be part of a joint effort in the area of developing and sharing that expertise.

Senator SHELBY. Thank you. Madam Chairman.

Senator MIKULSKI. Thank you, Senator Shelby and Senator Lautenberg thank you. I was concerned that, I know that you have to get to the Holocaust Memorial service.

Senator LAUTENBERG. I did want to, Madam Chairman, if I can.

Senator MIKULSKI. Yes.

Senator LAUTENBERG. If I can take a quick couple of minutes?

Senator MIKULSKI. Yes, yes.

Senator LAUTENBERG. Is that acceptable to Senator Stevens?

Senator MIKULSKI. Yes.

VIRGINIA TECH

Senator LAUTENBERG. Thank you very much. I look at what we're witnessing here Madam Chairman and in these days of gloom and shock pervades our country. There can't be anyplace on our soil

that doesn't share a feeling of personal mourning as we look at this incredible tragedy, almost impossible to imagine. Friends, when I look at the departments that each of you is responsible for, I salute you and the people who work in those departments.

We have this acceleration of crime in all phases whether it's from drugs or guns and I look at the budget and the request for all of the Departments of Justice within Justice and we have about a 1½-percent increase. The request is $21.8 billion for 2008 and the war in Iraq costs us $3 billion a week, a week, so we've got 7 weeks of that cost devoted to all of our internal law enforcement projects that you folks are responsible for. We've cut out the COPS program essentially that's down from a level of $432 million down to nothing. Madam Chairman, you know how valuable that COPS program has been.

We have to examine the terrible events at Virginia Tech and it needs to be done perhaps in a more sober moment entirely devoting our energy at that hearing to that. What did we learn from that? We learned that mad people, insane people, deranged people can do such damage. I don't understand why we continue to require data derived from gun purchases to be destroyed in 24 hours. Why it is that we have 3 days to approve or deny a gun sale when perhaps there is more time needed.

These aren't criminals. I'm not saying that everybody that buys a gun is a criminal, heavens no. And I'm not saying that we should wipe out the ownership of guns. I'm saying that it should be responsibly done and we shouldn't be trying to hide information, for what purpose?

I wrote a law in 1996 that said that any spousal abuser should not be permitted to own a gun. It was a tough fight and Senator Mikulski, Senator Shelby know that I put that into a budget to a supplemental bill so it was must-pass legislation. Fought like the devil to find a way to get it through.

We have kept 150,000 guns out of the hands of bullies. Can you imagine anybody who can get into that kind of a rage that they want to beat up their wife or beat their kids or abuse them in any other way, if they had been able to get their hands on a gun conveniently? What might have happened?

America, wake up, wake up. We've had 11,000 deaths, homicides in a single year of measurement and what we found is that four countries, Great Britain, Germany, Japan, and Canada had 650 deaths and what I did was took a group that population is approximately ours and they had 650 deaths from handguns, weapons. We had 11,000 in the same year, 11,000. Why? Why did more than 10,000 of our citizens perish because we have these rules.

CRIME GUN TRACES

I ask you Mr. Sullivan, and I'm grateful to my colleagues for allowing me this time. I wrote to your agency last year requesting the number of crime gun traces of the five-seven pistol. We know what a terrible weapon that is, can penetrate body armor; a number of those guns were recovered in New Jersey.

The answer I received was, "ATF has determined that the requested information cannot be disclosed to you." Mr. Sullivan, do you agree with the policy of restricting gun trace information this

way and are you concerned that this policy will limit efforts to fight illegal gun trafficking.

Mr. SULLIVAN. Senator, thank you for the question, is it specifically to the information that you were requesting and limiting the information to you as a Member of Congress?

Senator LAUTENBERG. The number of crime gun traces of the five-seven pistol, weapon that's out there and can penetrate body armor.

Mr. SULLIVAN. I'm of the opinion that that information could be shared with you and with this subcommittee. I think you have a legitimate interest in learning that information.

In terms of restricting gun tracing information, from my experience as a prosecutor, a State prosecutor, and more recently as a U.S. attorney, I think gun tracing information should be considered law enforcement sensitive information and should only be shared with law enforcement agencies that have a need to know that information. That's been my approach in dealing with law enforcement sensitive information generally and it's my approach in terms of dealing specifically with gun tracing information.

Now, having said that, I don't see anything, in my understanding or interpretation of statutory language, that prohibits me from sharing the gun tracing information with law enforcement agencies that have ongoing investigations as it relates to gun trafficking, patterns within their jurisdiction or specifically as it relates to gun tracing data based on weapons that they've asked ATF to trace.

So I would hope and I'm not aware that we aren't doing this, but I would hope that ATF is sharing as much gun tracing information with law enforcement agencies that are requesting that information to enhance their ability to protect the people within their jurisdiction.

Senator LAUTENBERG. And not to be shared with the Congress of the United States?

Mr. SULLIVAN. I'm sorry?

Senator LAUTENBERG. And not to be shared with Senators or Representatives in our Government?

Mr. SULLIVAN. No, I think I said earlier, Senator, the information.

Senator LAUTENBERG. I heard what you said, Mr. Sullivan and then I heard you kind of make sure that that information continued to be restricted.

Mr. SULLIVAN. As I understand the other question you asked Senator, and I apologize because I did not.

Senator LAUTENBERG. That's alright.

Mr. SULLIVAN. Because I did not study the letter you sent. I did have the opportunity to read it and the response that was provided by ATF. I think that's more general information as opposed to specific law enforcement trace information. That type of general information, if you and this subcommittee had an interest in learning about what's happening generally with regard to types of weapons that are being traced, unless I'm told otherwise, could be shared with you and the members of this subcommittee.

[The information follows:]

TRACE DATA DISCLOSURE

As it is ATF's policy that aggregated firearms trace data may be shared with members of congressional committees with jurisdictional authority over the Bureau, a policy consistent with current law, ATF will be providing the information the Senator has requested.

Senator LAUTENBERG. Madam Chairman, forgive me and I have such respect for Mr. Sullivan, his record and law enforcement but the reason that this information is not available is because a Congressman decided that every year he would put that into a bill, to an appropriations bill and there is no earthly reason in my view that that single person should be able to restrict this information.

We want to find out everything we can about this instance, but this is only one of many, it's just the largest of them all. We start with Columbine High School and go through shocking events in our history and we've got to find out ways to stop this. Thank you very much and thank you also.

Senator MIKULSKI. Mr. Sullivan, of course our colleague is referring to the Tiahrt legislation and one suggestion is if you can take the Lautenberg letter and look at it in terms of the consequences of implementing the Tiahrt. We'll talk about the Tiahrt later.

The Senator raises questions not about, what he wants to know, about an individual case. Rather he wants to have the epidemiology of information, data.

We're now going to move on though, our two other colleagues have been waiting, Senator Stevens and then Senator Domenici. And Senator Domenici, I'll stay here as long as you need us to stay.

Senator STEVENS. Senator Domenici doesn't have a timeframe, I do.

Senator MIKULSKI. Okay.

Senator STEVENS. I do want to join in congratulating you. I think there's been a really upbeat feeling about law enforcement recently because of the successes you've had.

It's unfortunate and we all mourn the situation down in Virginia but from the point of view of what was going on, I think that your people have all been doing a much better job in really trying to get to the bottom of many of the problems we face.

METHAMPHETAMINE LABS IN ALASKA

However, I am, Ms. Tandy, a little disturbed that the statistics show there are fewer meth labs in my State, our State, Alaska, now but there's a higher level of meth in the State. I talked to some of your people in Anchorage. I found that they feel that a great deal of that is coming in now from the islands of the Pacific and people aren't using labs anymore because it's cheaper just to bring the stuff in from some enormous lab that's really not even looked at as far as the Pacific Islands are concerned. Do you have people who check places like Samoa and other places that we believe a lot of this meth is coming from? Are you attentive to the problems of the west being now inundated by imported meth?

Ms. TANDY. I share your concerns about the shift in local domestic production of methamphetamine, which has dropped through the basement, which is a great thing in terms of the environmental risks and social child services issues, to the shift to the production

of methamphetamine elsewhere outside of this country and the smuggling into this country from outside.

Most of that is being produced in Mexico and elsewhere. The production in the Pacific and the areas outside of China, Malaysia, Indonesia, the Philippines are all matters that DEA is focused on. We have the largest law enforcement presence of any U.S. law enforcement agency outside of this country. We have focused our resources on the foreign side in the very areas that you've talked about as well as in the western hemisphere and beyond.

The production of methamphetamine by foreign trafficking organizations has been fueled by the fact that the precursor chemicals for the most part come from China and are then diverted and used to fuel those labs in the areas that you've mentioned as well as in Mexico and elsewhere.

We conduct our investigations.

Senator STEVENS. I thought we were entitled to 7 minutes? The set there seems to be running awfully fast.

Senator MIKULSKI. You can take your time.

Senator STEVENS. I don't want to interrupt you, but I am limited and I do have the problem about the number of people in the State like mine.

We're one-fifth the size of the United States, have the largest cargo landing airport now in the country and we feel a lot of the meth is coming in by cargo and somehow or other getting off of those planes that come through our Anchorage airport.

I would urge you to take a look at that because I think with the decrease in the number of meth labs your people generally felt happy about it and reduce some of the effort in our State but the good news was as you say the fewer labs but the bad news is there's an overwhelming amount of meth.

Ms. Tandy it's in small villages of 20 and 40 families. It's finding its way all the way through the 240 small native villages in my State and it is the number one problem that we face. I would urge that somehow you take a look at the concept of how many agents you have left. You only have 11 agents left in the whole State now.

Ms. TANDY. I understand Senator and this has been part of DEA's problem. We are in a hiring freeze and are unable to expand our agent presence. To the contrary we are having to reduce our number of agents in order to meet our budget. The agents in Alaska, to the extent that, actually beyond Alaska, everywhere in the United States, those agents that were focused on domestic labs have shifted their focus to assisting in these investigations for the smuggling of finished meth into Alaska and elsewhere in the United States but I appreciate the point that you're making. It has been a concern to all of us.

Senator STEVENS. Well, I would hope that you would take a look at the concept of working out some cooperation with the various local people. This meth has to be getting out to these small villages through the post office. The only thing that goes into those villages is what we call bypass mail. Now somewhere someone is putting together packages that contain meth and we're subsidizing the transportation of that package into every village in the State.

I do think it's a matter of investigation and believe me those villages are primarily supported by the Federal Government. They're

native people, unemployment is about 85 percent. How they're getting this stuff is driving us nuts and those kids get on this meth and they start coming into town. They will come to the nearest town and then they'll try to find their way to Anchorage or Fairbanks and they're committing horrendous crimes. We've got drive by shootings that we've never had before. We have enormous, just enormous theft and burglary and attacks on the person and it's coming, we believe because of this just overwhelming presence of meth.

I know the rest of the country has the same problem but it's accentuated in our State. They must be giving it away in those villages in order to get them on to this habit and they come to town to steal and commit crimes to get money to continue it. So I urge you to do something about finding a way to work out a cooperative program to get to the bottom of this thing. It's taken off in the last year to the point where it is really crisis stage.

I think you probably add up all the crimes that these young people have done, committed in our State in the last year and it would equal the number of deaths that took place in Virginia. I'm serious. It's a very serious situation in Alaska and we end up with 11 agents. We end up with 15 marshals and eight ATF officers in an area one-fifth the size of the United States. They can barely take care of Anchorage alone.

I understand what you're saying and we're going to do something about that freeze. I don't like that freeze at all.

Senator MIKULSKI. Well, if I might just comment to the Senator. First of all, just know that we're sympathetic to your situation.

HIRING FREEZE

The second thing is in the supplemental, we lift the hiring freeze. Working with the administration and DEA we lifted the hiring freeze and have provided DEA with an additional $25 million. So that's just as a point of reference to you Senator, but second, we would encourage Ms. Tandy meet with the Senator's very able staff because he really raises something that's rising to a, I think, a crisis situation.

So know we're working with that and then anything that we can be doing because we don't think you should have a hiring freeze.

Ms. TANDY. Thank you.

Senator MIKULSKI. And we'll come back to that even to talk about it in a more substantial form.

Senator STEVENS. Added to that is the problem of increased illegal immigration into our State. We've never had that before, but all of a sudden now we are just inundated with illegals following this meth. I think meth is the key so I appreciate your comments.

Senator MIKULSKI. Senator, any way we work with you, we're happy to do it because I think it's also a story that's happening around the country. You bet, you bet.

Senator STEVENS. Those planes come right down to this, 70 percent of the air cargo that's coming through from the Pacific is coming through Anchorage now. It's coming into the rest of the country. This is the place to shut it off. Thank you very much.

Senator MIKULSKI. You are welcome, sir. Senator Domenici, we're glad to have you back.

Senator DOMENICI. Thank you very much, Madam Chairman. I'm delighted to be back and I don't frequent this subcommittee as you know while I serve on it for quite some time, but meth brings me running over here because New Mexico as a border State is having an absolute.

There's a rage occurring in reference to meth and New Mexico and I think most of you who are participants in anything to do with meth you know that our Congressman Pearce has a done a pretty good job at bringing that meth problem to the surface in New Mexico and it is not, there's not the same problem of marijuana.

SOUTHWEST BORDER AND METH ENFORCEMENT INITIATIVE

Marijuana may be bigger in numbers and the like and alcohol might be but this one is one of the worst we've ever seen. You know that. It's going after all kinds of people including many women and they're not young women. They're women with children whose children have been taken away because they can't maintain them and so you see women truly in terrible shape, who've had their children removed, who are living in isolated places and we just have to move with a little more resources and a little more knowledge to try to do something about it and I understand that the DEA is requesting $29 million for the Southwest border and meth enforcement initiative. Is that correct?

Ms. TANDY. Thank you Senator. It is correct and that consists of aircraft as well as technology as well as surveillance enhancements, intelligence sharing, pieces also form part of that budget request that are specifically directed to methamphetamine and the trafficking, production, and transportation of that into the United States.

Just to put into context, Senator, there have been a number of improvements along the way with this shift that has really, it's a recent shift of the production of methamphetamine outside the country and even with that we have seized two metric tons of methamphetamine just over the past year. That is an increase of 129 percent in seizures of meth along the Southwest border.

In addition to that we have a partnership now with Mexico that frankly we have not enjoyed at this level at any time previously, where we are conducting joint operations, as well as targeting meth organizations. DEA has sent to Mexico eight clan lab trucks to assist in the meth production operations against these organizations, along with some of the other enforcement operations that have already been addressed at this hearing.

Senator DOMENICI. Well, I'm very much appreciative of all of the effort that's taking place and I congratulate all of you for the extra effort that meth has added to your very strong and difficult task.

I'm also concerned about the Native Americans. I think that we're just beginning to move into those areas where our Native Americans live and finding, it should not have been a surprise, but it was to many of us that meth has entered the Native communities in abundance and it's because it is cheap and quick. If they're looking for a fix, it's quick. If they're looking for the results, it's not very quick. It's everlasting it seems like, very hard to cure, but I want to thank you for that and I know.

Mr. Sullivan, I don't know you, but I have gathered that congratulatory remarks are in order and I would feel remiss if I didn't join in saying the best of luck to you.

Madam Chairman and my good friend from Alabama, let me choose to give you an observation and a prediction. I shouldn't do this but, starting 5 years ago because of my work with the mentally ill and we have accomplished a great number of things. We're waiting now for the last bill to get passed on parity.

I've been privileged to work with some of the smartest people in the United States on what's going wrong with the mentally ill and the commission of serious crimes such as murder by those who are mentally ill and have been committed to the institutions for care and maintenance and I will predict for you that the final result of this investigation will be twofold.

The United States of America does not have enough centers for taking care of people who are mentally ill who are assigned to inpatient clinics by judges. We have a total lack of facilities across this land because when we decided to go from the places where we held the mentally ill we did have; no new facilities were built as contemplated by then President Kennedy.

Congress baulked and we built none essentially. We're living in a kind of hand to foot creation of facilities. We got policemen who house more mentally ill than do any facilities. You know that as of this morning, more of the serious mentally ill are in police stations and being assigned to police cells than anyplace else in any other facilities.

So number one the report is going to say what's wrong with America. We better build inpatient facilities on some kind of a partnership with our States so we have a place to take care of the mentally ill.

The second thing that's going to come out unequivocally is that the States have not worked together to find a simple approach to how you get people committed and how you keep them committed until they get well. Right now they get out very quickly. When they get out is that period of time that things like this happen.

We're going to have to work on it and we won't escape it. The States will be criticized heavily and this State in which it happened will be looked at very much to see what they did and didn't do, but eventually we're going to have to have a big program to build facilities in conjunction with the States and we're going to have to have some uniformity of in-house commitment where people with serious mental illnesses will stay in facilities rather than be released so quickly and so easily because we don't want to exercise jurisdiction over sick people but that's going to have to happen.

I regret this day as if it was 5 years ago when I started reviewing the best article ever written was by the New York Times where they reviewed some hundred plus cases of the type I'm telling you about and they found that's what precisely was happening that most of these murders were being done by sick people who were released too early under the most grotesque of facts.

The neighbors knew they were doing things crazy, wild, all kinds of things to their relatives and nonetheless nobody could do anything about it because they could not get the kind of cooperation between law and those who wanted to help put them away and

that's going to change within the next 1½ or 2 years in my opinion big time and we'll be in the middle of it because we can't leave it up solely to the States.

I look forward to presenting some more issues to talk about to this subcommittee as we move ahead. Thank you very much.

Senator MIKULSKI. Senator we'd welcome that. First of all we want to salute you because you have been a long time advocate for mental health services. We note with affection your special relationship you had with our lately departed colleague, Senator Wellstone, on this issue. You continue to carry the torch. You're exactly right. We need to be looking at that, the whole Congress, in a variety of our subcommittees.

The second thing is that at this time, this is not the time for finger pointing. This is the time for pin pointing what happened here and how we can make sure that it never happens again.

Each and every man and woman in this room has made a difference but you know, and they make a difference every single day in terms of protecting our country from again, community security or national security, which you know if we all worked together. You've made a difference, Senator Shelby, all of us in this room. You know when we all work together we can make change and that's why we wanted to hear you today.

We could talk so much again about your individual missions of the agency, the particular budget needs that have been raised by my colleagues and myself but know that we're on your side. We want to help you be you, and we know you have a tough job. You come in after everything goes wrong and whether it's people trying to kill our troops in Afghanistan and Mr. Sullivan, we know that you're there and in Iraq, where Ms. Tandy, fighting drugs, we know you're there. You U.S. marshals have to guard terrorists and give them the rights that they wouldn't give anybody and so we're ready to work with you.

We also have discussed among ourselves, Ms. Tandy, that there's certain elements of your testimony we think would be better addressed in a closed or classified situation. We'll notify you of that because we would like to pursue some of these issues related to the international dealing of drugs as well as what this means to our borders.

There's many questions we could ask today and they can go to everything from gun control to border control to self control, but I think we've covered our topics today unless the panel has anything else. We will recess until next week with the FBI.

Senator SHELBY. Madam Chairman.

Senator MIKULSKI. Senator Shelby.

ADDITIONAL COMMITTEE QUESTIONS

Senator SHELBY. Madam Chairman, I have a number of questions for the panel that I'd like to submit for the record and I would also, Madam Chairman, think it might be in order at the proper time sometime to have Director Sullivan in a classified hearing and that might cover some of the ground that Senator Lautenberg had raised because what you're talking about is very sensitive stuff in that area, are you not, Mr. Sullivan? Thank you, Madam Chairman.

Senator MIKULSKI. My colleague raises a new point. In terms of the Tiahrt, would that be better in a round table or would it be better if, because there are classified things to talk about.

Why don't you talk with us afterward about what is the best mechanism because what we want to do is, we want to have the right policies and we want to have those policies rightly restored?

That's why we want to lift these freezing caps and get you the people you need, you need new technologies because the bad guys have new technologies and you've got to be, we've got to help you be as fit for duty as you can.

Did you want to?

Senator DOMENICI. Yes, I just want to say I hope my observations were not construed to be pin pointing.

Senator MIKULSKI. No, please, Senator, that's what I was saying. No, you were pin pointing, you weren't finger pointing. You were saying we got to get real about providing a continuing of service for mental health.

As you know sir, my professional background is that of a social worker and also my involvement whether it's been in preventing domestic violence to worrying about our police officers, I've got a well known and beloved police officer in Maryland 3 weeks before retirement, a guy shot through the door and killed him because he didn't take his meds.

So, I mean, no, no, your points were well taken. They were right on the mark and we think that not only this subcommittee but the entire Senate.

Senator DOMENICI. Oh, yes.

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

QUESTIONS SUBMITTED TO MICHAEL J. SULLIVAN

QUESTIONS SUBMITTED BY SENATOR BARBARA A. MIKULSKI

TIAHRT AMENDMENT

*Question.* Since 2004, the CJS Bill has included language known as the Tiahrt Amendment, which restricts the sharing of ATF gun trace information. The President's budget continues this language with a modification.

Please explain the Tiahrt language.

Answer. Since 2003, ATF's annual appropriation has contained a nondisclosure provision applicable to firearms trace data which is referred to as the "Tiahrt Amendment." This language prohibits ATF from expending funds to disclose any of the contents of the Firearms Tracing System (FTS) or any required Gun Control Act (GCA) information to anyone other than a law enforcement agency or a prosecutor solely in connection with and for use in a bona fide criminal investigation or prosecution, and then only such information pertaining to their geographic jurisdiction.

As originally drafted, the Tiahrt Amendment codified ATF's longstanding policy to provide access to firearms trace results to the law enforcement agency that has jurisdiction over the trace request while safeguarding those results from third parties. This policy, which is supported by law enforcement organizations such as the Fraternal Order of Police, recognizes ATF's interest in deciding how to utilize and whether to disseminate its sensitive law enforcement information, since premature and indiscriminate disclosure of firearms trace results could compromise criminal investigations and potentially jeopardize the safety of witnesses, informants, and law enforcement personnel. Moreover, once law enforcement agencies receive trace data from ATF, they remain free to share their firearms trace data with other law enforcement entities, since such sharing is consistent with this policy.

*Question.* How does the President's budget request modify the language?

Answer. The revised language first clarifies and confirms that firearms trace data may be shared with tribal and foreign law enforcement agencies. This corrects an unintentional drafting error and is wholly consistent with ATF's law enforcement mission and the express purpose of the Gun Control Act.

The revised language also clarifies and confirms that firearms trace data may be shared with Federal agencies for national security purposes. In the Department's view, Congress never intended to prohibit intelligence or security agencies from requesting firearms traces in the course of anti-terrorist or homeland security investigations. Sharing of information pursuant to such requests is wholly consistent with the Department of Justice mission.

The revised language also removes the "geographic jurisdiction" limitation. The current appropriations restriction allows ATF to share information "as it pertains to the geographic jurisdiction of the law enforcement agency requesting the information." This requirement was removed to make clear that state and local law enforcement agencies that receive trace information may lawfully disclose that information to other law enforcement agencies within their investigative discretion. Despite the removal of the "geographic jurisdiction" limitation in the President's fiscal year 2008 budget language, ATF will continue its longstanding policy of disclosing firearms trace results only to the law enforcement agency that requested ATF to trace the firearm. This policy prevents any indiscriminate disclosure of trace information that could jeopardize pending investigations and the safety of witnesses, informants, and law enforcement personnel.

Finally, the revised language requires that law enforcement agencies or personnel "certify" that the trace information is being sought in connection with a bona fide criminal investigation or prosecution. The Department of Justice's position is that this requirement to "certify" does not impose any new responsibilities on law enforcement. Under the Gun Control Act, ATF can only require that federal firearms licensees respond to ATF with records for determining the disposition of firearms (i.e. "trace information") when ATF's request is connected to a legitimate law enforcement investigation. As a result, there has always been a requirement that local law enforcement trace requests to ATF also be connected to a legitimate law enforcement investigation. The current trace request form, which requires the requesting agency to enter an NCIC crime code, is already a form of certification that satisfies the requirement in the fiscal year 2008 budget request. If a law enforcement officer presently falsifies information on the trace data request form, he could be subject to prosecution under 18 U.S.C. 1001 in the same manner as others who violate the statute by lying on a federal form. That is true independent of the appropriations language.

*Question.* As I understand the President's proposal—it is very detailed permanent authorizing language including—is that correct?

Answer. The proposal does contain "language of futurity" which applies to the fiscal year in question and thereafter. Such language of futurity has also appeared in previous iterations of the Tiahrt Amendment.

*Question.* Is the Administration working with the authorizing committees on this language?

Answer. The Department of Justice is not currently, but would be pleased to work with the authorizing committees on this language.

FEDERAL FIREARMS LICENSEES

*Question.* What are the tools available to put corrupt gun dealers out of business?

Answer. Under 18 U.S.C. 923(e), ATF has the authority to revoke a Federal firearms license if a dealer commits a willful violation of the Gun Control Act of 1968 (GCA). ATF conducts FFL inspections to verify that FFLs are complying with the provisions of the GCA and its implementing regulations, and to detect and prevent the diversion of firearms from legal to illegal commerce. ATF also investigates any substantive information regarding illegal activity by a Federal firearms licensee (FFL), and may recommend criminal prosecution for willful violations of the GCA.

*Question.* Isn't suing them an effective way of shutting them down?

Answer. Suing an FFL is not an option available to ATF nor do we think it would be an effective tool for overseeing and regulating the firearms industry. ATF meets its statutory and regulatory obligations through criminal investigation of FFLs that commit illegal acts and through its regulatory inspection program. Therefore, an FFL that is not meeting its statutory and regulatory obligations could be "shut down" through criminal investigation and subsequent prosecution and through an administrative remedy, such as license revocation.

*Question.* What is ATF doing to put these gun dealers who sell illegal guns out of business?

Answer. ATF is committed to enforcing the Federal firearms laws as enacted by Congress. As allowed under the GCA, ATF revokes Federal firearms licenses for willful violations of the Act. Over the past several years, there has been an increase in license revocations, partially due to additional training for field managers, improved guidelines for conducting inspections, and better utilization of information to identify which licensees should be inspected. ATF typically revokes licenses where the FFL has willfully and repeatedly failed to account for firearms or to ensure buyer eligibility. In addition to these administrative actions, under certain circumstances, ATF may investigate firearms dealers for criminal violations of the GCA.

ATF works on a daily basis to assist FFLs in their compliance obligations. The vast majority of inspections in which licensees are cited for violations do not result in revocation. In fact, the inspection process usually results in greater compliance and fewer violations during subsequent inspections. Overall, ATF revokes only a small percentage of FFLs where violations are found. In 2006, ATF revoked 115 licenses out of 7,000 inspected (1.4 percent) and a licensee population of approximately 108,000. The Department is currently developing a legislative proposal, the Violent Crime and Anti-terrorism bill, which proposes graduated sanctions for use against FFLs that are in violation of certain GCA provisions, but which do not rise to the level of license revocation. ATF believes that this will also promote greater FFL accountability and compliance.

A review of the most current data in our case management systems indicates that the following number of criminal charges were brought against FFLs since fiscal year 2000:

| | Number |
|---|---|
| Fiscal year: | |
| 2000 | 14 |
| 2001 | 17 |
| 2002 | 20 |
| 2003 | 33 |
| 2004 | 42 |
| 2005 | 31 |
| 2006 | 32 |

Citations: 18 U.S.C. 1001; 18 U.S.C. (2); 18 U.S.C. 47; 18 U.S.C. 111; 18 U.S.C. 371; 18 U.S.C. 844(h)(1); 18 U.S.C. 844(i); 18 U.S.C. 922(a)(1)(A); 18 U.S.C. 922(a)(2); 18 U.S.C. 922(a)(5); 18 U.S.C. 922(a)(6); 18 U.S.C. 922(b)(2); 18 U.S.C. 922(b)(3); 18 U.S.C. 922(d)(1); 18 U.S.C. 922(d)(3); 18 U.S.C. 922(d)(5)(B); 18 U.S.C. 922(d)(9); 18 U.S.C. 922(g)(1); 18 U.S.C. 922(g)(3); 18 U.S.C. 922(g)(8); 18 U.S.C. 922(j); 18 U.S.C. 922(k); 18 U.S.C. 922(l); 18 U.S.C. 922(m); 18 U.S.C. 922(o); 18 U.S.C. 922(s); 18 U.S.C. 922(v)(1); 18 U.S.C. 922(w)(1); 18 U.S.C. 924 (a)(1)(A); 18 U.S.C. 924(c); 18 U.S.C. 1341; 18 U.S.C. 1343; 18 U.S.C. 1503; 18 U.S.C. 1956(a)(1); 21 U.S.C. 841(a)(1); 26 U.S.C. 5861(d); 26 U.S.C. 5861(e); 26 U.S.C. 5861(f); 26 U.S.C. 5861(g); 26 U.S.C. 7206;

*Question.* Does ATF have all the resources it needs to go after these corrupt gun dealers?

Answer. After the implementation of the Safe Explosives Act in 2002, ATF increased its total number of field IOIs from 420 to 650 (fiscal year 2004–2005), and currently ATF has 594 IOIs on board. The Safe Explosives Act requires that ATF inspect each explosives industry member at least once every three years. This requirement places a significant demand on ATF's inspection force and it requires ATF to use flexibility in adjusting the total number of inspector hours dedicated to the firearms industry. ATF regularly reviews its programs and results to reduce inefficiency and increase effectiveness. This process includes the evaluation of all of our inspection procedures. In this way, ineffective procedures can be identified, and ATF's inspection efficiency is maximized.

Recall inspections of FFLs have shown a resulting increase in compliance for those licensees who have previously been inspected. The increased compliance has resulted in fewer violations and license revocations. Fiscal year 2006 recall inspections resulted in an increased compliance rate of 91 percent for inventory discrepancies and an increased compliance rate for 64 percent for total violations.

*Question.* What are the statistics on the number of rogue dealers selling illegal guns to criminals?

Answer. A review of current data in our case management systems indicates that in fiscal year 2006, 32 gun dealers had criminal charges brought against them for violating Federal gun laws. In addition, 115 licensees had their FFL revoked

through the regulatory inspection process. It is important to note that the revocation of a FFL is not indicative of criminal activity. The graduated sanctions for FFLs proposed in the Department's draft "Crime bill" will help address this issue and revocations will continue to be reserved for the worst licensee violations. Below is a chart that shows the number of revocations for the past several years.

| Year | FFLs Revoked National Totals |
|---|---|
| 2004 | 54 |
| 2005 | 104 |
| 2006 | 115 |

---

QUESTIONS SUBMITTED BY SENATOR RICHARD C. SHELBY

FUNDING SHORTFALL

*Question.* Your fiscal year 2008 budget requests were developed long before passage of the Joint Resolution.

Can each of you tell this Committee if the 2008 budget request will meet your current operating needs? If not, can you tell the Committee if the Department has begun to engage in any cost savings to mitigate any negative impacts from 2007 to 2008?

Answer. ATF supports the fiscal year 2008 President's budget request that is currently pending approval with Congress. The President's request was the result of an extensive deliberative process and strongly supports ATF's and the Department of Justice's mission to reduce violence and protect our citizens.

*Question.* Do you expect to submit a budget amendment to ensure that your critical law enforcement operations are not negatively affected by any funding shortfall in your 2008 request?

Answer. No.

GANGS AND GUN TRAFFICKING

*Question.* Mr. Sullivan, in 2006 the ATF referred more gang related defendants for prosecution than any other Federal law enforcement agency.

Can you tell us more about ATF's success in going after gangs?

Answer. ATF has approximately 2,000 special agents dedicated exclusively to investigating violent crime and gangs. In fiscal year 2006, ATF initiated 2,023 gang related cases. This represents an increase of 157 percent from 2002. Additionally in fiscal year 2006, 1,680 defendants in gang related cases initiated by ATF were convicted, an increase of 289 percent from fiscal year 2002. In total, ATF has referred more than 10,000 gang members for prosecution between fiscal year 2003 and fiscal year 2006.

ATF has long been involved in investigations of groups such as the Mara Salvatrucha (MS–13), organized criminal Asian gangs, violent white supremacists, and outlaw motorcycle organizations such as the Hell's Angels and the Banditos. For example, an ATF-Baltimore investigation led to Racketeer Influenced and Corrupt Organization Act (RICO) charges in a MS–13 gang case against 23 subjects who have been arrested and indicted. The April 2006 indictment charged numerous RICO predicate acts including seven homicides and numerous shootings, beatings, and other violent crimes in aid of racketeering. ATF coordinates efforts of Federal, State and local law enforcement working through the Regional Anti-Gang Enforcement Task Force to combat violent Latino gangs in Maryland's Prince George and Montgomery Counties. Twenty-three MS–13 gang members have been charged in a 36 count federal indictment including numerous shootings and other assaults, kidnapping, seven homicides, kidnapping, witness intimidation and other violent crimes.

In January 2007, 13 members of the MS–13 street gang were arrested and indicted following a year-long joint investigation conducted by ATF and the Nashville Metropolitan Police Department. During the investigation, information was developed linking Nashville-based MS–13 members and associates with seven shootings, three alleged murders, several planned murders, threats and intimidation, and other violent crimes that occurred in 2006. The defendants were indicted on racketeering conspiracy charges. If convicted, the defendants face a maximum penalty of life in prison on the RICO conspiracy charges.

*Question.* What type of operational intelligence does ATF use to go after these criminals?

Answer. ATF partners with other Federal law enforcement agencies and State and local law enforcement to investigate the most egregious violent criminals and violent criminal organizations. ATF special agents work with local police to try and identify the "worst of the worst" gang members and target these violent offenders first—using undercover operations, surveillance, wiretaps, and the controlled purchase of drugs, guns, explosives, and other contraband to identify and attack the gang's hierarchy. For example, in Chicago, ATF has used Title III wire taps in numerous gang investigations and recently completed a RICO case against the Aurora Insane Deuce gang. This case has been described by personnel at the U.S. Attorneys Office in Chicago as the template for future RICO gang investigations.

ATF is also an active participant in the National Gang Targeting, Enforcement and Coordination Center (GangTECC), which is a DOJ-led task force with a mission to disrupt and dismantle the most violent gangs in the United States in the interest of national security, border protection, and public safety. Three ATF special agents, including one who is serving as the first Deputy Director, are supporting GangTECC activities. GangTECC serves as a central coordinating center for multi-jurisdictional gang investigations involving Federal law enforcement agencies.

ATF's 23 Field Intelligence Groups (FIGs) provide intelligence services and support to ATF field offices throughout the United States. These Field Intelligence Groups are comprised of Special Agents, Intelligence Research Specialists, and Investigative Analysts who provide specialized support by producing crucial tactical and strategic intelligence products and other analytical services. FIGs provide investigative leads using gun trace data, multiple firearms sales, and firearms theft reports. Field Intelligence Groups also compare and share Tactical Intelligence collected in support of investigations with OSII IRS and National Gang Intelligence Center staff to help build on Strategic Intelligence that benefits gang investigations across the United States. They also serve as the conduit of information between field personnel assigned to the local Joint Terrorism Task Force (JTTF) and ATF.

NATIONAL CENTER FOR EXPLOSIVES TRAINING AND RESEARCH—REDSTONE

*Question.* ATF now has $10 million of the more than $40 million necessary to build a permanent site for the National Center for Explosives Training and Research NCETR (pronounced N-seed-R).

Can you tell us the status of this project?

Answer. ATF has been working closely with the Redstone Department of Public Works and the Army Corp of Engineers on this project. An Exhibit 300 (Capital Asset Plan and Business Case Summary) for the NCETR project has been completed and submitted via the electronic Capital Planning and Investment Control (e-CPIC) system. ATF is finalizing the design for the National Center for Explosives Training and Research (NCETR) with the Army Corps of Engineers and is anticipating a final product in early July. Additionally, ATF is awaiting an environmental assessment to be completed by Redstone Arsenal. Once the environmental assessment is complete, ATF will begin construction of an explosives range on the south end of the base, as plans for the range have been completed. Upon completion, ATF will begin explosives training courses at Redstone.

*Question.* Once completed what will this training center provide to the ATF that does not exist today?

Answer. ATF is tasked with being the lead Federal agency on explosives incidents and has developed expertise and fostered a strong reputation on such matters. The demands placed upon ATF for Federal, State, local, international and military training and research are many. NCETR will ensure that we meet those demands.

NCETR will provide a physical infrastructure for the experts in the explosives field to conduct advanced research, exploit intelligence related to explosives and improvised explosives devices, and train in the most advanced techniques to deter and prevent the criminal misuse of explosives. The number and types of classrooms and the range space at NCETR will allow ATF to substantially increase its training capacity. For instance, at our current facility we are generally limited to detonating explosives of 50 pounds or less. However, the future facility at Redstone will allow us to detonate a 500 pound explosive, which is equivalent to a vehicle bomb. This would give us the ability to train for real world applications. In addition, NCETR will provide a location to leverage our partnerships on a full time basis for training and research opportunities.

Furthermore, this facility will provide the explosives community in law enforcement and DOD something that does not exist today. Current Federal resources primarily address render safe capabilities and only cover approximately 20 percent of the explosives field. NCETR will provide the venue and capacity to impact the other 80 percent of the explosives field, including advanced training, research, intelligence

and investigations. ATF is uniquely positioned, as a result of its broad explosives related expertise, to manage and deliver comprehensive and progressive training programs with offerings of introductory, advanced, and specialized fire and explosives training programs to a diverse audience of domestic, military and international students. These students comprise a broad spectrum of learners, from first responders to prosecutors. The NCETR facility will be the first of its kind in size and scope related to explosives training.

*Question.* Do you believe this center will add to ATF's operational expertise?

Answer. Yes. As stated above, this facility will provide ATF with the opportunity to advance our explosives expertise through research partnerships, and share the results of that research with our law enforcement and military partners.

NCETR, through collaboration, will further our understanding of explosives scenes to train crime scene personnel to identify, collect and process evidence necessary for a conviction of a suspected terrorist or other crime suspect. The ATF United States Bomb Data Center (USBDC), a nationwide and international database at the forefront of data collection and dissemination, also will be located at Huntsville. Finally, through our regulatory authorities, ATF will share its expertise with State and local entities to ensure consistency in reporting and gathering data.

EXPLOSIVES

*Question.* Director Sullivan your agency's fiscal year 2008 budget request includes $10 million to support ATF's arson and explosives programs.

Answer. The $10 million in the fiscal year 2008 President's budget for the Explosives User Fee Offset is an increase that targets ATF's highest priorities which include Explosives Enforcement Activity, Explosive Industry Operations, Canine Enforcement Activity and Safe Explosives Act implementation.

*Question.* Can you tell us more about ATF's role in enforcing Federal laws as they relate to destructive devices, explosives and arson and how this request will assist your agency in its critical mission requirements?

Answer. ATF is the primary Federal agency responsible for administering and enforcing the regulatory and criminal provisions of the Federal laws pertaining to explosives, bombs and other destructive devices, and arson. ATF's mission includes deterring and investigating violations relating to destructive devices, explosives and arson. ATF is in a unique position to not only investigate arson and explosives related crimes and regulate commerce in explosives but also to provide intelligence and training to other law enforcement partners on these critical matters.

Since 1978, ATF has investigated more than 28,000 incidents involving explosives. Since 1978, ATF has investigated 79,161 arson and explosives incidents. In fiscal year 2006, ATF initiated 4,060 arson and explosives investigations, of which 2,222 were explosives cases. These cases involved the investigation of over 13,000 bombings and 15,000 incidents involving recovered explosives, including homemade explosives and improvised explosives devices. ATF initiated over 3,500 investigations concerning thefts of explosives and explosives materials and has conducted thousands of regulatory inspections of licensed explosives dealers and manufactures. ATF personnel have also been involved in virtually every bombing incident in the United States including the 1993 World Trade Center Bombing; the UNABOMB investigation; the Oklahoma City Alfred P. Murrah Federal Building bombing; and the Centennial Park Bombing.

Our Fire Research Laboratory (FRL) provides state-of-the-art forensic fire science expertise to aid fire investigations. The FRL has the capability of simulating fire scenarios approaching a quarter-acre in size, to scale, under controlled conditions, which allows for detailed analysis. It is the only such facility in the United States dedicated to providing case support in fire investigations using forensic fire science.

All arson and explosives incident databases within the Department of Justice have been consolidated by ATF into the Bomb Arson Tracking System (BATS) which now has over 42,000 records from over 700 agencies and is accessible to Federal, State and local law enforcement agencies. In addition to its use as an incident database, BATS serves as a case management system by arson and explosives incident investigators at all levels of government.

This budget request will ensure that the most advanced training opportunities will continue to be offered to all military and law enforcement agencies in the United States. Currently, several Federal entities, including the Hazardous Devices School (HDS) operated by the United States Army on behalf of the FBI, offer explosives related courses. However, these training facilities offer curricula that are narrowly focused along specific occupational requirements. For example, the HDS trains bomb technicians exclusively on basic electronics and how to render safe an explosive device. The NCETR training model will compliment these existing facili-

ties through the delivery of training programs not available elsewhere and through applied research projects that will enhance the programs offered at other existing facilities.

ATF provides specialized resources to train and assist other Federal, State, local and foreign law enforcement agencies in fire and explosives investigation, as well as explosives disposal. These training programs address all aspects of fire and explosives investigations including statutory and regulatory requirements, first responders, bomb technicians, post-blast reconstruction and investigation, forensic analysis, improvised explosives mixtures, IED electronics, explosives disposal, chemistry, and courtroom techniques.

ATF has also partnered with DOD's Joint IED Defeat Organization to produce the Military Post Blast Investigation course provided to military EOD personnel preparing for deployment to combat. Currently, DOD funds ATF's detailee stationed at JIEDDO in Fort Irwin, California. DOD provides housing and per diem and finances all travel expenses related to JIEDDO training. ATF currently has one Special Agent Certified Explosives Specialist (SACES) on a not to exceed 1 year detail to Fort Irwin. Subsequent to the 1 year assignment, ATF will either PCS or detail another SACES to Fort Irwin. It is anticipated that DOD JIEDDO will fund any PCS costs, per the DOD/ATF MOU.

ATF inspects the explosives industry to ensure compliance with storage, safety and security related requirements of federal law. ATF's relationship with the explosives industry also provides unique investigatory and technology resources to the Agency. ATF investigators are ideally positioned to thwart criminal activity at every level from the theft or illegal purchase of explosives to the interdiction and neutralization of these explosives.

With this budget request, ATF will continue to utilize its expertise to help the explosives industry comply with federal law, prevent the unlawful acquisition of explosives, and promote industry and law enforcement partnerships to reduce public safety risks. ATF will also continue to draw upon its expertise in fire and explosives investigations to assist other Federal, State, local and foreign law enforcement agencies with training and investigations.

*Question.* ATF trains canines to not only detect explosives but also to assist in the detection of accelerants used to start fires. Can you tell us more about the arson and explosives canine program?

Answer. ATF trains accelerant detection canines for State and local fire departments, police departments, and State fire marshal's offices. Currently, there are 85 active accelerant detection teams in the United States. These canine teams are utilized in fire investigations to help identify potential points of origin started by ignitable liquids. Each year in the United States, deaths, injuries, and millions of dollars of property damage are caused by intentionally set fires. ATF-certified accelerant canines are an essential tool in detecting minute traces of substances which have been used to start fires. Accelerant detection canines also serve as a critical part of ATF's National Response Teams. These highly-trained canines serve side by side with trained fire investigators and forensic chemists to help solve some of the nation's costliest and deadliest arsons.

ATF's canine programs produce extremely reliable, mobile, accurate, and durable explosives and accelerant detection tools, capable of assisting law enforcement and fire investigators with the escalating threat faced by communities worldwide. ATF has trained 519 explosives detection canines and 113 accelerant detection canines.

In 1997, ATF began training explosives detection canine teams for State, local, and other Federal agencies. As of April 30, 2007, there are 120 active ATF-certified explosives detection canine teams working throughout the United States. Thirty-four of these teams include ATF special agent canine handlers, and 86 are explosives detection canine teams for other federal, State, and local agencies. ATF also trains and provides explosives detection canines for foreign countries, in conjunction with the U.S. Department of State, Office of Anti-Terrorism Assistance, to protect U.S. citizens and interests abroad. To date, ATF has trained 339 explosives detection canines for the following 17 countries: Israel, Italy, Argentina, Cyprus, Greece, Chili, Egypt, Jordan, Malaysia, Australia, The Czech Republic, Poland, South Africa, Thailand, Bahrain, Qatar, and Mexico.

QUESTIONS SUBMITTED TO KAREN P. TANDY

QUESTIONS SUBMITTED BY SENATOR PATRICK J. LEAHY

DEA STATE AND LOCAL ASSISTANCE

*Question.* The Justice Department's Edward Byrne Memorial State and Local Law Enforcement Assistance Formula Grant Program ("Byrne grants") helps state and local governments address the law enforcement needs in their own communities. Historically, a large share of this grant funding has targeted investigating and prosecuting major drug dealers, as well as fostering multi-state operations to support national efforts to reduce drug crimes.

Since fiscal year 2002, funding for justice assistance programs in the Justice Department has fallen dramatically from $2.2 billion to $800 million—a cut of more than 63 percent. While reductions in crime and drug use rates over the past 10 years have been significant, they have leveled off in the past several years and, in some instances, have even begun to creep higher. The majority of the reductions occurred when state and local law enforcement assistance accounts were funded at high levels.

State and local law enforcement have always been the lynchpins of community safety. Are you concerned that reducing federal involvement in Byrne assistance grants to state and local entities will lead to less effective law enforcement?

Answer. Despite the reduction, we will continue to work side-by-side with State and local law enforcement through our domestic offices and task forces. We will also continue to share intelligence with and provide training to our State and local partners.

There are two narcotics task forces in the State of Vermont—the Vermont State Police Task Force and the DEA Task Force. The Vermont State Police Task Force is made up of three squads—Southern, Northeast, and Northwest. It is staffed as follows:

—2 State Trooper positions funded by the State of Vermont;
—6 State Trooper positions funded by the federal Meth Grant;
—3 State Trooper positions funded by the Byrne Grant;
—4 local Police positions funded by the Byrne Grant;
—2 local Police positions funded by the federal Meth Grant; and
—3 local Police positions funded by the State of Vermont.

The DEA Task Force is located in the Northwest part of Vermont. It includes two HIDTA positions and is staffed as follows:

—6 DEA Special Agents;
—1 Burlington Police Detective;
—1 State Trooper (included in the above 20 positions);
—1 Essex County Sheriff's Deputy;
—1 Lamoille County Sheriff's Deputy; and
—1 Border Patrol Agent.

Although more difficult, DEA will seek to maintain the necessary coverage throughout the State and service the needs of the communities as drug cases expand. In a state such as Vermont, DEA relies heavily on State and local counterparts for assistance, therefore a reduction in the Byrne Grant positions will likely impact State and local participation. However, DEA has a strong partnership with State and local law enforcement and these relationships will work to service the communities of Vermont with or without the positions. State and local law enforcement organizations have always demonstrated a commitment to working with DEA, and this will not change.

DEA will continue work with its task force and the remaining Vermont State Police Task Force positions. Currently, the Southern Vermont State Police Task Force conducts narcotic investigations in the Southern part of the state. The work of this task force has been extremely helpful to DEA because drug trafficking organizations come from Massachusetts or New York, conduct business in Southern Vermont, and then return to their originating states. Once these individuals have been identified, the U.S. Attorney's office becomes involved, along with DEA, and the investigation continues back into the source States resulting in the indictments of these individuals and groups impacting Vermont.

The Northeast Vermont State Police Task Force conducts investigations along the I–91 corridor and they also coordinate with the U.S. Attorney's office and with DEA on apprehending the cross state and cross Canadian border drug traffickers. The Northwest State Police Task Force conducts investigations within the same immediate area as the DEA Task Force. When investigations overlap the two task forces

are adept at coordinating, however they seldom cross paths, demonstrating the amount of work to be done in the area.

*Question.* In Vermont, state and local entities have long collaborated with the national government in fighting drugs. How can state and local anti-drug entities partner with DEA to curb drug trafficking when your fiscal year 2008 budget request reduces federal assistance to states in this area?

Answer. Despite the elimination of the MET program in fiscal year 2008, DEA will continue to work side-by-side with our State and local law enforcement partners by sharing intelligence, providing training, and participating in task forces. DEA assists State and local law enforcement in many ways, for example:

—DEA's EPIC Open Connectivity Project provides web-based access to approximately 1,800 Federal, State, and local partners on an annual basis. Users can query and access law enforcement data maintained by EPIC.

—In fiscal year 2006, DEA shared $274 million in State and local proceeds with State and local law enforcement, a 25 percent increase over the $219 million shared in fiscal year 2005, including a 40 percent increase in the funds shared with Sheriffs. This level of sharing is expected to continue.

—In fiscal year 2006, DEA trained over 41,000 S&L officers, including over 1,000 in meth lab clean up and training.

—By the end of 2008, DEA plans to complete a clandestine laboratory training facility to better train more State and local officers.

DEA will also continue to support State and local law enforcement through our domestic offices and task forces. DEA leads over 200 State and local task forces, including over 1,600 DEA Special Agents and over 2,100 State and local task force officers, all of whom are dedicated full time to address drug trafficking, including trafficking in our local communities.

PRESCRIPTION DRUG ABUSE

*Question.* In December 2006, the University of Michigan released a national survey, called "Monitoring the Future"—the largest and most in-depth survey of youth drug use in the nation measuring drug, alcohol and cigarette use and related attitudes among teenagers. The study revealed, among other things, that there was a thirty percent increase in the use of the prescription drug OxyContin® last year. I understand that in April of 2001 the DEA implemented a comprehensive National Action Plan to reduce the diversion and abuse of OxyContin®.

How many DEA investigations and arrests have led to successful prosecutions in OxyContin® cases since 2001?

From April 2001, when the OxyContin® National Action Plan was implemented, to the end of fiscal year 2006, DEA initiated 970 OxyContin® (both brand name and generic) investigations and made 912 OxyContin-related arrests. Though DEA databases do not comprehensively track prosecutions, the majority of DEA arrests result in successful prosecutions. The following are two examples:

—On July 10, 2006, Thomas Merrill, MD was sentenced in the Northern District of Florida in Pensacola, to life imprisonment on six counts of over-prescribing OxyContin® and other controlled pharmaceuticals resulting in the deaths of five individuals. He was also sentenced to concurrent twenty, ten, and five year terms of imprisonment on an additional 92 counts including wire fraud and defrauding health care benefits programs.

—On September 1, 2004, Fred J. Williams, MD was sentenced in the Northern District of Florida to life imprisonment following conviction on 94 counts of drug offenses arising out of his illegal dispensing of OxyContin®. Williams was writing prescriptions for known drug abusers using several variations of a patient's name in an apparent attempt to avoid attracting attention at local pharmacies. Williams wrote over 600 prescriptions to 150 people, none of whom were identified as patients. At the time of sentencing, the judge admonished Dr. Williams for wreaking havoc on the community and destroying lives.

*Question.* In 2002, the Justice Department Inspector General found that despite the widespread problem of controlled pharmaceutical diversion and abuse, "the DEA had been slow to commit resources to address this problem." In a July 2006 follow up review, the Inspector General found that "from fiscal year 2002 to fiscal year 2005, the DEA increased the percentage of time that diversion investigators spent investigating Internet diversion from 3 percent to 11 percent."

What percentage of time has DEA diversion investigators spent investigating Internet diversion from fiscal year 2005 to the present?

Answer. Since the 2002 OIG report, DEA has worked diligently to address the growing problem of pharmaceutical drug abuse in the United States. DEA attempts to leverage all of its resources to address this serious problem. In addition to having

Diversion Investigators conduct Internet and other types of diversion cases, Special Agents, Intelligence Analysts, and Task Force Officers routinely work on these types of investigations. DEA also prides itself in working shoulder-to-shoulder with our state and local counterparts on all investigations including diversion investigations.

In fiscal year 2005, 11.4 percent of Diversion Investigator (DI) work hours were spent on Internet cases. During the first half of fiscal year 2007, 16.8 percent of DI work hours were spent on Internet cases, an increase of 47 percent over fiscal year 2005.

In addition to investigative work, DEA has devoted significant resources to targeting efforts using ARCOS and SearchPoint, taking administrative action, such as Immediate Suspensions and Show Cause Orders, on pharmaceutical wholesalers and distributors found to be supplying Internet pharmacies. Further, DEA is also working closely with legitimate Internet-related businesses, such as credit card companies, express parcel carriers, and Internet Service Providers, to solicit their cooperation in shutting down illegal Internet pharmacies.

*Question.* In its 2006 report, the Inspector General examined several investigative tools that are part of DEA's overall operational strategy, including the Online Investigations Project (OIP), telephone and online hotlines, undercover equipment, and training in conducting Internet diversion investigations. The Inspector General found that although the OIP has become a valuable investigative tool, "it cannot automatically identify web sites with the highest volume of suspect pharmaceutical sales as originally intended."

Are you concerned that, contrary to the original intent of OIP, DEA may not possess the resources or capacity to identify rogue online pharmacies with the highest volume of suspect sales?

Answer. Although the OIP has not provided DEA the originally intended capabilities to proactively search the Internet and identify major violators, it is used daily to provide background information on suspect websites. In addition, DEA analysts and diversion investigators have demonstrated a limited capability to produce more detailed link analyses of groups of related websites.

DEA has recognized and acted upon the continuing requirement to proactively and efficiently search the Internet and identify illicit online pharmacies that are selling the greatest amounts of controlled pharmaceuticals. To this end, DEA in March of this year initiated a contract with an Internet search and analysis company to provide this capability. Although the identity of this company cannot be included in this response for reasons of investigative confidentiality, the company has over the past two years developed an excellent reputation providing Internet search and analysis services to leading credit card companies, Internet companies, and major banks for the purpose of enforcing company due diligence responsibilities in the field of Internet pharmaceutical sales, as well as several other areas of illegal commerce over the Internet. In particular, the company has been the leading provider of Internet search and analysis services to a coalition of financial companies working closely with the National Center for Missing and Exploited Children to identify and refer for law enforcement investigation Internet purveyors of child pornography—a more difficult Internet investigative challenge but also one that shares significant common traits with illicit Internet sales of controlled pharmaceuticals.

This contract for Internet search and analysis services includes a four-month initial performance period with options for an additional eight months as well as a subsequent year. The contractor recently provided DEA an initial list of six prospective website targets along with an initial list of affiliated websites. These targets have already been evaluated by our Special Operations Division and forwarded to several DEA Field Divisions. Significantly, this contract requires, and the contractor has expressed confidence in its ability to deliver, identification of the leading Internet controlled pharmaceutical trafficking networks. This includes all associated payment websites, affiliate or portal websites, registration, web hosting, and server identifications, as well as key financial links including payment processors and merchant banks that provide website operators access to major credit card networks. If successful, this contract by March of 2008 will have conclusively identified and mapped out the Internet "footprint" of the largest Internet controlled pharmaceutical trafficking organizations and DEA will have initiated investigations against those same organizations.

*Question.* Do you believe that a DEA or a nongovernmental organization should regularly search the Internet to identify these websites and other locations that offer to sell controlled substances without a prescription?

It is vital that the DEA and relevant private sector companies work together to proactively search the Internet to identify websites that are illegally selling controlled pharmaceuticals. Because the Internet is constantly changing, the search for

illicit websites is inherently complex and must be undertaken on a proactive basis, not reactive.

*Question.* Since 2002, the DEA has established telephone and online hotlines for reporting suspicious Internet pharmacies. The Inspector General's 2006 report found that "these hotlines have yielded few leads that resulted in diversion investigations." Equally troubling, the Inspector General found that while the DEA has started to provide undercover equipment to its diversion groups, "as of May 2006 most diversion groups still did not have this equipment."

Are you concerned that DEA lacks the resources to ensure that its intelligence, technological, and investigative tools operate effectively?

Answer. DEA is working hard to integrate and optimize its intelligence, technology, and investigative resources for Internet pharmaceutical investigations. The technological and analytical challenges posed by Internet pharmaceutical investigations are many and complex, and have required DEA to reach out to the private sector for Internet expertise for search, analysis, and training support. Moreover, much of the available intelligence for identifying and targeting violators resides in the private sector among key industry groups whose services are used by online traffickers of controlled pharmaceuticals. This has placed a premium on fostering effective working relationships with leading Internet, financial, and parcel delivery companies. In this time of constrained budgets, both manpower and funding limitations directly impact Internet investigations, which require unusually large commitments of these resources.

DEA has provided all field divisions with undercover credit card accounts in order to make online purchases of controlled pharmaceuticals for use as evidence in Internet investigations. DEA has also deployed undercover Internet workstations to all domestic field divisions.

*Question.* What percentage of diversion investigators receive specialized training that can prove useful for conducting Internet investigations?

Answer. As of March 1, 2007, 369 of the 520 (71 percent) on-board Diversion Investigators have completed Internet training conducted by DEA's Special Operations Division (SOD). Additional training classes have been scheduled during the remainder of fiscal year 2007. DEA is also developing an Advanced Internet Investigations course that is scheduled to begin in August of 2007. DEA has also added two Financial Techniques courses into the fiscal year 2007 training schedule that is designed to provide employees with the skills and knowledge to enhance their investigative skills to conduct financial investigations. DEA will also provide Diversion Investigators with courses on Complex Conspiracy Investigations.

*Question.* I am concerned that curbing Internet prescription drug abuse may take collaboration between law enforcement and private sector companies (i.e., credit card companies, payment systems, Internet Service Providers, common carriers, etc.)

What current methods of collaboration with private sector entities does DEA use to combat rogue online pharmacies?

Answer. For the past two years, DEA has actively developed relationships with leading financial, Internet, and express parcel delivery companies whose services are used by Internet controlled pharmaceutical trafficking organizations. The purpose of this outreach has been threefold: (1) to raise awareness of the growing problem of pharmaceutical diversion via the Internet; (2) to elicit voluntary efforts to restrict legitimate business services from being used by illicit Internet controlled pharmaceutical traffickers; and (3) to identify potential sources of data maintained by businesses that may aid in targeting enforcement efforts against the largest illicit Internet drug trafficking organizations.

These relationships provide an opportunity for government and the private sector to reach a better understanding of relevant federal laws and explore areas of cooperation and voluntary industry action to curb the expanding illicit sale of controlled pharmaceuticals over the Internet. The level of cooperation enjoyed by DEA with the various industries involved with Internet pharmacies is excellent. They understand the gravity of the problem and have been extremely cooperative with DEA's inquiries. These relationships are maturing even further around a systematic industry-based Internet search and analysis effort that will incorporate selected data inputs from key Internet, financial, and parcel carrier companies to proactively identify and target the largest Internet controlled pharmaceutical trafficking organizations. A coalition of leading financial companies is spearheading this effort.

*Question.* Information sharing between private sector entities and the DEA may be critical to preventing online prescription drug abuse. While the number of occasions may be limited, the willingness for private sector entities to share information with DEA about locations to sell pharmaceuticals illegally and to act upon them may be diminished by the threat of law suits.

Do you think that the private sector can play an important role in assisting DEA reduce online drug abuse?

Answer. Yes. Private sector involvement is critical for two reasons. First, the private sector—most especially the Internet, financial, and express parcel delivery companies whose services are used by Internet traffickers of controlled pharmaceuticals—must establish rigorous business practices to preclude this illicit use of their services and then rigorously enforce those standards through internal fraud prevention efforts. Second, these same companies, which all rely intensively upon the Internet for their business, possess invaluable data needed to proactively identify, target, and investigate violators.

*Question.* Do you support immunity from civil or criminal action for private sector entities that mistakenly identify websites in good faith? And do you support immunity from civil or criminal actions for private sector entities that refuse to do business with any organization mistakenly identified in good faith as offering to illegally sell a controlled substance?

Answer. Yes, DEA would support legislation that furthers the ability of private sector companies to deny services to other companies involved in suspect activities, while minimizing liability for any mistaken actions made in good faith. It is vital that relevant Internet, financial, and parcel delivery companies aggressively police their own operations in this area of illegal commerce. This support from the private sector strengthens DEA's overall enforcement strategy. Private sector entities are acutely aware of their legal liability for denying services to suspect websites whose operators have not been legally convicted. For example, MasterCard has in the past two years denied services to several hundred suspect pharmaceutical website operators working through the merchant banks that issued the credit card retail accounts. FedEx suspended truck deliveries of suspect packages containing pharmaceuticals within portions of eastern Kentucky when it became apparent that illicit Internet sales of controlled pharmaceuticals had reached epidemic proportions in that part of the state. In general, businesses have the legal authority to suspend their services to clients that violate internal business practices codified in their contracts with clients.

COCAINE

*Question.* The U.S. Sentencing Commission has expressed concerns about the amount of low-level drug offenders being dealt with excessively, particularly in the area of crack cocaine. In May 2002, the Commission found that in fiscal year 2000, 73 percent of all federal crack convictions were brought against low-level offenders, and only 6.1 percent of all federal crack convictions were brought against high-level dealers in crack cocaine cases.

For powder cocaine, a similar disparity exists. The Commission's May 2002 report found that only 6.7 percent of powder cocaine cases were brought against high level offenders, while 68 percent of powder cocaine cases were brought against the lowest-level offenders.

Are you concerned that the federal crack powder laws target "small fish" instead of drug kingpins of organized drug cartels?

Answer. Federal statutes do not target "small fish" instead of large scale traffickers and organized cartels. Federal statutes carry strong penalties for trafficking in meaningful amounts of cocaine powder and cocaine base. Individuals who are first time offenders and are not leaders or managers of a drug organization are eligible for more lenient treatment pursuant to the "safety valve" provisions of 18 U.S.C. 3553(f). Individuals who deal in large amounts of cocaine powder or cocaine base are subject to appropriately long sentences. An individual who deals in at least five kilograms or more of cocaine powder is subject to a mandatory minimum sentence of ten years, as is an individual who deals in at least 50 grams of cocaine base (crack). In addition, leaders and organizers of drug organizations are subject to the severe penalties of 21 U.S.C. 848, the Continuing Criminal Enterprise Statute, which carries penalties of from 20 years to life imprisonment.

*Question.* Does the DEA focus its drug interdiction efforts on high-level traffickers? Please explain.

Answer. DEA is committed to bringing those organizations involved in the illicit growing, manufacturing, diversion, laundering of proceeds, or distribution of controlled substances to the criminal and civil justice system of the United States, or any other competent jurisdiction. The DEA focuses a significant amount of its resources on attacking Priority Target Organizations (PTOs), which are major drug supply and money laundering organizations operating at the international, national, regional, and local levels having a significant impact upon drug availability.

In addition, DEA works closely with key drug enforcement programs such as the Organized Crime Drug Enforcement Task Force (OCDETF) program to accomplish its mission. The OCDETF member agencies identified international command and control organizations representing the most significant international drug trafficking organizations threatening the United States. These targets are referred to as Consolidated Priority Organization Targets (CPOTs). Efforts to disrupt and dismantle CPOT and PTO organizations are primarily accomplished through multi-agency investigations mostly directed by DEA. In fiscal year 2006, DEA participated in approximately 90 percent of all OCDETF cases, and had the lead or co-lead in approximately 80 percent of OCDETF investigations.

DEA also participates in enforcement-related programs such as specialized training for state and local law enforcement designed to improve their abilities to enforce state drug laws and target and dismantle street lead drug trafficking organizations and demand reduction programs designed to educate citizens concerning the dangers of drugs and emerging drug trends. These programs are aimed at reducing the availability of and demand for illicit controlled substances.

*Question.* At the November 14, 2006 hearing before the Sentencing Commission, DEA Deputy Assistant Administrator for the Office of Diversion Control, Joseph T. Rannazzisi, testified that cocaine enters the United States in the form of powder cocaine, and powder cocaine is converted into crack cocaine once the powder cocaine reaches the street level. According to Mr. Rannazzisi, crack cocaine is usually trafficked at the street level.

I understand that the DEA believes it is targeting street level crack or powder dealers to work up the chain to higher level dealers. What are the largest amounts of crack cocaine that the DEA has confiscated during a single drug arrest in the last five years?

Answer. DEA's database does not distinguish between "crack" cocaine and cocaine base because "crack" is a form of cocaine base. However, DEA does target street level drug dealers with the goal of working up the chain to the higher level trafficking organizations. DEA focuses on attacking the organizations which are the major drug supply and money laundering organizations operating at the international, national, regional, and local levels having a significant impact upon drug availability.

For example, in May of 2006, the Seattle Field Division completed an eight-month investigation focused on decreasing the growing problem of "open-air" drug markets in the East and West precincts of Seattle. Over the course of this deployment, many individuals were arrested for selling small quantities of drugs to undercover officers. The Seattle Filed Division's Special Agent in Charge, Rodney Benson, stated that "those street-level cases have resulted in a significant number of major, long-term investigations that we're working on right now," which focus primarily on those individuals high-up on the drug distribution food chain. This investigation resulted in the disruption of two drug trafficking organizations; 311 arrests; and the seizure of approximately .41 pounds of powder cocaine, 3.46 pounds of crack cocaine, .02 pounds of methamphetamine, 3.56 pounds of heroin, .21 pounds of marijuana, .46 pounds of steroids, .14 pounds of ecstasy, and .21 pounds of miscellaneous prescription pills, and over $150,000 in assets.

*Question.* What are the largest amounts of powder cocaine that the DEA has confiscated during a single drug arrest in the last five years?

Answer. The largest amount of powder cocaine that DEA has seized during the last five years was on November 5, 2004 in Key West, Florida for 11.9 metric tons of cocaine. DEA's database does not tell us if this occurred during a single drug arrest though, so potentially there could have been multiple arrests in this case that resulted in this amount of seized cocaine.

Even larger seizures have been made by agencies that work with DEA. On March 17, 2007, the U.S. Coast Guard, acting on information provided by DEA and Panamanian law enforcement, seized approximately 22 metric tons of cocaine aboard a Panamanian flagged motor vessel off the coast of Panama. This record-breaking seizure was the result of actionable intelligence provided by Panamanian law enforcement officials and close collaboration through DEA's multi-agency cocaine interdiction program, Operation Panama Express.

Previously, the largest cocaine seizures by the Coast Guard were: 13.6 metric tons from the stateless-vessel Lina Maria, on Sept. 17, 2004; and 11.9 metric tons from the Cambodian-flagged vessel Svesda Maru on May 1, 2001.

*Question.* Crack is the only drug for which the first offense of simple possession can trigger a federal mandatory minimum sentence. Under 21 U.S.C. § 844, possession of 5 grams of crack will trigger a 5 year mandatory minimum sentence.

Would reforming § 844 allow the DEA's anti-drug efforts more effective by focusing its resources on preventing drug trafficking by drug cartels instead of wasting precious time and resources on low-level street dealers?

Answer. As stated in the answer to the question above, DEA already focuses its resources "on preventing drug trafficking by drug cartels." Increasing the amount of crack that will trigger a five-year mandatory minimum sentence would not augment DEA's ability to dismantle drug cartels. The value of mandatory minimum sentences such as the five-year mandatory minimum for crack cocaine is that they facilitate DEA's ability to gain cooperation. A recent example is an important investigation of a DEA Atlanta Division crack cocaine trafficking organization that was built upon purchasing just a few ounces of crack cocaine from several mid-level members of the organization. Some of the original cooperating sources were working to lessen their sentences for selling user amounts of crack cocaine and other drugs. The investigation resulted in the arrest of more than 15 violators and the seizure of cash, securities and property in excess of one million dollars. The leader of the organization entered a plea of guilty and received 20 years in jail. The guilty plea was obtained due to the high minimum mandatory sentences that his subordinates were facing for the sales of ounce quantities of crack cocaine; they were motivated to cooperate and potentially testify against their boss.

Please note that while DEA believes that mandatory minimum sentences are a valuable tool in gaining cooperation and incapacitating dangerous drug traffickers and organizations, we do not agree that Federal law enforcement officers or prosecutors are devoting any measurable amount of resources to investigating or prosecuting cases of possession under 21 U.S.C. § 844. The fiscal year 2005 statistics from the United States Sentencing Commission show that only 0.8 percent of powder cocaine cases were for simple possession, and only 1.1 percent of crack cases involved a simple possession charge. The percentages of actual drug trafficking charges in 2005 for powder and crack cocaine were 98.4 and 95.3, respectively.

INTERNATIONAL DRUG ISSUES

*Question.* Last year, the United Nations Office on Drugs and Crime ("UNODC") reported that there has been a surge in opium cultivation in Afghanistan that is fueling the insurgency in that country. According to the report, opium production in Afghanistan has increased 59 percent over last year, and in the southern region where Taliban insurgents have intensified their attacks on Afghan government and U.S. forces, opium cultivation has increased by 162 percent.

What steps is the DEA taking to address the growing opium trade in Afghanistan?

Answer. DEA is working to help the Government of Afghanistan establish the drug enforcement institutions and capabilities they must have to enforce the rule of law. This means successfully identifying, disrupting, and dismantling major drug trafficking organizations that fuel and profit from the narco-economy.

Out of the six major Drug Trafficking Organizations (DTO) heads targeted by Operation Containment, four have been arrested to include Haji Bashir Noorzai and Haji Baz Mohammad who are being prosecuted in the United States. The operation has also led to significant seizures of narcotics and precursor chemicals and the dismantlement and disruption of organizations involved in the Southwest Asian drug trade.

The four other major DTO heads targeted by Operation Containment are Shabaz Khan, who was arrested in the United Arab Emirates and is currently on trial, Urifi Cetinkaya, who is serving a prison sentence in Turkey, Cumhur Yakut, who has been indicted, and Haji Juma Khan, who has not yet been indicted.

In October 2005, Haji Baz Mohammad—Drug Kingpin and CPOT—was extradited to the United States. This marked the first-ever extradition between the United States and Afghanistan.

DEA's Foreign-deployed Advisory Support Teams (FAST) advise, train, and mentor their Afghan counterparts in the National Interdiction Unit (NIU) of the Counter Narcotics Police—Afghanistan (CNP–A), and directly augment the Kabul Country Office in conducting bilateral investigations to identify, target, and dismantle transnational drug trafficking operations in the region. The five FAST each consist of a Group Supervisor, four Special Agents, and one Intelligence Research Specialist.

DEA has trained the NIU's 126 law enforcement officers in the conduct of drug enforcement operations.

*Question.* Does DEA have the resources to be effective in curbing the Afghan opium trade? If yes, how are those resources being allocated and utilized? If not, where are increased resources needed?

Answer. DEA's base funding for FAST program is $8.3 million, which is sufficient to fund continuing deployments to Afghanistan and refresh equipment.

The following support for DEA's operations in Afghanistan is provided by DOD:

—DOD is providing basing support at Bagram Air Base for DEA FAST members and facilities for the FAST teams remaining in the Continental United States (CONUS) at the Marine Corps Base at Quantico, Virginia; a hangar and fuel to support the DEA King Air 350 twin-engine turboprop aircraft currently in Afghanistan; two DEA King Air maintenance personnel in Kabul; and facilities to protect, house, feed, and operate at the National Interdiction Unit (NIU) site in Kabul, Afghanistan.

—DOD is providing transportation support for the NIU, which is the Afghan counterpart to DEA and the Afghan unit with whom the FAST conducts counternarcotics operations. The NIU received its basic training from DOD and currently has more than 100 personnel. DOD provides transportation for DEA FAST personnel and supporting equipment from CONUS to Afghanistan and back.

—DOD is acquiring thirteen (13) MI–17 helicopters for the Afghan Ministry of Interior to support the Counter Narcotics Police—Afghanistan (CNP–A), NIU, and DEA Special Agents.

—DOD is providing operational and logistical support and assistance through the U.S. Central Command (CENTCOM) and elements of the North Atlantic Treaty Organization (NATO) International Security Assistance Force (ISAF).

—DOD is providing investigational support by providing Ring Flights to DEA Special Agents. Since February 2005, DOD has provided 26 Ring Flights to DEA. These ring flights allow us to gather counter-narcotics intelligence, interview confidential sources and other sources of information in the outlying provinces, meet Afghan law enforcement counterparts to plan and coordinate investigations, meet local and provincial Afghan officials, and travel to Forward Operating Bases (FOBs) to meet Afghan counterparts and U.S. Military personnel.

—DOD is constructing significant infrastructure for the NIU, including facilities to protect, house, feed, train, and operate. Facilities are also under construction for the Counter-narcotics Judicial Center, which will provide a secure location to detain and prosecute narcotics traffickers. DOD also provided weapons, night vision devices, and other equipment to the NIU.

—DOD provides DEA FAST training at military installations in the United States prior to deployment.

—DOD has provided communications equipment for FAST command and control in Afghanistan. Additional communications equipment is being provided to the NIU.

—DOD has been actively working with the DEA, Department of State, U.S. Embassy Kabul, and Afghan Ministry of Interior officials to fund the expansion of the CNP–A.

—DOD has provided 4.5 million rounds ammunition for FAST and the NIU.

—DOD has provided contract medical, communications, logistical, and intelligence support to DEA and the NIU on a daily basis.

DEA could not maintain its presence in Afghanistan without the support it receives from DOD. Unfortunately, DEA operations have been severely limited due to lack of air mobility and security.

As a new and non-standard aircraft acquisition program, the MI–17 Helicopter Program has suffered setbacks and benefited from product improvements as they have been fielded. As a result the program is behind its estimated operational target of CY 2005. As of May 2007, none of the 6 MI–17 helicopters have flown law enforcement operations with CNP–A/NIU officers or DEA Special Agents.

Three Afghan pilots' classes have graduated from DOD training provided at Fort Bliss, Texas however aircraft delays have made it impossible for the Afghan pilots to keep their flight skills current. They are currently being checked by instructor pilots, prior to being qualified to fly pilots in command. Until that time, all crews will be mixed U.S./Afghan crews.

Finding permanent space for DEA's Afghanistan based King Air 350 and a second King Air, currently being modified for aerial surveillance, has proven to be a challenge. DEA and DOD are currently working to secure permanent space at the Bagram Airfield. If unsuccessful, the removal of the King Airs would significantly undermine DEA enforcement efforts.

*Question.* I am concerned whether the price and availability of cocaine has changed significantly as a result of DEA's international eradication efforts. Our country has given $5.4 billion in aid to support Plan Colombia. Yet, if you compare the price and availability of cocaine now to the price and availability of cocaine in 2001—at the start of Plan Colombia—there has been no significant change in either

the availability or the price of cocaine on America's streets. In fact, according to "Connecting the Dots: ONDCP's (Reluctant) Update on Cocaine Price and Purity," an April 2007 report by the Drug Policy Program of the Washington Office on Latin America, preliminary U.S. government data indicates that cocaine's price per pure gram on U.S. streets fell in 2006, while its purity increased.

These latest estimates, continuing a 25-year trend, suggest that cocaine supplies are stable or even increasing. Congress was told that Plan Colombia would cut cocaine production by half, but it obviously has failed to do that. Do you believe it is now time for DEA to rethink its international eradication strategy?

Answer. DEA does not have an international eradication strategy for Colombia. The U.S. Department of State's Narcotics Affairs Section (NAS) is responsible for the aerial eradication program in Colombia. The mission of DEA's Bogotá Country Office and Cartegena Resident Office is to conduct bilateral investigations and enforcement operations to reduce the drug supply by targeting, disrupting or dismantling the most wanted international drug trafficking organizations impacting the United States. Thus, DEA's operations in Colombia are concerned with interdiction rather than eradication.

*Question.* President Uribe has extradited about 400 people indicted for drug crimes in the United States, which I commend. However, none of them are top paramilitary leaders nor, with a couple of exceptions, are any of them FARC leaders. As you indicated at the last budget hearing in April 2006, it is one matter to indict someone and another to extradite and convict them.

Do you support the suspension of extradition of paramilitary leaders who have been responsible for the shipment of tons of cocaine to the United States?

Answer. If Autodefensas Unidades de Colombia (AUC) members currently involved in the peace process continue to traffic drugs and/or commit other crimes, DEA and the Department of State believe they should be extradited. Although suspension of extraditions is not consistent with the U.S. government's goal of bringing violent, transnational criminals to justice, such a peace plan would further our interests of attaining political stability throughout the region and strengthening the democratic institutions of Colombia. The Government of Colombia has indicated to DEA that if an AUC member is indicted in the United States for drug trafficking since the time they surrendered to the Justice and Peace process, then that member is subject to extradition.

Although the Uribe Administration continues to support extradition requests by the United States for paramilitary AUC members, there is a concern that it may be difficult for the Administration to follow through with the extradition of some key AUC leaders, particularly those who are critical to the peace and demobilization process. While engaged in the peace and demobilization process, the Colombian Government has suspended their extradition warrants. DEA anticipates that if these individuals comply with the Justice and Peace Law, they will receive a sentence of between 5–8 years and the extradition warrants will continue to be suspended. Under Colombian Law 975, known as the Justice and Peace Law, the demobilized members of the AUC who have committed massacres, drug trafficking, and other crimes are eligible for reduced sentences if they comply with the requirements of confessing to their crimes and making restitution to their victims. However, the Uribe administration has assured the U.S. Embassy that if there is evidence that an individual is continuing to engage in drug trafficking and other illegal activities after the July 25, 2005 signing date, they will be removed from the process and their extradition warrant will again become active.

*Question.* Has the DEA or the State Department told the Colombian Government that the United States agrees with these suspensions? Has the DEA or State Department told the Colombian Government that the United States disagrees?

Answer. Please see DEA's response to question above.

*Question.* What are the total numbers of FARC indictees that have been actually extradited?

Answer. Since the amendment to the Colombian Constitution on December 17, 1997, the Colombian Government has extradited 539 fugitives to the United States. Of that number, 7 were FARC members and 8 were AUC members.

Of the 50 FARC indictments unsealed on March 22, 2006, three have been captured and are awaiting extradition. To date, none have been extradited.

METHAMPHETAMINE

*Question.* According to a November 2006 report by the U.S. National Drug Intelligence Center, cartel labs in Mexico and California now produce about 80 percent of the methamphetamine in the United States.

What steps has DEA taken to decrease the amount of methamphetamine produced in Mexico?

Answer. DEA is working hard with the Government of Mexico to target the criminal organizations involved in the diversion of precursor chemicals and the producing and trafficking of methamphetamine. Mexico has imposed import quotas tied to estimates of national needs. The Mexican Government limited pseudoephedrine, ephedrine, and combination product importation permits to 70 tons during 2006; this is a reduction of 53 percent from the 2005 level of imports (150 tons). This quota has made it more difficult for traffickers to obtain precursor chemicals. Prices have increased and traffickers have been forced to resort to traditional diversion methods, including smuggling and the use of third countries to procure their chemicals. In addition, intelligence indicates that traffickers have also turned to alternate production methods for methamphetamine and the apparent use of substitute chemicals as the traditional precursors are becoming more difficult to obtain. Mexico has discussed revising their quota downward even further in 2007.

In May 2006, at the National Methamphetamine and Chemicals Initiative (NMCI) Strategy Conference in Dallas, Attorney General Gonzales announced important new anti-methamphetamine domestic initiatives, as well as new partnerships between the United States and Mexico in fighting methamphetamine trafficking. These initiatives will improve enforcement and information sharing, increase law enforcement training, and increase public awareness both domestically and internationally. Since this announcement, methamphetamine enforcement teams have been formed on both sides of the border and DEA, with the assistance of the U.S. Department of State, has donated eight refurbished clan lab trucks to Mexico.

Additionally, DEA and the Department of State, Bureau of International Narcotics and Law Enforcement Affairs trained over 2,000 Mexican officials in fiscal year 2006 on a variety of investigative, enforcement, and regulatory methods related to methamphetamine trafficking and manufacturing. This training included instruction on clandestine laboratory investigations, precursor chemical investigation, and drug identification. As a result of this training, Mexican law enforcement officials have had significant success in identifying labs.

In fiscal year 2006, DEA also trained over 41,000 State and local law enforcement officers, including over 1,000 in how to conduct investigations and dismantle seized methamphetamine labs. By the end of 2008, DEA also plans to complete a clandestine laboratory training facility to better train more state and local officers.

DEA has expanded the role of its Clan Lab Enforcement Teams to target Mexican methamphetamine trafficking organizations. These teams use their lab expertise to trace chemicals, finished methamphetamine, and drug proceeds to drug trafficking organizations in the United States and Mexico. These teams also work to identify and dismantle U.S.-based methamphetamine transportation and distribution cells.

DEA has also developed an intelligence collection program, Operation White Fang, to assist in the identification and targeting of organizations responsible for producing and trafficking methamphetamine across the entire Southwest Border. The operation focuses particularly on the groups responsible for the drug related violence facilitated by the major Mexican cartels operating along the U.S./Mexico border. In the fiscal year 2008 President's budget, DEA requests $325,000 for this operation.

*Question.* Recent reports show an increase in drug gang activity in the area of methamphetamine and over-the-counter medicines. I am concerned that this may be leading to an increase in violence in some communities.

Has DEA taken any steps to address this situation?

Answer. Recently, DEA has seen an increase in cases involving violent organized gangs, such as MS–13 and La Familia. Many of these gangs are typically, poly-drug and poly-criminal opportunists. Some of them are involved in trafficking various quantities of methamphetamine and precursor chemicals in states such as California. Historically, domestic motorcycle gangs, such as the Hell's Angels, have been the primary gangs involved in the manufacturing and trafficking of methamphetamine. As part of its mission, DEA targets violent gangs involved in drug trafficking activity, such as the Hell's Angels, Latin Kings, Bloods, Crips, Mexican Mafia, and Gangster Disciples.

To handle this problem DEA participates in a number of anti-gang initiatives with other law enforcement components, including the National Gang Intelligence Center, ATF's Violent Crime Impact Teams (VCIT) and Project Safe Neighborhoods, FBI's Safe Streets and Safe Trails Task Forces, DOJ's Weed and Seed Program, and

the Attorney General's Anti-Gang Coordination Committee[1] (GangTECC) which oversees all of the above listed programs.

*Question.* According to a March 25, 2007, article in the USA Today, "reports of candy-flavored methamphetamine are emerging around the nation stirring concern among police and abuse prevention experts that drug dealers are marketing the drug to younger people." The article reports that among the new flavors are strawberry, known as "strawberry quick," chocolate, cola, and other sodas. And, the article reports, that a DEA agent reported a red meth that has been marketed as a powdered form of energy drink.

Given these recent reports, how widespread has flavored crystal meth products become?

Answer. With the continual stream of negative press regarding methamphetamine, drug traffickers are trying to lure new customers by making meth seem less dangerous. Since the early 1980s there have been regional occurrences of different colors and better tasting methamphetamine. "Strawberry Quick" and other flavors are just the latest of the trends in the marketing of methamphetamine. According to intelligence, the flavored crystals are available in California, Nevada, Washington, Idaho, Texas, New Mexico, Missouri and Minnesota. Normally, methamphetamine is white or brownish and bitter-tasting. Strawberry Quick may be popular among new users who snort methamphetamine because the flavoring can cut down the taste. Traffickers are savvy marketers, and they continue to create new ways to market their drug of choice, especially to young people.

*Question.* According to the National Survey on Drug Use and Health by the Substance Abuse and Mental Health Services Administration, the number of people 12 and older who used meth for the first time in the previous year decreased from 318,000 people in 2004 to 192,000 people in 2005.

Are you concerned that drug traffickers are trying to lure in new customers, particularly young people, by making meth seem less dangerous? If so, what steps is DEA taking to address this issue?

Answer. While the primary function of DEA is to enforce the nation's federal drug laws, we understand that law enforcement alone cannot solve America's drug problems. DEA works with the youth concerning the abuse and awareness of drugs including the serious hazards of methamphetamine. Through DEA's Demand Reduction program, DEA shares drug law enforcement expertise and intelligence on the nature and extent of the national, regional and local drug threat and on emerging drug enforcement priorities. In conjunction with its prevention partners, DEA engages in aggressive public messaging campaigns to illustrate the consequences of drug use, particularly for non-users who suffer collateral damage as a result of the illegal drug trade. For example, in August of 2005, DEA launched a new website for teens, justthinktwice.com. Since its inception the justthinktwice.com website has averaged over 200,000 hits per month. This website provides teens with straightforward information on the consequences of drugs to users and non-users and gives teens the tools they need to make sound decisions about drugs. Included in the site is information on methamphetamine, prescription drugs, drugged driving, drug endangered children, marijuana, drug legalization, and the federal penalties for drug trafficking and manufacturing. Justthinktwice.com also dispels many of the myths that teens have about drugs by giving them the facts about drug legalization, "medical" marijuana, and other topics.

*Question.* Last year, the Combat Methamphetamine Epidemic Act became law as Title VII of the USA PATRIOT Improvement and Reauthorization Act of 2005 (Public Law 109–177), and which was designed to retail over-the-counter sales of certain precursors that are common ingredients in cold medicines. Under this law, consumers purchasing cold medicines containing ephedrine, pseudoephedrine and phenylpropanolamine must show identification and sign a log book at pharmacies. DEA, along with state and local law enforcement entities, are responsible for monitoring these log books in order to identify if any one person has purchased more than 9 grams within a month's time.

Do you believe the log book is working as hoped to support investigations?

Answer. As a result of state and CMEA legislation, which was implemented in September 2006, the downward trend in seizures of clandestine laboratories is unmistakable. In 2005 there were a total of 12,619 reported incidents involving clan labs. Calendar year 2006 saw a decrease of 43 percent, or a total of 7,180 incidents. Through April 25, 2007, only 720 incidents involving clan labs have been reported.

[1] In the fiscal year 2008 President's budget, DEA is requesting 1 Special Agent position in support of Gang TECC.

| Year | All Incidents | Labs Only | Super Labs | California Super Labs |
|---|---|---|---|---|
| 2005 | 12,619 | 5,879 | 34 | 28 |
| 2006 | 7,180 | 3,346 | 13 | 10 |
| 2007 | 720 | 361 | 1 | 1 |

*Question.* Could federal enforcement efforts be more effective if the log book was electronic?

Answer. Logbooks in and of themselves serve are an effective enforcement tool because they deter illegal purchases of products containing ephedrine, pseudoephedrine, and phenylpropanolamine. Persons who might be considering the purchase of these products for diversion to the illicit production of methamphetamine are deterred by the requirement to provide personal information (name and address) and their signature. Logbooks could be more effective as an enforcement tool if the data was collected electronically. If the data was collected electronically, aggregation of the data across retail locations and between states would be easier and potentially more effective.

*Question.* What enforcement resources has DEA dedicated to this area?

Answer. Investigative authority to enforce CMEA rests with a general workforce of approximately 500 Diversion Investigators and 5,000 Special Agents agency-wide. DEA also leads over 200 state and local task forces with over 2,100 state and local task force officers. DEA will investigate violations of not only the CMEA, but any violation of the Controlled Substance Act as necessary.

*Question.* The Combat Meth Act required DEA to establish production quotas and import quotas for ephedrine, pseudoephedrine, and phenylpropanolamine. This effort was done in order to prevent the illicit use of these three chemicals in the clandestine manufacture of methamphetamine.

Do you believe the system for establishing import quotas is working smoothly?

Answer. Although the quota regulations for the CMEA have not yet been fully implemented, DEA's 30+ years experience establishing quota for other pharmaceutical will ensure smooth administration of the import quota applications.

*Question.* Can you give us your assurance that the quotas established are adequate for medical use?

Answer. DEA's experience with the schedule I and II controlled substances quotas provides a solid foundation for the application and implementation of quotas to the list I chemicals: pseudoephedrine, ephedrine and phenylpropanolamine as outlined in the CMEA. DEA's diligent oversight of the quota applications and process will ensure an uninterruptible supply of medicine is available in the United States once this law is fully implemented.

In accordance with 21 U.S.C. 826, DEA is required to establish limits on the production of Schedules I and II controlled substances. The total quantity for each basic class of controlled substance in Schedules I and II is required to be determined on an annual basis. The quotas for controlled substances are established each calendar year to provide sufficient material for the estimated legitimate medical, scientific, research and industrial needs of the United States, for lawful export requirements and for the establishment and maintenance of reserve stocks. In addition, quotas are intended to limit the availability of legitimately manufactured controlled substances which can be diverted into the illegitimate market.

There are three types of quotas that are established pursuant to 21 CFR Part 1303: Aggregate production quotas, manufacturing quotas and procurement quotas. Procurement quotas are issued to DEA registered manufacturers who purchase Schedule I or Schedule II material and use that material to formulate finished dosage forms i.e. legitimate medicine. Manufacturing quotas are issued to DEA registered bulk manufacturers. A manufacturing quota is the amount of substance a company may produce in a calendar year. Aggregate production quotas (APQ) reflect the maximum amount of each controlled substance in Schedule I and II which may be produced in a given calendar year. The APQ is historically established once and revised mid-year, but the administrator has the authority to adjust individual APQ at any time. Similarly, the DEA establishes manufacturer's individual manufacturing and procurement quotas after careful consideration of the registrant's application, legitimate needs and prior year's year end inventory.

The DEA utilizes two types of information when establishing quotas: evidence of legitimate need and evidence of diversion abuse and illicit trafficking. The evidence of legitimate need is provided primarily by industry and the Food and Drug Administration (FDA) and actual pharmaceutical sales trend data supplied by an independent unbiased source. Companies submit yearly applications and data to DEA that includes actual sales, exports, actual production, customers, product develop-

ment (FDA requirements), batch size, losses, retains and inventories of their controlled substances.

DEA must take into consideration the total net disposal (sales and national trends), inventories, projected demands and other factors affecting medical, scientific, research and industrial needs in the United States and lawful export requirements before adjustment are made to individual procurement and manufacturing quotas. Due to changing needs of industry, a registrant may request an increase in their established quotas at any time. There has never been an occasion in which this process has led to a disruption in a patient's access to necessary medications.

Specifically regarding the three substances controlled under the CMEA, the DEA developed proposed estimates of the medical need of the United States for ephedrine, pseudoephedrine and phenylpropanolamine. The methodology used was developed with the assistance of an independent contractor that utilized three parallel data sets.

In establishing the 2007 estimates, DEA also considered exports, known industrial uses of these substances, and inventory requirements. The establishment of quotas is published as a Notice of Proposed Rulemaking in the Federal Register with an opportunity for public comment.

In addition, FDA and the Pharmaceutical Industry are working to develop new and reformulated products to insure that there has been no interruption of the supply of OTC products containing a nasal decongestant, because drug companies have reformulated some of their OTC products by replacing pseudoephedrine with phenylephrine, a nasal decongestant. FDA has determined that products which contain phenylephrine are safe and effective and have effects similar to pseudoephedrine.

DRUG USE

*Question.* At the last April 5, 2006, budget hearing, I asked you whether the price and availability of cocaine has changed significantly as a result of DEA's efforts. In response, you stated that there have been "statistically significant" changes in certain areas, and "It's measurable."

Since 2001, have the arrests and cocaine seizures by DEA had a sustained impact on the availability of cocaine?

Answer. DEA's large-scale Drug Flow Attack enforcement operations have had a major impact on the domestic drug markets. From the first quarter of 2007 through the second quarter of 2007, the average price per pure gram of all domestic cocaine purchases increased 24 percent. DEA's Operation All Inclusive, the centerpiece of DEA's Drug Flow Attack Strategy, has caused major disruption in the flow of cocaine, money, and chemicals between source zone areas and the U.S. Operation All Inclusive 2007 resulted in the seizure of 115 metric tons of cocaine which is 12 to 28 percent of the estimated quantity of cocaine transported through the transit zones to the United States during 2006. Also, in comparing the three month periods before and after Operation All Inclusive 2005, the average price per pure gram of cocaine increased 43 percent.

Furthermore, DEA in conjunction with ONDCP, commissioned a 16-month study by the CNA Corporation (CNAC) to determine the impact of law enforcement activities on cocaine availability in Atlanta, Chicago, and Dallas for the period 1999 through 2003.[2] The study, which was completed in April, 2006, sought to (1) to develop a model to identify and quantify the relationship between law enforcement activities (primarily DEA) and cocaine availability, and (2) to determine whether a common model was appropriate for all three cities. The study concluded that it is the cumulative or sustained impact of law enforcement activities that seem to best explain price and purity changes.

The study confirmed that DEA's priority targeting system did have some temporary impact on availability as observed by price and purity proxy measures in the selected cities. A sustained increase in arrests, arrests per case, and cocaine seizures are each associated with a statistically significant increase in cocaine price and decrease in cocaine purity. However, if increased levels of these law enforcement measures are not maintained, price and purity will return to their previous levels. Moreover, while prices were not higher in 2003 than in 1999, CNAC inferred that the prices would have been lower and the drug problem worse in the absence of law enforcement activities.

---

[2] *Impact of Law Enforcement Activities on Cocaine Availability: Atlanta, Chicago, and Dallas*, The CNA Corporation for ONDCP and DEA with Department of Health and Human Services, IPR 11781, April 2006.

CNAC researchers concluded further that it is impossible to create a single model to assess availability at the national level, or even between the selected cities. Not only are there simply no accurate measures of the quantity of cocaine available locally, regionally, or nationally, but there are too many variables that can have a significant effect on availability.

*Selected key findings*

Arrests, arrests per case, and cocaine seizures have an impact on price and purity, and, by inference, on cocaine availability, although the impact may not materialize for several months. In addition to the quantity of arrests, the concentration of arrests (i.e., targeting specific organizations) in a specific case had an impact on price and purity. Ten arrests in 1 case, rather than 1 arrest in 10 cases, caused bigger disruption or dismantlement than arrests spread across several cases.

The CNAC study concluded that it is the cumulative or sustained impact of law enforcement activities that seem to best explain price and purity changes: "Another way to think about this is that price and purity were at about the same level in 2003 as in 1999. All of the law enforcement activities in those five years did not drive price to a new permanent high or purity to a new permanent low. What we observed were often substantial, but temporary, price and purity changes following short-lived increases in arrests or cocaine seizures. For example, prices were relatively high and purity relatively low in Chicago and Atlanta in 2000 following a substantial increase in the number of arrests in those cities." In Chicago, for example, a sustained 20-percent increase in arrests was associated with an 8 percent ($13.00) increase in the price per pure gram for powder cocaine and a 4 percent ($6.00) per gram increase for crack cocaine. To the degree that powder prices are more indicative of the wholesale market and crack the retail market, DEA arrests impacted the wholesale market more than the retail market.

*Question.* At that same hearing, I asked you whether you agreed, that in Washington, D.C., the prices of crack cocaine have not increased and the availability of cocaine is about the same as it was three years ago. In response, you stated that you would get back to me. A year later, we still have not received a response.

Does the evidence show that the price and availability of cocaine in Washington, D.C. has changed significantly as a result of DEA's efforts?

Answer. The following is a brief overview of the cocaine pricing and availability situation in Washington, D.C.

*Cocaine Prices*

DEA's Washington Division reports that cocaine prices in Washington, D.C. have remained stable over the past six years, as have cocaine availability and abuse patterns. Cocaine price data for the period January through March 2006 indicate that cocaine hydrochloride sold for $1,100 per ounce in the Washington, D.C. metropolitan area compared to a price range of $900–$1,250 in 2001. Kilogram and gram powder cocaine prices and crack cocaine prices were not reported for 2006.

Prices are derived from undercover buys, Confidential Source (CS) information, and defendant information. Price data is not a completely accurate indicator of supply and demand. Much of this information is anecdotal, and prices cannot be validated through any scientific methodology. The greater the quantity, the more anecdotal the information, since DEA does not often purchase kilogram quantities.

The following chart provides the latest data available on cocaine prices for Washington, D.C. The national price range is provided for comparison.

## WASHINGTON, D.C. COCAINE PRICE RANGES 2001–2006

[National Price Range Provided for Comparison]

| Quantity | 2001 | 2002 | 2003 | 2004 | 2005 | 2006 |
|---|---|---|---|---|---|---|
| Powder Cocaine (cocaine HCl): | | | | | | |
| Kilo—DC | 16,500–35,000 | 17,500–35,000 | 17,000–35,000 | 24,000–25,000 | 23,000–27,000 | 19,000–26,000 |
| Kilo—National | 13,000–35,000 | 10,000–35,000 | 10,000–35,000 | 10,000–35,000 | 7,000–34,000 | 9,000–52,000 |
| Ounce—DC | 900–1,250 | 600–2,000 | 825–1,300 | 900–1,100 | 650–1,250 | 1,100 |
| Ounce—National | 400–1,600 | 400–3,500 | 375–1,800 | 350–1,800 | 300–1,600 | 300–2,000 |
| Gram—DC | 50–100 | 30–80 | 50–100 | 100 | ([1]) | ([1]) |
| Gram—National | 20–200 | 24–150 | 25–100 | 9–200 | 20–200 | 13–350 |
| Crack Cocaine (cocaine base): | | | | | | |
| Kilo—DC | 28,000–34,000 | 30,000 | 28,000–34,000 | 28,000–34,000 | 28,000–34,000 | ([1]) |
| Kilo—National | 13,000–50,000 | 13,000–35,000 | 7,500–35,000 | 8,000–38,000 | 14,000–34,000 | 13,000–32,000 |
| Ounce—DC | 900–1,300 | 900–1,750 | 1,000–1,300 | 1,000–1,200 | 550–1,250 | 900–1,200 |
| Ounce National | 300–2,800 | 325–2,800 | 325–2,000 | 325–2,000 | 325–2,000 | 210–3,800 |
| Gram—DC | 80–100 | 80–100 | 80–100 | ([1]) | ([1]) | ([1]) |
| Gram—National | 10–200 | 10–130 | 10–130 | 18–200 | 20–200 | 12–200 |

[1] N/R.

Source: Quarterly Trends in Traffick Report—DEA Washington Division.

*Changes in the Washington, D.C. Cocaine Market*

The main change in cocaine trafficking in the metropolitan area pertains to cocaine sources of supply. Over the past several years, cocaine smuggling from North Carolina and from the Southwest Border (especially Texas and Arizona) has increased. This mainly impacts Southern Virginia, but still affects Northern Virginia and Washington, D.C. Drug trafficking organizations in New York City, however, still appear to be the principal cocaine suppliers for Washington, D.C.

*Cocaine Availability*

The Washington, D.C. Metropolitan Police Department (MPD) indicates that cocaine availability has remained stable over the past several years. The MPD also reports that drug-related violence remains static, with the exception of homicides, which have decreased over the past five years.

*Cocaine Hydrochloride (HCl)*.—Kilogram quantities of cocaine HCl continue to arrive in the DEA Washington Division area of responsibility (Washington, D.C., Maryland, Virginia, and West Virginia). Powder cocaine sold on the mid- to retail level remains widely available. The quantities of cocaine HCl available in any given area greatly depend on abuse patterns, the level of distribution at which a particular dealer conducts business, and the prevalence of cocaine abuse in that area. Cocaine HCl most commonly is found in gram and ounce quantities for resale in suburban and rural areas, but in larger quantities (i.e., quantities appropriate for redistribution after conversion to crack) in urban areas of the Division.

*Crack Cocaine*.—Crack cocaine is available throughout the Washington Division are of responsibility in quantities ranging from rocks up to one kilogram. Most of the crack cocaine distributed within the Division is brought in as cocaine HCl and subsequently converted to crack. Generally, significant quantities of crack cocaine are not stockpiled and are manufactured according to demand.

*Question.* Two months ago, Administrative Law Judge Mary Bittner ruled that University of Massachusetts Professor Dr. Lyle Craker could grow marijuana for medical research purposes. Judge Bittner found a "minimal risk" that the marijuana would be diverted to the black market. And she found that the government's current use of one medical marijuana research facility insufficient to meet the needs of legitimate medical researchers. DEA must now review Judge Bittner's ruling granting Dr. Craker approval to cultivate medical marijuana.

What procedures will DEA follow in reviewing Judge Bittner's ruling? Will DEA solicit the input of governmental and non-governmental organizations in this process?

Answer. DEA has never denied a registration to a person seeking to conduct clinical research with marijuana whose research protocol has been deemed meritorious by the Department of Health and Human Services. By law, DEA must—prior to granting a registration to conduct such research—seek the input of the Department of Health and Human Services (DHHS) as to the scientific merit of the proposed research. If DHHS finds the proposed research to be scientifically meritorious and the researcher to be competent, DEA must assess whether the research will have in place sufficient safeguards against diversion. Provided the diversion controls are sufficient and the proposed research is otherwise in conformity with the Controlled Substances Act, DEA will grant the research registration. Under the Administrative Procedure Act and the Controlled Substances Act, the Administrative Law Judge issues recommendations rather than final decisions. Ultimately, the Deputy Administrator of DEA makes the final determination.

The University of Massachusetts case has been submitted to the Deputy Administrator for a final determination. While the case remains pending before the agency, it would inappropriate for DEA to comment on it.

*Question.* In May of 2006, DEA arrested five Mexican nationals during a raid at a heroin lab in Toluca, Mexico. The lab was suspected of being the principal source of fentanyl pushed into the U.S. drug supply of heroin and cocaine, causing deaths in eight states. U.S. Drug Czar John Walters estimated that there could be 1 million doses of the tainted drug on the streets.

Are you concerned that drug traffickers have substantially poisoned the U.S. drug supply?

Answer. DEA is deeply concerned over the illicit distribution of fentanyl, which has caused an unprecedented outbreak of fentanyl-related overdoses. Between April 2005 and February 2007, at least 972 confirmed fentanyl-related deaths, and an additional 162 suspected fentanyl-related deaths have occurred primarily in Delaware, Illinois, Maryland, Michigan, Missouri, New Jersey, and Pennsylvania. A total of 903 confirmed fentanyl-related deaths occurred during 2006.

DEA has responded by hosting a coordination meeting of federal, State, and local law enforcement officials in Chicago in June of 2006 to address this recent fentanyl

outbreak. Several DEA Field Divisions, including DEA's Mexico City office, the Department of Justice, and the Office of National Drug Control Policy (ONDCP), state chemists, and public health and treatment officials attended this event. DEA has assisted the interagency response to the fentanyl threat by participating in numerous teleconferences with SAMSHA (Substance Abuse and Mental Services Health Administration), CDC (Centers for Disease Control) and other agencies regarding fentanyl-related deaths.

*Question.* Is there any indication that traffickers may be building more labs? And do you believe Congress needs to tighten controls on the precursors used to make fentanyl?

Answer. Because of recent clandestine laboratory activity and the serious threat illicitly produced fentanyl poses to the public safety, DEA will regulate or control the chemical precursors used in the illicit manufacture of fentanyl. These precursors are 4-anilino-N-phenethyl-4-piperidine (ANPP), (CAS# 21409–26–7) and N-phenethyl-4-piperidone (NPP), (CAS# 39742–60–4). Both of these precursors are required to produce fentanyl. NPP produces ANPP which is not commercially available and is the direct precursor to fentanyl.

DEA has controlled the intermediary precursor, N-phenethyl-4-piperidone (NPP) as a List I chemical under the Controlled Substances Act (CSA) through an Interim Rulemaking, effective April 23, 2007. The new rule subjects handlers of NPP to the chemical regulatory provisions of the CSA. The designation of NPP as a List I chemical subjects NPP handlers to all of the regulatory controls and administrative, civil, and criminal sanctions applicable to the manufacture, distribution, importing, and exporting of a List I chemical. Persons potentially handling NPP, including regulated chemical mixtures containing NPP, are required to comply with the List I chemical regulations including registration, records and reports, import/export, security, and administrative inspection.

DEA is also moving to control the precursor chemical, 4-anilino-N-phenethyl-4-piperidine (ANPP) as a schedule II controlled substance, because it is an immediate precursor in the production of fentanyl and warrants the stricter DEA controls applicable to schedule II drugs. DEA is in the process of preparing a Federal Register Notice to propose this control. As a schedule II controlled substance, ANPP will be subject to the same registration, recordkeeping, security and import/export controls as fentanyl.

---

## QUESTIONS SUBMITTED BY SENATOR RICHARD C. SHELBY

### METHAMPHETAMINE

*Question.* Administrator Tandy, methamphetamine use has become a severe and very worrisome problem in Alabama. While the number of labs seized in Alabama has decreased significantly the problems related to this drug continue to worsen.

Can you tell the Committee how methamphetamine distribution has changed?

Answer. Methamphetamine is unique from other common drugs of abuse in that it is a synthetic drug, and its precursor chemicals have historically been easy to obtain and inexpensive to purchase. These factors contributed to methamphetamine's rapid sweep across our nation. However, State legislation, the Federal Combat Methamphetamine Epidemic Act, and law enforcement efforts have all contributed to a significant decline in methamphetamine labs inside the United States. The number of methamphetamine laboratory incidents reported in the United States has decreased from 17,857 in 2004 to 7,385 in 2006, a 59 percent decrease.[3] The number of "super labs" seized in the United States dropped from 144 in 2002 to 20 in 2006, a decrease of 86 percent.

Current drug and lab seizure data suggests that roughly 80 percent of the methamphetamine used in the United States now comes from larger laboratories run by Mexico-based trafficking organizations operating on both sides of the border. The proliferation of methamphetamine across the United States, and its spread to states such as Texas, Georgia, and Alabama, has required our offices, in concert with their State and local counterparts, to gear the majority of their methamphetamine enforcement efforts towards the targeting of poly-drug trafficking organizations, rather than small lab operators. These drug trafficking organizations have distribution networks throughout the United States, as well as access to drug transportation routes to smuggle the methamphetamine from Mexico into the United States.

*Question.* How are you attacking this problem?

---

[3] Methamphetamine laboratory incident data is current as of August 28, 2007.

Answer. DEA is working hard with the Government of Mexico to target the criminal organizations involved in the diversion of precursor chemicals and the producing and trafficking of methamphetamine. Relations between Mexican authorities and DEA are at an all time high in terms of chemical control. Mexico has imposed import quotas tied to estimates of legitimate national needs. The Mexican Government limited pseudoephedrine, ephedrine, and combination product importation permits to 70 tons during 2006; this is a reduction of 53 percent from the 2005 level of imports (150 tons). Mexico has discussed revising their quota downward even further in 2007.

In May 2006, at the National Methamphetamine and Chemicals Initiative (NMCI) Strategy Conference in Dallas, Attorney General Gonzales announced important new anti-methamphetamine domestic initiatives, as well as new partnerships between the United States and Mexico in fighting methamphetamine trafficking. These initiatives will improve enforcement and information sharing, increase law enforcement training, and increase public awareness both domestically and internationally. Since this announcement, methamphetamine enforcement teams have been formed on both sides of the border and DEA has donated eight refurbished clan lab trucks to Mexico.

Additionally, DEA and the Department of State, Bureau of International Narcotics and Law Enforcement Affairs trained over 2,000 Mexican officials in fiscal year 2006 on a variety of investigative, enforcement, and regulatory methods related to methamphetamine trafficking and manufacturing. This training included instruction on clandestine laboratory investigations, precursor chemical investigation, and drug identification. As a result of this training, Mexican law enforcement officials have had significant success in identifying labs.

In fiscal year 2006, DEA also trained over 41,000 State and local law enforcement officers, including over 1,000 in how to conduct investigations and dismantle seized methamphetamine labs. By the end of 2008, DEA also plans to complete a clandestine laboratory training facility in Quantico, Virginia to better train more State and local officers.

DEA has expanded the role of its Clan Lab Enforcement Teams to target Mexican methamphetamine trafficking organizations. These teams use their lab expertise to trace chemicals, finished methamphetamine, and drug proceeds to drug trafficking organizations in the United States and Mexico. These teams also work to identify and dismantle U.S.-based methamphetamine transportation and distribution cells.

DEA has also developed an intelligence collection program, Operation White Fang, to assist in the identification and targeting of organizations responsible for producing and trafficking methamphetamine across the entire Southwest Border. The operation focuses particularly on the groups responsible for the drug related violence facilitated by the major Mexican cartels operating along the U.S./Mexico border. In the fiscal year 2008 President's budget, DEA requests $325,000 to expand this operation.

*Question.* How has the DEA adjusted its enforcement activities to meet this threat?

Answer. In addition to the efforts mentioned above, DEA has used a multi-tiered approach over the last several years to enhance its attack on the diversion of bulk quantities of key precursors needed to manufacture methamphetamine, ephedrine, and pseudoephedrine. On the bi-lateral front, through our offices based in the United States and overseas, we are making headway by actively targeting, through joint investigations and initiatives, the diversion of precursor chemicals and the organizations involved in this activity. On the multi-lateral front, we are working with relevant international organizations and engaging both source and transit countries through international forums to target the diversion of these substances and to promote and promulgate good practices to prevent their diversion in the future.

In March 2006, the United States successfully sponsored a resolution at the United Nations Commission on Narcotic Drugs (CND) that requests countries to provide and share voluntary information relating to their annual requirements for key methamphetamine precursors and urges countries to provide information to the International Narcotics Control Board (INCB) on shipments of these precursors in both bulk and tablet forms. This data will serve to allow the international community to observe where potential areas for diversion of these precursor chemicals are occurring. At present, some 80 nations have provided estimates of their annual licit requirements for bulk ephedrine and pseudoephedrine to the INCB who in turn will publish this information on a yearly basis in their annual precursor report. Importantly, the resolution also requests that countries permit the INCB to share information regarding suspicious shipments with law enforcement authorities, so that appropriate measures can be taken in order to prevent or interdict those shipments of concern.

During a meeting of the CND in March 2007, the United States joined the European Union (EU) in co-sponsoring an EU-drafted resolution which contained many useful and potentially important provisions regarding methamphetamine precursor control. Among other things, the resolution requests member states to voluntarily recognize the heightened threat of diversion of ephedra and phenylacetic acid, to exercise increased vigilance regarding their movement, to apply available monitoring measures regarding the trafficking of non-controlled derivatives and substitute chemicals, and to develop further national guidelines and training programs in consultation with industry with respect to precursor chemical control.

While theses resolutions on precursor chemical control are important steps, they are voluntary measures which will take several years to be fully implemented and, as such, we do not see them as the sole solution to our obtaining information regarding diversion of these precursors from licit trade. We do see the CND resolutions as important steps in the sharing of information to which, heretofore, we were not privy.

*Question.* Would you explain the toxic and environmental challenges that DEA agents face when they find these labs?

Answer. Clandestine drug laboratories are a unique law enforcement challenge to DEA agents, our State and local law enforcement counterparts, and any peripheral support personnel providing assistance to the investigation and dismantlement of a lab. Methamphetamine's addictive characteristics produce devastating effects on all of its victims. These victims are not limited to those who choose to use this poison, but include others who become part of what could be considered the drug's "collateral damage". Those who suffer the "second-hand" effects of meth include the victims of methamphetamine-related crimes, innocent children whose homes have been turned into toxic clandestine lab sites, law enforcement officers who work with the hazardous materials found at lab sites, and the environment from the approximately five pounds of toxic waste produced for every pound of methamphetamine cooked.

Poisons and other highly toxic materials are often used in the illicit manufacturing of methamphetamine. The potentially hazardous elements that agents face when addressing a clandestine lab may include corrosive chemicals in combination with flammable chemicals. The corrosives may be both acidic and caustic in nature and in liquid, solid, or gas form. Aside from the volatilization of acids and solvents due to the introduction of heat, other more lethal compounds may be created at various stages in the clandestine production process. Chemical reactions between these ingredients may also generate reaction by-products that present a significant toxic danger. Additionally, the fire and explosion hazards in clandestine lab environments are considerable as a result of the solvents used in the chemical processing and extraction of the methamphetamine.

During clandestine laboratory investigations, aside from evidence collection, DEA and law enforcement in general only dismantle and remove the chemicals, glassware, and apparatus. Law enforcement conducts only gross contaminant remediation and virtually no site decontamination. Currently, no national standards for remediation and decontamination exist. However, the U.S. House of Representatives recently passed legislation to change this. The legislation charges the Environmental Protection Agency with the development of guidelines to assist State and local authorities in cleaning up former methamphetamine lab sites.

FINANCIAL INVESTIGATIONS

*Question.* Administrator Tandy, when we met earlier this year we discussed the fact that Americans spend up to $65 billion annually on illegal drugs. DEA is making a renewed effort to go after the cash profits in the drug business. You stressed in our meeting that DEA is looking at the drug trade as a business and attacking the flow of drug proceeds with financial and money laundering initiatives.

Can you tell the Committee more about what you are doing in these financial investigations?

Answer. DEA has set a five-year plan that by fiscal year 2009 we will be taking $3 billion per year away from all drug trafficking organizations (DTOs). The cumulative targets over five years total $10 billion. In just the first two years we have denied traffickers $3.5 billion in revenue. We count not only the money and property seized, but also the value of the drugs seized—that is the amount of funds invested in the drugs by the owner computed at production cost levels, which are very conservative.

To accomplish these goals, DEA makes use of its authority to conduct undercover operations, known as Attorney General Exempted Operations (AGEO), which employ sensitive activities delineated by the Department of Justice (DOJ). In order for DEA to participate in these undercover money laundering investigations, the oper-

ation must undergo review by the Sensitive Activities Review Committee (SARC) and be approved by both the DEA Administrator and by a Deputy Assistant Attorney General of DOJ's Criminal Division.

There are two possible types of SARC approved operations. The first is a Shelf Account operation. This operation enjoys the authority to establish undercover corporations and to open related undercover bank accounts to assist in ongoing narcotics investigations. A DEA office may then conduct transactions with a cap of $1.5 million.

The second type of SARC approved operation is a Full Exemption. This type of operation allows for the establishment of an undercover corporation and bank account, but also affords the operation the use of any commissions collected to offset reasonable undercover expenses and to enter into an undercover lease of property. These types of investigations allow DEA Special Agents, acting in an undercover capacity the ability to infiltrate drug organizations through the use of financial transactions.

Both types of operations are approved for a period of six months, each must call DEA's Office of Financial Operations (FO) in advance of any undercover pickup for a FO transaction number for tracking purposes and to assure FO that they have received prior approval from the DEA Country Attaché (CA) from any affected foreign office. The individual CA approval will also include documentation of the U.S. Ambassador and host counterpart's prior approval as well. All three approvals must be secured before any enforcement activity takes place in the foreign country, to include the wire transferring of funds which have been laundered, thus insuring compliance with DEA's Memorandums of Understanding with the Department of State as well as the host government counterparts. Each of the operations must also submit monthly statistical reports and undergo onsite inspections every six months.

A Fully Exempted operation will have a cap of $10 million, which may be increased upon a written request with an appropriate justification to the SARC committee. Each Fully Exempted operation must also be target specific, precluding DEA from operating open ended umbrella operations. Before extensions are granted for Fully Exempted operations, a review of the operation's arrests, seizures, and Title IIIs (lawful communications intercepts) conducted during the current reporting period are taken into consideration.

*Question.* How do drug cartels get their cash profits out of this country and how is the DEA dealing with this threat?

Answer. According to current estimates from the National Drug Intelligence Center, between $13 billion and $47 billion per year in drug trafficking profits leave the United States, mostly in the form of bulk currency, bound for international sources of supply. The smuggling of large sums of cash across our borders is the primary method used to expatriate drug proceeds from the United States. To target this flow of cash, DEA has initiated the following national financial initiatives:

The Bulk Currency Initiative, a Special Enforcement Operation, coordinates all U.S. highway interdiction money seizures to develop the evidence needed to identify, disrupt, and dismantle large-scale narcotic trafficking organizations. When DEA is notified of a cash seizure by a State or local municipality, agents respond to the scene, assist with debriefing the defendants, and coordinate potential controlled deliveries of currency. Special Agents also assist in follow-up investigations, seizure and forfeiture of currency, and provide guidance on federal prosecution. DEA's El Paso Intelligence Center (EPIC) conducts research and analyzes evidence and intelligence relating to PTOs and other types of investigations.

The Bulk Currency Initiative is aimed at assisting in the development of new investigations pertaining to seizures of large amounts of United States currency, as well as linking these seizures to ongoing drug investigations. This initiative endeavors to bring together all of the information and intelligence from existing interdiction programs through cooperative and collaborative sharing of information between federal, State, and local initiatives, and includes currency seizures made on United States highways through the highly successful Operation Pipeline program, and currency seizures made at various United States commercial airports through Operation Jetway. Additionally, DEA relies on its extensive foreign operations apparatus to identify instances where bulk United States currency is introduced into a foreign country's local economy.

The Bulk Currency Initiative attempts to coordinate investigations that will be initiated in the field and assist in obtaining evidence and intelligence that may be shared among the various DEA field divisions. The DEA has found that the transportation of large amounts of United States currency from within the United States to various border locations continues to be one of the primary methods utilized by large scale trafficking organizations to launder narcotics proceeds. After arrival at any of the numerous border crossing points throughout the United States, this bulk

currency is easily transported into a foreign country where it can be placed into the financial system with less risk of detection or reporting to law enforcement authorities, and eventually be utilized for a variety of illegal purposes. This movement of bulk cash presents an opportunity for law enforcement entities to disrupt an important facet of the narcotic trafficking process.

The Concealment Trap Initiative, a Special Enforcement Operation program, targets those vital service providers who build concealed trap compartments in conveyances and residences for DTOs. The initiative has a two-fold objective. The first is to identify, prosecute, and/or gain the cooperation of the trap builders to identify the DTOs for whom they have previously built concealed traps. The second is, through the use of these cooperators and/or DEA Special Agents who have already been specially trained in the art of building concealment traps, to offer to build traps or provide trapped out vehicles (within the legal framework). These traps will have installed tracking devices to enable law enforcement to monitor the movement of these vehicles. These trapped vehicles will act as pointers to identify stash houses or locations where drugs and money are picked up and dropped off. Once these locations are identified, surveillance, controlled deliveries, communications intercepts, and other investigative techniques will enable the investigators to identify and seize millions in additional drug proceeds. Interdiction stops of vehicles using independent probable cause, with no reference to DEA's current investigation, will also be performed whenever possible. The vehicle with a concealed compartment will also be used to track bulk currency shipments back to the source of the drugs.

Operation Highwire, a Special Enforcement Operation program, funds undercover sting operations targeting money remitters and others who offer money laundering services. Operation Highwire focuses on individuals involved in laundering drug proceeds through money remitter companies or individuals providing remitter-like services. DEA is targeting the finances of drug trafficking organizations operating along the Southwest Border, in the transit zone, and in source countries. DEA is also expanding financial investigations beyond the Western Hemisphere. Through its presence in Afghanistan, Dubai, and the surrounding region, DEA is targeting the flow of drug revenue suspected of financing terrorist activities. For example, DEA is developing intelligence on Afghanistan-based Hawaladars.

The Hawala system is the principal method through which money is moved from, to, and throughout Afghanistan. Hawala is an established and accepted facet of the licit Afghan financial services industry. Legitimate Hawala brokers exist in Afghanistan and throughout the Islamic world. Afghan legislation requires hawalas to register with and be regulated by the Government of Afghanistan. The underground system thrives particularly due to the dearth of a legitimate banking industry in country. Approximately eleven banks have opened in Afghanistan since the fall of the Taliban. To date, these banks enjoy only a small portion of business typically reserved for banks. In zero sum fashion, Hawaladars often replace existing banks as providers of financial services. The principal service provided by Hawaladars is the transfer of money from one place to another. That traditional service does not preclude others, such as: currency exchange, check cashing, safeguarding of monies (i.e. acceptance of deposits), and other services. Moreover, it is believed that a significant percentage of Hawaladars also work in the import/export field.

By working closely with our host nation counterparts, such as the Counter Narcotics Police-Afghanistan, DEA enjoys the access it needs to learn how traditional systems like Hawala operate. This knowledge, combined with DEA's institutional expertise in international drug investigations and drug intelligence will allow DEA to demonstrate that the Hawala system is not invulnerable. DEA's initial objective is to identify illicit money remitters operating in Afghanistan, and the Hawaladars with whom they work worldwide.

Specific attention will be paid to identifying linkages to the United States. Acquisition of Hawaladar identifying information such as telephone/cell phone contact information, names, and possibly addresses will be the first step towards homing in on those involved with drug money laundering and with the provision of financial services to terrorists. Hawala transaction data is obtained through various means. Some is obtained through arrests and/or the execution of search warrants by DEA's foreign counterparts, who share the data with us. Communication intercept operations also yield hawala transaction data. Hawaladars in the United Arab Emirates are required by the government to file suspicious activity reports and to make their books available for inspection. Afghan authorities are implementing similar measures. Frequently, legitimate hawaladars form guild-like organizations, generally referred to as Hawala Unions, which set and enforce business standards and guarantee customers' rights. The Afghan government has established liaison relationships with a number of these unions in furtherance of developing market watch intelligence. Upon identification of a hawaladar participating in illicit activity, oper-

ational personnel will pass communications and other identifying information to the DEA's Special Operations Division and OCDETF's Fusion Center for exploitation. Between DEA, FBI, and other U.S. government database checks, and SOD communications exploitation, those Hawaladars determined to be involved with narcotics trafficking and/or terrorism will become potential targets of investigation.

The Money Trail Initiative (MTI) is a Special Operations Division (SOD) supported multi-jurisdictional, multi-agency, Organized Crime Drug Enforcement Task Force (OCDETF) initiative targeting various DTOs that attempt to avoid law enforcement detection by smuggling multi-million dollar amounts of U.S. currency within and out of the United States to further their criminal enterprises. The MTI includes attempts to identify new bulk currency smuggling techniques and has already demonstrated a tangible impact from several operations. To date, $126,098,915 in cash and $22,667,016 in assets have been seized. A total of 14,719 kilograms of cocaine, 161,447 pounds of marijuana, 538 kilograms of methamphetamine, 300 pounds of ice, and 35 kilograms of heroin have been taken off the streets under this initiative. The MTI involves the coordination of national bulk currency wire tap investigations and employs a "Follow-The-Money" strategy that enables domestic and Mexico-based DEA offices to utilize a more systematic and proactive approach to respond to techniques and trends in bulk currency operations. Through a coordinated operation, agents track the movement of currency forward to intended recipients and backward from the couriers to identify the breadth and scope of the DTOs that generate money. The MTI allows investigators to identify the money and drug transportation coordinators, couriers, and facilitators that are often shared between multiple DTOs.

DEA Financial Investigative Teams focus on the flow of drug proceeds and how they can be identified and seized. While DEA will lead these efforts, they will involve cooperation with our federal, State, local, and foreign counterparts.

The National Trucking Initiative, a Special Enforcement Operation program, is aimed at assisting in the development of relationships between DEA and the United States trucking industry. This will allow DEA access to the industry's assets and intelligence, which will assist DEA in disrupting the method for transporting drug proceeds via rogue trucking companies or transportation groups, in collaboration with several major truck lines.

The License Plate Reader (LPR) Initiative combines the DEA, HIDTA, and U.S. Customs and Border Protection (CBP) database capabilities with new technology to identify, interdict, and/or develop intelligence on conveyances being utilized to transport drugs and bulk cash. DEA has implemented capabilities to exploit data collected from the LPR in Texas where the DEA Houston Division Office is currently operating LPRs in Falfurrias and Laredo. Use of the data from LPRs will be expanded nationally as funding becomes available. DEA exploits data collected from the LPR devices to tip-off DEA and other law enforcement agencies to suspect vehicles moving both to and from the Mexico border and identify conveyances being utilized to transport drugs and bulk currency. This is accomplished using the El Paso Intelligence Center as the recipient of all tactical requests. In addition, DEA has set an internal requirement to determine what strategic value and uses are being gained from the program to assure the program is best utilized. Once the proper network is funded, LPR data will be funneled to the OCDETF Fusion Center where it will be used for a comprehensive analytical research project.

In the Fiscal Year 2007 Global War on Terror Supplemental, DEA requested and received $3,000,000 in non-personnel funding for Financial Investigations to support a proactive attack on the financial infrastructure of drug trafficking organizations operating in Afghanistan and within the region to help prevent Afghanistan from becoming a narco-terrorist state. This funding will support two initiatives: the first is an operation to develop a precise understanding of the Hawala system, and the second is to establish an ongoing, coordinated, regional Financial Investigation Training Program. The training program is being done in conjunction with the Department of State, the Department of Defense, and on a country by country basis with pertinent Operation Containment allies.

*Question.* Under the Bank Secrecy Act, the Departments of Treasury and Homeland Security administer a number of enforcement activities and regulatory restrictions on money remitters. How are you collaborating with these Departments to jointly stop the flow of money?

Answer. Money remitters are classified as Money Service Businesses (MSB) under the Bank Secrecy Act (BSA). As a MSB, money remitters fall under the Currency Transaction Report (CTR) filing requirements of the BSA. IRS is designated as the regulatory monitoring authority for MSBs for BSA regulatory compliance. Additionally, IRS-Criminal Investigation (CI) has sole jurisdiction over the enforcement of the CTR reporting requirements. Since both domestic and international drug traf-

ficking organizations exploit the vulnerabilities of the money remitting industry, DEA works very closely with the IRS on both case specific and industry-wide programs relating to money remitters. DEA also works with DHS/Immigration and Customs Enforcement (ICE) on case specific matters involving money remitters when the facts of the case involve the cross border transmission of drug money. For example, a DEA group is assigned to the ICE-led El Dorado Money Laundering Task Force in New York.

In addition to the flow of money through MSBs, it is likely that each year $8.3 billion to $24.2 billion in Mexican and Colombian wholesale drug proceeds generated in the United States are moved into Mexico via bulk cash smuggling by vehicles.[4] To combat this illicit drug money transiting the Southwest Border (SWB) into Mexico, DEA field divisions along the border are actively working with Customs and Border Protection (CBP), ICE, and IRS–CI on proactive investigations and money flow initiatives:

—DEA, ICE, and IRS–CI all participate in the Texas Department of Public Safety (DPS) Post Seizure Analysis Team in Austin, Texas.

—DEA, ICE, and the Arizona DPS are working together on a large multi-jurisdictional investigation targeting the DTOs utilizing concealed traps to transport money throughout the United States and into Mexico.

—DEA is working very closely with the Treasury Office of Foreign Assets Control (OFAC) through real-time access to sensitive case related intelligence to assist OFAC in its Kingpin and Tier II designation of Mexican drug traffickers and their associated entities.

—ICE and CBP are working with DEA's Houston Field Division on investigations into Mexican drug trafficking organizations responsible for sending thousands of kilograms of cocaine and methamphetamine into the United States, and tens of millions of drug dollars back to Mexico.

—ICE is working with the DEA Phoenix Field Division and Arizona DPS on initiatives aimed at interdicting the flow of bulk cash across the SWB. For example, the Arizona Money Trap Initiative was designed by the Phoenix Field Division to form a partnership with the various federal, State, and local law enforcement entities in Arizona. This partnership attacks as many facets as possible of the transportation and smuggling of bulk currency across the State. At the core of the initiative is the concept that information from various cash seizures will be shared, and acted upon by the member entities in a coordinated manner The initiative has several ongoing cases.

—EPIC, through its new National Seizure System (NSS), will act as a central repository for bulk cash interdiction intelligence information. ICE has tentatively agreed to place its bulk cash information in the NSS.

—ICE and IRS–CI are participating agencies at the DEA Special Operations Division (SOD). SOD coordinates DEA's largest and most sensitive investigations on drug money flow across the SWB. As participants at SOD, both ICE and IRS–CI have access to the SOD databases for deconfliction and coordination of their money flow investigations with DEA's.

—DEA and CBP are working on a number of initiatives aimed at fusing intelligence to identify and interdict money flowing across the SWB by and on behalf of DEA targets of investigation. DEA and CBP Headquarters are working with the Fusion Center to test the LPR program by combining indices from each organization. DEA and CBP are also working in Texas on the Divisional use of the LPR system. Additionally, DEA and CBP are working at the Headquarters level in the trial stages of using CBP international parcels data to target and interdict bulk currency and other contraband being shipped via parcels out of the United States.

—IRS–CI is assisting the DEA Las Vegas District Office in the follow-up investigation of the recent seizure of $207 million in Mexico City from a supplier of precursor chemicals used in the production of methamphetamine.

INTERNET

*Question.* Drug traffickers, like virtually every other industry, legal or illegal, use the internet to conduct business.

What is the DEA doing to attack this problem?

Answer. The Internet is the fastest growing source of diverted controlled pharmaceuticals. DEA is working hard to attack this problem on many fronts:

[4] U.S. Department of Justice National Drug Intelligence Center (2006). Prepaid Stored Value Cards: A Potential Alternative to Traditional Money Laundering Methods. Assessment, Product No. 2006–R0803–001, 9 pages.

—DEA has provided all field divisions with undercover credit card accounts in order to make online purchases of controlled pharmaceuticals for use as evidence in Internet investigations.

—From October 2002 through December 2006, a total of 3,924 individuals (3,327 federal participants and 597 State and local participants) have completed DEA's online investigations training program. This training is provided to DEA Special Agents, Diversion Investigators, and Intelligence Analysts, as well as State and Local Task Force Officers.

—DEA's Online Investigations Project is used to provide Whois (registration information relative to domain names) and trace route information on suspect websites that might be illegally distributing controlled substances and link them to other associated websites.

—In order to identify and shut down Internet pharmacies violating the Controlled Substances Act, DEA's Diversion Control Program is using all regulatory tools possible, including Administrative Inspection Warrants, registration suspensions, and criminal/civil charges.

—DEA is using the Automated Reports and Consolidated Order System (ARCOS) to identify high volume purchasers of narcotic controlled substances and to determine which retail pharmacies and practitioners are most likely involved in the illicit distribution of controlled substances over the Internet.

—In August 2005, DEA began its Distributor Initiative Program. Since that time DEA has been meeting with representatives of the pharmaceutical industry to educate them on the issue of illegal diversion via the Internet. Through this program DEA has sought the cooperation of the distributors of controlled pharmaceuticals to increase their due diligence in order to prevent further diversion of controlled substances. As a result of this program, 24 distributors working out of 129 distribution outlets have voluntarily stopped selling or voluntarily restricted sales of controlled substances to hundreds of domestic pharmacies that were attempting to make suspicious orders from the distributors. Each distribution outlet is registered with DEA and each can loose its registration independently of the other outlets.

—DEA has worked with Internet search engines such as Google, AOL, and Yahoo to create links to DEA's Diversion Website. These links are designed to appear when consumers attempt to buy controlled substances online without the requisite medical exams and prescriptions. In 2005 and 2006, these links appeared more than 72.9 million times.

—DEA has initiated over 218 investigations of online sales of controlled substances without a prescription through the end of fiscal year 2006. DEA initiated an additional 11 investigations during the first quarter of fiscal year 2007.

—As a result of Internet investigations, DEA seized approximately $30 million in cash, bank accounts, property, and computers during fiscal year 2006. In fiscal year 2005, Internet investigations resulted in $34.5 million in seizures, a 190 percent increase over fiscal year 2004 ($11.9 million). Internet investigations have resulted in the seizure of $13 million during the first quarter of fiscal year 2007.

—DEA has developed a close working relationship with Internet Service Providers (ISPs), Voice over Internet Protocol (VoIP) providers, and email providers from around the world to include Microsoft, Vonage, Google, Time Warner, and AT&T. These providers have supplied DEA with a secure method to deliver data from the provider to DEA field agents for an immediate enforcement response.

—DEA routinely meets with other members of the law enforcement community from around the world. DEA has built an extensive cooperative relationship with other federal agencies to include FBI, Secret Service, ICE, and the U.S. Marshals Service. With the cooperation of these federal counterparts, DEA is able to leverage unparalleled engineering expertise for the design and implementation of technical solutions that ensure law enforcement's ability to lawfully intercept emerging technologies.

—DEA implemented a Technology Working Group (TWG) to address technical issues associated with Internet intercepts. The TWG routinely meets with members of the Internet industry and becomes educated on new technologies that could affect DEA, either positively or negatively. The TWG gathers and reviews reports from our field offices that discuss technologies and the obstacles associated with these technologies. The TWG follows up with the respective field agents to become more familiar with the technologies and how they effect DEA's operations. If the collected intelligence needs to be disseminated to additional sections within DEA or the law enforcement community, the TWG is responsible for ensuring that data is disseminated appropriately.

—In 2005, DEA hosted interagency meetings with executive level representatives from over two-dozen corporations in three key industry groups (Internet, express parcel delivery, and financial) used by Internet pharmaceutical traffickers. Since those meetings, DEA has developed progressively closer working relationships with the leading corporations in each industry sector and has coordinated interagency outreach to these same corporations. These industry relationships are intended to: (1) promote information sharing within the private sector and with DEA to proactively identify and target major Internet controlled pharmaceutical traffickers; and (2) identify and share best practices across industry groups to more effectively deny the use of business services by Internet controlled pharmaceutical traffickers.

*Question.* Given the large number of new encrypted communication devices entering the market, how does DEA stay up with this evolving technology?

Answer. The use of encrypted communications by drug trafficking organizations is becoming more prevalent. To counter this, DEA is an active participant in a number of technology working groups and routinely meets with law enforcement and intelligence agencies from around the world to discuss intercept solutions for emerging encryption devices. DEA also employs a highly specialized staff of engineers that test, develop, and evaluate solutions to defeat or minimize the impact of encrypted communications in use by criminal organizations.

DEA's Office of Investigative Technology, is responsible for the design, development, and implementation of technical solutions for the lawful intercept of Internet-facilitated communications utilized by drug trafficking organizations. However, the complexity and costs of a single data network intercept is often overwhelming for law enforcement. Furthermore, traditional technologies available to law enforcement for data network intercepts are vulnerable to organizations that utilize multiple access points for data communications or encrypt their communications using high level encryption protocols.

In the fiscal year 2008 President's budget, DEA requests $1,000,000 to improve and expand its Internet investigative technologies to combat the evolving methods used by drug trafficking organizations. This funding will be used to develop and purchase intercept solutions for emerging Internet technologies, including data intercept solutions that can be placed on a targeted computer to covertly capture all communications authorized by a Title III court order. Since the intercept solution actually resides on a subject's computer, mobility of a target that accesses the Internet through multiple service providers can be overcome. Also, encrypted communications can be intercepted as the software is able to capture communications in their unencrypted state, rather than when they are in transit and secure.

Ongoing investigations limit DEA's ability to provide specific details on the methods and use of this encrypted communication technology. However, this enhancement will provide DEA with the technical capacity to address certain types of communications that cannot be intercepted through conventional methods. The challenge facing DEA on these ongoing investigations is that the drug trafficking organizations increasingly communicate by means of encryption among their associates regarding transportation, distribution routes, and money laundering activities. To make it more difficult, some of these encrypted email service providers and peer-to-peer communication networks are foreign based companies not subject to our laws. Therefore, the inability of domestic law enforcement to exploit these encrypted communications has allowed the criminal organizations to operate with impunity and prohibit the intercept from realizing its full investigative potential.

There are several ongoing investigations that have been adversely impacted by the use of encryption by the targeted organizations. For example, drug trafficking and money laundering organizations have directed members of their organization to use encrypted email service providers and peer-to-peer communication networks to facilitate, organize, and conduct criminal acts. Drug traffickers have also learned to converse over the Internet and on their cell phones using one or more encrypted methods. These methods range from sending and receiving calls, sending instant messages, and viewing information over an encrypted email service and/or peer to peer communication network. Additionally, the drug trafficker or money launderer has the ability to use a cell phone or computer device with minimal knowledge, identity, and cost.

*Question.* In your testimony, Administrator Tandy, you identify a problem with online pharmacies. What are the challenges these online drug stores present to the DEA?

Answer. The illicit trafficking of controlled pharmaceuticals has been facilitated by the wide use of the Internet and the anonymity it provides. The existence of readily available drugs on the Internet is a great concern because of the potential for abuse and the potential safety issues that revolve around what is largely an un-

regulated process. A July 2006 Department of Justice, Office of the Inspector General report states, "The increase in the diversion of controlled pharmaceuticals has coincided with the emergence of the Internet as a significant source for diverted pharmaceuticals. Hundreds of Internet pharmacies have been established through which large amounts of pharmaceuticals can be easily purchased with a credit card and without a prescription."[5] Much of the problem revolves around third-party businesses operating websites that facilitate a doctor's ability to write, and a pharmacy to fill, numerous prescriptions without a face-to-face visit.

DEA investigations indicate the Internet is the fastest growing and one of the largest sources of diverted controlled substances. The volume of controlled substances being diverted by a single rogue pharmacy dispensing via the Internet poses a major threat. For example, in fiscal year 2006, DEA identified 34 known or suspected rogue pharmacies dispensing controlled substances via the Internet. Cumulatively, these pharmacies dispensed 98,566,711 dosage units of hydrocodone-based products in 2006. It would take 1,118 legitimate pharmacies to dispense the same amount of hydrocodone-based products as these 34 rogue Internet pharmacies did in 2006.[6]

Online investigations also require more resources than traditional diversion investigations because a large amount of data is retrieved and processed during online investigations. For example, Internet online pharmacy cases require a cadre of highly skilled engineers to develop customized intercept solutions. On average, a major online investigation conducted by DEA costs $1.5 million (including salaries and operational costs) and requires 27,800 work hours (based on five recent major online investigations). In comparison, a typical diversion investigation costs $220,000 and requires 3,800 work hours. However, online investigations may not require the same amount of resources as large non-diversion cases with extensive Title III investigations. For example, the recent Operation Three Hour Tour cost $2.4 million and required 48,000 work hours.

One lawful intercept or Title III can reveal hundreds to thousands of users. Operation CyberRX was one of DEA's largest Internet intercepts and intercepted over 6,500 individuals purchasing pharmaceuticals illegally. The volume of data collected during this investigation required the deployment of additional resources. As a result, the Fort Worth Resident Office has seized over $19 million in cash and assets and 19 individuals were arrested.

Finally, online pharmacies that operate outside of the United States and its territories pose legal and technical issues for DEA. Internet Service Providers (ISPs) operating within the United States are generally responsive to lawful orders issued by U.S. courts. However, DEA's regulatory authority and Administrative Subpoena authority does not extend to the foreign-based ISPs, companies, or pharmacies. Furthermore, DEA is unable to measure the exact number of rogue "pharmacies" operating outside the United States. A Google search may reveal thousands upon thousands of "sites" that offer controlled pharmaceuticals however many of these sites are transient and illusive, taking advantage of the anonymity afforded by the Internet. Experience has also shown that many of these are referral sites and are not ones that would ultimately fill an order. It is usually difficult, if not impossible, to trace where international sites are physically located. Some investigations have revealed that the web site may be located in one country, while the "pharmacy" is located in another, and the money is received in yet a third country. Often times the international "pharmacy" is not a pharmacy at all and the products that are shipped may be diluted or counterfeit substances.

*Question.* Are there additional legal authorities you need to assist you in this war?

Answer. The Administration is looking at a wide range of potential legislative measures. DEA wants to stop the illegitimate online pharmacies while ensuring that legitimate pharmacies and doctors are able to effectively use the Internet.

Since the advent of the Internet law enforcement has encountered numerous obstacles and challenges. The "Technological Revolution" has opened new and evolving legal hurtles never before faced by any previous generation. Though designed for the benefit of society, the Internet has allowed criminals the ability to continue their activities while maneuvering through cyberspace under the cloak of anonymity. Traditional crimes such as child pornography, identity thefts, drug diversion, and fraud are able to flourish in cyberspace. Daily, law enforcement, attorneys, legislators, and the courts are all faced with new issued brought about by the Internet. Yesterday's laws are often inappropriate, outdated, or inadequate to deal with crimes that

[5] *Follow-Up Review of the Drug Enforcement Administration's Efforts to Control the Diversion of Controlled Pharmaceuticals*. DOJ, Office of the Inspector General, July 2006.

[6] Source: ARCOS data. In 2006, the average U.S. pharmacy dispensed 88,178 dosage units of hydrocodone.

evolve so quickly. Compounding the problem is the fact that often there are parallel issues involving the use of the Internet for legitimate and well intended purposes. It is therefore vital that when laws are drafted to deal with matters as important as the diversion of controlled substances that they will withstand the test of time. The Drug Enforcement Administration is always willing to provide Congress with whatever technical assistance it can for legislators to determine what laws they deem appropriate and necessary.

SURVEILLANCE

*Question.* The drug cartels are spending millions to overcome your surveillance, even conducting counter surveillance activities on the DEA.

What are the cartels doing to make surveillance more difficult?

Answer. DEA has gathered intelligence that traffickers both in the United States and outside the United States have become more technologically advanced in an effort to divert law enforcement. Devices that are used everyday as a secure means of communication pose a threat to law enforcement and its capability to conduct lawful intercepts. These devices provide a secure means of viewing and sending data over a handheld device (such as a Blackberry) via a foreign based company server. This is further accomplished utilizing proprietary company software that has the ability to encrypt the data, sent over a U.S. based cellular provider's network to a recipient's communication device that contains the proprietary software needed to decrypt the data. Should U.S. law enforcement intercept this encrypted data anywhere between the sender and the recipient, we would not be able to decrypt the communications due to its high level encryption algorithms.

Drug cells operating around the world are aware of the complexity in conducting intercepts, whether it is on a telephone or a computer. The availability of wireless "hotspots" and cybercafés adds to the complexity of conducting intercepts because a target is able to utilize a laptop computer or an Internet enabled device to access the Internet where he/she can use email, oversee financial assets, and make Voice over Internet Protocol (VoIP) calls using multiple Internet Service Providers (ISPs). Law enforcement does not have the ability to deploy mobile intercept equipment from ISP to ISP due to the complexity of these intercepts. However, if intelligence is able to determine a pattern on a subject's use of the Internet, we can then begin to target the provider in hopes of deploying an intercept.

The use of VoIP services is becoming more common mainly because of the low cost of these services. Although DEA is able to intercept VoIP communications and routinely does so, providers are beginning to offer features such as encryption and peer-to-peer communications for added security. One of the most recognizable vendors in this area is Skype Communications. Skype is free software that is downloaded off of the Internet which allows for encrypted VoIP and instant messaging communications between customers that have also downloaded Skype's software. The communications only require Internet connectivity to facilitate the communications. The communications are not delivered through a traditional ISP server but rather each Skype user allows for the facilitation of communications over a peer-to-peer network. The data delivery of these communications takes an unpredictable route making it almost impossible to intercept. Furthermore, if the data was intercepted it would be in an encrypted format that would be almost impossible to crack. DEA has also observed several additional email providers that market their encrypted email features for little or no charge.

Traffickers transiting the high seas on commercial maritime vehicles and the Caribbean on go-fast boats also make surveillance difficult by communicating by satellite telephones. While DEA has used satellite telephone intercepts and maritime tracking devices to successfully locate and seize vessels laden with drugs, satellite telephone intercepts are extremely costly. For example, there are instances where satellite telephone companies are not CALEA compliant and DEA must engineer an intercept solution to glean investigative information.

In the fiscal year 2008 President's budget, DEA requests $3,100,000 for improved satellite telephone and maritime tracking resources, as well as additional linguist funding and data collection capabilities.

In fiscal year 2008, DEA also requests $2,000,000 for tracking, sensor, and audio/video surveillance equipment. Surveillance equipment is particularly crucial in areas such as the Southwest Border (SWB) because it is a major point of entry with few realistic controls. Cartels are also building sophisticated encrypted radio networks along the SWB for command and control. Surveillance equipment, such as remote cameras, tracking devices, and alarms, are one of the only ways to cover such an expansive area. DEA field divisions along the SWB employ a variety of sophisticated audio and video surveillance equipment including mobile surveillance plat-

forms, digital equipment with Internet connectivity, mobile x-ray equipment, microwave automated repeater systems, and scanners for monitoring radio frequencies. Much of this equipment is a "force multiplier" because agents do not need to be physically present to monitor the surveillance, which enables them to be more productively used elsewhere.

In regards to counter surveillance, it has become more commonplace for drug traffickers and drug trafficking organizations to use sophisticated countermeasures to detect electronic surveillance signals. The most frequently used countermeasure devices are radio frequency (RF) detectors, frequency counters, and scanners.

A radio frequency detector identifies devices which transmit RF signals within the operating parameters of the detector. RF transmitters used by law enforcement agencies for surveillance purposes convey audio, video, and data from one location to another. RF detectors are commonly used by legitimate industry technicians to locate frequencies, identify unwanted signals, and interference which contribute to degradation of RF signals. These devices are also used for more nefarious purposes by criminals for the purpose of identifying electronic surveillance by law enforcement. RF detectors, from basic inexpensive types to expensive sophisticated models, are widely available through Internet vendors as well as stores commonly referred to as "spy shops."

A frequency counter is a device that determines the frequency emitting from a transmitter. The are two basic types of frequency counters, one that will determine the exact frequency of analog transmissions, and one that will determine the exact frequency of either analog or digital transmissions. A scanner is used to identify radio emissions in a given area.

RF detectors, frequency counters, and scanners are used in concert to complete an effective, electronic "sweep" of an area for RF signals. Criminal organizations are known to retain highly paid private detective firms or other vendors specializing in providing electronic "sweeps" of homes, offices, vehicles, or other conveyances and locations to identify electronic surveillance devices.

*Question.* What is DEA doing to overcome these obstacles?

Answer. DEA employs a cadre of Engineers and Telecommunications Specialist to develop, test, and implement technical intercept/surveillance solutions. The equipment that is utilized to develop these solutions is very complex and very costly. The skill set these employees possess is very unique and requires a great deal of training in order to evolve as quickly as technology dictates.

DEA has also developed minimization software for data intercepts that enables law enforcement to view or listen to intercepted communications just as a target would view or listen to it. The software that is utilized during Internet intercepts is constantly being updated to conform to the Internet's constantly changing protocols. DEA provides this software to other federal agencies, as well as State and local law enforcement agencies.

The ISPs that DEA routinely works with also advise DEA of new technologies prior to their release to the general public. This enables DEA to proactively develop solutions which will allow DEA to have intercept solutions in place should an investigation require them. This provides minimal turnaround time and allows the data to be expedited to the field.

Finally, DEA continues to work with industry, the field, and other federal, State and local agencies to research, develop, and employ both active and passive surveillance countermeasures.

MET PROGRAM

*Question.* Administrator Tandy, the Mobile Enforcement Team (MET) program has proven to be very successful in assisting State and local law enforcement agencies in addressing their communities' drug threats. The Budget proposed to eliminate the MET program.

How will DEA respond to requests for assistance from State and local law enforcement without the MET program?

Answer. MET is not the only DEA program that benefits State and local law enforcement. In addition to the MET program, DEA leads over 200 State and local task forces, including over 1,600 DEA Special Agents and over 2,100 State and local task force officers, all of whom are dedicated full time to address drug trafficking, including trafficking in our local communities.

Despite the elimination of the MET program, DEA will continue to work side-by-side with our State and local law enforcement partners by sharing intelligence and providing training to them. DEA assists State and local law enforcement in many ways, for example:

—DEA's EPIC Open Connectivity Project provides web-based access to approximately 1,800 Federal, State, and local partners on an annual basis. Users can query and access law enforcement data maintained by EPIC.
—In fiscal year 2006, DEA shared $274 million in State and local proceeds with State and local law enforcement, a 25 percent increase over the $219 million shared in fiscal year 2005, including a 40 percent increase in the funds shared with Sheriffs. This level of sharing is expected to continue.
—In fiscal year 2006, DEA trained over 41,000 S&L officers, including over 1,000 in meth lab clean up and training.
—By the end of 2008, DEA plans to complete a clandestine laboratory training facility to better train more State and local officers.

UNITED STATES/MEXICO COLLABORATION

*Question.* Administrator Tandy, State and local law enforcement officers are the "end-users" that deal with the drugs and violence proliferated by Mexican drug trafficking organizations. Historically, the government of Mexico has not been a strong ally in addressing this threat.

What is your assessment on America's current working relationship with the Mexican government on combating drug trafficking organizations?

Answer. Under the Calderon Administration, our relationship with Mexico has experienced unprecedented levels of cooperation and solidarity in combating drug trafficking organizations. Specifically, DEA is working hard with the Government of Mexico to target the criminal organizations involved in the diversion of precursor chemicals and the producing and trafficking of methamphetamine. Relations between Mexican authorities and DEA are at an all time high in terms of chemical control. Mexico has imposed import quotas tied to estimates of national needs. The Mexican Government limited pseudoephedrine, ephedrine, and combination product importation permits to 70 tons during 2006; this is a reduction of 53 percent from the 2005 level of imports (150 tons). This quota has made it more difficult for traffickers to obtain precursor chemicals. Prices have increased and traffickers have been forced to resort to traditional diversion methods, including smuggling and the use of third countries to procure their chemicals. In addition, intelligence indicates that traffickers have also turned to alternate production methods for methamphetamine and the apparent use of substitute chemicals as the traditional precursors are becoming more difficult to obtain. Mexico has discussed revising their quota downward even further in 2007.

In May 2006, at the National Methamphetamine and Chemicals Initiative (NMCI) Strategy Conference in Dallas, Attorney General Gonzales announced important new anti-methamphetamine domestic initiatives, as well as new partnerships between the United States and Mexico in fighting methamphetamine trafficking. These initiatives will improve enforcement and information sharing, increase law enforcement training, and increase public awareness both domestically and internationally. Since this announcement, methamphetamine enforcement teams have been formed on both sides of the border and DEA has donated 8 refurbished clan lab trucks to Mexico. Additionally, DEA and DOS/INL trained over 2,000 Mexican officials in 2006 on a variety of investigative, enforcement, and regulatory methods related to methamphetamine trafficking and manufacturing. This training included instruction on clandestine laboratory investigations, precursor chemical investigation, and drug identification.

DEA has also expanded the role of its Clan Lab Enforcement Teams to target Mexican methamphetamine trafficking organizations. These teams are using their lab expertise to trace chemicals, finished methamphetamine, and drug proceeds to drug trafficking organizations in the United States and Mexico. These teams are also working to identify and dismantle U.S.-based methamphetamine transportation and distribution cells.

The United States also enjoys an excellent extradition relationship with Mexico, which has served both countries well in the administration of justice. In 2006, for the fifth consecutive year, Mexican authorities extradited a record number of fugitives to the United States. In 2006, there were 60 extraditions from Mexico to the United States. Twenty-six of these extraditions were for drug charges, including 24 Mexican nationals. In 2005, Mexico extradited 41 fugitives to the United States—up from 34 in 2004.

The new administration of President Calderon has taken a strong, proactive stance against drug traffickers and the associated violence. On January 19, 2007, Mexico extradited 15 offenders to the United States, a significant number of which have U.S. narcotics trafficking and related charges. Notably, the leader of the Gulf Cartel, Osiel Cardenas-Guillen, two high-level members of the Tijuana Cartel, two

mid-level members of the Juarez Cartel, and three high-level and two mid-level members of the Federation were extradited.

DEA works closely with its Sensitive Investigative Unit (SIU) in Mexico. As of December 31, 2006, the Mexican SIU consists of nearly 300 Federal Investigations Agency, Federal Preventive Police, and SIEDO (federal prosecutors). Furthermore, during 2006, under DEA direction, 2,161 agents of the AFI and the Policia Federal Preventiva and other Mexican personnel were trained by DEA and State Department funded contractors on clandestine laboratories, officer/first responder safety, and chemical identification. DEA also provided training to both Mexican prosecutors and law enforcement as part of a month-long course at the DEA Training Academy in Quantico, Virginia.

The Bilateral Intercept Program is an unparalleled initiative between DEA and the Government of Mexico which has developed a comprehensive wire intercept program by utilizing the SOD methodology of simultaneously targeting international drug trafficking organizations throughout the United States and Mexico. Early successes have indicated cooperation between DEA and Government of Mexico will only continue to expand coordinated law enforcement efforts.

Operations All Inclusive 2005–1 and 2006–1 is another example of DEA and Government of Mexico cooperation. These operations ran from August 5, 2005 through October 8, 2005, and March 4, 2006 through April 26, 2006, respectively, and targeted South American source regions, Eastern Pacific and Western Caribbean vectors of the Mexico/Central America transit zones, and the Mexico and Central America land mass, by attacking the drug trade's main arteries and support infrastructure with innovative, multi-faceted, and intelligence-driven operations. Both operations exploited the maritime, overland, commercial air, and private air smuggling vulnerabilities in the movement of drugs, money, and chemicals. DEA and other federal, State, and host nation law enforcement and military agencies supported both operational and intelligence aspects of these operations.

Operation All Inclusive 2005–1 seizure highlights in Mexico include 21.05 metric tons of marijuana, 108 kilograms of cocaine, 35.2 kilograms of heroin, and nearly 1 million tablets of pseudoephedrine. Of particular importance were two currency seizures at the Mexico City Airport totaling $8.7 million. One seizure totaling $7.8 million, which was eventually linked to members of the Mexican "Federation," is the largest currency seizure to date at the Mexico City International Airport. During this operation, over 46 metric tons of cocaine were interdicted and seized before they could reach Mexico, where the drugs are normally broken down into smaller quantities for transshipment north and to make them more difficult to interdict. Additionally, 3.5 metric tons of cocaine seized from the fishing vessel *Vega* in the Eastern Pacific Ocean on August 15, 2005, was linked to Colombian PTO Herman Vasquez-Sanchez and an alleged Mexico City-based recipient who were identified through wire intercepts. Operation All Inclusive 2006–1 highlights included the arrest of three pilots and the seizure of a DC–9 and Dassault Falcon Jet aircraft and 5.6 tons of cocaine at the Ciudad de Carmen Airport, Campeche, Mexico. Also, nearly 17 metric tons of marijuana and 10.4 kilograms of heroin were seized. Thirty-eight metric tons of cocaine were interdicted and seized before they could reach Mexico.

*Question.* What does the future hold for increasing DEA-Mexican cooperation?

Answer. In addition to enforcement assistance and the development of new enforcement strategies, DEA will continue to offer training to the Government of Mexico. In fiscal year 2006, under DEA direction, over 2,000 agents of the AFI and the Policia Federal Preventiva and other Mexican personnel were trained by DEA and State Department funded contractors on clandestine laboratories, officer/first responder safety, and chemical identification.

DEA will also continue to work with the Government of Mexico to obtain the extradition of high value targets such as occurred on January 19, 2007; when Osiel Cardenas Guillen, a CPOT and the leader of the notorious Gulf Cartel which is headquartered in Matamoros, Mexico; who was responsible for much of the "narco-violence" on the Southwest Border was turned over to the DEA by the Government of Mexico to face drug charges in U.S. Federal Court.

DEA will also continue working with the Government of Mexico on future iterations of Operation All Inclusive. Recognizing that the United States cannot control its borders by merely enforcing the immediate border, DEA's International Drug Flow Attack Strategy incorporates a "defense in depth" component by attacking the source and transit zone. This model has successfully been applied internationally in two deployments and is in the beginning stages of a third operation (Operation All Inclusive 2007–1). A fourth iteration focuses on the Southwest Border and is called Operation Doble Via. Operation Doble Via is a combination of staggered and simultaneous U.S./Mexico enforcement operations combined with intelligence driven en-

forcement operations designed to influence illicit trafficking patterns and increase disruptions to violent DTOs.

Operation All Inclusive was developed to attack an entire region in hopes of not simply displacing cartels but eliminating them. Operation All Inclusive causes major disruption to the flow of drugs, money, and chemicals between the source zones and the United States. To effectively combat drug trafficking in Central America, Mexico, and the transit zone, the United States must maintain a sustained, multi-agency approach. The DEA focuses on improving the region's counter drug capabilities through developing personal liaisons with host nation law enforcement authorities, institution building with host nation governments, and by attacking the command and control structures of major drug trafficking organizations.

MARIJUANA

*Question.* Administrator Tandy, marijuana abuse is one the most significant drug challenges currently faced by law enforcement agencies. The majority of domestically cultivated marijuana is being grown on public lands in our national parks and forests. These marijuana plots are being aggressively defended by armed Mexican drug cartels, making our national treasures unsafe for public use.

Do you agree with this assessment?

Answer. The Department of Agriculture, Forest Service (USDA, FS) and agencies of the Department of the Interior (DOI) continue to detect significant increases in marijuana cultivation on federal public lands nationwide. These findings correspond to reports of expanded domestic cannabis cultivation and marijuana production. Domestic cannabis eradication data for 2005 shows the highest level of cannabis eradication ever recorded. In 2005, 4.2 million plants were seized compared to 3.7 million in 2003, the next highest level in the years 2000–2005.[7]

The cultivation of marijuana on public lands is dominated by loosely organized, poly-drug Mexican drug trafficking organizations (DTOs) employing illegal Mexican aliens for the production and distribution of marijuana and methamphetamine nationwide. The violence and environmental risks associated with this cultivation is growing, therefore DEA is striving to halt the spread of marijuana cultivation in the United States by focusing various federal, State, and local law enforcement efforts towards identifying and dismantling the DTOs directing and controlling this activity.

*Question.* What is DEA's strategy to address this growing threat?

Answer. To address this threat, DEA has initiated a public land working group comprised of affected federal land management agencies. DEA is examining how best to leverage the available resources of our federal partners through better sharing of intelligence and targeting of these DTOs. Critical to this strategy will be the collection and sharing of intelligence concerning the communications devices and techniques used by those growing marijuana on our public lands. Federal land management agencies have confirmed their commitment to sharing intelligence with DEA. With the intelligence gathered, DEA will identify and attack the Mexican organizations that direct and control the cultivation and distribution.

Marijuana cultivation on public lands presents a number of enforcement challenges, including the need for air support and large numbers of law enforcement personnel to safely and successfully accomplish eradication missions. DEA has the mechanisms in place through the Special Operation Division, the Fusion Center, and the El Paso Intelligence Center to add value to intelligence from marijuana enforcement operations on public lands and to coordinate and expand investigations beyond simple plant eradication to attacking the controlling DTOs. DEA has offered this established strategy and available resources to the FS and DOI, as well as additional training and access to intelligence information.

DEA is also working with the Park Service and Forest Service to cross-designate selected Park Service and Forest Service law enforcement officers to work on specific cases with DEA, or to serve on DEA task forces. Unilateral Title 21 investigations by the DOI or the Forest Service would lack the coordination necessary to ensure the safety of law enforcement personnel, and would not permit de-confliction with other domestic and foreign investigations.

In addition to enforcement efforts, DEA's Domestic Cannabis Eradication/Suppression Program (DCE–SP) works with our participating State and local partners to target marijuana wherever it is produced throughout the United States and its territories, on both public and private lands. The DCE/SP is an enforcement activity which provides funding, operational support, and training to participating State and

[7] *National Drug Threat Assessment 2007*. National Drug Intelligence Center, U.S. Department of Justice, October 2006.

local agencies. The program strives to halt the spread of marijuana cultivation throughout the United States and is responsible for the investigation and eradication of both indoor and outdoor cultivation of the illicit crop.

---

## QUESTION SUBMITTED BY SENATOR PETE V. DOMENICI

### DEA NM RESOURCES

*Question.* I believe that the DEA plays a critical role in law enforcement activities in New Mexico. State and local law enforcement agencies reap vast benefits while working alongside these federal agents. I am concerned that the smaller communities in my home state may not be able to take advantage of these federal partnerships. This is especially problematic because community population is neither a variable nor a predictor of drug use.

Can you please explain what type of interaction DEA agents have with smaller communities and what we might be able to do to ensure that all our communities benefit by working with federal law enforcement agents?

Answer. As with all federal agencies, the DEA concentrates the bulk of its offices and agents in the highest population areas in an attempt to maximize our efforts and effectiveness. DEA has limited manpower and resources, as do all other law enforcement agencies throughout the United States. DEA has found that the most effective method to increase productivity, improve our responsiveness to State and local agencies, and ensure that all communities benefit from a federal law enforcement presence is through the employment of multi-agency task forces. The task force concept provides several advantages to all participating agencies: DEA is able to draw on the expertise of State of local law enforcement; DEA can share resources with State and local officers, thereby increasing the investigative possibilities available to all; State and local officers can be deputized as federal drug agents, thus extending their jurisdiction; State and local participating agencies can receive an equitable share of forfeited drug proceeds; and DEA can pay overtime and investigative expenses for the State and local agencies.

In New Mexico, DEA has two offices located in Albuquerque and Las Cruces. The Albuquerque District Offices (DO) is staffed with 33 Special Agents (including four supervisory Special Agents). The Las Cruces Resident Office (RO) is staffed with 17 Special Agents (including three supervisory Special Agents). The Albuquerque DO and the Las Cruces RO each support two federally funded multi-agency task forces. The addition of ten task force officers in Albuquerque and nine task force officers in Las Cruces provides DEA with a more than 35 percent increase in agent strength, which is subsequently leveraged to cover a vast area of responsibility. The addition of task force officers also prompts parent agencies to regularly interact with DEA. This representation of local community concerns also often promotes the presentation of cases for extended federal investigation and prosecution.

Additionally, the State of New Mexico is currently divided into seven Bureau of Justice Assistance regions. Throughout New Mexico, State and local law enforcement agencies are provided with federal funds to organize and implement multi-agency task forces within each respective region. Again, the task forces permit State and local law enforcement agencies—within a specific geographic area—to pool resources and information that consequently maximize effort and effectiveness. DEA Special Agents are designated by management to interact with each regional task force. This practice encourages smaller and more isolated local agencies to interact more meaningfully with DEA.

Task forces, by their very nature, are designed to facilitate the exchange of information at the federal, State and local levels. This information exchange allows for the development, coordination, and prosecution of targeted members and their criminal organizations. In order to avoid duplicative efforts, agents and task force officers routinely rely on the free exchange of information between our State and local counterparts, coupled with DEA information systems, such as NADDIS, to identify potential conflicts between competing jurisdictions. Moreover, current DEA policy mandates that communication devices suspected to be used by targets in DEA investigations be checked against DARTS prior to any enforcement operation.

The task force concept has proven to be very successful. In fiscal year 2006, the New Mexico DEA offices conducted investigations from Raton to Las Cruces and Gallup to Portales, as well as in nearly every modestly populated area within proximity. The two DEA offices in New Mexico initiated 468 cases, effected 659 arrests, and seized over 70,000 pounds of marijuana, 1,898 pounds of cocaine, 159 pounds of methamphetamine, 16 pounds of heroin, and over 4.5 million in drug trafficker currency and assets.

QUESTION SUBMITTED BY SENATOR TED STEVENS

METHAMPHETAMINE

*Question.* What is DEA doing about methamphetamine in Alaska?

Answer. DEA's Anchorage District Office (DO) prioritizes its assets by targeting the highest level drug trafficking organizations (DTOs) which can be identified in the state of Alaska. Recognizing the devastation caused by methamphetamine, the Anchorage DO puts forth considerable effort to combat the methamphetamine problem through a coordinated strategy that includes a comprehensive interdiction effort, conducting complex investigations into organizations responsible for trafficking drugs into Alaska, targeting clandestine methamphetamine laboratories, conducting methamphetamine training and certification to State and local counterparts, funding and coordinating all hazardous waste clean-ups of clandestine methamphetamine laboratories, as well as keeping up a strong demand reduction program that educates youth, bush villages, and civic groups.

The Anchorage DO is part of the Seattle Field Division (FD). Historically, Anchorage was a Resident Office (RO) with one GS–14 supervisor and 6 Special Agents (SA), for a total of 7 SA positions. However, in March 2002, DEA upgraded the Anchorage RO to a DO through the addition of a second GS–14 supervisor and a GS–15 Assistant Special Agent in Charge (ASAC), for a total of 9 SA positions. Additionally, in September 1999, DEA opened a Post of Duty in Fairbanks, Alaska. This office has two Special Agent positions.

Prior to the March 2002 upgrade, the Anchorage office operated a Drug Task Force with 5 Task Force Officers (TFOs). The Anchorage DO now has 7 TFOs. Furthermore, at any given time 10–15 additional State and local officers are deputized (on a case specific basis) to assist in major investigations. As of May 2007, 12 State and local officers are deputized. The Anchorage DO is co-located with the Anchorage Police Department (APD) Metro Narcotics Unit and the Alaska State Troopers (AST) Major Offenders Unit (MOU).

DEA intelligence indicates that, in accordance with national trends, most of the methamphetamine found in communities throughout Alaska originates from the Southwest Border of the United States. DTOs following trafficking routes through cities such as Las Vegas, NV, Tucson, AZ, and Seattle, WA, where the meth is repackaged and distributed through parcel service to Anchorage. Methamphetamine wholesale prices in Seattle range from $3,000 to $4,000 per pound compared to wholesale prices of $18,000 to $20,000 per pound in Anchorage, making Alaska a lucrative destination.

The Anchorage DO Airport Interdiction Task Force (AITF) covers the entire State and is supervised and staffed by DEA Special Agents, as well as AST Investigators, Airport Police Officers, and National Guard Counterdrug Support Program personnel. It prioritizes resources to stop drugs as they come into the state of Alaska through interdiction at all parcel sorting facilities (FedEx, UPS, U.S. Postal Service, etc.), the Port of Anchorage, and the Anchorage International Airport. The AIFT has supported several operations in Southeastern Alaska to include a joint operation with the Southeastern Alaska-Narcotics Enforcement Team and the U.S. Postal Service targeting the parcel shipping facilities in Juneau and Ketchikan. Additionally, the AITF targets outgoing flights to the bush in an attempt to interdict drugs before they arrive in the villages. The Anchorage DO coordinates these efforts very closely with State and local counterparts including the AST and the U.S. Postal Service.

In late 2006, the AITF initiated Operation Dip Net in order to better coordinate the interdiction efforts of law enforcement agencies, and to target those facilities/routes of smuggling that result in the seizure of significant contraband. The identified trends allow management to better direct law enforcement efforts by physically placing interdiction officers in the prevailing illicit drug supply route. Since the inception of Operation Dip Net, 14 pounds of methamphetamine, over 32 kilograms of cocaine, a half pound of crack cocaine, nearly 10,000 Ecstasy tablets, and a bottle of liquid LSD have been seized in Alaska. Additionally, approximately $310,000 in U.S. currency has been seized, 20 defendants have been arrested, and 23 firearms recovered or seized as a direct result of the interdiction efforts. Operation Dip Net has also put "look outs" on particular locations with cargo companies.

Due to its highly lucrative nature, methamphetamine can make its way into distribution cells that distribute retail amounts to local gangs who further distribute to the user population. To date, there is no evidence of methamphetamine making its way into Samoan gang distribution cells from sources originating in Samoa. The Anchorage DO did seize and subsequently conducted a controlled delivery of four

ounces of methamphetamine to an individual of Samoan decent, however the methamphetamine had been sent to Alaska from Las Vegas.

---

## QUESTIONS SUBMITTED TO JOHN F. CLARK

## QUESTIONS SUBMITTED BY SENATOR RICHARD C. SHELBY

### GULF COAST TASK FORCE

*Question.* Director Clark, for fiscal year 2006, the United States Marshals Service (USMS) was authorized by Congress to establish a Regional Fugitive Task Force in Alabama and Mississippi. Just last week, this Task Force arrested Gerald Campbell who was previously convicted and sentenced to life in prison for murdering his wife but escaped in 1978 from the Alabama Department of Corrections. The Gulf Coast Task Force tracked Campbell down and arrested him after 23 years on the run.

Mr. Director what is the status of this task force, and can you tell us about some of the other good work they have accomplished?

Answer. The Gulf Coast Regional Fugitive Task Force (GCRFTF) began operations on July 1, 2006. It is the sixth RFTF within the USMS. The GCRFTF expects to be fully operational by the end of fiscal year 2007. There are five office locations in Alabama: Birmingham, Huntsville, Montgomery, Mobile, and in the future, Dothan. The Birmingham office serves as task force headquarters and includes a training center similar to other RFTFs. There are three office locations in Mississippi: Oxford, Jackson, and Gulfport.

Supporting the GCRFTF are USMS Technical Operations Group (TOG) facilities and personnel in Birmingham, Montgomery, and Jackson. There are 32 USMS positions authorized and all of these positions have been filled. In addition, 100 investigators from 30 law enforcement agencies are working in conjunction with the GCRFTF.

Since its inception, the GCRFTF has made a tremendous impact on the region. Below are the statistics from July 2006 to April 2007:

| | Number |
|---|---|
| Felony Fugitives Arrested | 1,700 |
| Warrants Cleared | 2,246 |
| Arrested Individuals Wanted for Homicide | 100 |
| Arrested Individuals Wanted for Sex Offenses | 471 |
| Arrested Individuals Who Were Not in Compliance with Sex Offender Registry Requirements | 187 |
| Firearms Seized | 84 |

In addition to arresting Gerald Raye Campbell, a convicted murderer who was wanted for escape from the Alabama Department of Corrections after 23 years on the run, the GCRFTF has made several significant arrests. Below are two additional notable arrests during the month of April 2007:

On April 4, 2007, Jerone Bussey was arrested in Athens, Alabama, by members of the GCRFTF and officers from the Athens Police Department (APD). Authorities in Indianapolis, Indiana, wanted Bussey for murder after he allegedly shot and killed two people with an AK–47 assault rifle. One of Bussey's alleged victims was seven and one-half months pregnant at the time of the shooting. USMS investigators in the Southern District of Indiana developed information indicating that Bussey fled to the Athens area. The GCRFTF responded by identifying Bussey's probable location in Athens, and established surveillance. The GCRFTF, with assistance from marked APD units, conducted a felony stop on Bussey's vehicle and took him into custody without incident.

On April 11, 2007, Kent Steward, a registered sex offender, was arrested in Ozark, Alabama, by members of the GCRFTF and officers from the Ozark Police Department. Authorities in Ozark wanted Stewart for kidnapping and rape of a minor after he allegedly abducted and sexually assaulted a ten year old girl. After authorities identified Stewart as a suspect, GCRFTF established covert surveillance outside his probable location. When investigators later observed a male subject matching Stewart's description, they moved in and safely took Stewart into custody. Stewart has a previous conviction for rape. If convicted, Stewart faces life imprisonment with no possibility of parole.

*Question.* The Alabama Mississippi Task Force is the 6th such force created by the USMS. Does the agency have a plan to expand this concept into other regions of the country?

Answer. USMS Regional Fugitive Task Forces (RFTFs) consisting of "Federal, State and local law enforcement authorities in designated regions of the United States" were established by the Presidential Threat Protection Act of 2000 (Public Law 106–554) to locate and apprehend fugitives. RFTFs supplement the 85 district-managed, multi-agency task forces already operating throughout the country. To date, six RFTFs are in operation and USMS is exploring areas of the country where RFTFs would have the greatest impact based on the warrant workload, but there are no immediate plans for additional RFTFs. The city in parenthesis indicates where the task force headquarters office is located:

—Capital Area Region (Washington, DC)—in operation.
—Great Lakes Region (Chicago, IL)—in operation.
—Gulf Coast Region (Birmingham, AL)—in operation.
—New York/New Jersey Region (New York, NY)—in operation.
—Pacific Southwest Region (Los Angeles, CA)—in operation.
—Southeast Region (Atlanta, GA)—in operation.

*Question.* What types of fugitives do these task forces investigate?

Answer. RFTFs target the "worst of the worst" fugitives who have a history of violence. They include murderers, gang members, drug traffickers, and violent sex offenders. The USMS approach in assisting state and local agencies with their fugitive warrants has been twofold. First, the USMS reviews all fugitive warrants to determine their ability to be executed. During the review process, many warrants are determined to be unserviceable because of the age of the warrant, witnesses have disappeared, police officers or agents have retired, evidence is missing, or the prosecuting attorney dismisses the warrant upon review. Second, the USMS prioritizes based on the severity of the charge. Once a warrant is pursued by an RFTF, all resources are brought to bear to locate and apprehend the fugitive.

ADAM WALSH

*Question.* The National Center for Missing and Exploited Children (NCMEC) estimates that there are approximately 600,000 sex offenders in the United States that are required to register. As many as 100,000 are not in compliance with their registry requirements.

How does the passage of the Adam Walsh Act affect the USMS?

Answer. The Adam Walsh Child Protection and Safety Act of 2006 directs the Attorney General to use the resources of federal law enforcement, including the United States Marshals Service (USMS), to assist jurisdictions in locating and apprehending sex offenders who violate registration requirements. It further provides that sex offenders who violate registration requirements are deemed to be fugitives for purposes of the Marshals Service's fugitive investigation functions, and it provides federal penalties for sex offenders who violate registration requirements under circumstances supporting federal jurisdiction (such as interstate travel). See § 142 of the Adam Walsh Act and 18 U.S.C. 2250. The reforms of the Sex Offender Registration and Notification Act—i.e., title I of the Adam Walsh Act—generally strengthen the minimum national standards for the sex offender registration and notification programs of the states and other covered jurisdictions, and the national database and website system which make sex offender information obtained under the individual jurisdictions' programs more widely available to law enforcement and the public. See generally 72 FR 30209 to 30234 (May 30, 2007) (proposed National Guidelines for Sex Offender Registration and Notification issued by the Attorney General). The Adam Walsh Act reforms increase the capacity of responsible officials at all levels of government to track sex offenders effectively following their release into the community through enhanced registration standards and requirements, and the USMS serves as the lead federal law enforcement agency in investigating violations of these requirements and helping to locate and apprehend non-compliant sex offenders.

*Question.* How long would it take the Service to fully enforce this law, and what kind of resources would be required?

Answer. It will take several years to fully enforce this law because the existing network of sex offender registries must first be improved and the Sex Offender Registration and Notification Act (SORNA) must be implemented by all jurisdictions. Most, but not all, states have some form of registry already in place, however, these registries are not well integrated with each other or with the National Sex Offender Registry. In the interim, the USMS has begun a two-part approach: enforcement and compliance.

With regard to enforcement, the USMS has established the Sex Offender Investigations Unit at headquarters. A full-time liaison has been stationed at the National Center for Missing and Exploited Children (NCMEC). The USMS is working

with NCMEC to develop and establish the "National Sex Offender Targeting Center" which will:

—Identify and prioritize targets by using analytical tools;
—Aid the USMS and other agencies with investigative leads;
—Provide a valuable data source for state and local agencies;
—Operate a national tip line and web site;
—Provide analytical support to law enforcement;
—Serve as a national point of contact for sex offender registration issues; and
—Provide a source to share other criminal leads.

Designated Sex Offender Investigations Coordinators have been identified in all 94 USMS district offices and within the Regional Fugitive Task Forces. The first 50 coordinators have already been trained and an additional 150 personnel will be trained by the end of fiscal year 2007. The USMS is currently establishing contacts with state, local, tribal, and territorial sex offender registries. At the same time, the USMS is coordinating efforts with the Department of Homeland Security's "Operation Predator" to ensure that illegal alien sex offenders are referred to the Bureau of Immigration and Customs Enforcement for removal.

With regard to compliance, the USMS is planning a media campaign to educate sex offenders about their registration requirements and the enhanced penalties for non-compliance, in an effort to encourage them to register or update their registrations.

*Question.* How many additional positions are being created in the USMS to help you track down non-compliant sex offenders?

Answer. The USMS has designated three positions from existing resources to establish the Sex Offender Investigations Unit at headquarters, which includes the full-time liaison at NCMEC. Until additional resources are provided, the USMS will rely on the six existing Regional Fugitive Task Forces and 85 district-managed task forces to aggressively pursue unregistered sex offenders and offenders against children. The USMS is committed to enforcing the Adam Walsh Act in addition to pursuing fugitives wanted for violent federal and state crimes.

The fiscal year 2008 President's budget includes a request for 54 positions (including 43 Deputy Marshals), 27 FTE, and $7,845,000 to begin deploying Deputy Marshals to areas of the country that have large numbers of non-compliant sex offenders.

MARSHALS D.C. SUPERIOR COURT

*Question.* This Committee is concerned about the health, safety and security of the U.S. Marshal Service employees at the D.C. Superior Court. The cellblock and workspace there are below any acceptable standards and are in desperate need of renovation.

Are you working with the D.C. Courts to fix the U.S. Marshals Service occupied space at the D.C. Superior Court?

Answer. Yes, the Marshals Service is working with the D.C. Courts Executive Office on a memorandum of agreement (MOA) to delineate the responsibilities for repairing and maintaining the space provided to the USMS in the Moultrie Courthouse. The space provided to the USMS by the D.C. Courts belongs to the D.C. Government. The MOA between the USMS and the D.C. Courts will identify responsibilities much in the same way that tenant/landlord agreements are established.

*Question.* Does the $10 million that the Senate provided in the fiscal year 2007 supplemental appropriations bill help begin to alleviate the Superior Court situation?

Answer. The $10 million would provide a short-term remedial solution until the Executive Office of the D.C. Courts obligates the resources to make long-term renovation to improve the cellblock physical infrastructure and USMS office space. Health, safety, and security improvements in the cellblock and prisoner receiving areas would have a positive multi-agency impact as this environment is utilized by the USMS, Metropolitan Police Department, Department of Corrections, and numerous law enforcement officers who transfer prisoners to and from USMS custody.

*Question.* Do you give this subcommittee your commitment to ensure that the USMS employees at Superior Court are taken care of?

Answer. Yes, the Marshals Service will take the necessary steps to ensure the health, safety and security of USMS employees at Superior Court. The majority of administrative personnel, warrant squad, writ squad, and prisoner coordination section have been relocated to another building because adequate space was not available in the Moultrie Courthouse. Remaining USMS personnel who manage court support and cellblock operations continue to work out of the Moultrie Courthouse and the USMS continues to request additional space from the Executive Office of

the D.C. Courts to ensure that USMS court operations has adequate and safe office space. Until additional space is obtained, the USMS will ensure that personal protective equipment and gear are supplied so that USMS personnel can operate safely.

*Question.* Does this workspace meet any Federal standard for health, safety or security?

Answer. The Marshals Service surveyed the Moultrie Courthouse and it does not meet GSA, OSHA (Occupational Safety and Health Administration), and USMS standards for security, safety and health. The USMS identified the following as problem areas: vehicle prisoner loading—sallyport, main detention area—cellblock, main detention area-fixtures and construction, detention area-processing room, main cellblock-interview rooms (prisoner) side, detention facilities, prisoner circulation from cellblock to court floors, courtroom holding facilities and circulation, support and special purpose space. The USMS is committed to working with the Executive Office of the D.C. Courts to ensure that all security, safety, or health issues are addressed in a manner that is mutually beneficial.

HOMELAND BUILD UP

*Question.* The Department of Homeland Security (DHS) is in the process of hiring up to 2,000 new border agents.

How does this escalation in DHS personnel correspond to the Marshals' responsibilities to produce prisoners for trial and provide courtroom protection?

Answer. As DHS increases the number of border patrol agents along the Southwest Border and in other areas of the country, arrests will increase which will in turn increase the number of detainees in USMS custody. The USMS average daily prisoner population continues to increase, particularly in the five districts that comprise the Southwest Border:

| | Fiscal year— | | |
|---|---|---|---|
| | 2004 | 2005 | 2006 |
| Ave Daily Prisoner Population—Total | 49,400 | 53,000 | 56,000 |
| Ave Daily Prisoner Population—SWB Only | 16,600 | 17,500 | 18,700 |

For example, the Del Rio suboffice in the Western District of Texas has an average daily prisoner population of over 2,600. In comparison, the District of Maryland has just over 450 per day. The three judicial districts in Alabama combine for just over 600 per day.

*Question.* How does this hiring at DHS affect the USMS budget?

Answer. As DHS increases its hiring, the impact on the USMS budget is felt approximately 18 months later. It takes about 18 months for DHS to recruit, train, and fill its new positions. Once on board, new border patrol agents begin making arrests which drives up USMS workload.

*Question.* How will this affect court operations?

Answer. The immediate impact to court operations is that the USMS must produce prisoners before magistrate judges for all criminal court proceedings. Even if these defendants do not reach trial, the USMS is required to produce them for all attorney interviews, medical trips, and court-related appearances. This is an enormous strain on USMS resources because Deputy Marshals must ensure the safety of all judges, attorneys, witnesses, and the public at all court hearings.

GANGS

*Question.* The increase in gang-related trials around the nation creates security concerns, not only for members of the judiciary, but also for witnesses and trial observers. Recent examples include the MS–13 trials in the D.C. area and the Aryan Brotherhood trials in California.

How is the Marshals Service tracking violent gangs?

Answer. The USMS uses the combined resources of its six Regional Fugitive Task Forces and 85 district-managed task forces to investigate and apprehend violent fugitives which include violent gang members. Investigative information gleaned from these fugitive cases is maintained in an automated fashion and is accessible by USMS judicial security inspectors who are responsible for the operational planning of high-threat trials. Many of these trials involve violent gangs, including prison gangs. This information is also used to separate detainees within the cellblock and on any JPATS air transportation movements to ensure the safety of Deputy Marshals and other prisoners.

*Question.* What more could you do if you had additional resources?

Answer. The 2008 President's budget includes a request for 17 additional positions, including 15 Deputy U.S. Marshals, and $5.1 million for high threat trial security. This request will provide surge capacity that can be deployed to high threat trials throughout the country. If fulfilled, USMS will have the flexibility to deploy additional personnel or security resources for trials related to gangs, terrorism, or any other purpose requiring additional security.

FORMER MARSHAL'S DAUGHTER HEROIC EFFORTS IN CAMPUS SHOOTING

*Question.* Director Clark, I understand that a former Marshal's daughter was wounded in the shootings on the Virginia Tech campus Monday morning. Her heroic efforts saved the lives of her classmates.

Would you tell us about Jim Carney and his daughter Katie's story?

Answer. On April 16, 2007, Katelyn Carney, the daughter of retired Deputy U.S. Marshal Jim Carney, was shot in the left hand and a second bullet grazed her head during the shooting rampage at Virginia Tech University. Ms. Carney and three other students blocked the doorway to their classroom to prevent the gunman from returning. Ms. Carney is expected to make a full recovery.

SUBCOMMITTEE RECESS

Senator MIKULSKI. Yes. This subcommittee stands in recess until next Thursday, April 26, at which time we will take the Federal Bureau of Investigation. It will be followed the following week by the EEOC and then we will come back to the Justice Department.

[Whereupon, at 11:29 a.m., Thursday, April 19, the subcommittee was recessed, to reconvene subject to the call of the Chair.]

# COMMERCE, JUSTICE, SCIENCE, AND RELATED AGENCIES APPROPRIATIONS FOR FISCAL YEAR 2008

**THURSDAY, APRIL 26, 2007**

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

The subcommittee met at 10:30 a.m., in room SD–192, Dirksen Senate Office Building, Hon. Patrick J. Leahy presiding.

Present: Senators Mikulski, Leahy, Kohl, Lautenberg, and Shelby.

## DEPARTMENT OF JUSTICE

### FEDERAL BUREAU OF INVESTIGATION

**STATEMENT OF HON. ROBERT S. MEULLER III, DIRECTOR**

STATEMENT OF SENATOR PATRICK J. LEAHY

Senator LEAHY. Let me mention before we start that, I've often used the expression that Senators are merely constitutional impediments for their staffs. And, in the United States Senate, if it wasn't for the superb staff members of both Republican and Democratic Senators, we would not be able to exist in this subcommittee. I've served on most of my years in the Senate to various integrations.

We've seen some wonderful people here, but Paul Carliner, who's sitting here to my left, this is his last hearing as clerk. He's spent 16 years in the Senate, but 8 years on this subcommittee. Paul is one of the reasons why the rest of us can do our work. He has shown the ability to reach out to Members on both sides of the aisle on very difficult things. Everybody on this subcommittee wants something, usually something different. And he's the one that's trying to do that. So, Paul, congratulations to you.

Mr. CARLINER. Thank you, Senator.

Senator LEAHY. And, Director Mueller, thank you for joining us today to testify before this subcommittee.

I also want to thank the Chair of our subcommittee, Senator Mikulski, for allowing me to open the hearing on her behalf. She's going to be joining us shortly, but she's on her way back from the formal send off for the 1,300 Maryland National Guardsmen that are going to be deployed to Iraq in the next few months.

Having attended too many of such events in my own State of Vermont, I know how hard the send off is for the guardsmen, their

families, and friends, for Senator Mikulski, and all those attending. And our hearts and prayers are with those brave Maryland soldiers and all our brave men and women preparing to leave and our hearts and prayers are with their families. I hope they come back safely.

Now, I know in the wake of the terrorist attacks, the Justice Department's focused much of its attention in the prevention of terrorism and the promotion of national security. I worry, however, that the budget proposal, if it's enacted, is going to divert critical resources and staffing from traditional law enforcement matters. We've seen a spike in violent crime, which is something I know concerns the Director very much. And, if we shift money into counterterrorism, we take it away from traditional criminal matters.

The fiscal year 2008 budget requests a realignment of 100 criminal agents, counterterrorism work. That would leave traditional criminal law enforcement significantly understaffed in the Bureau. If you realign these agents further it may further erode the Federal Bureau of Investigation's (FBI) ability to combat violent crime. It has been cited by the Office of Inspector General (OIG) as one of the top management challenges at the Justice Department.

And, since the FBI announced the Virtual Case File successor, the Sentinel Program, I really have not been confident of the Bureau's ability to manage the status and cost of this project. The FBI estimates that Sentinel will ultimately cost the American taxpayers $425 million. A December 2006 OIG audit questioned the reliability of the total estimated cost of the program. It was originally expected the full Sentinel system would be deployed in 2009. Recently, however, we hear a familiar piece of news regarding the FBI's computer upgrade project. Apparently there will be delays in the deployment of phase one of the Sentinel upgrade, which jeopardizes the schedule for this much-needed computer system.

And, I worry—as one baseball great once said, it's déjà vu all over again—we tried Trilogy, we scrapped that. We were told that Virtual Case File would meet the FBI's needs and that's been scrapped. Now that delays in Sentinel have been announced, is not clear at all the third time's going to be the charm. It's been an expensive series of lessons, costing nearly $423 million for these programs so far.

Another recent report by the Office of Inspector General found the FBI can't account for 160 laptop computers, and an equal number of weapons that were lost or stolen over a 3½-year period. And, this comes 4 years after a recommendation that they take steps to ensure the security of this equipment. And, even more troubling, in many cases, it was found the FBI could not even determine whether these lost or stolen computers contained classified or sensitive information, putting Bureau employees and other individuals at risk of becoming victims of identity theft.

I am deeply troubled by, as I've discussed with the Director and I know of his concern in this, the OIG's report finding widespread illegal and improper use of national security letters. We had a hearing on this in the Judiciary Committee.

So, we're at a crossroads. And, I think if we don't learn from the mistakes, progress won't be made.

I'll put my full statement in the record. It's quite a bit longer. [The statement follows:]

PREPARED STATEMENT OF SENATOR PATRICK J. LEAHY

Director Mueller, welcome and thank you for joining us today to testify before the Appropriations Subcommittee on Commerce, Justice and Science regarding the fiscal year 2008 budget request for the Federal Bureau of Investigation. You and I get to see each other from time-to-time when you come before the Judiciary Committee for oversight hearings. Today, however, I am here wearing my appropriator's cap and I look forward to hearing you make the case for the budget the President has proposed for the FBI in the coming year.

I also want to thank the chair of our subcommittee, Senator Mikulski, for allowing me to open this hearing on her behalf. She will be joining us shortly, but is on her way back from the formal send-off of the 1,300 Maryland National Guardsmen who will be deployed to Iraq in the next few months. Having attended several such events in my own home state of Vermont, I know how hard this sendoff must be for the Guardsmen, their families and friends, Senator Mikulski and all those attending. Our hearts and prayers are with those brave Maryland soldiers—and all of our brave men and women preparing to leave—and their families during this difficult time. We hope they will be returning home soon.

During recent years, the FBI has confronted the daunting challenge of protecting our nation against international terrorism in the wake of the attacks of September 11, 2001, the subsequent anthrax attacks and other threats. Director Mueller, you deserve credit for your efforts to assure the safety of the American people.

In the wake of terrorist attacks, I recognize that the Justice Department focused much of its attention on the prevention of terrorism and the promotion of national security. Its top priorities continue to be the prevention, investigation and prosecution of terrorist activities against U.S. citizens and interests, which is evident in the request for more than $417 million in new investments for the FBI, including counterintelligence activities and justice information systems technology.

Nonetheless, I am concerned that this budget proposal, if enacted, would divert critical resources and staffing from traditional law enforcement matters, such as reducing the spike in violent crime, to support the Bureau's counterterrorism work. The fiscal year 2008 budget requests the realignment of one hundred criminal agents to counterterrorism work. This would leave traditional criminal law enforcement significantly understaffed at the Bureau. Realigning these agents may further erode the FBI's ability to combat violent crime and has been cited by the Office of Inspector General (OIG) as one of the top management challenges at the Justice Department. We must not allow daily responsibilities that keep our citizens safe to fall aside.

It has been over two years since the FBI announced it would scrap the three-year $170 million effort to develop a modern case management system, known as the Virtual Case File, or VCF. I have repeatedly expressed to you, Director Mueller, my deep frustration over the millions of dollars wasted on "lessons-learned," and the fact that more than three years have passed since the original deadline while these technology goals are not met.

Since the FBI announced the VCF's successor, the Sentinel program, I have seen nothing to boost my confidence in the Bureau's ability to manage the status and cost of this project. While the FBI estimates that Sentinel will ultimately cost the American taxpayers $425 million, a December 2006 OIG audit report questioned the reliability of the total estimated costs for the program. It was originally expected that the full Sentinel system would be deployed in 2009. Just recently, however, we learned a familiar piece of news regarding the FBI's computer upgrade project. Apparently there will be delays in the deployment of Phase I of the Sentinel upgrade, which jeopardizes the schedule for this much-needed computer system.

This latest setback is one of a string of costly delays in the FBI's efforts to upgrade its computers. Sentinel was launched after the FBI wasted five years and millions of taxpayer dollars on the failed Trilogy program. By my calculations, at least $253 million has been invested in Sentinel alone from fiscal year 2005 to fiscal year 2007 between reprogramming dollars and Congressional appropriations. The President's fiscal year 2008 Budget proposes no funding for the project. The first of four program upgrade phases has yet to be completed, although we expected the entire Sentinel program to be up and running by 2009.

Director Mueller, this committee has to ask: Is this déjà vu all over again? You tried Trilogy and scrapped that. You told us that Virtual Case File would meet your needs and you scrapped that. Now that delays in Sentinel have been announced it's not clear at all that the third time will be the charm. This has been an expensive

series of lessons—costing nearly $423 million for these three programs so far—learned on the backs of American taxpayers.

We must ensure that the FBI's technological capabilities keep pace, and to do so requires not only an emphasis on providing funds but also effective use and implementation. I hope the latter is not neglected and I remain seriously concerned about this project.

The pattern of incompetence and lack of accountability within the Bureau is also on display with its treatment of its own equipment and weapons. Another recent report by the DOJ OIG found that the FBI cannot account for 160 laptop computers and an equal number of weapons that were lost or stolen over a 3½ year period. This finding comes 4 years after the Inspector General recommended that the FBI take steps to ensure the security of this equipment. Even more troubling, in many cases it was found that the FBI could not even determine whether its lost or stolen computers contained classified or sensitive information, putting Bureau employees and other individuals at risk of becoming victims of identity theft and potentially compromising national security information

I am deeply troubled by the DOJ OIG's report finding widespread illegal and improper use of National Security Letters (NSLs) to obtain Americans' phone and financial records. As Chairman of the Senate Judiciary Committee, I convened a hearing on NSL abuse several weeks ago. Inspector General Fine testified that his office found 22 separate instances where the FBI improperly abused NSLs in the review of just 77 FBI files. Not a single one of these violations had been reported by the FBI. On top of that, because the FBI still lacks the information technology that it needs to function efficiently in the Information Age, OJG found that the FBI database used to track NSLs malfunctioned, making it impossible to keep track of these letters. I fear that the violations the Inspector General uncovered are probably just the tip of the iceberg and that there could be thousands of additional violations among the tens of thousands of NSLs that the FBI is now using each year.

The FBI finds itself again at a crossroads. Acknowledging shortcomings is well and good, but the Bureau—and the Justice Department as a whole—must also learn from its mistakes if progress is to be made. The time has come for demonstrable progress by the Bureau on a learning curve that has gone on and on for far too long. Much work remains to be done and I have no doubt that the leaders and members of this Subcommittee will fulfill their obligation to the American people to carefully examine all of these issues.

STATEMENT OF SENATOR RICHARD C. SHELBY

Senator SHELBY. Thank you, Mr. Chairman. We appreciate you being here in place of Barbara Mikulski. We know Senator Mikulski, the Chair, is tied up, but she's very involved in these issues.

Paul, I want to just say to you, we wish you well. As Senator Leahy said, you've served the Senate well, you've served this subcommittee very, very well and we wish you the very best in whatever your next step is. We'll miss you here. You have—on this side of the aisle—I know you work with the Democrats, but you have, when I was chairman of this subcommittee, you were a valuable resource to getting the job done here, for everybody, and we owe you a lot. And, we thank you for your service to the Senate and to the Nation.

Mr. CARLINER. Thank you, sir.

Senator SHELBY. Director Mueller, thank you for joining us today to discuss the Federal Bureau of Investigation's 2008 budget request. One week after your arrival as the sixth Director of the FBI, our Nation suffered its worst terrorist attack ever on U.S. soil. The September 11, 2001 attack—attacks on the World Trade Center and the Pentagon signified the transformation of a new FBI, focusing more on national security. Congress has tasked the FBI with more responsibility than any other Federal law enforcement agency, resulting in more challenges and changes than ever before.

The FBI is the Nation's premier law enforcement counterterrorism and counterintelligence agency that investigates

criminal activity and includes terrorism, foreign intelligence, operations, espionage, cyber-crime, public corruption, national criminal organizations, white-collar crimes, and significant violent crime. The FBI request for 2008 is $6.4 billion. This is a $391 million increase over the 2007 joint resolution funding level.

It has come to my attention, Mr. Director, that the FBI has a $139 million shortfall in the 2008 budget request. Chairman Mikulski and I want to work with you to ensure that the FBI has sufficient resources to protect our Nation. Based on my review of your request, combined with the likely fiscal constraints of this subcommittee, we will need your assistance as we face tough funding decisions regarding the allocation of resources in your budget.

This subcommittee and the Bureau share the difficult task of targeting these limited resources in a manner that safeguards taxpayers' dollars, while preserving public safety. The Department of Justice's inspector general (IG) recently issued a report critical of the FBI's use of national security letters (NSL). The IG's review found that more than 60 percent of the files examined, including—included violations of the FBI's own policies and procedures.

The report also identified significant abuses in the use of exigent letters. The FBI regularly issued them when no emergency existed, often when there was not even a criminal case open. The lack of controls in the use of national security letters and exigent letters is very troubling, but as the former chairman of the Senate Select Committee on Intelligence, I also know that they're critical in your mission of keeping America safe.

Director Mueller, in our meeting last month, you committed to fix the deficiencies identified in the IG report and to implement its 10 recommendations. The FBI must carefully balance the privacy protections and civil liberties of Americans against the need to provide its agents critical information that's pivotal to mission success.

Chairman Mikulski and I have provided the FBI $10 million in the current war supplemental bill to carry out the IG's recommendations to fix these problems.

We're extremely saddened, as you were, by the tragedy that took place on the Virginia Tech campus last week. I understand that the FBI dispatched 20 agents, four victim assistant specialists, and one terrorism victim specialist. I look forward to hearing from you, Mr. Director, about the FBI's role, and what these men and women are doing to assist those affected by this terrible event.

While I wholeheartedly support bringing the FBI into the 21st century and realize the importance of information technology in the FBI's mention—mission, I have a number of unanswered questions about Sentinel's phase one implementation. Given your Trilogy failure, I will not support unlimited and unchecked resources and will not tolerate broken promises for the results of information technology (IT) projects that are not fulfilled or delivered.

I understand that things are on track and within budget, but I expect the questions of this subcommittee to be answered in a timely and complete manner. This has not occurred, but I'm hopeful that with your commitments here today, we'll be able to continue our support for this needed, important project.

The FBI's Hazardous Device School, HDS, at Redstone Arsenal, is the crown jewel of the Federal Government's effort to provide

training to Federal, State, and local bomb technicians. In partnership with the Army, this facility has trained over 20,000 bomb technicians in the past 36 years. That's a proven record of success.

HDS is the only pre-blast explosive training school in the United States. With the continued construction of the National Center for Explosive Research, Redstone Arsenal will become the home of Federal law enforcement explosives training and research. I'm working collaboratively to expand the Federal Government's explosive infrastructure and expertise here. I look forward to hearing from you, Director Mueller, to ensure that Redstone Arsenal is, and will continue to be, the law enforcement capital of explosives research and training.

There are other issues I'd like to discuss this morning, including the use of resources for the FBI's priority missions. In addition, I would like to talk about the relationship of the FBI Director to the new Director of National Intelligence and the financial and manpower implications for the FBI. I remain concerned that this new arrangement, while important, is placing additional personnel stresses on an overburdened FBI. I fear that some of the FBI's traditional law enforcement responsibilities will not be sufficiently supported by this budget request.

Director Mueller, I look forward to hearing your thoughts on the FBI's budget request and we also look forward to working with you on these and other important issues facing our Nation.

And, Madam Chairman, I just want to thank the men and women who work at the Federal Bureau of Investigation for what they do to keep this country secure.

Thank you.

Senator MIKULSKI [presiding]. Thank you very much, Senator Shelby, and good morning to everybody. I'm going to say just a few quick thanks before we go right into our hearing.

First, thank you, Senator Leahy, for opening this hearing and advising everyone that I was with our Governor, Governor O'Malley, to see off the first phase of National Guard deployment from the State of Maryland, 1,400 Marylanders have been called up, and will all be leaving in 90 days. So, we wanted to be there for them this morning.

So, Senator Leahy, thank you for that.

And, Director Mueller, thank you for accommodating the delay of starting this hearing.

I want to advise my colleagues that the Director must leave at noon. So we're going to go right into allowing you to testify, so I ask that during the questions, if you have things you want to incorporate from your opening statement, do.

I also want to thank Senator Leahy for acknowledging that today is the last hearing—the last public appearance of Paul Carliner—Ace Aide who's served me for 12 years. He has served the Nation for 12 years in his role as my clerk on Appropriations. We wish Paul well. We know wherever he goes, he will be outstanding. But also, it's a goodbye for the FBI's legislative Ace Aide as well, Eleni Kalisch.

Eleni, please stand up so people can know who you are.

Ms. Kalisch is going to be leaving the FBI. She has been the Director's liaison to this subcommittee and has done an outstanding

job. We always appreciated your candor and your cooperation, as you appreciated Paul's candor, we'll call it candor these days because we're being kind. But really, we wish you very well, Ms. Kalisch, in your new life. Because I think all of us know, we can't do our job without the worker bees and we thank our staff and again, reiterate how much we appreciate the FBI itself.

Senator Shelby outlined the budget concerns. I'm going to, essentially, agree with the issues that he's raised, and ask unanimous consent that my full statement be in the record.

And, note the fact that we've asked the FBI to essentially be two agencies, but the same agency. One agency to fight the global war against terrorism, to have an agency within the agency, our own, kind of American, uniquely American version of MI5, to really work in protecting our homeland, and at the same time to continue fighting violent crime, protecting children against exploitation, whether it's on the Internet or in the playgrounds, from despicable, heinous sexual predators. We are working to give them the resources to do both, which requires new people, requires new training, and requires us to stand sentry against those things that sometimes get out of our control.

So, in the course of this hearing, we're going to come back to know if you have the real resources to fight this new emerging spike in organized crime. How is it working to take on what we're asking you to deal with, the exploitation of children? Cyber-crime is despicable, whether it's a hacker against our national lab or whether it's a cyber-stalker against our kids. And, at the same time, the FBI is fighting the global war against terrorism.

I was recently in London and had the chance to meet with MI5, but while I was meeting with MI5 I was also meeting with the FBI office there. And I saw how the FBI and our intel agencies worked with a very treasured ally in disrupting that very ghoulish airline plot of last summer.

So, you've got a big job, we know that your budget has increased, but we want to make sure we're matching resources with mission and also standing sentry on our accountability issues. So, having said that, the statement I wanted to make on the details of the budget, I'll put into the record.

Why don't you go ahead and present your testimony, Director Mueller, and then we'll get right into the questions, which I think is the meat and potatoes of the hearing.

[The statement follows:]

PREPARED STATEMENT OF SENATOR BARBARA A. MIKULSKI

This is the second in our series of hearings focusing on security. Unfortunately, this comes in the aftermath of two tragedies—the tragic events at Virginia Tech last week and the death of FBI Special Agent Barry Lee Bush, a 20-year veteran of the FBI, who was killed in the line of duty in New Jersey three weeks ago. In both cases, we were reminded that violent crime is a growing problem in this country and the FBI's own statistics show it is on the rise.

The number one job of government is to keep our communities safe from violence. But the rise in violent crime and the critical ongoing fight against terrorism have placed new pressure on the FBI. Just look at the FBI's top priorities: combating terrorism, preventing the acquisition of weapons of mass destruction, stopping violent crime on our streets, stopping foreign intelligence operations, stopping the exploitation of children, and fixing their information technology infrastructure.

The FBI is both an intelligence and a law enforcement agency. It is no longer just a domestic law enforcement agency. It is now a global intelligence and law enforce-

ment agency operating in over 50 foreign countries. Unfortunately, compared to other intelligence agencies, the FBI share of the overall intelligence budget is small.

Yet, the FBI is charged with protecting 300 million Americans from a terrorist attack. In January, the President increased the FBI's role in counterterrorism by transferring the Render Safe mission from the Defense Department to the FBI. This means the FBI is now responsible for dismantling a nuclear device in the United States.

This has increased the FBI's responsibility and placed added pressure on its budget. I am very concerned about the rising rate of violent crime. Just look at the most recent statistics from the FBI: robbery is up by 9.7 percent, aggravated assault is up by 1.2 percent, murder has increased by 1.4 percent and for cities with populations of 500,000 to 1 million—the murder rate has increased by 8.4 percent.

However, since 9/11, the FBI has shifted almost 2,000 agents from violent crime into counterterrorism. This forced state and local law enforcement to take up the slack, because of rising crime rates, state and local law enforcement are stretched to the limit.

I believe we need more resources dedicated to violent crime. State and local law enforcement needs the FBI to help them fight street gangs like MS–13 and other types of organized crime plaguing our communities. Joint federal-state task forces are the most effective means to combat violent gangs, drug dealers and others who have a predatory intent. We should expand federal-state task forces to help locals fight crime on the streets.

Unfortunately, the President's budget cuts $1.5 billion from state and local law enforcement. You cannot cut the COPS program when violent crime is on the rise. Our communities need federal resources to keep them safe.

In addition, I am concerned about the recent disclosure of abuses in issuing National Security letters. The Justice Department Inspector General [IG] found the FBI had no tracking or compliance procedures. This is unacceptable.

That's why we added $500,000 to the IG's budget in the Supplemental Appropriations bill to continue oversight of the FBI on this subject. In addition, we directed that $10 million of the FBI's budget be dedicated to implementing the IG recommendations to make sure the FBI fixes the problem.

The FBI must not only protect us from terrorists, they have to protect our privacy and our civil rights. I commend Director Mueller for his swift response to this problem and I look forward to hearing his long-term plan to correct these abuses.

This subcommittee will also maintain it's vigilance on Sentinel, the FBI's long-delayed IT program. After the collapse of Trilogy, the FBI must stay on track, and see that this program does not fail.

At the Congress' request, both the GAO and the Justice Department IG are monitoring and overseeing this program. We will maintain our vigilant oversight to ensure that this program stays on track and that no taxpayer dollars are wasted.

The President's proposed budget for the FBI for 2008 is $6.4 billion, a 5 percent increase over fiscal year 2007. The proposed budget for fiscal year 2008 provides funding for 11,868 special agents and 17,500 professional support personnel.

I want to point out to my colleagues that since 2001, the FBI's budget has increased by over 100 percent. Few other agencies have had a 100 percent increase to their budget in just six years. But given the critical mission of the FBI, even a 100 percent increase may not be enough to fulfill its mission of protecting the American public.

In counterterrorism, the budget proposes $2.5 billion, a $160 million increase over last year. This increase will pay for 176 additional special agents and 111 additional intelligence analysts in the counterterrorism division. Counterterrorism now accounts for 40 percent of the FBI's budget.

In the area of violent crime, the fiscal year 2008 budget proposes to spend $2.1 billion, which is a $50 million increase over 2007. This is just a 2.5 percent increase over 2007.

I have two concerns with this budget. First, the FBI's most recent statistics show a rise in violent crime across the country. When you add the $1.5 billion cut to state and local law enforcement in the President's budget, it becomes a double cut. Second, a 2.5 percent increase is not enough, given the needs of our communities all across this country. State and local law enforcement want to expand their cooperation with the FBI.

The budget proposes to spend $22 million to fight crimes against children, a 5 percent increase over last year. We must do more to fight sexual predators. Our neighborhoods and communities need to be protected from these horrible predators. Since many of these predators use the internet and come from other states, only the FBI can mount a national fight against these predators, in cooperation with state and local law enforcement.

Given all of these important roles and responsibilities, we must ensure that the FBI has the resources it needs. The lives of 300 million Americans depend on it.

Mr. MUELLER. Thank you and good morning, Madam Chair, Chairman.

And, let me also start off by thanking Paul Carliner for his service. Looking at it, not from either side of the aisle, but from this side of the bench, let me tell you that our relationship has been terrific. You have been tremendously helpful and understanding the needs of the FBI and translating them into pieces of legislation to give us the funds that we need to do our mission. And, I also want to join the others in thanking you for the service and tell you that there are also, always employment opportunities at the FBI.

And, let me also mention with Eleni Kalisch here, who has been, I must say, my strong right arm in what is an exceptionally important position in the FBI and that is a liaison with Congress. She has done a remarkable job. I hate to see her go, but I wish her good sailing and we will miss her. So, thank you, also for your service.

I appreciate the opportunity, Madam Chairman, to be here today to discuss our 2008 budget request. I'd also like to thank this subcommittee for its continued oversight and support of the Bureau, as we work together to keep the Nation safe, while preserving the privacy rights and civil liberties of all Americans.

As I said, the subcommittee is aware, and has pointed out, the FBI has been undergoing significant restructuring, realignment, and transformation for the past 5½ years. All designed to better position the Bureau to meet the threats and challenges of the future. And, the men and women of the FBI have demonstrated the ability and the willingness to embrace change for a better, stronger, and more effective organization. In order to continue to meet the evolving challenges facing the Nation, our 2008 budget request totals almost 30,000 positions and $6.4 billion.

I would like to briefly address the five key challenges that are the focus of this budget request. First is combating terrorism; second, preventing the acquisition of weapons of mass destruction; third, defeating foreign intelligence operations; fourth, reducing child exploitation and violent crimes; and five, strengthening infrastructure and information technology.

COMBATING TERRORISM

The first challenge continues to be addressing the current terrorist threat environment. It is clear that the FBI's operational and analytical commitment to combating terrorism must continue to grow. And, therefore, our budget requests 231 new positions, 126 of which are agents. These resources will enable the Bureau to conduct investigations to prevent, disrupt, and deter acts of terrorism.

Our intelligence-driven focus in addressing terrorism, at this point, is taxing our physical surveillance and electronic surveillance intelligence-gathering capabilities. Therefore, we are seeking enhancement of 118 new positions, including 12 agents, $65 million, to strengthen surveillance and technical collection capabilities.

The capacity to carry out extended covert surveillance of subjects and targets is essential to the FBI's counterterrorism and counterintelligence programs. Additionally, we must be able to develop and deploy new operational technologies and techniques to counter a

more technically sophisticated adversary and to exploit and share the information that we gather.

WEAPONS OF MASS DESTRUCTION

The second challenge that we are facing, addressed in the 2008 budget, is the intent of terrorists to seek the means and capability to use weapons of mass destruction against the United States.

In July of last year, we established the Weapons of Mass Destruction (WMD) Directorate to better integrate and leverage FBI counterproliferation and WMD intelligence analysis and prevention programs. We must continue to build this Directorate and we have requested 146 new positions toward that end, as well as $19 million to continue to enhance our capabilities to prevent, prepare for, and respond to the threat of WMD.

FOREIGN INTELLIGENCE OPERATIONS

The third significant challenge addressed in our 2008 budget is, or budget request, is the foreign intelligence threat to the United States. Foreign powers continue their efforts to establish economic, military, and political preeminence and to position themselves to compete with the United States in economic and diplomatic arenas. Foreign adversaries are increasingly employing nontraditional collectors, such as students, visiting scientists, scholars, businessmen, as well as cyber-based tools, to target and penetrate U.S. institutions.

Our budget request includes a request for 119 positions, 55 of which are agents, and $26.5 million to address these activities.

CHILD PORNOGRAPHY

The fourth program area included in our 2008 budget request is combating child pornography and obscenity, and protecting children from trafficking and other forms of exploitation. One of the most important and successful programs is the innocent images national initiative, which for 10 years, has targeted sexual predators who use the Internet to exploit children.

We have ongoing undercover operations across the country with more than 240 agents who investigate cases with their State and local counterparts. Unfortunately, there is no shortage of work in this arena. Our caseload has spiked from just 113 cases in 1996 to more than 2,100 last year. Our budget request proposes 14 new positions and $2.4 million for the Crimes Against Children and Innocent Images Programs.

As this subcommittee is aware and has been pointing out in the opening statements, the country is experiencing an uptick in violent crime, particularly as it relates to gang violence. By our own estimates, there are now over 30,000 gangs across America and over 800,000 gang members. The FBI has established 131 violent gang task forces across the country, enabling FBI agents to work in lockstep with police on the street, sharing information, and conducting investigations together.

While combating violent crime remains a priority, the shift in resources from our criminal programs to our national security programs has been significant. And, in this current budget process,

I'm looking forward to working with the subcommittee to ensure that our criminal programs may be restored to appropriate resource levels.

I might add that, in this context, the budget process started 2 years ago. And consequently, when we sat down and addressed our priorities 2 years ago, we did not have the benefit of information that may have come along afterward, such as the recent statistics that indicate the uptick in violent crime. And so, as we go through this process, we want to work with the subcommittee to take into account those factors that may have come about over the last couple of years since we started this budget process.

I might also add in this context, that in addition to our investigative capabilities, the Bureau brings to local, State, and national efforts, efforts against violent crime, a number of proven crime fighting technologies, services, and tools that are used every day by law enforcement agencies throughout the country. Whether it be forensics, identification and information technologies, all are crucial for leveraging the capabilities of our State and local law enforcement partners in the fight against violent crime. This also, should be taken into context as we go through this budget process this year.

INFRASTRUCTURE AND INFORMATION TECHNOLOGY

Finally, the overall success of the FBI's mission requires the appropriate work environment and updated information technology. The 2008 budget includes $15 million to provide technology support, and to prevent information technology obsolescence. This funding will enable us to upgrade networks and encryption to comply with mandated intelligence community protocols and to begin bringing desktops, laptops, servers, printers, into a 3-year technology refreshment cycle.

Our request also includes a total of $11.5 million to address critical space requirements, including requirements associated with the FBI headquarters annex and $4 million for the central records complex. The annex will provide additional space to ease existing fragmentation of headquarters, divisions and offices. The central records complex will consolidate most of our records into a single facility, moving from a system of paper records to digital records.

This covers, Madam Chairman, the five key areas, including violent crime, that are addressed in our 2008 budget request.

But before concluding my remarks, I would like to provide an update on the development of our information management system, known as Sentinel. As has been pointed out by Senator Leahy, Sentinel is being developed in four phases, and will be delivered in increments beginning this year. We have attempted to keep your staffs briefed, every 2 weeks, at this juncture, on the status of that project. Our contractor, Lockheed Martin, has completed the critical design and build of the software application and is presently in the testing phase. Once this testing is complete, we will begin piloting phase one at headquarters, followed by piloting in several field offices, during which time ourselves and Lockheed Martin will correct any additional issues that surface. And, shortly after we complete the testing in pilot offices, we will begin the rollout of

Sentinel training and the software application across the organization.

We had hoped to begin deployment this month. Currently, we anticipate beginning deployment next month. I will tell you that the schedule has shifted, as a result of some unforeseen technicalities, a total of 5 weeks. I will also tell you that we are on budget. We will continue to keep the subcommittee updated on our progress in the weeks ahead.

Madam Chairman, Senator Shelby, members of the subcommittee, I thank you for the cooperation and the support you have given to the FBI in the past and I ask for your support in providing the resources requested, not only in the 2008 budget, but also resources that may be necessitated by a change of circumstances over the last several months or years. Again, I appreciate the opportunity to testify this morning and look forward to answering your questions.

Thank you, Madam Chairman.

[The statement follows:]

PREPARED STATEMENT OF ROBERT S. MUELLER III

Good morning, Madam Chairman, Senator Shelby, and members of the subcommittee. I appreciate the opportunity to appear before you today to discuss the President's Fiscal Year 2008 Budget for the Federal Bureau of Investigation (FBI). I would also like to thank you for your continued oversight of the Bureau and your efforts to ensure our success as we pursue the shared goal of making America safer.

2008 BUDGET REQUEST

The fiscal year 2008 budget for the FBI totals 29,373 positions and $6.4 billion. The net fiscal year 2008 program increases total 714 new positions (231 agents, 121 intelligence analysts, and 362 professional support) and $313.8 million. Our fiscal year 2008 budget is focused on improving the FBI's capabilities in addressing five key challenges: combating terrorism; preventing the acquisition of weapons of mass destruction; defeating foreign intelligence operations; reducing child exploitation and violent crimes; and strengthening infrastructure and information technology.

I recognize that there are many competing requirements for limited funding. Nonetheless, the FBI must continue the progress it has made to implement the President's directives and the recommendations of the 9/11 Commission and the Weapons of Mass Destruction Commission. At the same time, the FBI must be resourced to discharge its critical criminal investigative mission that also contributes to the overall safety and security of the Nation. In addition, for the FBI to be a full partner in the intelligence community it must have the tools, capacities, and capabilities to work closely with other members of the community. Finally, the FBI must find the proper balance between expanding our workforce and supporting onboard employees with the technology and infrastructure necessary to accomplish our mission. I believe the fiscal year 2008 budget will go a long way toward achieving these goals.

COMBATING TERRORISM

The current terrorist threat environment shows no signs of abating in the near term. Consequently, the FBI's operational and analytical commitment to combating terrorism is not expected to decrease. The FBI must remain vigilant for indications of terrorist groups shifting focus from the insurgency in Iraq and Afghanistan to acts that could be carried out against United States interests outside the current theater of operation and/or against the United States homeland. The FBI must also continue its efforts to deny terrorist groups and sympathizers the ability to raise funds and to carry out other operational and logistical support from the United States.

This budget requests 231 new positions (126 agents) and $44.4 million to conduct intelligence-drive terrorism investigations and operations. Additionally, the fiscal year 2008 budget proposes the reallocation of 100 field special agents from criminal investigations to counterterrorism. These resources will enable the FBI to conduct investigations to prevent, disrupt, and deter acts of terrorism and continue to

strengthen working relationships with our Federal, State, and local partners; enhance our capacity for analyzing and exploiting information from growing volumes of seized terrorist digital media and communications; enhance the Terrorist Screening Center operations center; provide support to the National Virtual Translation Center, which serves as a clearinghouse to facilitate timely and accurate translation of foreign intelligence for elements of the intelligence community; and address growth in the number of terrorism and counterintelligence-related computer intrusion cases.

Shifting from a reactive criminal prosecution approach to a more prevention and intelligence-driven focus in our counterterrorism program is taxing the FBI's physical surveillance and electronic surveillance intelligence gathering capacities. The capacity to carry out extended covert surveillance of subjects and targets is absolutely critical to the FBI's counterterrorism and counterintelligence programs. Surveillance capacities—physical and electronic—give us insight and awareness of our adversaries. Insight and awareness, in turn, create opportunities to identify sleeper cells, disrupt support networks and communications, and recruit assets. We need a robust surveillance capacity to keep on top of known and emerging targets. Additionally, we must be able to develop and deploy new operational technologies and techniques to counter a more technically sophisticated adversary and to exploit and share the information we gather.

In fiscal year 2008, we seek an enhancement of 118 new positions (12 agents) and $65 million to strengthen surveillance and technical collection capacities. These resources will enable the FBI to increase the number of physical surveillance teams; address growing workload for electronic surveillance involving broadband and other data network and internet communications; develop new techniques and tools to address emerging technologies; meet demands for new audio and data collection and upgrade existing and/or obsolete digital collection system equipment and components; address growing workload for covert entries and searches; and develop new techniques and tools for tactical operations.

An integral part of our national security program is the development and operation of human intelligence. Our budget request includes 85 new positions (6 agents) and $22.3 million to strengthen human intelligence capacities. This funding will enable the FBI to provide staffing for field intelligence groups to comply with new human source validation standards and perform continuous assessments; continue development and deployment of Delta to support management of over 15,000 FBI human sources; deliver and deploy comprehensive human source targeting and development training; and remediate human source handling deficiencies. The intelligence derived from FBI human intelligence source collection also enables other agencies' success in their counterterrorism, counterintelligence, and counterproliferation missions.

We are fortunate that there has not been another major terrorist attack within the United States since September 11, 2001. This reflects positively, in part, on the hard and diligent work of FBI employees and those individuals who work alongside them, such as prosecutors and our partners in law enforcement and intelligence. However, we cannot afford to lessen our guard against the threat from terrorism. We must continue to invest in the resources and capabilities to counter an ever adapting and agile adversary.

PREVENTING THE ACQUISITION OF WEAPONS OF MASS DESTRUCTION (WMD)/RENDER SAFE

The National Counterterrorism Center WMD Threat Assessment, 2005–2011, reaffirmed the intent of terrorist adversaries to seek the means and capability to use WMD against the United States at home and abroad. Denying these adversaries access to WMD is a top administration counterterrorism strategy priority. Within the U.S. Government, the FBI has been assigned responsibility for Render Safe operations involving all WMD in the National Capital Region. The responsibility to render safe WMD throughout the remainder of the United States belongs to the FBI, supported by the Department of Defense. To fulfill its critical responsibilities in the area of WMD, the FBI must continue to build to the capacities and capabilities of its WMD Directorate and the Render Safe Program.

The WMD Directorate was created in July 2006 to better integrate and leverage FBI counterproliferation and WMD intelligence analysis and prevention programs. The fiscal year 2008 budget seeks 146 new positions (29 agents) and $19 million to continue to enhance the Directorate's capabilities to prevent, prepare for, and respond to the threat of WMD. These resources will allow the FBI to enhance strategic partnerships with foreign intelligence, law enforcement, security, public

health, agricultural, chemical, and other public and private sector agencies and organizations that are vital to the early detection of a potential WMD incident.

The fiscal year 2008 budget also includes enhancements of 9 positions (3 agents) and $11 million to enhance the FBI's Render Safe Mission, which encompasses both the tactical and technical response to incidents involving WMD within the United States and its territories. The complete development of a robust render safe crisis response for the directed contingencies requires the FBI to develop command and control capabilities to support deployments and to provide the FBI and United States Government leaders with the information required to make time-critical decisions. The requested funding will allow the FBI to enhance its National Asset response staffing beyond current minimum levels and provide program personnel with adequate training, equipment, supplies, and services. Additionally, the requested funding will allow the FBI to upgrade its Render Safe technical tools so the operators will have the latest and most effective technology at their disposal to meet and dispose of this challenge.

DEFEATING FOREIGN INTELLIGENCE OPERATIONS

The foreign intelligence threat to the United States is increasing as foreign powers continue their efforts to establish economic, military, and political preeminence and to position themselves to compete with the United States in economic and diplomatic arenas. Foreign adversaries are increasingly employing nontraditional collectors—e.g., students and visiting scientists, scholars, and businessmen—as well as cyber-based tools to target and penetrate U.S. institutions. The fiscal year 2008 budget includes 119 positions (55 agents) and $26.5 million to address these activities.

In November 2005, the FBI launched a Domain Management Initiative to focus attention on whether the FBI is conducting the right investigations to have the greatest impact on threats to national security. Continued implementation of the domain initiative will provide FBI leaders with a comprehensive and context decision-making environment. It will allow field office executive management to examine its target and regional environment and discuss the relative priority and focus of different activities. In addition, resources are needed to transform and leverage the capacities and capabilities of the Foreign Terrorist Tracking Task Force (FTTTF) into a National Security Analysis Center that would provide expanded analytical support to all FBI National Security programs by leveraging data and services residing in both FTTTF and the Investigative Data Warehouse.

REDUCE CHILD EXPLOITATION AND VIOLENT CRIMES

The FBI remains committed to fighting child pornography and obscenity, and to protecting children from trafficking and other forms of exploitation.

The fiscal year 2008 budget proposes 14 new positions and $2.4 million for the Crimes Against Children (CAC) and Innocent Images National Initiative (IINI) programs. These resources will enhance field-based Child Abduction Rapid Deployment (CARD) Teams that provide onsite response and investigative and technical assistance in child abduction cases. The funding will also enable the IINI, which targets child prostitution, to enhance its capacity to disseminate intelligence regarding unregistered sex offenders and innocent images investigations.

In addition to its investigative capabilities, the FBI brings to local, State, and national efforts against violent crime a number of proven crime-fighting technologies, services, and tools that are used every day by law enforcement agencies throughout the country to solve crimes and put criminals in jail. FBI forensic, identification, and information technologies and tools are critical for leveraging the capabilities of our State and local law enforcement partners in the fight against violent crime. Access to these crime-solving services and capabilities is even more important in a post 9/11 environment where the FBI may not always be able to devote the level of special agent resources to violent crime as it has in the past. Over the past several years, State and local agencies have been provided grant funding to improve their digital forensic, DNA, automated fingerprint identification, and information sharing capabilities.

One of the consequences of these improved State and local capabilities is increased demand for services and access to the underlying and unifying FBI systems and connectivity. For fiscal year 2008, the FBI is requesting a total of $90.5 million to improve its capacities and capabilities for providing forensic, identification, and information technologies and services for law enforcement, including IDENT/IAFIS Interoperability ($10.0 million); Next Generation Identification ($25 million); Law Enforcement Information Sharing/R-DEX ($5 million); DNA forensic services, including Walsh Act implementation ($14.6 million); Combined DNA Index System ($7

million); Regional Computer Forensic Laboratories ($6 million); and Computer Analysis Response Teams ($22.8 million).

STRENGTHENING INFRASTRUCTURE AND INFORMATION TECHNOLOGY

Critical to the success of the FBI mission are a safe and appropriate work environment and information technology (IT). Over the past several years, the FBI has made substantial investments to upgrade its underlying IT architecture, including the purchase of computer workstations and software for employees and networks for connectivity both within the FBI and with our external partners. Having made these investments to bring IT in the FBI to near current state-of-the-art, it is now necessary to keep these investments current with technology.

The fiscal year 2008 budget includes $15 million to provide enterprise IT support and prevent IT obsolescence. This funding will enable the FBI to address increased costs of software license/maintenance agreements, upgrade networks and encryption to comply with mandated intelligence community protocol, and begin bringing desktops, laptops, servers, and printers into a 3-year technology refreshment cycle.

Additionally, $7.5 million is requested to continue to build and strengthen the FBI's IT program management capabilities. The Inspector General and others have repeatedly criticized the FBI for ineffective program management of IT projects. Funding requested will enable the FBI to increase management and oversight of critical IT projects, ensure compliance with FBI Life Cycle Management Directives, and enhance FBI IT policy and planning capacities.

The FBI requests a total of $11.5 million to address critical space requirements, including $7.5 million for fiscal year 2008 requirements associated with the FBI Headquarters (HQ) Annex and $4 million for the Central Records Complex (CRC). The FBIHQ Annex will provide additional office space to ease existing fragmentation of headquarters divisions and offices. This funding will support the build-out of annex space, including furnishings, UNet and FBINet connectivity, equipment, locks, alarms, and access control. The CRC will consolidate most of the FBI's records, which are currently dispersed in FBI locations across the Nation, into one single facility. The funding requested will support non-standard requirements associated with the construction of the permanent CRC facility, such as fencing, vehicle barriers, and guard booths. Construction of the CRC, a GSA build-to-suit/leased facility, is planned to begin in fiscal year 2008.

"UNFUNDED FTE" REDUCTION

The fiscal year 2008 budget reflects a reduction of 2,700 positions (576 special agent and 2,124 professional support) for the FBI. This reduction is part of a Department of Justice-wide effort to remove "unaffordable work-years" and to recast positions and work-years consistent with available funding. Let me assure you that the "unaffordable work-years" reduction is being targeted against vacant positions and that no on-board FBI employee's position will be affected by this action. The underlying causes for the accumulation of "unaffordable work-years" are the results of both internal workforce management decisions by the FBI and external decisions on the Bureau's budget.

CONCLUSION

Madam Chairman, Senator Shelby, and members of the subcommittee, today's FBI is part of a vast national and international campaign dedicated to defeating terrorism. Working hand-in-hand with our partners in law enforcement, intelligence, the military, and diplomatic circles, the FBI's primary responsibility is to neutralize terrorist cells and operatives here in the United States and help dismantle terrorist networks worldwide. Although protecting the United States from terrorist attacks is our first priority, we remain committed to the defense of America against foreign intelligence threats as well as enforcing Federal criminal laws while still respecting and defending the Constitution.

I recognize that the fiscal year 2008 request will require difficult decisions with respect to meeting the competing demands among the Department of Justice components as well as those of other agencies. At the same time, even in times of fiscal restraint, there is a strong public expectation that the government provides our Nation's safety and security. Protecting the Nation from terrorist attacks, the threat of WMD, foreign intelligence agents, and violence requires a strong and well-resourced FBI.

I ask for your support in providing the resources requested in the fiscal year 2008 budget so that we can fulfill our mission to safeguard the American people. I look forward to working with you on this budget proposal and other issues.

Once again, I thank you for your continued support of the FBI. I am happy to answer any questions you may have.

Senator MIKULSKI. Thank you very much, Mr. Director, and we're going to follow very closely our time. I'm going to get right to my questions. I'm going to go into three areas. The FBI fighting crime, the FBI fighting terrorism, and then making sure that the FBI has an accountability system for, not only Sentinel, but also the national security letters, where there seems to have been a big problem.

VIOLENT CRIME

I'd like to go right to the violent crime issue because, again, we'll come back to the fact that you're two agencies, but you're one agency. Violent crime is on the rise, we've heard about the data. Robbery is up 9 percent, aggravated assault is up. It's not just about the crime, it's also who's doing the crime, the new gangs, and the threat of meth.

As I looked at your budget, 60 percent of the FBI's money goes to counterterrorism, counterintelligence, and the intel function. Thirty-four percent goes to traditional crime-fighting responsibilities. My first question is, is that the right ratio? Or is it that as we scrambled to fight the global war against terrorism and the massive need to shift resources, have we kind of left fighting crime a little bit behind? What would you say would be the actual resources you need, or are they pretty well amplified in this statement?

Mr. MUELLER. First of all, let me say the percentage that you give in terms of dollars may be roughly accurate. I will tell you that in terms of agents assigned to national security responsibilities as opposed to the criminal responsibility, it's almost 50/50 on the street. I will tell you that since September 11, understandably I believe, we have taken resources—substantial resources—from the criminal side of the house to address the counterterrorism mission. We have tried to establish priorities that maximize our capabilities to augment State and local law enforcement and other authorities in particular areas.

I have always believed that when it comes to violent crime, the FBI should play a substantial role, because of our capabilities of reaching across jurisdictions. And, we have set up, as I——

Senator MIKULSKI. But Director, do you feel that the President's budget is enough for you and your agents and analysts, and so on, to do the job of fighting crime and having the important linkages to local law enforcement with the unique role the FBI plays?

Mr. MUELLER. I believe at this juncture, we ought to revisit, as will happen through the budget process—normally within the administration, with the Department of Justice, with the Office of Management and Budget (OMB), but also with the subcommittee, our allocation of resources, given the uptick in violent crime with the possibility, given the budget constraints, of augmenting the FBI. I absolutely believe that we would benefit from additional resources.

Senator MIKULSKI. Once we have this information, we'll talk with you about that in more detail.

TERRORISM

Let's go to the global war against terrorism. One of the things that I've noted, that in addition to the very important intel function that you perform, that you're also now playing a very important role in the issue of weapons of mass destruction, some of which is too sensitive for a public hearing.

But again, our question is—this requires very sophisticated people. These are people that require enormous scientific and technical backgrounds often more usually found in the Department of Defense (DOD), and it also takes a lot of money to do this. Could you share with the subcommittee, that as you do the surveillance and things that are important domestically and internationally, what about this new role of fighting the weapons of mass destruction? Should it be with you? And do you have the resources that you need to do this?

Mr. MUELLER. Well, responding to an attack of weapons of mass destruction in the United States is a responsibility of the FBI. I think it is appropriately a responsibility of the FBI, in large part because of the extent of integration we have with State and local law enforcement around the country, our presence around the country, and the expertise that we develop in this arena, some of it at Redstone Arsenal, as pointed out by Senator Shelby. So, I do believe we should have this mission.

But it is an expensive mission. It requires contributions from a number of different skill sets and, as the Senator is well aware, those who are on the intelligence side of the house as well as this side of the house understand that we have requested substantial funding in that regard and my understanding is we're getting substantial funding to assist in that. But it is an expensive proposition, but I do believe we appropriately have that mission.

Senator MIKULSKI. Well, my time has expired and I want to go by the rules. I would just like the subcommittee to understand, the FBI has now been given a very important responsibility, which is to, number one, make sure that a weapon of mass destruction does not fall into the hands of people who would want to use them in the United States of America. This is a pretty big job, against chemical, biological, and nuclear, big and small.

Mr. MUELLER. That's correct.

Senator MIKULSKI. That's a pretty big deal. Then, in addition, there is something that is in your materials and that is an open document, but Senators could also get a briefing on this, called Render Safe, which means the FBI has also the job—that if a nuclear weapon, big or small, is detected, their job is to defuse it. This is big deal and it, and again, requires enormous sophistication.

And, then also, for those who would want to bring these despicable and horrific weapons into our country, or seize them within our country, the stress, and the number, and the scientific and technological capability, even for surveillance is pretty significant. So, this isn't J. Edgar Hoover's FBI any more. And it's not like, let's hear a hoo-hah for gumshoe. So, we're talking about one, fighting gangs, dealing with meth, partnering with local law enforcement, and then these very sophisticated things.

I'm going to yield now to Senator Shelby, but I would hope, also, that perhaps Senator Leahy will be picking up on the question of those national security letters.

Senator LEAHY. We are, yeah, we are.

Senator MIKULSKI. Okay, thank you. Because that was a question I was going to go into.

Senator Shelby.

NATIONAL SECURITY LETTERS

Senator SHELBY. Director Mueller, the inspector general issued a report critical of the FBI's use of national security letters. While I understand the critical need for these tools, the lack of supervision in the use of the national security letters and exigent letters is very troubling. Can you tell us what steps you're taking to correct the deficiencies and when those steps will be completed? You've testified previously that you would prefer administrative subpoena authority in counterterrorism cases to the existing national security letters (NSL) authority. Why do you prefer one tool over the other?

Mr. MUELLER. Let me start with what steps we've taken to address the issues with regard to NSLs.

One of the first immediate steps we took was to expand on the audit that was done by the inspector general and to go across the country. I had 150 special agents, inspectors, visit every office to look at the use of national security letters. They have come back with information relating to the use around the country. I do not believe that, in the end, as we go through the information, there will be any startling differences between what we found and what the IG found. But nonetheless, it enables us to look at potential problems with more particularity.

We are reviewing those findings now and my expectation is that, in working with the IG in the next several weeks, we will have some conclusions from that 10 percent audit. We are going back and looking at the numbers reported, our software and databases, to determine how we can retroactively identify, with more precision, the numbers that may have been left out. And again, we are working with the IG on that.

I would say the third, well, let me talk about the third area, and that's the exigent letter issue. We have undertaken a joint investigation with the inspector general to determine how this happened, who was involved, and to make recommendations as to what further steps must be taken as a result of our findings. Again, it's a joint investigation with the inspector general. I think that will take several weeks, if not months, to follow-up thoroughly on that.

Most importantly, what we did not have in the FBI was a compliance system, a compliance program. Large corporations have compliance programs. And, we had put into place procedures, but we had no way of assuring, on a daily basis, that those procedures were being followed.

The $10 million that you mentioned in your opening remarks, with regard to following up on the NSL issue, will be used to establish a compliance office, reporting to the highest levels of the FBI, and addressing—not just the issues that we found with NSLs—but other issues to make certain that, whether it be NSLs or other circumstances, where Congress has given us the capabilities, that we

are handling them appropriately, that the reporting to Congress is accurate and to make certain that what happened with NSLs does not happen again. And, I look at this as not just addressing the NSL issue, but addressing other issues within the Bureau that we can anticipate better and address, before the inspector general or Congress needs to address them.

The last step I would say that we're taking is understanding—and agreeing with—the concerns of privacy groups, legitimate concerns, about the use of NSLs. We have undertaken outreach to the privacy groups and the civil liberties groups, to explain what steps we're taking and to get input. We may not always agree and, quite obviously, there'll be occasions where we disagree, but we will have a dialogue as to how we can do better in this regard, and have elicited input from these privacy and civil liberties groups. Those are the five steps that we are taking.

Senator SHELBY. What would—you mentioned administrative subpoena authority in counterterrorism cases.

Mr. MUELLER. One of the issues with the national security letters is the authorities are spread across a number of statutes. The predication for it and understanding the use of a particular NSL may depend on the type of records requested and falls under separate statutes. Administrative subpoenas would, hopefully, put in one place this authority. It would give, as the latest iteration of the Privacy Act has given, the right for somebody to contest it, as well as us to enforce it. And, so my hope would be that the administrative subpoena process would replicate, somewhat, the NSLs, but be much simpler for us to operate under.

BUDGET REQUEST

Senator SHELBY. Mr. Director, can you tell this subcommittee if the 2008 budget request, in your judgment, would meet your current operating needs?

Mr. MUELLER. My belief is there should be further discussion with the Department of Justice, with OMB and also with this subcommittee, as to the budget, because circumstances have changed in the last couple of years that, in my mind, warrant a revisiting of the issues.

Senator SHELBY. Madam Chairman, I have a number of questions that I would like to—because of the interest of time and the Director's schedule—submit to the record, for the record, that I think are important.

Senator MIKULSKI. Without objection.

Senator SHELBY. Thank you.

Senator MIKULSKI. Thank you very much.

Mr. MUELLER. Can I add one thing? I'm sorry.

Senator SHELBY. Sure.

Mr. MUELLER. In response to Senator Shelby's last question, in terms of the budget formulation, one of the things we've been asked to do, and believe it's important to do, is have a strategy in the Bureau, a long-term strategy. Not a year-to-year strategy, but a long-term strategy.

We are looking at budget requests over a 5-year period and believe that, for us, we should be on a 5-year cycle of budget requests. And, as we have developed the strategy, we are putting in place

the requests over a 5-year period. That also will help, I believe, in supporting the discussion as to the budget request for 2008.

The last point I'd make, I have to correct myself, I said the Privacy Act, I did mean the Patriot Act, in terms of the changes of the abilities of persons to contests NSLs and for us to enforce them.

Senator SHELBY. A 5-year budget plan would help you to plan more readily, would it not?

Mr. MUELLER. It would.

Senator SHELBY. Thank you.

Senator MIKULSKI. Well, not only a 5-year budget plan, which we would certainly recommend because we could then look at how to pace this. But also the fact, that when we look at the funding of the intel agencies, you have to have more visibility to be at the table.

Let me turn to Senator Leahy and, subcommittee members we'll come back for a second round. Senator Leahy.

Senator LEAHY. Thank you, Madam Chair. I had the privilege of serving on the Appropriations Committee and also, as the Director knows, I serve on the Judiciary Committee. And, I just want to take this opportunity to note, the Judiciary Committee still has not received answers to the written questions that we gave in connection with your March 14 appearance, or your appearance last year on December 6.

Now, I understand that your responses have been submitted to the Department of Justice. That's all well and good, but we still don't have last year's responses or this year's responses. I don't think you would tolerate this kind of response time in FBI investigations.

Before you leave, I will give you a copy and resubmit these as questions from the Appropriations Committee. Maybe that will help you get it through the Department of Justice quicker, because their budget will also come before this subcommittee.

I've also raised with the Attorney General why they take so long clearing your answers to get them to us. We found last week that we will not get answers from him, but I would like to at least get answers from you.

SENTINEL

Now, we're a year into the Sentinel computer upgrade, the costs go up all time. The FBI informed the Judiciary Committee you'd encountered unexpected problems with the deployment of phase one that could delay it. What is the current status of Sentinel? Do you anticipate additional delays, or cost overruns?

Mr. MUELLER. We are on budget, in fact we're under budget at this juncture on the first phase of Sentinel. In terms of the time, as I indicated in my opening remarks, we had hoped that we would start deployment in April. It looks like it will be deployed next month.

We are in the final stages of the approval process with the contractor on phase one. One of the mistakes made by me, I would say early on, in terms of the computers, was pushing the process and the schedule. I had pushed hard, but I want to make certain that when it is deployed—my expectation is next month—that it works. I meet every week with the Sentinel team. I monitor it.

Senator LEAHY. That's just phase one. That's phase one.

Mr. MUELLER. Phase one. That is phase one. Now phase two, which is the more—in some senses, is the more important phase—because it addresses more of our business practices. We have started the planning on phase two. And we will have to—there are a number of lessons we learned in phase one that we'll have to implement in phase two.

Senator LEAHY. When do you think phase two, the more important part, will be fully deployed?

Mr. MUELLER. I cannot give you an answer now on that.

Senator LEAHY. This year?

Mr. MUELLER. I would be concerned in giving you an answer.

Senator LEAHY. But you don't see it as happening this year?

Mr. MUELLER. Not this year. The original expectation was it would take another year to 18 months after the deployment of phase one to deploy phase two. But one of the things we learned in the development of phase one is that some of the things we anticipated deploying in phases two, three, and four, could better be moved up and other aspects of it moved down to phase four. Consequently, we are reviewing the lessons learned in phase one and over the summer and the fall we'll be determining how we proceed with phase two, three, and four.

But, at this point, we have no belief that it is over budget or will be over budget. We have every belief, at this juncture, that we can do it under budget, in the timeframe that was originally set out for Sentinel.

Senator LEAHY. Well, are you still using Computer Sciences Corporation and CACI International?

Mr. MUELLER. No. Lockheed Martin is our contractor on Sentinel.

Senator LEAHY. Were Computer Sciences Corporation and CACI, in any way, part of the Sentinel contract team?

Mr. MUELLER. There was one aspect—let me just check—there was one aspect that one of the corporations that was involved in Virtual Case File is involved with Sentinel. I believe it was training, but it was a separate company, not part of the original company handling Virtual Case File. That is the case, there is one business element of one of those companies, at this point, that has a small role in Sentinel.

Senator LEAHY. Which one?

Mr. MUELLER. I believe it's, and I'd like to get back to you and firm it up, but I think it's Computer Sciences Corporation, it was bought by DynCorp.

Senator LEAHY. Well, please fill that for the record. Because I think if Computer Sciences and CACI were involved in the failed Virtual Case File project, I would hate to see them involved again. I'm also going to ask questions for the record on the integrated wireless network, 6 years in development, $195 million already being spent, an anticipated overall cost of $5 billion, and nobody has anything that works yet.

[The information follows:]

SENTINEL CONTRACTORS INVOLVED IN VIRTUAL CASE FILE

Two vendors are common to both Trilogy and Sentinel: Computer Science Corporation (CSC) and CACI. The division of CSC that worked on Trilogy, however, was part of a separate company at the time and not acquired by CSC until after the Trilogy contract ended. Furthermore, the after-acquired division of CSC will not be working on Sentinel, thus we anticipate little or no overlap of services or personnel. We have contracted with CACI to provide training for Sentinel, which was also CACI's role in the Trilogy contract. Training was not an issue in the execution of the Trilogy contract.

The FBI has strengthened its internal controls to avoid a repeat of problems experienced with Trilogy. Among other things, we have improved our contract oversight in two major ways. First, the Sentinel contract has clear reporting requirements and severable deliverables. In other words, we can stop work if we are not satisfied with a contractor's progress. Second, we have structured our contract management with clearly defined roles and responsibilities, so accountable personnel are reviewing all documentation and expenses. That process will be supplemented by internal audits of our financial management, as well as external oversight from Congress and the Administration.

Mr. MUELLER. Can I respond briefly, Senator, if we have time? The Trilogy project was, as you know, three pieces. The networks, the computers, and two-thirds of it was successful, the other third was not successful. But I will also say in the development of the Sentinel project, we have had the inspector general review us day in and day out, and the Government Accountability Office (GAO), and we have endeavored to keep the committees apprised of the status of Sentinel, offering weekly briefings, now giving bi-weekly briefings, too, so that there is no miscommunication in terms of where we are at any particular point in time in the development of this project.

Senator LEAHY. Thank you, Madam Chair.

Senator MIKULSKI. Thank you, Senator Leahy. You know, what's so great is, on our subcommittee now, we have the chairman of the Judiciary Committee, who has oversight of the FBI. We welcome you and your expertise.

Senator LEAHY. You might think it's greater than some of the witnesses might.

Senator MIKULSKI. And Senator Kohl is also a member of the Judiciary Committee. Senators, I think the Director would also be wiling to brief both you and also your Judiciary Committee staff about the status of Sentinel. I think you'd be heartened about the progress.

Senator LEAHY. He does, he does.

Senator MIKULSKI. Okay, thank you.

Senator Kohl.

Senator KOHL. Thank you, Madam Chairman.

VIOLENT CRIME

Director Mueller, violent crime, as you've said, is on the rise across the country. When we ask State, local, and Federal officials in all our communities what needs to be done to get this problem under better control, they all give the same answer. They ask for greater Federal funding for State and local law enforcement. This administration is not giving our law enforcement officials the help that they need.

For example, in Wisconsin, our share of Byrne funding went from more than $9 million in fiscal year 2002, all the way down to less than $3 million in fiscal year 2006. As a result of cuts to the COPS

hiring programs, support to Milwaukee's Police Department to put more cops on the beat, went from more than $1 million in 2002, down to zero these past 2 years.

It's no surprise that the rise in violent crime has come on the heels of reductions in this administration's financial assistance to State and local law enforcement.

Mr. Director, don't you agree that more Federal support for local law enforcement would greatly help our local communities in the battle against violent crime?

Mr. MUELLER. Well, I certainly am supportive of funding for State and local law enforcement from a variety of sources, including Federal. And, I would tell you that I believe that we work most efficiently when we work together with our State and local counterparts.

And, what I'd like to see is the funding tied into working in task forces. We have 131 Safe Street task forces around the country. It harnesses our ability to reach across jurisdictions to obtain evidence, to provide forensics help and the like, but also provides the prioritization of what needs to be addressed in the community and a task force concept, I think, is tremendously important when you address gangs and some of the contributing factors to violent crime.

So, I am, I have been and will continue to be, supportive of enhanced funding to State and local law enforcement in hopes that that funding will also be tied to participation on task forces, so that we maximize our work together.

Senator KOHL. Well is this an ongoing kind of a process? Because, as I said, the direct funding for things like Byrne and COPS has gone down. Has it been augmented in some other way to local law enforcement?

Mr. MUELLER. Again, I am supportive of funding the State and local law enforcement.

Senator KOHL. Right.

Mr. MUELLER. And, I'll leave the details up to the Department of Justice, that is the conduit for those grants.

Senator KOHL. But the problem is so severe out there, you know, that the question of where does it come from is not nearly as important as getting the money out there so that our local law enforcement people can do their job more effectively. Not 2 or 3 or 4 years from now, but yesterday and today. Isn't that true?

Mr. MUELLER. I am absolutely supportive of funding for State and local law enforcement and, as I said I believe, I am also supportive in the context of doing it so that we work together.

What we find, I will tell you, is it is increasingly difficult for State and local law enforcement to assign personnel to task forces because of the reduction in personnel. My belief is that task forces are tremendously important, and we ought to focus on the funding for State and local law enforcement in such a way that it enhances our joint efforts to address violent crime or counterterrorism or other threats, including cyber-crime and crimes against children, in a way that enhances our ability to work together and serves as an incentive for us to work together.

COPS PROGRAM

Senator KOHL. All right. Just talk about the COPS program and get some comment from you. The overall COPS program was funded just a few years ago at more than $1 billion and this year the President's request for $32 million really means, basically, the end of the program. Last year in my home town of Milwaukee, the police department had approximately 200 vacancies in an ideal force of 2,000. We used to have a program to deal with that problem and it was called, The Cops Universal Hiring Program. And, that program was instrumental at reducing crime in the 1990s.

Unfortunately that program has been entirely eliminated in this administration. So, would you agree that we need a new commitment to the COPS program? Especially when we're witnessing a surge in violent crime in our mid-size cities and other sized cities all across our country. Don't you agree that we need to increase Federal funding in order to help put more police on the streets?

Mr. MUELLER. Without regard to a particular program, I am supportive of enhanced funding for State and local law enforcement, particularly funding to working cooperatively between ourselves, the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), and the Drug Enforcement Administration (DEA), without regard to a particular vehicle.

I think the vehicle is less important than the fact that we address the threats that are out there, when it comes to the uptick in violent crime. I attended a meeting a couple days ago at the National Academy of Sciences. One of the issues discussed by a number of very influential and capable professors from around the country was why this uptick. You can look at the statistics across the Nation, but then every community is somewhat different.

What you do not want to do is, necessarily, just throw in resources without understanding what the problem is, what the solution is, and then assign those resources to effect that solution.

In my own mind, most of the threats cross jurisdictional borders now. The solution comes from working together, ourselves with State and local law enforcement. To the extent that local communities cannot afford the participation of State and local law enforcement on task forces, I believe there has to be a mechanism someplace, through some vehicle, so that there is an incentive for us to work together and that we address these issues, together, as opposed to addressing them individually. Because I think we're far more effective when we do it jointly.

Senator KOHL. I thank you so much.

And, I thank you, Madam Chairman.

Senator MIKULSKI. Senator Lautenberg.

Senator LAUTENBERG. Thank you, Madam Chairman.

And, thank you, Director Mueller, for being here and for providing the leadership that you do for this important arm of our protection and safety in our society.

Oddly enough, Senator Kohl, my friend and colleague, hit on the subject, COPS. And, as I was looking over my notes, the thought occurred to me and I found out that at one point there were 120,000 police on the streets, 5,000 in my State of New Jersey from COPS. And, then your notes, Director, in your comments you say

access to local law enforcement partners in the fight against violent crime, access to these crime-solving services and capabilities are more important in a post-9/11 environment. So, it's hard to understand why that program might be eliminated when we need all the help we can get.

GUNS TO TERRORISTS

Let me get on to something that's come about. A GAO report that I requested in 2005 revealed that 35 known or suspected terrorists bought guns in a 5-month period of 2004. And, then I asked you to review what legislative changes might be needed, and you wrote me in March 2005—so, we're looking back more than 2 years—that Department of Justice create a working group to look into this.

Yesterday, the Department of Justice sent me, Vice President Cheney, and House Speaker Pelosi, a proposal to give the Attorney General the discretion to deny guns to terrorists. Do you think 2 years to move on something as sensitive and as helpful as this could be, borders on either outright neglect or lack of interest in the proposal? Should known terrorists be allowed to buy guns at all?

Mr. MUELLER. I can't speak to the delay, Senator. I think before one reaches any conclusion as to the delay, one would want to know what kind of dialogue there has been, whether it be within the administration, or between the administration and Congress. I see it was submitted yesterday. I would ask the opportunity to go back to look at this and then, to the extent that you have further questions in terms of what this legislation does, I'd be happy to answer them.

Senator LAUTENBERG. Okay. But, and the last part of my question, should one's name on a terror list be sufficient evidence to not allow a gun to be purchased? What do you think?

Mr. MUELLER. I think it depends on the circumstances. There are gradations. I do not want guns in the hands of terrorists. You look at what happened at Virginia Tech recently, and it calls for a revisiting of the legislation, not just at the national level, but at the State level in terms of the production of medical records and particular mental health records——

Senator LAUTENBERG. Okay. Thanks.

Mr. MUELLER [continuing]. When it comes to purchasing a weapon.

Senator LAUTENBERG. Thanks, Mr. Mueller. The one thing that we do know is that you're an intelligent, educated man, and I find it surprising that we can't get a specific answer that says, "No, they're terrorists." If you were good enough to use a somewhat humorous description, to get, to make it to the terrorist list and you can still buy a gun in this country, I think that suggests that there's a weakness there someplace.

BACKGROUND CHECKS TO INVESTIGATE CRIME

I want to get on to something else. Would there be any value, Mr. Mueller, to permit law enforcement to use background check records to investigate crime, perhaps even in the case of terrorism?

Mr. MUELLER. I'm somewhat uncertain of the question.

Senator LAUTENBERG. Well, that is——

Mr. MUELLER. Because, quite obviously, we use background information, to investigate allegations of terrorism.

Senator LAUTENBERG. All right. Let me go to the little, expansion of that. Do you think that destroying records that were used in approving a gun purchase in just 24 hours, is a good idea? Perhaps you can explain—well, let me get the answer to part a, then we'll go to part b.

Mr. MUELLER. Well, I know there's been substantial debate on how long records are retained. There's a substantial argument in my mind for retaining records for a substantial period of time, but this is an area where the policymakers will advise and then we will follow.

Senator LAUTENBERG. Fair enough. I'm glad that you concur with my view. Okay.

Thank you, Madam Chairman. Thanks.

Senator MIKULSKI. Thank you.

Well, Director, we are moving expeditiously to get you to where you need to go.

Mr. MUELLER. Thank you.

Senator MIKULSKI. I have two questions, one related to intelligence analysts and then the other to what we need to be able to train them.

INTELLIGENCE ANALYSTS

I am tremendously impressed with the FBI intelligence analysts that I've met, both overseas and here. But here goes to my questions. Two years ago, the IG released a report that nearly one-third of the intelligence analysts positions were unfilled because of rapid turnover and other problems and also, at that time morale was low, and there was a difficulty in retention. Can you tell us what you've been able to do over the last 2 years with the issues raised by that? Do you remember that?

Mr. MUELLER. Yes.

Senator MIKULSKI. And, then what are you doing to improve the training and retention of the intel analysts, particularly, you know, you had the agents on the street, but it is the analyst that's supposed to help the policymakers and the enforcers to connect the dots.

The so-called "connect the dot" problem.

Mr. MUELLER. We have tremendously talented analysts. We've doubled our analyst cadre since September 11, and the qualifications and capabilities of the analysts are superb. They have become an indispensable asset not just at headquarters, but in every office around the country.

The inspector general recently had a further report, in which, it was pointed out that we had a shortfall of 400 analysts in 2006 that we had not brought onboard. He indicated part of it was attributable to the length of time it took to get an analyst onboard. But, I will tell you, part of it, also, was our recalibration of our strength in what was called "hollow work-years" that had developed over a period of time. And so, we have a shortfall, currently, of approximately 160 analysts who we're trying to bring onboard. And, we will over the next months and into next year.

The delay in bringing people onboard that the IG mentioned, as well, is in some part attributable to the fact that we want to give them training. We want them to start the job with the training, and without slots for the training, we're delayed longer than we would like. And, I will tell you also, we are revamping the training. We have continuously done so—particularly in the wake of September 11, but we continue to revamp the training to make it more successful, I will tell you, more effective.

The other thing that the IG, I think, pointed out is that most of the analysts we brought onboard are exceptionally happy working at the FBI, enjoy their job, anticipate staying, so we're not, we are not where we would like to be. I'm not certain we would ever be there. I think we've made substantial strides with the analytical cadre.

Senator MIKULSKI. Yes, because that will go to training in Quantico.

Senator Shelby, you want to jump in here?

Senator SHELBY. Director Mueller, we realize it's—it's difficult and tedious to train analysts and, but in the recruitment area, because—how are you doing there? Because you're recruiting in the marketplace with everybody else?

Mr. MUELLER. Very well, very well.

Senator SHELBY. And, that's very important.

Mr. MUELLER. In the training, we have structured training so the analysts train with the agents for much of their time at Quantico, so there is an understanding of the kind of contributing skills that make us more successful.

The fact of the matter is, as the organization grows, the credibility and the capability of the analysts will impress the rest of the organization and bring us into more of a team than, perhaps, we've been in past years. And, both through the training, the working together, and the types of cases, whether they be intelligence or criminal that we're working, I think we're making strides there.

Senator SHELBY. Thank you.

Thank you, Madam Chairman.

TRAINING AT QUANTICO

Senator MIKULSKI. Which takes me to Quantico. Because all FBI agents and analysts, regardless of their responsibility are trained at Quantico, am I correct?

Mr. MUELLER. Well——

Senator MIKULSKI. Well, is it prime? Is my question.

Mr. MUELLER. All agents are trained at Quantico. There are areas of training that we do outside of Quantico, but certainly all new agents and analysts go through Quantico.

Senator MIKULSKI. Right. So, but, Quantico is the starting point?

Mr. MUELLER. It is.

Senator MIKULSKI. It is the starting point. Now, from what I understand from staff visits to Quantico, that Quantico because of when it was built, its original mission, which was the pre-9/11 FBI, that this is pretty dated, both in terms of being able to handle the number of people you wish to train, and what is required in unique training facilities now, with technology, et cetera. Could you share with the subcommittee what you think we need to do to help you,

to kind of, reinvigorate Quantico? So that when these talented people come to serve, and you have the curriculum to do it, that we're all helping you move in the direction we want you to move in?

Mr. MUELLER. We've had problems with the buildings at Quantico. It's years and years, I can't tell you exactly, but tens of years old. We've had problems, for instance, with information technology and instituting it there because it was not set up with the modern capabilities.

As we look 5 years down the road to the FBI, training is going to have to be expanded at Quantico, but also other places in the country. One of the gems, the jewels of the FBI is the National Academy, where every year we educate somewhat more than 1,000 State, local and, as important if not more important, foreign officers who become colleagues of ours, and my hope is that we could expand the National Academy. Because I think it's a jewel and it's tremendously important to the United States, not just domestically to have the capacity, but for the intersection of ourselves and the future with our counterparts overseas, to have that type of, not only dialogue, but building of relationships.

So, whether it be National Academy, the agents, the professional staff, analysts, we are going to be looking at our 5-year plan for expanding—not just renovating at Quantico—but looking at opportunities elsewhere as well.

And, we cannot continue to build a national security function, and continue to do what we do on the criminal side without enhanced facilities.

I will make one last plea, if I could, and that is, we are asked to be and appropriately so, I believe, the domestic intelligence agency for national security.

Senator MIKULSKI. That's a pretty big deal.

Mr. MUELLER. Part of the intelligence community. We have a single funding stream that comes through Commerce, Justice, and Science, as opposed to being looked, from the funding perspective, as part of the intelligence community. And, my request is that, if we have the responsibility and the role that I believe we should have, we should be looked at as a member of the intelligence community from the perspective of funding.

Senator MIKULSKI. You mean through an intel authorization?

Mr. MUELLER. Yes.

Senator MIKULSKI. Well, you know we can't get one through the Congress, so you actually get a better deal coming through us. We hear what you say.

Mr. MUELLER. Well, when I look at the various budgets, I'm not——

Senator MIKULSKI. Well, no, we understand that it, and again, this is an environment we can not discuss it.

Mr. MUELLER. Right.

Senator MIKULSKI. Senator Shelby chaired the Intel Committee and, of course, I'm a very proud member. And, Director, we would suggest that this is something we three could talk about, about what is the most effective way.

One quick question. When is this 5-year plan going to be done?

Mr. MUELLER. I believe we could start briefing you on it, probably, in a month.

Senator MIKULSKI. Well, one of which, too, will be the issue related to facilities because if we have to get started, then those things, as you know, are an extensive look ahead. So, we'll look forward to that.

But, listen, we promised you you'd be on your way and we want to thank you today for your testimony.

ADDITIONAL COMMITTEE QUESTIONS

If there are no further questions, Senators may submit questions for the record. We would appreciate the FBI's written response within 30 days. We, Mr. Director, we look forward to an ongoing conversation with you, once we get our allocation and so, we want to get you on your way.

And, we say to Eleni and Paul, good luck as they go on their new ways.

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

QUESTIONS SUBMITTED BY SENATOR PATRICK J. LEAHY

SENTINEL

*Question.* Now a year into the Bureau's Sentinel computer upgrade program, I remain concerned about the prospect of this program and its ballooning costs to American taxpayers. Last month, the FBI informed the Judiciary Committee that it had encountered unexpected problems with the deployment of Phase 1 of the Sentinel program that would delay the program. Even more troubling, the FBI could not tell Judiciary Committee staff how long it would take to remedy these problems, or how the delay would impact the overall schedule for Sentinel.

Director Mueller, what is the current status of the Sentinel program and do you anticipate that there will be additional delays in deploying the program or costs overruns?

Answer. The FBI has implemented Phase 1 of the Sentinel Project and our agents are now using it. The prime contractor, Lockheed Martin, has completed the design, development, and testing of the Phase 1 functionality and the FBI administered a two-week system acceptance test, which was followed by user acceptance testing. The system was then incrementally deployed and piloted in the Baltimore, Washington, and Richmond Field Offices and in one Division at FBI Headquarters (FBIHQ). In addition to testing the system's functionality, the pilot also assisted in testing the load of users on the system and in assessing the adequacy of the training materials.

After changing the deployment approach to allow for a pilot period, the system was delivered to all users. Changes in the deployment approach and delivery schedule were made to ensure an accurate measurement of performance by testing it with actual users, rather than through controlled testing.

The Sentinel Program Management Office and Lockheed Martin prepared users for training and deployment, training nearly 250 field office and FBIHQ users as Sentinel Training Advisors. This group is assisting contract instructors in providing training and assisting users in their divisions when questions arise. The training curriculum and materials continue to be refined to incorporate system updates and trainee feedback.

*Question.* What impact have the delays with Sentinel—and Trilogy before it—had on the Bureau's ability to fulfill its core mission?

Answer. The delays in updating the FBI's computer systems have had very little impact on the Bureau's ability to fulfill its core mission. All components of the FBI's Automated Case Support (ACS) system have continued to be operational and this information will be migrated to Sentinel. Phase 1 provides Sentinel's foundational base and enhanced access to the information contained in ACS. Phase 2 will bring additional capabilities to the users, including automated workflow, document and record management, public-key infrastructure, digital signatures, and role-based access controls.

*Question.* The December 2006 OIG audit report questioned the reliability of the total estimated costs for the program. How confident are you about the final cost estimate for the Sentinel program?

Answer. The estimated costs for the Sentinel program were developed consistent with the Federal Acquisitions Regulations (FAR), the Department of Justice (DOJ) Information Technology Investment Management (ITIM) process, and the FBI's Life Cycle Management Directive (LCMD) process. The FBI anticipates total program costs of approximately $425 million, including costs for development, program management, Independent Verification and Validation, and two years of Operations and Maintenance (O&M) after we reach full operating capability. Any changes to those estimates will be vetted through the ITIM and LCMD boards, documented in accordance with the FAR, and provided to Congress.

*Question.* Based on this cost estimate, how much additional funding or reprogrammed funds will the FBI require to complete this program? If reprogramming is required, what programs do you anticipate will lose funds?

Answer. The FBI determined that no additional reprogramming was required for fiscal year 2007 Sentinel operations. The funding requested in the President's fiscal year 2007 budget, in combination with the fiscal year 2007 reprogramming for Sentinel, funded O&M for Phase 1 and system development, training, and program management costs budgeted for Phase 2. Funding for Phases 3 and 4 and for the remainder of O&M for all Phases will be requested in future budget submissions. As noted in the response to the Office of the Inspector General (OIG), the FBI evaluates the operational impact of any proposed reprogramming and takes that impact into consideration in all reprogramming decisions. The FBI routinely provides this impact assessment and other relevant information to DOJ, the Office of Management and Budget (OMB), and Congress.

*Question.* I am troubled by reports that two of the companies that are part of the Sentinel contract team—Computer Sciences Corp. and CACI International Inc.—also played roles in the earlier failed Trilogy effort. How do you justify entrusting these companies with taxpayer funds again?

Answer. Two vendors are common to both Trilogy and Sentinel—Computer Science Corporation (CSC) and CACI International, Inc. The division of CSC that worked on Trilogy (and actually a separate firm at the time of its Trilogy work, acquired by CSC thereafter) will not be working on Sentinel, so we anticipate little or no overlap of services or personnel. We have contracted with CACI to provide training for Sentinel, which was also the purpose of the Trilogy contract.

The FBI has strengthened its internal controls to avoid a repeat of the issues cited by the Trilogy auditors with respect to all vendors. Among other things, we have improved our contract oversight in two major ways. First, the Sentinel contract has clear reporting requirements and severable deliverables. In other words, we can stop work if we are not satisfied with a contractor's progress. Second, we have structured our contract management with clearly defined roles and responsibilities, so accountable personnel are reviewing all documentation and expenses. That process will be supplemented by internal audits of our financial management, as well as by oversight from Congress and the Administration.

VIOLENT CRIME

*Question.* Recently, the Seattle Post-Intelligencer reported that since the terrorist attacks of September 11 the number of criminal investigations conducted by the FBI has declined significantly, and white collar investigations in particular have dropped precipitously. Many cases that would have been pursued in the past are simply going unsolved. I have asked you in the past about declining prosecutions of public corruption cases and this study shows that the problem is even broader than was previously known. While it is crucial that the FBI devote all necessary resources to protecting the country from terrorism, that effort should not be at the expense of protecting the country from crime.

Americans count on the FBI to aggressively investigate crime, particularly those types of crime that cannot always be adequately addressed by the states, like corruption, fraud, civil rights offenses, and the most serious violent crime. The FBI's apparent retreat from fulfilling these core duties comes at a time of rising violent crime rates in the country and dwindling public confidence in the Department's objective handling of corruption cases.

Is the FBI capable of handling the dual tasks of protecting the country from terrorism and aggressively enforcing the nation's criminal laws at the same time? Why have you not been getting the job done?

What steps is the FBI taking to make sure that it does not sacrifice crucial criminal investigations and prosecutions as a result of increased emphasis on terrorism?

Answer. The number of FBI Special Agents (SAs) assigned to criminal cases has decreased by 1,335, or 21 percent, since the attacks of 9/11/01. Despite the loss of those SA positions, protecting the nation from traditional criminal offenses has always remained a core function of the FBI, and 53 percent of all FBI SAs remain assigned to these criminal matters.

To address this decrease, the FBI has made difficult choices in determining how to most effectively use the available agents. In 2002, the FBI established as its criminal program priorities: public corruption, civil rights, transnational and national criminal enterprises (which include violent gangs and the MS–13 initiative), white collar crimes (which include corporate fraud and health care fraud), and violent crimes (which include crimes against children).

Since the designation of public corruption as the top criminal priority, over 280 additional agents have been shifted from other criminal duties to address corruption cases. The FBI is singularly situated to conduct these difficult investigations, and our effectiveness is demonstrated by the conviction of more than 1,000 corrupt government employees in the past two years.

The FBI has also maintained a steady commitment to addressing civil rights matters. Pending Color of Law (excessive force) investigations increased 25 percent from 2001 to 2007, and Human Trafficking cases increased 323 percent during the same period. FBI investigations of Human Trafficking resulted in 29 indictments in 2001; since then there have been an average of 48 each year.

The FBI has addressed violent street gang matters through the establishment of Violent Gang Safe Streets Task Forces (VGSSTFs) that leverage Federal, state, and local law enforcement resources to investigate violent gangs in large, medium, and small cities and towns. There are currently 135 VGSSTFs composed of 600 FBI SAs and 1,170 state/local law enforcement officers.

Although the FBI has had to reduce the number of SAs working Governmental fraud matters since 9/11/01, FBI agents still respond to serious crime problems, as demonstrated by the FBI's current initiatives to address hurricane-related fraud and Iraq contract fraud.

The FBI also prioritizes investigations within its White Collar Crime Program, emphasizing corporate/securities fraud and health care fraud. The corporate fraud cases, in particular, are very labor intensive, but they are a priority for the FBI because so many represent the private industry equivalent of public corruption, where the dishonest actions of a few people in leadership positions cause tremendous monetary losses and undermine investor confidence, both of which can threaten economic stability.

The FBI's priorities have resulted in less of an emphasis on investigating traditional drug trafficking cases and more emphasis on assigning SAs to established Organized Crime Drug Enforcement Task Force (OCDETF) strike forces and High Intensity Drug Trafficking Area (HIDTA) initiatives that target violent gangs whose members are involved in drug trafficking.

The FBI has also shifted criminal resources to implement the child prostitution initiative and the Violent Crime Task Force initiative. The child prostitution initiative is a coordinated national effort to combat child prostitution through joint investigations and task forces that include FBI, state, and local law enforcement, along with juvenile probation agencies. This initiative has resulted in more than 500 child prostitution arrests (local and Federal combined), 101 indictments, 67 convictions, and the identification, location, and/or recovery of 200 children. To address violent crime, the FBI has partnered with other state and local law enforcement agencies to create 24 Violent Crime Task Forces throughout the United States. The FBI also funds and operates 18 Safe Trails Task Forces (STTFs) to address violent crime in Indian Country (IC).

In addition to the above initiatives, the FBI has continuously worked to use technology, intelligence analysis, and enhanced response capability to leverage criminal program resources. In October 2005, the National Crime Information Center's fugitive database was integrated with the Department of State passport application system, resulting in automatic notification when fugitives apply for United States passports. In December 2005, eight Child Abduction Rapid Deployment Teams were established in four regions of the United States. These teams are available to augment field office resources during the crucial initial stages of a child abduction. The FBI is currently developing a means of integrating sex offender registries and other public databases to better identify sex offenders in the vicinities of child abductions and to "flag" sex offenders who have changed locations without satisfying registration requirements.

*Question.* Congress has always been willing to support both of these core missions. We have up to now been given the impression that the FBI was getting sufficient

resources to do these jobs effectively. What more does the FBI need to live up to its responsibilities?

Answer. The FBI has appreciated the support of Congress in ensuring that we have the necessary resources to deter and respond to terrorism and other crimes. We will continue to work with DOJ, the Office of the Director of National Intelligence, OMB, and the Congress to assess what resources are necessary to meet our responsibilities, consistent with Executive Branch priorities.

INTEGRATED WIRELESS NETWORK

*Question.* I was interested to see the March 2006 audit report by the Justice Department's Office of the Inspector General regarding the progress of the joint Integrated Wireless Network (IWN) for the Departments of Justice, Homeland Security, and Treasury. The OIG found that despite over 6 years of development and more than $195 million being spent on the IWN—out of an estimated $5 billion in total estimated costs with a goal of supporting 81,000 federal agents by 2021—DOJ law enforcement agents have received little in the way of new, secure, compliant radio equipment through IWN. The causes for the risk of failure include uncertain funding to complete the project, disparate departmental funding mechanisms, a fractured IWN partnership, and the lack of an effective governing structure for the project. What results from this partnership likely will not be the seamless, interoperable system that was originally envisioned and therefore the communication systems may not be adequate in the event of another terrorist attack or national disaster.

The OIG offered four recommendations for the Justice Department in attempting to avoid the IWN train wreck looming on the horizon.

Do you feel that those recommendations should be followed in order for the IWN to become the seamless, interoperable system originally envisioned? If not, why and how best do you feel the goal of a seamless, interoperable system would be reached?

Answer. While a valid goal, seamless interoperability does not address the immediate needs of DOJ components. The nationwide trunked network originally envisioned by some has not been a simple or easy undertaking (as demonstrated by the challenges encountered in Washington State). A single nationwide system would put those users on the same network, but this would not always make the best use of the available spectrum. Using trunked networks within a single band (which are more spectrally efficient than large-scale, multi-channel conventional systems) would not resolve the interoperability issues inherent in a system in which Federal, state, and local users use alternate frequency bands.

Evolutionary solutions would provide opportunities for components to address their own internal requirements while addressing interoperability needs and unnecessary redundancy among DOJ components. Current FBI Land Mobile Radio (LMR) systems using the Digital Encryption Standard (DES), which is no longer approved for use in Sensitive but Unclassified systems, put users at risk for potential compromise. These antiquated component systems must be upgraded to meet security requirements (such as the Advanced Encryption Standard) while satisfying the narrowband mandate and providing enhanced feature sets.

Future capabilities will include not only multiband, multimode radios, but the ability to interoperate with state and local partners through multiple gateways.

*Question.* What part, if any, has the FBI played in implementing those recommendations? How would you define the Bureau's commitment and funding requirements to support the network?

Answer. The FBI has been working with others in DOJ since 1999, providing both technical expertise and personnel in their planning, design, infrastructure installation, site leasing, spectrum coordination, equipment testing, and decommissioning efforts, among others. For example, FBI personnel in both Seattle and Portland have played an active role in Integrated Wireless Network (IWN) implementation, providing expertise and support in order to help make the network there a functional reality.

The FBI's current network infrastructure includes over 3,000 sites nationwide, and the cost of system maintenance, site leases, and circuit costs are directly affected by IWN's size and capabilities. Reduction of the FBI's maintenance costs depends on the installation of new equipment as part of either IWN or FBI system/network upgrades. Cost savings can be realized either by fully implementing IWN as envisioned and decommissioning FBI sites or by downsizing DOJ components where permitted by system sharing.

*Question.* Through fiscal year 2006, approximately $772 million has been appropriated to fund the DOJ Narrowband Communications Account. However, instead of funding new technological solutions and upgrades, nearly two-thirds of this fund-

ing has been used to maintain DOJ's antiquated legacy systems. The OIG report found that the majority of DOJ's communications systems are obsolete because the manufacturers no longer support them, maintenance is difficult and spare parts are hard to find. As the DOJ equipment continues to age, these costs are expected to increase by five percent each year.

Between a lack of money because funds that should be used for new technology solutions and upgrades are being poured into DOJ's antiquate legacy systems, and the rising cost of operating and maintaining legacy communications, can you tell me when you expect the IWN to be up and running so that the Bureau's agents can access and use the latest in interoperable technologies to communicate and coordinate with their fellow federal, state and local law enforcement partners?

Answer. Full migration to a new, DOJ-level, trunked VHF network requires not only extensive planning and spectrum coordination, but also site preparation and circuit leasing, and these to a much greater extent than if the upgrade were to a single organization's system. In order to deploy new systems, several issues must be addressed. For example, we must upgrade radios in the field as necessary; address licensing limitations and the need for compatibility with manufacturers' infrastructures; either negotiate new site leases or modify existing leases based on new requirements; address access and security requirements; and realign and approve spectrum allocations while formulating transition schedules. In the interim, although aging wideband legacy LMR systems are antiquated, they can be upgraded to newer, narrowband, conventional equipment relatively easily, networks can be expanded, and capabilities enhanced.

O&M expenses are a significant part of the cost of any large-scale system or network. Site repairs, security upgrades, network expansion, radio installations, personnel, and training are among the areas funded by DOJ components before the consolidation of those individual resources. The integration of multiple systems requires experienced engineers and government personnel who understand implementation needs to ensure proper oversight, control, and system availability. For example, even following integration, these networks must remain functional at key local levels during times of crises to ensure the public is protected if one agency or one part of the system is compromised.

*Question.* What impact has the lack of a functioning IWN had on the FBI's ability to carryout its counterterrorism mission?

Answer. Absent the ability to communicate securely with other investigative personnel, FBI personnel use other alternatives, such as commercial services. Commercial devices operate on commercial networks, which may have inadequate capacity in times of crises, may not meet security requirements, and may operate only in areas with adequate infrastructure. For example, commercial LMR peer-to-peer (device-to-device) capabilities usually require that the infrastructure be operational at the time of attempted communication. In the absence of secure communications capabilities, outsiders (including suspects) can use frequency monitoring devices (scanners) to track unencrypted online communications. Unlike most portable devices currently used by the FBI in the field, newer radio models are smaller, can be used to send e-mails and broadcast messages, provide greater voice clarity, and regain range that is lost to systems using DES encryption.

INTELLECTUAL PROPERTY ENFORCEMENT

*Question.* By some government estimates, U.S. companies suffer $250 billion in annual losses due to intellectual property theft, which also causes U.S. workers to lose millions of jobs. Aggressive investigation and prosecution of IP crimes is clearly needed to deter such massive infringement. In recognition of this need, the Justice Department's IP Task Force, in its October 2004 Report and a subsequent June 2006 Progress Report, recommended increasing the number of FBI agents investigating intellectual property crimes.

Would you agree with the Task Force's recommendation that, to effectively deter rampant IP infringement, there should be an increase in the number of FBI agents dedicated to investigating IP crimes?

Answer. The FBI SAs assigned to cyber crime programs in the FBI's field offices address intellectual property (IP) infringement matters in the same manner as they address other FBI violations, which is based upon FBI investigative priorities. IP infringement matters that pose a threat to national security (such as certain thefts of trade secrets) are the FBI's highest IP infringement priority. The number of SAs working IP matters has decreased since fiscal year 2005 due to the November 2004 re-ordering of cyber priorities, pursuant to which Innocent Images matters were placed in a higher priority than IP rights. In fiscal year 2005 there were approximately 56 SAs working IP investigations, while in June 2007 there were 48.

NATIONAL SECURITY LETTERS

*Question.* Director Mueller, as you know, I am very concerned about the widespread abuse of National Security Letters ("NSLs") at the FBI. Last month, the Justice Department's Inspector General recently reported on a pattern of unacceptable abuses of NSLs by the FBI, where time and time again the FBI did not follow the law, or even its own rules, in obtaining sensitive personal information about thousands of ordinary Americans and others. According to the Inspector General's report, one in every five of the NSL files reviewed contained violations of the law, and more than half of the NSLs reviewed did not even meet the FBI's own standards. During the FBI Oversight hearing that the Judiciary Committee held last month, you promised to promptly address the serious lapses with NSLs.

Director, what are you doing to make sure that the FBI follows the law—and its own policies—when issuing National Security Letters going forward?

Answer. As a result of the OIG report, the FBI has prepared comprehensive guidance concerning the use of National Security Letters (NSLs). Every proposed NSL must be reviewed by the Chief Division Counsel in each FBI field office or by an attorney in the National Security Law Branch (NSLB) at FBIHQ, including review of the relevance of the request to an authorized investigation and the predication for that investigation. In addition, NSLB is developing a training curriculum, which will be mandatory for all employees involved in the NSL process, to address problems created by confusion and lack of familiarity with the provisions and requirements of the various statutes authorizing NSLs. Even before the OIG report was published, the FBI had begun work on a database, based on the successful "FISA Management System," that will permit the electronic transfer of NSL-related data between databases (this transfer is currently being accomplished manually). Finally, the Inspection Division is investigating in more detail many of the problems identified in the OIG report. This review should identify any areas that require closer scrutiny. Taken together, these measures will both provide a more user-friendly business process for FBI personnel who use NSLs as an investigative technique and enhance management's audit and oversight capabilities. This system will also enhance the accuracy of the NSL reports provided to Congress.

The FBI has also recognized the need to create a compliance program to ensure we have appropriate policies, procedures, audit capabilities, and training for all our activities. The FBI's compliance program will be modeled after similar programs in the public and private sectors. While it is too early to say with certainty what the program will look like, it will most likely incorporate features common to most successful programs, such as a written compliance policy, a central compliance officer and office, a senior-level compliance committee, access to and the ability to draw upon the resources of the organization, and an implementing strategy that adjusts as new threats and programs are identified. Audits of practices, not just procedures, will be an essential component of the program, as will effective "two-way" communication channels. In addition, OGC will continue to meet regularly with DOJ's National Security Division (NSD) to discuss appropriate policies in the national security arena. DOJ's NSD and the FBI's NSLB conducted 14 national security reviews of the FBI's field offices and one of an FBI Headquarters Division in calendar year 2007. There are 14 national security reviews of the FBI's field offices and one of an FBI Headquarters Division planned for calendar year 2008. Those reviews will include, but not be limited to, the use of NSLs.

*Question.* One of the most disturbing findings in the Inspector General's Report was that the FBI improperly issued more than 700 so-called "exigent letters," seeking telephone and financial records on an emergency basis, which contained blatant factual misrepresentations. Is the FBI still using these so-called "exigent letters," and if so, based upon what legal authority?

Answer. The OIG identified four problems with the so-called exigent letters as they were used by the FBI's Communications Analysis Unit (CAU): (1) although the letter asserted there were exigent circumstances, that was not always the case; (2) the CAU maintained no records supporting the claimed emergency; (3) although many of the letters asserted that a Federal grand jury subpoena had been requested, in fact, in most circumstances a grand jury subpoena had not been requested and the intent was to provide the carrier with an NSL; and (4) in many cases, although subsequent legal process had been promised to the carrier, no process (neither a grand jury subpoena nor an NSL) was delivered in a timely fashion.

It was not until the FBI received the draft OIG report that executive leadership became aware of the full scope of the problems with the use of the so-called exigent letters. Upon learning of this matter, the FBI worked quickly to develop policy that would address the shortcomings identified in the OIG report without undermining the FBI's ability to receive information under 18 U.S.C. § 2702(c)(4), a critical provi-

sion allowing communications service providers to give the government information in certain emergency circumstances. That policy, which was issued on 3/1/07, discontinued the use of "exigent letters" of the sort described in the OIG report, but affirmed that the FBI may continue to receive information pursuant to section 2702. The new form 2702 letter makes it very clear that: production of the records is at the carrier's discretion; no other legal process is promised; and, by policy, the emergency justifying this requirement must be documented. Accordingly, the FBI believes the new policy deals precisely with the problems identified by the OIG and appropriately balances privacy concerns with investigative needs in case of dire, life-threatening emergencies.

PRIVACY/DNA SAMPLING

*Question.* Pursuant to a little noticed provision in the Violence Against Women and Department of Justice Reauthorization Act of 2005, the Justice Department is developing new guidelines that would greatly expand the government's ability to collect DNA samples—which reveal the most sensitive genetic information about an individual—from most individuals who are arrested or detained by federal authorities. Under this policy, the Government will store this sensitive biological information in a federal data base known as the National DNA Index System.

I am very concerned about the privacy implications of this new policy because, unlike fingerprinting—which is commonly used as a means of identification—DNA profiles reveal all kinds of sensitive biological information about a person, including the presence of a physical disease or mental disorder.

Director Mueller, what privacy protections are in place under these new guidelines to ensure that sensitive DNA data contained in the National DNA Index System will not be misused or improperly disclosed by the Justice Department?

Answer. While the FBI is working with others in DOJ to finalize the regulations on DNA sample collection relative to federal arrestees and detainees, there are already a number of protections in place and they are vigorously enforced. When arrestee and detainee DNA samples are collected, they are placed in the National DNA Index System (NDIS) offender database. The offender and crime scene databases are populated by profiles from Federal, state, and local law enforcement agencies. The profiles within the database use only genetic markers that provide identification; no other genetic information, such as medical status, can be gleaned from these markers, and NDIS, which is in essence a pointer system, does not contain any names or personally identifying information. Instead, each profile is associated with a unique identifier that traces back to the laboratory that developed that particular profile and placed it in the database. Once a "hit" occurs and is confirmed, then the two laboratories involved will exchange information regarding the individual involved.

Although all states participate in NDIS, they do not have direct access to the national database. NDIS is searched once a week at the FBI and a hit report is generated. If an individual lab wants to follow up on a particular hit (generally the lab that contributed the forensic sample), it contacts the laboratory that provided the offender information and a confirmation process begins. During that process, the laboratories follow written procedures to ensure the hit is related to the correct offender; these procedures include re-working a portion of the remaining sample and re-comparing results. Under procedures established by the NDIS Board, no names or other personally identifying information may be reported until the confirmation process is complete.

Federal law also provides privacy protections, including criminal penalties. By law, NDIS may only include DNA information that is:

Maintained by Federal, State, and local criminal justice agencies (or the Secretary of Defense in accordance with section 1565 of Title 10) pursuant to rules that allow disclosure of stored DNA samples and DNA analyses only—

—(A) to criminal justice agencies for law enforcement identification purposes;

—(B) in judicial proceedings, if otherwise admissible pursuant to applicable statutes or rules;

—(C) for criminal defense purposes, to a defendant, who shall have access to samples and analyses performed in connection with the case in which such defendant is charged; or

—(D) if personally identifiable information is removed, for a population statistics database, for identification research and protocol and development purposes, or for quality control purposes. (42 U.S.C. § 14132(b)(3).)

These protections are further bolstered by provisions that reiterate these protections and provide criminal penalties for individuals who knowingly disclose DNA in-

formation from the database to a person or agency not authorized to receive it. (See, for example, 42 U.S.C. § 14133(c) and 42 U.S.C. § 14135e(c).)

Finally, we are conducting a privacy impact assessment to analyze how this DNA information will be handled, determine risks from processing this information, and identify protections to help mitigate any privacy risks.

*Question.* Another concern that I have about this policy is that it will just add to the already notorious backlog at the FBI's laboratory. According to press reports, the FBI acknowledges that this new policy will result in an increase of as many as one million additional DNA samples a year. Is the Bureau's laboratory equipped to handle this additional workload?

Answer. The FBI's Federal Convicted Offender (FCO) Program is responsible for collecting and processing DNA samples collected from those convicted of Federal felonies for the purpose of retention and cataloging in the FBI's National DNA Database. The FCO Program supplies collection kits and receives samples from over 500 collection sites across the country. Since the program's inception in June 2001, over 225,000 samples have been received. The FCO Program currently receives 7,000 to 8,000 samples monthly. To date, the FCO Program has uploaded over 34,000 samples into the National DNA Database, which has resulted in over 600 hits. The volume of sample submissions to the FCO Program has increased dramatically since 2001.

While much of the DNA analysis process has been automated, a bottleneck continues to exist at the DNA data review stage, which is currently conducted manually. To alleviate this bottleneck, the FBI is evaluating data analysis software packages or expert systems to automate this part of the process. Once implemented, the resulting system would be able to assess 85 percent to 90 percent of the convicted offender data without manual intervention, reducing data analysis time from approximately 60 minutes (per 80 samples) to less than 15 minutes (a four-fold increase in efficiency).

QUESTIONS SUBMITTED BY SENATOR LEAHY PURSUANT TO THE DECEMBER 6, 2006, SENATE JUDICIARY COMMITTEE HEARING REGARDING FBI OVERSIGHT

The FBI's responses to the Questions for the Record (QFRs) posed by Senator Leahy to Director Mueller following the December 6, 2006, Senate Judiciary Committee hearing, and resubmitted following this hearing, were provided to the Senate Judiciary Committee by letter dated June 14, 2007, along with the rest of the QFRs posed to the FBI following that hearing. Please refer to the record for the responses to those questions.

*Iraq Study Group Recommendations*

1. In its recent report about the situation in Iraq, the bipartisan Iraq Study Group found that the Iraqi Police Service ("IPS") is in dire straits. In particular, the report states (on pages 9–10):

The state of the Iraqi police is substantially worse than that of the Iraqi Army. The Iraqi Police Service currently numbers roughly 135,000 and is responsible for local policing. It has neither the training nor legal authority to conduct criminal investigations, nor the firepower to take on organized crime, insurgents, or militias . . . Iraqi police cannot control crime, and they routinely engage in sectarian violence, including the unnecessary detention, torture, and targeted execution of Sunni Arab civilians. . . . There are ample reports of Iraqi police officers participating in training in order to obtain a weapon, uniform, and ammunition for use in sectarian violence. Some are on the payroll but don't show up for work. In the words of a senior American general, "2006 was supposed to be 'the year of the police'" but it hasn't materialized that way.

In recommendation #54 of the report, the Iraq Study Group advocates having the Justice Department direct the training mission of the IPS forces that remain within the Iraq Ministry of the Interior.

(a) Please state whether you agree with this recommendation and explain your response.

(b) What role has the FBI had in the training of the Iraqi police, thus far?

(c) What additional steps will the FBI take to train the IPS in light of the Iraq Study Group's report and in particular, this recommendation?

2. In recommendation #57, the Iraq Study Group recommends that the practice of embedding U.S. police trainers with Iraqi police units be expanded and that the number of civilian officers training Iraqi police be increased.

(a) Please state whether you agree with this recommendation and explain your response.

(b) Are there currently any FBI agents embedded with the Iraqi Police Service? If so, how many?

(c) Will the FBI provide additional police trainers to participate in the training of the Iraqi Police Service and, if so, how many?

3. In recommendation #58, the Iraq Study Group further recommends that the FBI expand its investigative and forensic training and facilities in Iraq, to address both terrorism and criminal activity.

(a) Please state whether you agree with this recommendation and explain your response.

(b) How many FBI agents and personnel are currently providing investigative and forensic training in Iraq?

(c) How many FBI agents and personnel are currently assisting with counterterrorism activities in Iraq?

(d) Will the FBI expand its role in these programs as the Iraq Study Group recommends and, if so, what additional resources, including staff, equipment and funding, will be dedicated to that effort?

4. Public corruption is a significant problem in Iraq. According to the Iraq Study Group's report, one senior Iraqi official estimated that official corruption cost the Iraqi Government between $5 and $7 billion per year. To address the rampant corruption in Iraq, the Iraq Study Group concludes that Justice Department programs to create institutions and practices to fight public corruption in Iraq "must be strongly supported and funded."

(a) What resources, including staff, equipment and funding, does the FBI currently have dedicated to helping to fight public corruption in Iraq?

(b) Will the FBI increase the resources that it currently has in Iraq to further assist the Iraqi government in fighting public corruption?

*Datamining/ATS and IDW*

5. At the hearing, I asked you about the Department of Homeland Security's Automated Targeting System ("ATS") and recent revelations that, since 9/11, the Bush Administration has been using this program to secretly assign terror scores to millions of law-abiding Americans who travel across our borders. You were not prepared to answer my questions about ATS at the hearing; however, you stated that you would look into this matter. Please respond to the following questions:

(a) During an unclassified briefing for Judiciary Committee staff, the Department of Homeland Security said that it shares the sensitive personal information in the ATS database with the FBI and checks the information in this database against the Terrorist Watchlist. Does the FBI receive the terror scores or assessments and the other information contained in the ATS database? Please describe the information that the FBI receives from ATS and explain how the Bureau uses this information.

(b) Does the FBI use the information that it receives from ATS to assist it in investigating traditional criminal cases as well as counterterrorism matters?

(c) What safeguards are in place at the FBI to ensure the accuracy of this information and to protect the privacy interests of the millions of law-abiding Americans whose sensitive personal data is contained in ATS?

6. You also testified that you would check into whether the FBI's own Investigative Data Warehouse database ("IDW")—which now contains more than 560 million FBI and other agency documents—shares information or data with ATS. Does the IDW database share information or otherwise interface with the ATS data-mining program?

7. You further testified that the FBI has issued a privacy impact statement for IDW.

(a) Has the Bureau publicly released this privacy impact statement for IDW and, if not when will the FBI do so?

(b) Has the FBI filed a notice in the Federal Register regarding the IDW program? If not, why not, and when will the Bureau do so?

8. What policies are in place to ensure the accuracy and security of the sensitive personal data contained in the IDW database?

*Detainee Treatment*

9. Last year's Detainee Treatment Act and this year's Military Commissions Act both set standards for what types of interrogation techniques are and are not permissible. In each case, though, the standards are general and open to interpretation.

(a) Did the Office of Legal Counsel or any other legal office at the Justice Department or the FBI provide guidance to the FBI regarding how to interpret the provisions of the Detainee Treatment Act governing what interrogation practices are permissible?

(b) What form did this guidance take? Did it dictate what specific interrogation techniques can and cannot be used?

(c) What was the substance of this legal guidance? Will you share this document with the Committee?

10. Has the Office of Legal Counsel or any other legal office at the Justice Department or the FBI provided guidance to the FBI regarding how to interpret the provisions of the newly passed Military Commissions Act governing what interrogation practices are permissible?

(a) If so, what is that guidance? Please provide a copy of any legal guidance provided to the FBI regarding the Military Commissions Act.

(b) If not, please explain how your agents know what is permitted or prohibited by the broad language of the Military Commissions Act without legal guidance. Do you expect to receive legal guidance in the future?

11. An FBI Supervisory Special Agent at Guantanamo Bay wrote a memo in November 2002 entitled "Legal Analysis of Interrogation Techniques," in which he or she concluded that rendering terrorism suspects to "Jordan, Egypt, or another third country to allow those countries to employ interrogation techniques that will enable them to obtain the requisite information" would violate 18 U.S.C. § 2340 (the torture statute). Specifically, the memo states:

In as much as the intent of this category is to utilize, outside the United States, interrogation techniques which would violate 18 U.S.C. § 2340 if committed in the United States, it is a per se violation of the U.S. Torture Statute. Discussing any plan which includes this category, could be seen as a conspiracy to violate 18 U.S.C. § 2340. Any person who takes any action in furtherance of implementing such a plan, would inculpate all persons who were involved in creating this plan. This technique cannot be utilized without violating U.S. Federal law.

Legal Analysis of Interrogation Techniques (available online at http://www.humanrightsfirst.org/us_law/etn/pdf/fbi-brief-inter-analysis-112702.pdf).

(a) Do you agree that the "technique" of rendering suspects to third countries in order to allow those countries to use coercive interrogation techniques that violate U.S. law "cannot be utilized without violating U.S. Federal law"?

(b) Does the legal analysis contained in the November 2002 memo reflect the FBI's current thinking with respect to rendition and other interrogation techniques? If not, how does the FBI's current analysis differ from the analysis in the memo?

12. You testified that the FBI is not investigating any of the allegations that have been made by German national Khalid El-Masri and others regarding possible violations of U.S. law in connection with the rendering of individuals to foreign countries. Why isn't the FBI investigating these allegations?

*Brandon Mayfield*

13. In December, the government agreed to pay $2 million to settle a case that had been brought by Oregon lawyer Brandon Mayfield. Mr. Mayfield was jailed for two weeks in 2004 as a material witness, in connection with the Madrid train bombing. As part of the settlement, the government made a formal apology to Mr. Mayfield and his family for the suffering caused by his mistaken arrest. Mr. Mayfield was arrested and held for two weeks on a material witness warrant. Under the material witness law, the government is authorized to arrest a witness to secure his testimony in a criminal proceeding. After the 9/11 attacks, the Justice Department began using the material witness law not to secure testimony from possible witnesses, but rather to lock up possible suspects in counter-terrorism investigations without charge until there is enough evidence to indict. Is it accurate to say that this is what happened in the Mayfield case?

14. The Second Circuit Court of Appeals wrote in 2003 [in the *Awadallah* case] that the purpose of the material witness law is to secure testimony where it may become impracticable to secure the presence of the witness by subpoena. The Court added: "It would be improper for the government to use [the material witness law] for other ends, such as the detention of persons suspected of criminal activity for which probable cause has not yet been established." Do you agree that it is improper for the government to use the material witness law for purposes other than securing testimony?

15. The government noted as part of the settlement with Mr. Mayfield that the FBI had taken steps "to ensure that what happened to Mr. Mayfield and the Mayfield family does not happen again." What steps has the FBI taken? Do they include any new guidance respecting the use of the material witness statute?

*Sentinel*

16. You testified that there will be no cost overruns or budget shortfalls for the Sentinel program. However, in December 2006, the Department of Justice Office of Inspector General ("OIG") released a report that found that the FBI will need an additional $56.7 million over what the President requested in his budget for next

year to continue the Sentinel project, and that these additional costs could have an adverse impact on the FBI's counterterrorism and other programs. The OIG's report also calls the FBI's cost estimate for the Sentinel program into serious question.

(a) Does the FBI need additional funds to pay for Phase II of Sentinel and if so, how much additional funding is needed?

(b) You testified that the FBI has set aside $57 million to make up the difference between the President's $100 million budget request for Sentinel and the anticipated program costs for Phase II. What FBI programs will be cut back or eliminated in order to use these funds to pay for Sentinel?

(c) Will you promptly inform Congress of Sentinel's operational impact on other FBI programs if reprogramming of funds is necessary to pay for Sentinel?

17. Earlier this year, the Government Accountability Office ("GAO") found that the FBI paid about $10.1 million in unallowable costs to contractors during the Trilogy program. You have said that the FBI would pursue these funds upon completion of a closeout audit of the Trilogy program by the Defense Contract Audit Agency. When will the FBI start to recover these taxpayer funds?

18. Another concern raised by the GAO is the FBI's over-reliance on government contractors to complete Sentinel. According to the GAO, 77 percent of the positions for Sentinel will be filled by contractors rather than by government personnel. Given the FBI's past experiences with contractors on the Trilogy program, is the Bureau overly relying on contractors for Sentinel?

*Arabic-speaking Agents and Translators*

19. Despite progress on hiring Arabic translators, the FBI lags far behind when it comes to the number of agents who are proficient in Arabic. Recently, The Washington Post reported that only 33 FBI agents have at least a limited proficiency in Arabic and only 1 percent of FBI agents have any familiarity with the language.

(a) How can the FBI effectively fight the war on terror when most of its agents lack even a basic proficiency in the Arabic language?

(b) How has the lack of Arabic speaking agents impacted the Bureau's ability to develop relationships with Arabic-speaking and Muslim communities within the United States?

(c) How has the lack of Arabic speaking agents impacted the Bureau's ability to gather critical counterterrorism intelligence?

20. You previously testified that the FBI can translate high-priority counterintelligence material within 24 hours. Is this still the case, and what are the realistic prospects for this type of material to be translated in something approximating real time?

*Afghanistan Opium Trade*

21. Earlier this year, the United Nations Office on Drugs and Crime ("UNODC") reported that there has been a surge in opium cultivation in Afghanistan that is fueling the insurgency in that country. According to the report, opium production in Afghanistan has increased 59 percent over last year and in the southern region where Taliban insurgents have intensified their attacks on Afghan government and U.S. forces, opium cultivation has increased by 162 percent. Given that the Bush Administration routinely describes the international narcotics trade as a national security issue, and that the production of opium has skyrocketed since the invasion of Afghanistan and removal of the Taliban, what does this mean for our national security at home and for the safety of our troops in Afghanistan?

*Terrorist Watchlist*

22. You recently disclosed that the Terrorism Screening Database ("TSDB") contains 491,000 records and that the FBI's review of the database to ensure the accuracy of these records will take years. The glaring errors in the FBI's Terrorist Watchlist—including the names of Members of Congress, infants and even nuns—clearly make the case for why this review is needed. These errors also suggest that any review of the TSDB must also include finding out how the bad information that is in this database got there in the first place.

(a) What is the FBI doing to find out how bad data got into the TSDB and onto the terrorist watchlist?

(b) Is there any procedure in place that requires the FBI to conduct an internal investigation whenever errors are detected in the TSDB? Should there be?

*Cyber Security*

23. During the hearing, you testified that cyber crime is one of the FBI's top three priorities on the national security side. In late November, there were unconfirmed reports of a threatened attack on U.S. stock market and the Banking industry

websites by a radical Muslim group. According to press reports, the attack would be in retaliation for the detention of Muslim prisoners at Guantanamo Bay.

(a) What steps did the FBI take to respond to this threat?

(b) What resources does the FBI currently have dedicated to U.S. cyber security?

*Public Corruption*

24. In your testimony at the hearing, you called public corruption the FBI's top criminal investigative priority and you asserted that there has been an increase in the number of agents investigating public corruption cases and the number of cases investigated. However, a September 2005 report by the Department of Justice Office of the Inspector General found that, from 2000 to 2004, there was an overall reduction in public corruption matters handled by the FBI. The report also found declines in resources dedicated to investigating public corruption, in corruption cases initiated, and in cases forwarded to U.S. Attorney's Offices. It further found that some field offices were not giving public corruption sufficient emphasis and had scaled back their anti-corruption efforts.

(a) What have you done since the Inspector General's report came out to ensure that combating corruption gets the resources and attention it needs?

(b) Would the FBI benefit from additional resources to combat public corruption? If so, what types of resources would be the most helpful?

25. In your written testimony, you cited the Phoenix Division's Lively Green investigation as an example of the FBI's commitment to, and success in, investigating public corruption. The Arizona Republic reported earlier this year that FBI agents working on the Lively Green investigation paid for a room for informants to stay in a presidential suite at the MGM Grand Hotel in Las Vegas. According to a disclosure made by prosecutors, the informants and suspects staying in the room hired prostitutes and sexually abused an unconscious prostitute. Soon after, FBI personnel recorded conversations which included detailed descriptions of the incident, and agents reviewed lewd photographs from the incident. FBI personnel failed to report the incident to prosecutors, who learned of it only many months later from an informant, and one agent was found to have made statements apparently suggesting that the informants get rid of the incriminating photographs. Although the Lively Green prosecutions went forward successfully, these cases were placed in jeopardy by this conduct.

(a) What is the FBI doing to ensure that the problems that plagued the Lively Green investigation and other past investigations—agents covering for their informants' misconduct—do not happen again?

(b) Are you satisfied with the steps that the FBI took to investigate and respond to the misconduct in the course of this operation?

*FBI Computer System Failure*

26. According to several press reports, the FBI's National Instant Criminal Background Check System, which is used to screen gun buyers, crashed several times in November 2006—potentially allowing gun buyers to purchase firearms without being properly screened. According to the FBI, this background check system receives between 30,000 and 50,000 background check request each day, so this is not an insignificant matter. I have three questions:

(a) Has the FBI determined what caused the system to crash, and has this problem been fixed?

(b) Does the FBI know how many gun sales were completed without background checks while the system was down?

(c) What is the FBI doing to make sure that this problem never happens again?

*Mike German / Whistleblowers*

27. According to the Office of the Special Counsel ("OSC"), the average number of whistleblowers who have filed complaints with the government has increased by 43 percent since September 11, 2001. Yet, sadly, the number of whistleblowers who have filed reprisal complaints with the OSC because their employers have retaliated against them for coming forward has also increased by 21 percent during the same time period. For example, former FBI special agent Michael German has said that his reputation and career were ruined after he reported concerns about misconduct on the Bureau's terrorism investigations to his superiors. What is the Bureau doing to protect the rights of whistleblowers within the FBI to come forward and disclose government fraud, waste and abuse?

28. Many whistleblowers in the intelligence community are discouraged from coming forward because intelligence agencies are exempted from the Whistleblower Protection Act. Would you support legislation to extend whistleblower protections to national security employees?

*Anthrax Investigation*

29. The Bureau's investigation into the 2001 anthrax attacks that killed 5, infected 17 others and terrified millions of Americans is now well into its fifth year. Many believe that the investigation has gone very cold and no arrests have been made in the case.

(a) What is the current status of the anthrax investigation?

(b) Do you expect that criminal charges will be brought in the case and if so, when?

(c) You testified at the hearing that the FBI currently has 17 agents and 10 postal inspectors assigned to the anthrax investigation. Has the number of personnel dedicated to the investigation changed? Will you consider increasing the number of agents and investigators dedicated to this investigation?

(d) How much money has the FBI spent on the anthrax investigation to date?

30. A frequent criticism of the anthrax investigation is that the FBI has made a number of incorrect assumptions about the source of the anthrax and refused to heed outside expert advice in the case. Will the Bureau be open to new theories about the case and more receptive to outside expertise and criticism going forward?

31. You testified that the FBI has "periodically" provided briefings for the family members of the anthrax attacks. When was the Bureau's last briefing to victims and their family members? How often does the FBI provide these briefings?

*Combined DNA Index System (CODIS)*

32. A recent investigation by USA Today uncovered nearly three dozen cases during the past five years in which investigators failed to pursue potential suspects whose DNA matched evidence found at crime scenes. ("Many DNA Matches Aren't Acted On, Nov. 21, 2006). According to USA Today:

The unpursued matches had this in common: All were recorded as "hits" by the CODIS system and added to the list of CODIS-aided investigations that the FBI makes public. Through September, the FBI counted 39,291 such matches since 1990. No one is certain how many of those matches resulted in arrests or convictions, however. In part that's because no law or regulation requires crime labs, the FBI or local law enforcement to follow through and determine what becomes of DNA matches after the CODIS system reports them to the police. Crime lab officials believe hundreds more matches have not been pursued by authorities. They say those matches might become evident only after a perpetrator is caught for a second time.

(a) Does the FBI keep any data on how many CODIS matches are pursued by investigators?

(b) Does the FBI keep any data on how many CODIS matches have helped solve crimes?

33. The leader of the FBI's CODIS unit told USA Today that tracking the results of DNA matches would present a "significant task" that the FBI is not geared to undertake, and that accounting for CODIS matches should be the responsibility of local police and prosecutors who are given match information. Do you agree?

34. Do you have any recommendations for improving accountability in this area? How can the federal government get an accurate measure of CODIS's real world value in solving crimes?

*Corporate Fraud*

35. You testified during the hearing that white-collar criminal cases were one of the FBI's top three priorities on the criminal side. Recently, Deputy Attorney General McNulty issued new guidelines for corporate fraud investigations to address growing concern about the Department of Justice's investigation and prosecution of corporate fraud cases and, in particular, criticisms of the Department's policy—embodied until recently in the so called "Thompson Memorandum"—to request that corporate defendants produce attorney-client privileged and/or work product information in these investigations.

(a) Does the FBI request or demand that corporate defendants turn over attorney-client privileged or work product information in its corporate fraud investigations? If so, would you describe such requests as routine in white collar fraud cases?

(b) What will the FBI do to ensure that agents investigating corporate fraud cases conform their conduct to fit the standards set out in the new McNulty Memorandum?

*Gardner-quinn Murder Investigation*

36. During the hearing, you testified that the FBI agent who published details of the Gardner-Quinn murder investigation in a Vermont newspaper is under investigation. What is the status of this investigation and has the agent involved been disciplined by the FBI?

QUESTIONS SUBMITTED BY SENATOR LEAHY PURSUANT TO THE MARCH 27, 2007, SENATE JUDICIARY COMMITTEE HEARING REGARDING FBI OVERSIGHT

The FBI's responses to the below QFRs posed by Senator Leahy to Director Mueller following the 3/27/07 Senate Judiciary Committee hearing were to be provided to the Senate Judiciary Committee with the rest of the QFRs posed to the FBI following that hearing. Because we are not providing those responses here, we have "grayed out" these particular QFRs.

*National Security Letters*

1. Despite the recent report by the Department of Justice Inspector General finding illegal and improper use of National Security Letters and so-called "exigent letters," I understand that the FBI may still be using exigent letters. Is the FBI still using exigent letters and if so, why have you not stopped this practice?

2. The Attorney General's guidelines require that the FBI use the least intrusive investigative tools to obtain the information that it needs. During the recent hearing that the Committee held on NSLs, Inspector General Glenn Fine testified that the least intrusive NSL are the ones seeking telephone records and that NSLs for financial records and for credit reports are more intrusive of Americans' privacy. During the hearing, you testified that you believed that NSLs seeking credit reports could be intrusive, but less so than those seeking telephone toll records. Does the FBI have a policy in place requiring that agents first use the least intrusive types of NSLs—such as NSLs seeking telephone toll records—when conducting investigations? If not, will you adopt such a policy to better safeguard Americans' privacy?

3. I am also concerned about the kind of information that the FBI is seeking in its National Security Letters.

(a) Is it true that most of the FBI's NSLs seeking telephone or Internet records under the Electronic Communications Privacy Act ("ECPA") seek only subscriber identifying information? What percentage of these NSLs seek other transactional information, such as toll records or billing records?

(b) With regard to NSLs that seek bank or other financial records under the Right to Financial Privacy Act, the Fair Credit Reporting Act and the National Security Act, what percentage of these NSLs seek detailed financial transaction information, such as bank account records and/or full credit reports?

4. During the hearing, you testified that the information that the FBI improperly obtained through unlawful NSLs has been placed into the FBI's database. What steps have you taken to track all of this improperly obtained information, and have you removed it from all of the FBI's files and databases?

5. Has any of the information improperly obtained through unlawful NSLs been used in any criminal cases or investigations and, if so, have you notified appropriate authorities at the Justice Department in order to make sure none of this information has been improperly used in our justice system?

6. Do you believe that the FBI's failure to follow the law in obtaining NSLs may be exculpatory, or Giglio information, that needs to be disclosed if the information is used in court?

7. The Judiciary Committee has received letters and briefings from FBI and Justice Department officials in the past, assuring us that NSLs were being used properly, and that all appropriate safeguards and legal authorities were being followed. For example, in a November 2005 letter to this Committee (attached), the Justice Department asserted emphatically that the FBI was not abusing the process for seeking NSLs, and that all NSL activity was accurately being reported to Congress as required by law. In light of the Inspector General's report, will you review those letters and briefings to see if anyone at the FBI or the Justice Department has misled this Committee about NSLs?

8. According to the Inspector General's report, one of the major reasons that the FBI failed to report thousands of NSLs to Congress was because of a malfunction in a FBI's computer database. Apparently, this breakdown occurred in 2004, causing the loss of information about more than 8,000 NSL requests. What was the cause of this malfunction, and have you corrected it? Why did you fail to report this problem to Congress?

9. You testified during the hearing that the FBI has revised its internal policy on NSLs and adopted the recommendations contained in the Inspector General's report. But, in 60 percent of the NSLs that the Inspector General reviewed, he found widespread failure on the part of the FBI to comply with its own internal control policies. Given this track record, how can you assure Congress that the new policies that you are implementing will prevent future abuses of NSLs, when the Bureau clearly failed to follow its own policies in the past?

10. During the hearing, you testified that "[t]he relevant standard established by the PATRIOT Act for the issuance of National Security Letters is unrelated to the problems identified by the Inspector General." Yet, given the broad scope of the abuses uncovered by the Inspector General's report, it appears that there is a need for additional checks and balances on the authority to issue NSLs. Do you believe that an independent check on the NSL process, such as approval of NSLs by a judge, a Justice Department attorney, or an outside review panel, would improve the NSL approval process and prevent future abuses?

*Library Records*

11. I appreciate your March 30, 2007, letter responding to my question about how often the FBI has used NSLs to obtain records from libraries and educational institutions. In your letter, you state that the FBI's Office of General Counsel has maintained an informal list of the number of NSLs served on educational institutions or libraries; however, you also state that this list may not be complete or accurate. Given the importance of this issue to Americans' privacy and civil liberties, will the FBI agree to formally track the number of NSLs issued to libraries and educational institutions and periodically report this figure to Congress?

12. During the hearing, you cited the Inspector General's Report on Section 215 of the PATRIOT Act, which found that the FBI rarely used this authority to obtain library records. However, I am concerned that the FBI is using other provisions in the PATRIOT Act to obtain this information, thereby circumventing the safeguards and reporting requirements of Section 215. For example in 2005, the FBI issued NSLs to four Connecticut libraries asking them to surrender "all subscriber information, billing information and access logs of any person" related to a specific library computer during a specific time period, pursuant to Section 505 of the PATRIOT Act. These NSLs also prohibited the librarians from disclosing the fact that they had received the NSLs or their contents—the so-called "gag order" under the PATRIOT Act.

(a) Please describe the circumstances surrounding the FBI's decision to issue these National Security Letters.

(b) Please identify all of the PATRIOT Act provisions that the FBI has used to obtain library records from libraries and educational institutions?

(c) Is the FBI circumventing the requirements of Section 215 by relying on other provisions in the PATRIOT Act to obtain this information?

*Arar/Watchlist*

13. I have asked before about Maher Arar, a Canadian citizen who when returning home from a vacation in 2002, was detained by federal agents at JFK Airport in New York City on suspicion of ties to terrorism, and was sent to Syria, where he was held for 10 months. After I pressed the Attorney General about the Arar case at a hearing in January, Senator Specter and I were finally granted a classified briefing. After that briefing, we wrote to request a Justice Department investigation into the matter and have learned that the Department's Office of Professional Responsibility is looking into the Department's legal decisions.

(a) Is the FBI taking any steps to evaluate whether your agents and officials acted properly in the Arar matter, particularly with regard to the original decision to send him to Syria, rather than to Canada?

(b) Given that a past OPR investigation of a politically sensitive matter, specifically the NSA's warrantless wiretapping program, appears to have been blocked, will you commit to cooperate with OPR's investigation of the Arar case?

(c) What steps has the FBI taken to ensure that you do not participate in sending other people in the future to places where they will be tortured?

14. Despite having been cleared of all terrorism allegations by Canada, Mr. Arar remains on a United States terror watch list. In fact, The Washington Post reported on Sunday that our watch lists keep growing, with the Terrorist Identities Datamart Environment ("TIDE")—the master list from which other lists, like the No Fly list, are taken—now numbering about 435,000 people.

(a) Doesn't such a large and constantly growing list actually make it harder for the FBI and others to use the information? Wouldn't the FBI and other agencies be able to do much more to protect us with a more controlled list, focused on serious and proven threats?

(b) The Washington Post article also noted the difficulty that people on the list, or with names similar to people on the list, have in getting off of government lists—which restrict their travel and their lives. The Government Accountability Office issued a report last year setting out some of the failures throughout the government in allowing individuals effective redress if they are wrongly placed on these lists. In light of the Arar situation, Senator Specter and I asked the Government Account-

ability Office to update their review. What steps has the FBI taken to allow individuals who may be wrongly on watch lists to challenge and correct those designations?

*Sentinel*

15. Now a year into the Bureau's Sentinel computer upgrade program, I remain concerned about the prospect of this program and its ballooning costs to American taxpayers. Earlier this month, the FBI informed the Committee that it had encountered unexpected problems with the deployment of Phase I of the Sentinel program that would delay the program. Even more troubling, the FBI could not tell Committee staff how long it would take to remedy these problems, or how the delay would impact the overall schedule for Sentinel. What is the current status of the Sentinel program and do you anticipate that there will be additional delays in deploying the program or costs overruns? What impact have the delays with Sentinel—and Trilogy before it—had on the Bureau's ability to fulfill its core mission?

*Civil Rights Cold Cases*

16. In February 2006, the FBI established a nationwide initiative to re-examine civil rights era cold cases. At a press conference on February 27th, the FBI released a press statement announcing that although 100 cold cases have been referred to the Bureau, the FBI has prioritized only a dozen. I applaud the effort to reexamine these cases, but why has the FBI only prioritized a mere handful of civil rights era cold cases? How many agents, analysts, and other resources has the FBI committed towards this important effort?

17. Earlier this year, I joined Senator Dodd in re-introducing the Emmett Till Unsolved Civil Rights Crime Act. This bill creates permanent unsolved civil rights crimes units within the FBI and the Civil Rights Division of the Justice Department to investigate and prosecute these crimes. This bill will also give law enforcement the resources to ensure that justice is served. As a former prosecutor, I strongly believe law enforcement should have the necessary tools to aggressively seek those who have committed these crimes, regardless of the time that has passed. Would you support the Emmett Till bill? Do you believe this bill gives the FBI the resources needed to thoroughly investigate unsolved civil rights murders?

*Lost Laptops/Data Security*

18. In February, the Inspector General for the Department of Justice released another troubling report finding that the FBI lost 160 laptop computers—including at least ten computers that contained classified information and one that contained sensitive personal information about FBI personnel—during a 44-month period. Even more troubling, the report also found that the FBI could not even account for whether 51 other computers, including seven computers that were assigned to the Bureau's counterintelligence and counterterrorism divisions, might contain classified or sensitive data. What is the Bureau doing to address its problem of lost laptops and lax data security?

19. Earlier this year, Senator Specter and I reintroduced our Personal Data Privacy and Security Act, which would, among other things, require federal agencies to give notice to the individuals whose data is lost or stolen, when a data breach occurs. Did the FBI notify the individuals whose sensitive personal information was lost in the case of the missing laptops? Would you support this legislation?

20. After the VA lost a laptop containing sensitive personal information about millions of veterans and active duty personnel, Secretary Nicholson instituted a new policy requiring that all of the VA's computers contain encryption technology to prevent the unauthorized disclosure of sensitive information. Will you make a similar pledge to use encryption technology for all of the Bureau's computers?

*DNA Sampling*

21. Pursuant to a little noticed provision in the Violence Against Women Act reauthorization bill, the Department of Justice is currently developing new guidelines that would greatly expand the Government's ability to collect DNA samples—which reveal the most sensitive genetic information about an individual—from most individuals who are arrested or detained by federal authorities and to store this sensitive biological information in a federal data base known as the National DNA Index System. This new policy will allow the Federal Government to collect DNA samples from hundreds of thousands of illegal immigrants who may be detained by federal authorities and from individuals who may be arrested—in essence, making DNA collection as common as fingerprinting. What privacy protections are in place under the Department's new guidelines to ensure that sensitive DNA data contained in the National DNA Index System will not be misused or improperly disclosed by the FBI or other federal and state agencies?

22. I am also concerned about this new policy because the new DNA evidence collected by the Government will add to the already notorious backlog at the Bureau's laboratory. According to press reports, the FBI acknowledges that this new policy will result in an increase of as many as 1 million additional DNA samples a year. Is the Bureau's laboratory equipped to handle this additional workload? What steps are you taking to make sure that the FBI's laboratory can keep up with the demand for DNA samples?

*Improper Reporting of Terrorism Statistics*

23. The Department of Justice Inspector General found in another recent report that the FBI failed to accurately report eight of the ten terrorism statistics that it reviewed for this report—that is an 80 percent failure rate. Among other things, the FBI overstated the number of terrorism-related convictions for 2004, because it included cases where no terrorism link was actually found. This is no simple matter—the Congress relies upon these statistics to conduct oversight and to make funding and operational decisions regarding the Bureau. What steps have you taken to address the problems with reporting of terrorism statistics at the FBI?

*Staffing*

24. I also remain concerned about staffing at the Bureau. In January, your Deputy, John Pistole, told the Senate Intelligence Committee that the FBI expects to lose 400 agents and 400 intelligence analysts this year, due to retirement or attrition. Mr. Pistole also stated that approximately 20 percent (370) of the FBI's intelligence analysts have less than a year of experience with the Bureau. I cannot help but worry that the Bureau will not have the staffing and expertise that it needs to carry out its counterterrorism and counterintelligence mission, given these figures on staffing. What are you doing to address the shortage in intelligence analysts and agents? How many agents and analysts do you expect to hire by the end of 2007?

*FOIA*

25. I was disappointed to learn that the FBI has not met several of its goals to improve FOIA processing under the President's Executive Order 13392, including the important goal to complete all FOIA requests that are more than two years old by August 2006. What is the current status of the FBI's FOIA backlog?

*MI5*

26. After the horrific attacks of September 11th, I worked very hard with others in Congress to give the FBI the tools that it needed to combat terrorism and carry out its domestic intelligence functions. Given what we have learned about the widespread misuse of National Security Letters and chronic staffing problems in the Bureau's counterterrorism and counterintelligence offices, some are calling for the Congress to put the Bureau's domestic intelligence operations in a new MI5-styled domestic intelligence agency. Do you believe that Congress should create a domestic intelligence agency to carry out the Nation's domestic counterterrorism activities?

POLITICAL LANDSCAPE "INFORMATIONAL BRIEFINGS" BY WHITE HOUSE FOR SENIOR GOVERNMENT OFFICIALS

*Question.* A number of recent reports, including Tuesday's (April 24, 2007) Los Angeles Times and today's Washington Post, suggest that White House staff, including Ken Mehlman, Scott Jennings and perhaps others, have provided what a White House spokesman calls "informational briefings to appointees throughout the federal government about the political landscape."

Have appointees or employees at the United States Department of Justice received such "informational briefings"?

Answer. The Department queried components to determine whether any political appointees attended or were aware of any employees within the components attended a briefing with White House officials described in the inquiry. The Department's Office of Information and Privacy and the Executive Secretariat also conducted searches of the electronic and paper files.

The Department's information indicates that employees attended briefings at the White House's Eisenhower Executive Office Building and in one instance, at the U.S. Department of Agriculture. The Department's records do not indicate whether all of the meetings actually included a political briefing regarding elections or candidates.

*Question.* Have appointees or employees at the United States Department of Justice received briefings from White House staff that reviewed polling data?

Answer. The Department's search efforts did not reveal information indicating that briefings of the type described in the inquiry were held at the Department of

Justice. The Department's information indicates that DOJ employees attended briefings at the White House's Eisenhower Executive Office Building and in one instance, at the U.S. Department of Agriculture. The Department's records do not indicate whether all of the meetings actually included a political briefing regarding elections or candidates.

*Question.* Have appointees or employees at the United States Department of Justice received briefings that mentioned congressional election or reelection campaigns?

Answer. The Department's information indicates that DOJ employees attended briefings at the White House's Eisenhower Executive Office Building and in one instance, at the U.S. Department of Agriculture. The Department's records do not indicate whether all of the meetings included a political briefing regarding elections or candidates.

*Question.* According to a front page story in today's Washington Post, before the last midterm election, White House staff conducted 20 such briefings in at least 15 government agencies on the electoral prospects of Republican and Democratic candidates. If any such briefings have occurred at the Department of Justice, please provide me with the specifics on when they occurred, who attended, what was shared and said, and all documents reflecting such matters in the custody, possession or control of the Department.

Answer. The Department's search efforts did not reveal information indicating that briefings of the type described in the inquiry were held at the Department of Justice. The Department's information indicates that DOJ employees attended briefings at the White House's Eisenhower Executive Office Building and in one instance, at the U.S. Department of Agriculture. The Department's records do not indicate whether all of the meetings included a political briefing regarding elections or candidates.

---

## QUESTIONS SUBMITTED BY SENATOR PETE V. DOMENICI

### INDIAN COUNTRY METHAMPHETAMINE PROBLEMS

*Question.* As you know, methamphetamine is a growing problem around the country, second only to alcohol and marijuana as the drug used most frequently in many Western and Midwestern states. Meth has become an epidemic because of its low cost and ready availability. Law enforcement officers continue to raid record numbers of clandestine labs. Despite these efforts, meth use in communities continues to increase. These labs present a clear and present danger to the citizens of my state and to people across the country.

Congress has passed the Combat Meth Act to provide valuable new resources and tools to states, local law enforcement and prosecutors to combat the production and distribution of meth while at the same time educating our communities about meth. The DEA is requesting $29.2 million for its Southwest Border and Methamphetamine Enforcement Initiative.

I'm told by experts in my home state of New Mexico that many of our meth problems are the result of the drug being brought into the United States from Mexico. I have also been told that the decrease in illegal importation of Meth is directly correlated to the increase in clandestine labs. I am very concerned about meth production and use on the Native American lands in New Mexico. Knowing the FBI's jurisdiction in Indian Country, has the FBI seen an increase in violent crimes and felonies on the Navajo Nation and in the four-corners area of New Mexico that are meth related?

Answer. The FBI has noted increases in the use of methamphetamine and in methamphetamine-related violence in this area over the past four years, and in some locations the increase in violence has included an increase in the number of assaults on law enforcement officers by methamphetamine traffickers and users. While the overall level of violent crime in Indian Country (IC) has remained relatively constant from 2004 to the present (based on the number of pending cases, cases opened, arrests, indictments, informations, and convictions for murder, assault, adult rape, and child physical abuse), the incidence of IC violent crime remains high.

It is the FBI's understanding that research by the Office of National Drug Control Policy indicates a reduction in the number of methamphetamine laboratories in the United States, with much of the methamphetamine used in the United States being manufactured in Mexico. These drugs are often trafficked through IC for sale in the United States. These findings are consistent with the FBI's analysis and experience and, in an effort to address the surge in IC methamphetamine trafficking, the FBI

has continued to expand its STTF initiative. Sixteen STTFs, comprised of Federal, tribal, state, and local law enforcement officers, operate throughout the IC. The interagency partnerships established in these task forces benefit IC law enforcement by leveraging resources. On many Native American Indian reservations, the STTFs provide the only effective narcotics investigation capabilities. Initial data for fiscal year 2007, indicate that STTFs obtained 69 indictments, arrested and/or located 96 subjects, obtained 86 convictions, and disrupted two drug trafficking organizations.

*Question.* What other trends are you seeing on Tribal Lands relating to felony criminal activity that is under the purview of the FBI's jurisdiction?

Answer. FBI SAs assigned to IC continue to report high levels of violent crime on Native American reservations throughout the United States, including a marked increase in the number of IC child sexual assault cases in fiscal year 2007 as compared with fiscal year 2005 and 2006. The number of child sexual assault cases opened in fiscal year 2007 outnumbered those for fiscal year 2006 by 7 percent.

In order to better equip Federal and tribal officials investigating IC child sexual assault allegations, the FBI has developed a course focused on forensic interviews of children in IC cases. This training was offered regionally on three occasions in fiscal year 2007 and will be offered again in fiscal year 2008. In addition, the FBI has worked to create a state-of-the-art child advocacy center on the Crow Reservation in Montana. This center, which opened on 4/24/07, provides child-appropriate interviewing services to IC investigators on the Crow and Northern Cheyenne Reservations. (This valuable resource has also been used by state officials investigating the alleged sexual abuse of non-Indian children.)

Compounding the problems associated with high violent crime rates and drug trafficking in IC are increasing problems related to IC street gang structures, many of which engage in drug trafficking to enhance their gang influence. The majority of large Native American reservations suffer from some level of gang influence, ranging from "emerging" to established street gang structures engaged in organized criminal activity. In the past, Native American gangs engaged primarily in property-based crimes such as graffiti and vandalism. IC law enforcement officials are particularly concerned about the movement toward more violent criminal acts, including sexual assaults, gang rapes, home invasions, drive-by shootings, beatings, and elder abuse. During a 2006 assessment of gang activity on the rural Crow Indian Reservation in Montana, teenage gang members told FBI SAs of impending drive-by shootings on that reservation and acknowledged "jumping in" (severely beating) and "sexing in" (requiring sexual activity from) prospective female gang members.

The emergence of Native American gangs in IC has largely been attributed to the strained Native American social environment and pervasive media influences. Native American gangs often assume characteristics of urban street gangs, using common signs, symbols, names, slang, and attire. These gangs have been significantly influenced by members who were previously incarcerated and involved in prison gang cultures. As incarcerated individuals have been released from prison to their reservation communities, they have enhanced their influence by promoting their prison gang affiliations, fostering the growth of criminal gang cultures in IC. In addition to prison gang influences, IC law enforcement officials have noted the emergence of female Native American gangs, members of which have escalated their violent behavior in order to prove they are as violent and anti-social as their male counterparts.

The FBI sponsors training for all levels of IC law enforcement, including approximately 25 classes per year for 1,200 Federal, state, local, and tribal law enforcement officials. This training addresses Native American gangs, crime scene processing, child abuse investigations, forensic interviewing of children, homicide investigations, interviewing and interrogation, officer safety and survival, crisis negotiation, and Indian Gaming.

INTERNET CRIME

*Question.* The Albuquerque Journal reported this week that over the past two years, internet crime in my home state of New Mexico has increased by over 235 percent, while internet crime nationwide has remained at the same levels. This news story went on to state that the technology boom in rural America may be the cause of increased internet criminal activity in New Mexico. Electronic criminal activity is a serious issue that appears to be difficult to investigate and prosecute.

Has the FBI made any inroads into cracking down on this type of criminal activity?

Answer. The series of international searches, arrests, and confessions accomplished in the past several years through Operation Fast Link and Operation Site

Down have enabled the FBI to make significant progress in addressing IP Internet criminal activity. The FBI is also focusing on the counterfeiting of business software and hardware products, which has significant international impact. The FBI will continue to work with industry, state and local law enforcement authorities, and our foreign law enforcement partners to ensure that our IP enforcement measures are as effective as possible and address the problem at all levels.

*Question.* What is the FBI doing to assist local law enforcement with investigations related to internet crime?

Answer. The FBI's approach to Internet crime includes more than 75 cyber task forces, which include state and local law enforcement and leverage the FBI's ability to provide support and guidance in support of their local investigations. These task forces supplement the FBI's investigative efforts by supporting not only IP rights and Internet crime investigations, but also computer intrusion and "Innocent Images" investigations.

In addition, the Internet Crime Complaint Center (IC3), which is a project jointly run by the FBI and the National White Collar Crime Center, receives over 22,000 Internet crime complaints per month from consumers and businesses. All complaints received by IC3 are accessible to Federal, state, and local law enforcement to support active investigations, trend analysis, and public outreach and awareness efforts. During 2006, IC3 referred 86,279 complaints of crime to Federal, state, and local law enforcement agencies around the country for further consideration. The vast majority of these cases involved fraud and a financial loss on the part of the complainant.

SUBCOMMITTEE RECESS

Senator MIKULSKI. So, this subcommittee stands in recess until 10 a.m., Thursday, May 3, when we will take testimony from the Equal Employment Opportunity Commission.

Mr. MUELLER. Thank you, Madam Chairman, and thank you for letting me out of here so I can attend to the next function I have to make.

Thank you.

[Whereupon, at 11:43 a.m., Thursday, April 26, the subcommittee was recessed, to reconvene at 10 a.m., Thursday, May 3.]

# COMMERCE, JUSTICE, SCIENCE, AND RELATED AGENCIES APPROPRIATIONS FOR FISCAL YEAR 2008

**THURSDAY, MAY 3, 2007**

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

The subcommittee met at 10:03 a.m., in room SD–192, Dirksen Senate Office Building, Hon. Barbara A. Mikulski (chairman) presiding.

Present: Senators Mikulski, Shelby, and Alexander.

## EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

**STATEMENT OF NAOMI CHURCHILL EARP, CHAIR**

STATEMENT OF SENATOR BARBARA A. MIKULSKI

Senator MIKULSKI. Good morning. The Subcommittee on Commerce, Justice, Science of the Appropriations Committee will come to order. As we said in the beginning of the year, our themes are innovation, security, and accountability.

This morning, this subcommittee will focus on an agency who has one of probably the most important missions within the Government in addition to security, which is the enforcement of our laws against employment discrimination. This hearing will be an oversight hearing as related to what is needed to be sure the agency is able to fulfill its mission.

I would have never dreamed many years ago that I would be able to be here as the appropriator for the Equal Employment Opportunity Commission (EEOC). It would have been a dream well beyond my wildest imagination. Over 40 years ago, I was a young social worker who had heard the call of a gifted President named Jack Kennedy asking not what you can do for your country but what your country can do for you, and responded to that call by fighting the war on poverty and being very active in my own community in the area of civil rights.

Baltimore was a tough town. It had a northern economy but a southern social structure. It was a segregated town and as part of great leadership, the home of where the NAACP is headquartered, the home that gave us Thurgood Marshall, the Mitchell family, like Juanita and of course, Mr. Mitchell, the 101st Senator himself. We did marches and we sang, but we knew that marches and singing didn't always open the doors. They were to get the attention to open the doors.

So when this Government created the Equal Employment Opportunity Commission, we thought it would be a one-stop shop that people within this country could turn to redress any grievance they had if doors were being slammed against them. That's what the job of the EEOC Commission is, to make sure that doors of employment are never ever slammed shut, that by vigorously enforcing the discrimination laws on race, religion, gender, and national origin, we would show that America believed that we are truly all created equal.

But we are very concerned about what's happened over at the Equal Employment Opportunity Commission over the years. It seems not to have been able to fulfill its mission and we are concerned about three issues: management, morale, and money. Is it the lack of resources that are creating the problem? But by any index of objective analysis, it seems that the EEOC really has problems and is in disarray.

We are very concerned about the fact that over years, management has been inconsistent and imperial. Madam Chair, we understand you've been on the job for 6 months, so we're looking for recommendations and results and how that might be tied to resources. If it's not resource-driven but leadership driven, then I want to hear what your vision is because we're very concerned about how we can fix it so that people can have confidence in the process. We believe that we are a Nation of law, that our law guarantees equal opportunity in employment and that we have an agency that you can turn to if you feel that you have discriminated against.

But we're concerned. Last year, EEOC received 76,000 complaints that needed to be investigated on top of a backlog—the 34,000 backlog cases from the year before. Backlogs are an obsession with us because where there is a backlog, there is really a question of being able to enforce the laws. We're concerned that backlogs are on the rise and that the issues are not being addressed.

Despite rising complaints and increased backlogs, EEOC has downsized its agency, contracted out to a customer service call center, which had very few people and seemed to have very little training. So we're going to want to ask about this call center. When you call, do you get an answer? Or are you put on hold and with the backlog, there's another hold you're put on?

What we want to be able to do today is focus on two things: oversight and accountability and how that leads to advocacy. My duty as an appropriator is to make sure that American taxpayer dollars are used responsibly but at the same time, that accomplishes mission and purpose. So we've been concerned and I'll be blunt, Ms. Earp, we know you've had this job 6 months so when you hear our frustration, it's not targeted at you personally, so we want you to know that. We know that front line staff has been cut. We know that work has been privatized without really ensuring quality and oversight.

The district offices were reduced from 23 to 15 but what is the rationale? We know that there has been a reduction in attorneys. Was this about money? Was this about poor management? And it's had a terrible effect on morale. The agency has been reduced by 575. Has this been downsizing and downgrading? Or it is right

sizing? We need to know and we know that there hasn't been a look at the agency in a number of years and that's why we want to start this ball rolling.

As I said, we're advocates here, of civil rights. These men represent the New South. They were generationally parallel. We came out of a lot of turmoil and a lot of tumult but committed in our lives and our public service to do that. Senator Shelby, a champion on these issues. Senator Alexander, a Governor, a Secretary of Education, now fighting also to make sure that education is one of the key tools of an empowerment agenda and the greatest equal opportunity is the right to an equal education and to a good education.

So we're champions here of civil rights and this is why we want this agency, under our stewardship, to be one of the best in our portfolio. So we want to hear from you today on how to do it. You know, we've been through restructuring plans. We don't know what that meant. We saw that positions were reduced, as I said, from 23 to 15. Was that a good idea? It seemed that from what we heard from the civil rights community was that it was not a good idea.

With the call center, we understand that it was contracted out. They only get 7 days of training on civil rights law, that you're not getting the calls that you expected and there seems to be a tremendous lack of communication between the EEOC and the call center.

Then, in my own State, there was the closing of a district office, which was the hallmark of fairness in hearing complaints for Federal employees. There are 117,000 Federal employees in the State, and not because we're a big bureaucracy. We're the home to the National Institutes of Health—13,000 people. We're the home to the Census Bureau—4,000 people. We are the home to so many other Federal agencies—yes, as well as our defense, which has its own track.

So you see, what we want to do is we—we can talk about downsizing and right sizing but what we want to talk about is the right track. We are committed to the mission and goals that were established for the EEOC. So we want to take a look at the management issues, the morale issues and the money issues and we look forward to hearing your recommendations because we are results driven but know, just as there has been a backlog, there is also a backlog of frustration.

But I'm going to be clear. It is not at you personally. Senator Shelby.

STATEMENT OF SENATOR RICHARD C. SHELBY

Senator SHELBY. Thank you, Senator, Chairman Mikulski, Madam Chairman. We thank you for joining us here today to discuss this. The chairman has already said the Equal Employment Opportunity Commission 2008 budget request.

The EEOC has an important mission as it provides assistance to those who have faced discrimination in the workplace. This is accomplished through investigations, mediation, legal action and by providing education to businesses. The EEOC request for 2008 is $327.7 million, which is approximately a $1 million decrease below the 2007 joint resolution funding level.

I know that Chairman Mikulski has serious concerns regarding the EEOC's performance, particularly with the Commission's direction and disregard for congressional oversight. I agree with her and know that you are new to your chairmanship and inherited many of the problems from your predecessor. I believe this has had an immeasurable impact on the EEOC's ability to carry out its mission.

It's come to my attention that the EEOC has decided to cut a large amount of its allocation from the State and local sector. I'm curious as to why this route has been taken because the local offices, I believe, are vital to the mission of EEOC. I have heard of the great accomplishments of the new Mobile office in my State, especially given its large jurisdiction covering the gulf coast regions of Mississippi, Alabama, and the Florida Panhandle. I want to work with you to ensure that the State and local offices get the support that they need to do their job.

Based on my review of your request, combined with the likely fiscal constraints of this subcommittee, we will need your assistance, Madam Chairman, as we face tough funding decisions regarding the allocation of resources in your budget. This subcommittee and the Commission share the difficult task of targeting these limited resources in a manner that safeguards taxpayers' dollars while enabling the mission of EEOC to be carried forward.

Madam Chairman, we look forward to your testimony and we look forward to working with you during the 2008 budget process to ensure that you have, as the chairman, have the necessary resources to carry out the wide and varied missions of the EEOC. I look forward to working with you and Chairman Mikulski and Senator Alexander and others to make sure that you have the requisite funding and we hope and I believe you will go in the right direction. Thank you.

Senator MIKULSKI. Thank you very much. Senator Alexander, did you wish to make a comment?

Senator ALEXANDER. No thank you, Madam Chairman. I have some questions but I'll save them for later.

Senator MIKULSKI. Thank you. Ms. Earp, please proceed.

SUMMARY STATEMENT OF NAOMI EARP

Ms. EARP. Thank you. Good morning, Madam Chair, members of the subcommittee. Thank you for inviting me to testify today on behalf of the Equal Employment Opportunity Commission in support of the President's 2008 budget request for $327.7 million.

As you've already indicated, I became the 13th Chair of the Equal Employment Opportunity Commission just this last fall. It is a distinct pleasure to appear before you to discuss the needs of EEOC for fiscal year 2008 as represented in the President's budget. I want to thank you, Madam Chair, for your past support and thank the members of the subcommittee for its support and your anticipated future support.

EEOC's vision is for a strong and prosperous Nation secure through fair and inclusive workplaces. We strive to ensure equality of opportunity in the workplace by enforcing the Federal laws prohibiting employment discrimination. We seek to maintain the Commission's reach by continuing proactive measures to prevent dis-

crimination while resolving claims and strategically focusing our enforcement and litigation programs.

I've submitted for the record, a statement that highlights aspects of our budget but I want to spend just a few minutes touching on some of the points that are in the written statement.

First of all, our budget request includes $160.3 million for administrative charge processing. In fiscal year 2006, the EEOC received almost 76,000 private sector charges. This was a slight increase over 2005. We resolved just over 74,000 private sector resolutions and recovered $229.8 million in monetary benefits for victims of discrimination. We ended the fiscal year with a charge inventory of almost 40,000 charges. We acknowledge that our charge——

Senator MIKULSKI. Excuse me. Does charge inventory mean backlog?

Ms. EARP. Essentially.

Senator MIKULSKI. Okay.

Ms. EARP. We acknowledge that the inventory is growing. EEOC also has responsibility for hearings and appeals of complaints filed by Federal employees. We received over 14,000 requests for hearings or appeals from Federal sector employees. Our budget request includes $47.5 million for Federal sector programs.

The litigation program is an important part of overall enforcement. During 2006, our litigation program filed 371 new lawsuits on the merits and resolved 418, resulting in monetary benefits of $44.3 million. The 2008 budget request includes almost $3 million in direct support of the litigation program.

That would bring our total litigation budget to just a little under $57 million.

A strong litigation program provides an incentive for the early resolution of charges during the administrative enforcement process.

Regarding mediation, our budget request includes $22.3 million. In fiscal year 2006, 8,200 charges were resolved through mediation. The mediation program is highly successful and has been since its inception.

Madam Chair, you've noted a number of issues that you are concerned about but I would like to point out that the mediation program is one of the best, most successful efforts EEOC currently has underway. An independent survey found that 96 percent of employers and 91 percent of charging parties would use our mediation program again if they were offered it.

It's clear the best way to combat employment discrimination is to prevent it from happening in the first place. We continue to meet with advocacy and community groups, employer groups, the legal community, students, educational organizations, unions and members of the general public. We share with them employment trends. We assess needs and we offer advice and assistance. In fiscal year 2006, we conducted 5,634 outreach events, reaching nearly 300,000 people. Approximately 4 percent of the budget is devoted to outreach activities. We're asking $12.6 million.

Regarding the FEPA, Senator Shelby, that you mentioned, I would note that we are joined in our enforcement efforts, with 96 State and local partners generally called the Fair Employment Practice Agencies (FEPA). The budget request for FEPAs for 2008

is $28 million and I would just note at this time that EEOC has no involvement and has had no involvement in cutting any amount from the President's budget or otherwise for our State and local partners.

The EEOC, like all agencies today, faces many challenges. We are first and foremost an enforcement agency and we must provide the quality and integrity of enforcement efforts that the public expects and deserves. Approximately 80 percent of our budget has been consistently devoted to relatively fixed expenses, primarily payroll and rent. An additional 9 to 10 percent is dedicated to our partners in the State and local fair employment practice agencies. The fixed costs of EEOC leave us with little discretion in terms of shifting resources to be able to respond to emerging or pressing needs. We constantly look for ways to maximize the return on resources and we look for better ways to align those resources with the mission.

In August 2002, the National Academy of Public Administration (NAPA) conducted a study of our structure and our program delivery. In February 2003, the Academy released its findings. Most significantly, they recommended that we establish a National Contact Center and that we align or realign our field offices and that we restructure our headquarters. We have acted on the first two of these recommendations and we are just beginning work on the third. I look forward to working with the subcommittee, getting the subcommittee's ideas about reorganizing, restructuring our headquarters office.

I want to make just a couple of points about the National Contact Center (NCC). It began operation in March 2005 on a 2-year pilot basis. It's based in Lawrence, Kansas. The pilot has been extended for 1 additional year. While admitting that the National Contact Center got off to a rough start, we had some things to smooth out. The NCC allows 24-hour access to the Equal Employment Opportunity Commission. It saves our investigators and our attorneys from having to answer routine calls. Since it began taking calls, the National Contact Center has received over 1 million contacts from the public. This includes telephone calls, e-mails, faxes.

Our initial focus was on training, monitoring for quality, accuracy and the interpersonal skills of the people who would answer the phone for us. As these have developed, we are now prioritizing actions to increase call volume and to better integrate the National Contact Center with EEOC procedures and practices. Results are reflected in the most recently available report, which shows that in March of this year, the National Contact Center received over 65,000 contacts. At this rate, we project that the contact center will handle 700,000 contacts for us this year alone.

A recent report by NAPA found that EEOC is aggressively addressing issues and the implementation and follow-up is noteworthy regarding the contact center. The NAPA Panel also found that the cost of moving the contact center into EEOC would substantially exceed the current arrangement and that an in-house run EEOC call center would cost about $8 million the first year and almost $5 million every year after that.

Regarding repositioning, I would just simply say, again this was a NAPA recommendation that we believe is a good idea as we seek to realign our resources with our organizational structure. While we are concerned about the rising inventory and our ability to timely investigate charges and provide efficient customer service, we are confident that strides are being made, that improvements are underway and that we can manage within the budget the President requests for 2008.

PREPARED STATEMENT

In conclusion, Madam Chair, the EEOC cannot fight discrimination in the 21st century with the same methods that we've used in the past and we thank you for your support.

[The statement follows:]

PREPARED STATEMENT OF NAOMI CHURCHILL EARP

Good morning Madam Chair and Members of the Subcommittee. Thank you for inviting me to testify today on behalf of the Equal Employment Opportunity Commission (EEOC) in support of the President's fiscal year 2008 budget request of $327.7 million. As you may know I became the thirteenth Chair of the Equal Employment Opportunity Commission in September 2006. It is a distinct pleasure to appear before you to discuss the needs of the EEOC for fiscal year 2008 as represented in the President's request. I want to thank you for your past and anticipated future support of the EEOC.

Our vision is for a strong and prosperous nation secured through fair and inclusive workplaces. We strive to ensure equality of opportunity in the workplace by enforcing the federal laws prohibiting employment discrimination. Our newly implemented strategic plan builds upon what the agency has accomplished to improve its operations. It seeks to maintain the Commission's reach by continuing proactive measures to prevent discrimination; resolving claims of discrimination more proficiently; continuing alternative dispute resolution; developing a more strategic focus in our enforcement, litigation and federal programs; and renewing a strategy to eradicate race and color discrimination while maintaining our internal operations.

EEOC'S FISCAL YEAR 2008 BUDGET REQUEST

EEOC's fiscal year 2008 budget request is for $327,748,000. Let me highlight some components of our budget, approval of which will be essential to meet the demands inherent to the fulfillment of our mission in the 21st century. I am also submitting for the record a copy of EEOC's Fiscal Year 2006 Performance and Accountability Report. The report provides in greater detail the successes of our performance and activities for the past year.

*Staffing and Enforcement Workload*.—Our budget request includes $160.3 million for administrative charge processing. Our employees are passionate about, and dedicated to, their work and produce a substantial body of work. In fiscal year 2006 the EEOC received 75,768 private sector charges, a slight increase over 2005. We had 74,308 private sector resolutions and recovered $229.8 million in monetary benefits that went directly to the victims of discrimination.

In fiscal year 2006 our average processing time per private sector charge was 193 days, a 12 percent increase over our 171 day average in fiscal year 2005. Our end of year inventory of private sector charges was 39,946, a 19 percent increase over our fiscal year 2005 inventory. We project an inventory of in excess of 54,000 by the end of fiscal year 2007 and in excess of 67,000 by the end fiscal year 2008. We will address this issue of rising average processing times within existing resources, using an FTE level of 2,381, the same as fiscal year 2007 and an increase over our staff level at the end of fiscal year 2006. As we staff up to our budgeted levels, we expect an increase in charge processing (and, by extension, progress in our inventory).

EEOC also has responsibility for hearings and appeals of complaints filed by federal employees. Our hearings data shows that we received 7,802 hearing requests, had 8,685 resolutions, ended the year with an inventory of 4,912 and had an average processing time of 248 days. In the area of federal sector appeals, we received 6,743 appeals, resolved 6,405, and ended the year with an inventory of 3,887. The average processing time was 220 days for fiscal year 2006—a 13 percent increase

from the previous year. Our federal sector appeals data reflects increases in inventory and average processing time and a drop in resolutions.

*Litigation*.—Our litigation program is an important part of our overall enforcement of the law. During fiscal year 2006, our litigation program filed 371 new lawsuits on the merits and resolved 418, resulting in monetary benefits of $44.3 million. We seek to maximize the impact of our lawsuits through various means, including obtaining relief for multiple aggrieved individuals and securing broad-based, prospective relief to prevent the recurrence of discrimination. A strong litigation program also provides an incentive for the early resolution of a charge during the agency's administrative enforcement process in the pre-cause determination and mediation process and in the conciliation process. We also believe that publicity of high impact litigation and other cases serves to increase voluntary compliance with the laws we enforce.

The EEOC's fiscal year 2008 budget request includes $2.9 million in direct support to our litigation program, with a total litigation budget of just under $57 million. We project a slight decrease in our suit filings for fiscal year 2008, but the demands on our staff and our resources are expected to increase. This is because we expect to devote some of the requested funding to litigating larger and more complex cases involving systemic discrimination developed through the Commission's new Systemic Program. While these cases are resource-intensive to litigate, they have great potential to pay enormous dividends in the long run.

*Systemic Program*.—Last April, the Commission considered the recommendations of our Systemic Taskforce which was led by Vice Chair Leslie Silverman. The Commission unanimously passed a series of motions calling for the Commission to reinvigorate its Systemic efforts. Systemic cases are defined as "pattern or practice, policy and/or class cases where the alleged discrimination has a broad impact on an industry, profession, company, or geographic location." Since the passage of Title VII of the Civil Rights Act of 1964, as well as with later amendments and authority granted, Congress recognized that employment discrimination cannot be eradicated without a focus on its systemic nature. A strong systemic program is crucial to the elimination of instances of pattern or practice, policy and class discrimination which has a broad impact on an industry, profession, company or geographic location.

Therefore, to complement private sector enforcement of Title VII, the ADEA, the EPA and the ADA, the Commission has embarked upon an enhanced systemic enforcement program. Systemic plans from all District Offices were approved in December 2006. Commissioner charges based on those plans have been submitted and signed by Commissioners. While Systemic cases often take two or three years in order to investigate and develop evidence to decide whether to proceed, I expect some of our cases to be developed and resolved through settlement, conciliation or a litigation filing within a year.

*ADR/Mediation*.—Our budget request includes $22.3 million for mediation. In fiscal year 2006 we increased the number of our mediation resolutions to 8,202. Since its inception, EEOC's mediation program has been highly successful in resolving charges of employment discrimination. In addition to the record number of resolutions obtained through the mediation process in fiscal year 2006, a survey conducted by independent researchers to evaluate the program's effectiveness found that 96 percent of employers and 91 percent of charging parties that participated in the mediation process would use the mediation program again if offered. The Commission continues to conduct extensive outreach and publicity efforts to highlight the benefits of EEOC's mediation program and to expand charging party and respondent participation. Additionally, as a result of significant efforts focused on increasing the participation of employers in the mediation program, the agency continues to utilize Universal Agreements to Mediate (UAMs) to secure employer support for the program. These agreements now number over 1,100.

*Outreach*.—We also employ other strategies by which we address discrimination in the workplace. The best way to combat employment discrimination is to prevent it from happening in the first place. The Commission continues to work closely with its stakeholders to implement new strategies to stop discrimination before it starts. We are striking a vital balance between outreach and education on one hand, and enforcement and litigation on the other. We meet with advocacy and community groups, employer groups, the legal community, students and educational organizations, labor unions and the general public to assess current needs, and employment trends and issues. In recent years, EEOC staff also has increased our number of media presentations, including appearances on radio and television programs in languages other than English, providing information to uncounted thousands of people. The Commission recognizes the importance of outreach, education, and technical assistance to reach out to under-served constituents and to aid in voluntary compliance. In fiscal year 2006, EEOC conducted 5,634 outreach events, reaching nearly

302,000 people. Events included speeches, seminars, workshops, training programs, expanded presence visits, cultural expositions, conferences, and community group meetings. Approximately 4 percent of our budget request, or $12.6 million is allocated to outreach.

*Federal Sector*.—The Commission fulfills its mandate to federal employees and applicants for employment through our hearings and appellate enforcement efforts, as well by exercising our oversight authority and providing guidance, outreach and technical assistance. Our budget request includes $47.5 million for our federal sector programs.

The Federal Sector complaint process is one area by which stakeholders agree that improvements need to be made. We believe that the complaint process takes too long. By statute, federal agencies initially are responsible for investigating charges filed against them. Both Commissioners Stuart Ishimaru and Christine Griffin have been working on recommendations for improvement to the complaint process, and particularly on the agency investigative process. We have made advances in the processes under EEOC's direct control. For example, the inventory of requests for a hearing sharply declined from 5,994 in fiscal year 2005 to 4,912 in fiscal year 2006. Additionally, the average processing time from request to the conclusion of the hearing declined slightly last year. These are welcome developments. Both appeals inventory and average processing time have shown significant decline since 2001–2002, but both showed increases in fiscal year 2006.

In addition, we continue to provide training, outreach, and technical assistance to federal agencies in the implementation of our Management Directive 715 to aid agencies in their efforts to build model EEO programs.

*Fair Employment Practices Agencies*.—We are joined by our 96 State and Local partners, Fair Employment Practices Agencies (FEPAs), in our vital enforcement role. Our budget request calls for an amount for state and local contracts up to $28 million. Additionally, we continue to support the 64 Tribal Employment Rights Organizations (TEROs), providing outreach and training to address the specific equal employment issues facing the Native American community. During fiscal year 2006, we successfully transitioned our State and local government FEPA partners to the new Integrated Mission System (IMS), allowing EEOC to retire the old legacy Charge Data System. This migration will provide consistent data management and reporting across EEOC and FEPA offices nationwide. In response to recommendations from the State and Local Re-engineering Workgroup, during fiscal year 2006 we began a comprehensive national training initiative for FEPA staff. This effort will continue into fiscal year 2007.

*Information Technology*.—Over the past several years, EEOC has completed several major information technology (IT) projects that have streamlined internal processes, reduced paperwork burden, integrated data, advanced our technological infrastructure, and allowed the agency to conduct business more efficiently. The EEOC is taking a fresh look at our Information Technology (IT) architecture and services in an effort to improve operational efficiency, lower recurring costs, increase customer satisfaction, and ensure that IT services are properly aligned with agency priorities and strategic plans. Our overall goal is more efficient usage of the resources that EEOC expends to maintain our IT infrastructure, while realigning our architecture to better support an environment that promotes collaboration, information sharing and analysis, enhanced communications, and streamlined work processes.

During fiscal year 2007, we are integrating our EEO–1 and IMS systems, to provide improved analysis capabilities and data integrity. We have also expanded usage of video conferencing and video-streaming, using this technology to conduct depositions and external hearings, provide remote interpretive services, conduct remote training sessions, and improve collaboration/communication across our multiple office locations. In addition, I have already discussed our systemic program, and several initiatives are underway to ensure that EEOC's technology infrastructure supports a seamless, nationwide, systemic practice.

During fiscal year 2008, we will maintain our critical technology infrastructure but will not undertake new projects or expand current services. Our ability to move forward on other major technology initiatives, such as document management and data warehousing will be largely dependent on future funding. EEOC is currently conducting studies and developing business cases to support requests in these areas.

*Initiatives*.—It is critical not only that we manage our inventory, but that we spread the word that preventing discrimination benefits everyone. Some of our outreach is conducted through several targeted ongoing initiatives. These initiatives have no separate funding component and are performed by all of our professional staff and included in our overall outreach, education and technical assistance budget.

In support of the President's New Freedom Initiative, we will continue to work with state governments on strategies for removing employment barriers and to promote the employment of people with disabilities. Our Youth@Work Initiative empowers youth to understand their workplace rights and responsibilities and encourages employers to promote fair and inclusive workplaces. Our Small and Mid-size Business Initiative expands outreach and technical assistance to the small business community to encourage voluntary compliance. Our newest initiative—ERACE, Eradicating Racism and Colorism in Employment—addresses the persistence of race and color discrimination in the workplace through outreach, dialogue, and the pursuit of priority and emerging legal issues. In addition, in fiscal year 2005, we inaugurated the agency's first-ever Freedom to Compete Award program to recognize best practices in the private sector, public sector, associations and other organizations. In the federal sector we have begun our LEAD initiative (Leadership in the Employment of Americans with Disabilities) to address the lack of improvement in the federal government's employment of people with targeted disabilities.

NATIONAL CONTACT CENTER AND REPOSITIONING

The EEOC, like all federal agencies today, faces many challenges. We are first and foremost an enforcement agency and we must provide the quality and integrity in our enforcement efforts that the public expects and deserves. As such, we strive to manage our resources to most effectively and efficiently fulfill our enforcement mandate.

Approximately 80 percent of the EEOC's budget has been consistently devoted to relatively fixed expenses, primarily payroll and rent. An additional 9–10 percent has been dedicated to our partners in state and local Fair Employment Practices Agencies. Therefore, our fixed costs of approximately 90 percent of the agency budget leave us with little discretion in terms of shifting additional resources to respond to pressing needs. We continue to look for ways to maximize the return on our resources.

In August 2002 we commissioned the National Academy of Public Administration (NAPA) to conduct a study of our structure and program delivery systems. In February 2003, the Academy released its findings and recommendations. The Academy Panel made a series of recommendations, most significantly recommending that: (1) we establish a National Contact Center (NCC) as a way to improve the quality, timeliness, access, and consistency of services to EEOC's customers and (2) that we realign our field offices flattening the field's management staffing levels, and (3) that we reorganize our headquarters. We have acted on the first two recommendations and have begun work on the third.

*National Contact Center*.—After the Commission approved the contract to establish the National Contact Center (NCC) in September 2004, it became operational in March 2005 on a two-year pilot basis and was extended by the Commission for one additional year in July 2006. The NCC operates under a contract to Vangent, Inc., from a facility in Lawrence, Kansas. For fiscal year 2008, $2.5 million is included in our budget for the operation of the NCC. The NCC allows 24 hour access to the EEOC and the ability to speak with a live person 12 hours a day, five days a week. Since it began taking calls on March 21, 2005, the NCC has received more than 960,000 phone calls, nearly 48,000 emails, and more than 2,500 faxes and letters from the public. The NCC's Customer Service Representatives (CSRs) have handled more than 600,000 calls in English, Spanish and through the TTY. In fiscal year 2006, the first full year of operation, the NCC handled over 500,000 contacts, including 284,000 calls answered by CSRs. We expect the contacts handled by the NCC to increase by 100 percent in 2007. The remainder were handled via Interactive Voice Response (IVR), e-mail, fax, or written correspondence. Initial focus was on training, monitoring for quality, accuracy, and interpersonal skills. As these have been developed, we are now prioritizing actions to increase call volume and integrate NCC and EEOC procedures and practices.

In 2006 the NCC was reviewed by EEOC's Inspector General. The IG's report made a number of recommendations that needed to be implemented if the NCC was to be a more effective and integrated component of the EEOC. Many steps have been taken to implement those recommendations. Among the recommendations was the need to increase the call volume to meet prior projections. Actions have been taken to increase call volume since the beginning of fiscal year 2007. The result is reflected in the most recently available monthly report which shows that in March 2007 the NCC received approximately 65,174 contacts, including calls and emails, which projects to almost 800,000 contacts per years. A recent (January 2007) report by the National Academy for Public Administration found that EEOC has begun to aggressively address shortcomings in the NCC's implementation and follow-up and

that progress has been noteworthy. The NAPA panel also found that the cost of moving the call center into EEOC would substantially exceed the current arrangement, and that an in-house EEOC-run NCC—staffed with EEOC employees—would cost $8 million for the first year and $5.7 million annually thereafter. Given the cost to bring the NCC in-house and the fact that many improvement-plan initiatives still are being implemented, the Panel recommended that EEOC maintain the current arrangement until and unless a more detailed, comprehensive cost analysis is conducted.

Through the Center we have compiled data on the race, national origin, gender, and age range of callers and can separate the reasons people call into various topics. Among our findings, we now know that less than 40 percent of the callers are calling about potential charges. As of this month, we will be able to run reports on the bases and issues that people call about and show trends by region, race, national origin, gender, and age. This information will help us to know how to more strategically focus our resources. The NCC is a good investment—it allows the public greater access to our agency, permits us to analyze trends and other data, and frees up EEOC employees to focus on investigation, mediation and litigation. Overall, I believe both the IG and NAPA assessments have resulted in an improved system that will better serve the Commission. The extension of the NCC will be the subject of a Commission vote later this year.

*Repositioning*.—The Commission also realigned its field organization effective January 2006. This reduced the number of our districts, reclassified the status of some offices, and allowed us to balance the workload within our districts. This was done without closing any offices or reducing staff.

With the implementation of the field repositioning plan and the consolidation of 24 district offices into 15 districts, the agency has realized the benefits from being able to redirect more staff to the front line duties of enforcement and mediation. In preparing the repositioning plan, we looked at the resources EEOC was spending on its management and administrative positions. The previous EEOC structure was put in place in 1979 when the Commission had approximately 3,800 employees; whereas in 2005 we had approximately 2,400 employees. We did not believe it was prudent to retain a management and administrative structure that was designed for a much larger workforce and was designed when we did not have the advantages of modern technology for our business uses. In fact, in 2006 we opened two new offices in Las Vegas and Mobile to provide access to the EEOC in growing and underserved areas. Beginning in 2003 we initiated a five-year program to more appropriately size our field office space as leases expire, with a goal of reducing rent costs by 35 percent. The lease on our headquarters building expires in 2008 and we are working with our landlord, the General Services Administration, to find a location that will meet our current space requirements.

We are now working on the third of NAPA's major recommendations, the evaluation and reorganization of our headquarters structure.

## CONCLUSION

We will continue to review our operations and infrastructure to obtain savings wherever we can so that we are best able to place our resources where they are most needed. We have been diligent in our efforts to do so and to build a sound financial model. We believe that the efficiencies that we have in place will in the long term reap benefits; however, we cannot and will not lose sight of our current posture and the need to continuously align our resources with our mission.

It is essential that we be fully funded at the President's request, so that we can maintain staff and deal with the inventory issue to the best of our capability. While we are concerned about our rising inventory and its impact on our ability to timely investigate charges and provide efficient customer service, we are confident that we can reduce the inventory and our charge processing time by more efficiently utilizing our existing resources.

Madam Chair, the EEOC cannot fight discrimination in the 21st century with the same methods that have been used in the past. Great strides have been made in the past four decades, but there is no rest for the EEOC. Approval of our 2008 budget is essential to permit the EEOC to continue with its vital mission of ensuring that equality exists in the American workplace. The citizens of our Nation deserve no less. We must continuously work to effectively allocate our resources so as to meet our statutory mandates. Madam Chair, we appreciate your support and that of the Subcommittee. Thank you for inviting me to appear before you today and I will be happy to answer any questions you might have.

Senator MIKULSKI. Thank you very much for this testimony. We are going to vote. The vote will start in about 15 minutes, although it's never as calibrated as we all think. And I understand my colleague, Senator Shelby, might not return, to be able to return. Senator, what I'm going to suggest as a way of proceeding that we turn to you and then——

Senator SHELBY. I'll be quick.

Senator MIKULSKI. We want you to do what you need to do here and then we'll return and when the vote occurs, we'll recess, dash over and come right back.

OFFICE CLOSURES

Senator SHELBY. Okay. Thank you, Madam Chairman. I'll just get right to some of the issues that I raised. In my opening statement, I mentioned that I was concerned about the cut in State and local funding. You alluded to that. Your budget request reduces funding to the State and local offices—it's my understanding—by $2 million from the 2007 budget. Will this cut cause any offices to be shut down? I mentioned the Mobile office, which covers south Alabama, part of Mississippi and the Florida Panhandle. We think that's an important office, not because it's located in my State. It could be located in Maryland or somewhere else but local offices do augment what you're doing.

Ms. EARP. No, sir. We do not anticipate closing any local offices.

Senator SHELBY. Okay. Well, that's good.

Senator MIKULSKI. Mr. Chairman, what do you mean by local office? Are you talking about a Federal office? What do you mean?

Ms. EARP. Well, definitely we don't plan to close any State or local offices under the fair employment practices agencies but we have no plans, have never considered closing any of the Federal offices either.

Senator SHELBY. That's good to know because I don't—if you start closing offices anywhere, I don't believe you can carry out the mandate that I know you want to do and have the EEOC to do as part of your charter and your responsibilities. That was my—that's one of my concerns, funding reductions.

At the time of the release of your 2008 budget request, there were only 2,246. That's a decrease of 978 people, which seems like a number over a short period of time, especially since the backlog of charges has increased, that you mentioned. How are these staffing reductions spread across the agency, including field offices? Have you worked that out yet and if you haven't, will you let us know what you're doing?

Ms. EARP. Well, we constantly balance the workload against the number of people available to do the work but I would be happy to submit to you a more detailed——

Senator SHELBY. To the subcommittee, to all of us.

Ms. EARP. To the subcommittee.

Senator SHELBY. Sure. If you would do this, that would be very helpful from my standpoint. It's my understanding that there are 2,381 is the actual number of current employees or is this a ceiling for the maximum number you plan to employ? Do you want to answer that for the record?

Ms. EARP. Yes, we plan to hire to our ceiling.

Senator SHELBY. You plan to continue to, under your leadership, for the EEOC to meet its responsibilities, do its job?

Ms. EARP. Yes, sir, absolutely.

Senator SHELBY. Okay. Well, we have a lot of confidence in you. We know you are new on the job but you bring a lot of experience to this job and that's what we're interested in, is fairness in the workplace, fairness everywhere.

Ms. EARP. Thank you.

Senator SHELBY. Thank you, Madam Chairman.

Senator MIKULSKI. You were quick. Senator Alexander, will you be able to come back or would you like to proceed now as a senatorial courtesy?

Okay. Then let me start the questioning and then we'll come back with Senator Alexander and if there is a follow up round. We want to acknowledge first of all, that the EEOC has been flat funded for 5 years. Five years, with an expanding population, expanding stress in terms of a variety of forms of discrimination and this flat funding has had to take its toll, which is one of the reasons we want to have this oversight hearing.

Remember: management, morale, money. Let me get in—in the Congress when we passed the continuing resolution, we were able to come up with modest increases, particularly in the area as Senator Shelby has said, we increased it in State and local and also the private sector enforcement.

REPOSITIONING PLAN

But let me get then to the punch line. Over the last 6 years, there has been a reduction in full-time employees of 543 staff. Was that—I'm going to talk about what caused the reduction and what are the consequences of the reduction, meaning the impact. Was the reduction due to the so-called right sizing, you know, all that nice private sector vocabulary or was it really budget driven when one looks then at the backlog and some of the other issues?

Ms. EARP. I believe that the reduction is multifaceted. We stand in the current position today because like many Federal agencies, we have had a number of employees for some time who were retirement eligible. That's a factor. We also had early outs and voluntary retirements in the last couple of years and we've had some natural attrition.

I think if you take all of those together, compared to the rising workload, it just makes sense. Over time, we have become a smaller agency like many.

Senator MIKULSKI. But here's what I find difficult to understand. You have a rising workload, a changing population, even geographically, which I know you'll want to discuss with the field offices, which would seem to me with the backlog coming now of 40,000, don't you need more people?

Ms. EARP. Well, we believe that we can manage for 2008 within the President's budget. But I would submit, Madam Chairman, that the current situation, which some view as a crisis, started a number of years ago in the mid-nineties. In 2002, EEOC——

Senator MIKULSKI. We're not—we understand that. But we're right here now, to get it right. So we know that the backlog has been growing over a number of years. This is not finger pointing

at an administration. This is trying to pinpoint where we are. We now have a backlog that we expect of 54,000 cases, a 60-percent increase in 3 years. So let me then get to this. What does it take? What are your ideas for dealing with the backlog? How will we systematically be able to deal with the backlog and what do you need to be able to deal with this backlog?

Ms. EARP. Well, we are doing a number of things to gain efficiencies and attempt to manage the workload. We continue to reassign staff. One important decision that was made recently is to manage the agency as if it were a national model. In the past, we've been stovepipes—each district responsible for its resources and the management of its cases.

For example, with legal, we will function like a national law firm so that work in one area, we move the people to the work. That particular district no longer has to be held hostage to the limited resources that it has there.

Senator MIKULSKI. Yes, but what are the top three things that you need? So one is this national model and I'm not sure what that means. But what are the top three things to deal with the backlog? What do you anticipate the backlog reduction will be for this coming year? We know backlogs can't just evaporate but we know—so can you tell us the top three things—what are your benchmarks and goals? How will you measure improvements in the reduction of backlogs? What would be the matrix that you would use?

So what is your plan? What are your top three? What are your benchmarks for evaluation and what will be the matrix that you will use to evaluate that these suggestions or management models are effective?

Ms. EARP. Madam Chair, because we are finalizing our strategic plan, I would really like to provide you with our top three benchmarks, and especially our measures at a later time, if you would allow me to do that.

Senator MIKULSKI. Certainly. We would like the benchmarks and we'd like the matrix so then we're all—we all are clear then on what are the criteria by which we can evaluate progress and we can evaluate—and we can do our stewardship. But what are the top three things that you are going to do to eliminate the backlog?

So one is the national model idea.

Ms. EARP. One is to function on a national model. Number two is to have enough savings to be flexible and we are getting our savings from managing our rent, managing our attrition rates, preparing to relocate the headquarters office, as well as right size field offices and to use money saved there. To better train our staff is the third.

Senator MIKULSKI. So what you're really doing with your three ways of reducing backlog is trying to find money elsewhere and to come up with savings. Is that right?

Ms. EARP. We're trying——

Senator MIKULSKI. Do you need more people? Or are you—the Office of Management and Budget (OMB)—listen, we're not trying to embarrass you, please. Are you OMB embargoed and can't tell me that?

Ms. EARP. Yes, ma'am.

Senator MIKULSKI. Okay. Well, I think that answers the question. If I could come back to the 543, were they in particular areas, like law? Were they back office support? Were they paralegals? Are there ways that technology can help you do things apart from this call center? We'll come back to that. Where did you lose most of your people?

Ms. EARP. Most staff were lost with investigators and administrative support staff. Paralegals, clericals, the people who are a part of a very people-driven process on the customer service end. We've had less loss, I think, with attorneys but a lot on the enforcement staff with investigators.

Senator MIKULSKI. So really, the front line staff, which is where the calls come in and then the people who actually initiate, particularly that initial claim and that's where, because you've lost investigators, the backlog in the initial claims is the one that's growing. Am I correct in that?

Ms. EARP. Yes.

Senator MIKULSKI. And then, of course, investigators need what we'll call the back office support, is that correct?

Ms. EARP. Yes.

Senator MIKULSKI. Can you tell me about how many investigators you lost and what would that be in terms of a budget item?

Ms. EARP. I can't provide budget information but over a period of time, we've lost about 500 employees, the majority of those being on the enforcement side of the house versus the legal side.

Senator MIKULSKI. Right. And enforcement is a word to mean the investigation of the complaints, which then determine the nature—when the validity of the complaint and the nature of the complaint, which meant some could go into mediation and some would have to follow our legal procedures, is that right?

Ms. EARP. That's correct.

Senator MIKULSKI. But this is the gateway and then would you say that this is also now the choke point in terms of creating the backlog?

Ms. EARP. Yes. The inventory and receipts come in on the enforcement side of the house so the inventory grows on the enforcement side of the house.

Senator MIKULSKI. Okay. My time has expired. I want to turn to Senator Alexander and Senator, why don't you proceed?

SALVATION ARMY LITIGATION

Senator ALEXANDER. Thank you, Madam Chairman. I have a question on a little different subject. Thank you for coming and I say, as I reflect on the discussion you've just had with the chairman about the need to allocate to resources and the 56,000 case backlog. Are you aware of the lawsuit that the EEOC has filed against the Salvation Army, alleging that they fired two employees for not being able to speak English, according to the Salvation Army's policy that its employees should speak English in the workplace?

Ms. EARP. Yes, sir.

Senator ALEXANDER. I want to ask you about that a little bit. As I understand the facts, the Salvation Army has a policy that says employees are expected to speak English and that it gave two em-

ployees who did not, 1 year to learn English and then when they didn't, it fired them. Am I to understand that any business in the United States cannot have a policy that requires its employees to speak our national language?

Ms. EARP. No, sir. The—and I don't want to say too much about the Salvation Army case because it is ongoing. But the question, when an employer has an English only standard, as is alleged in this particular case, the issue for us is whether or not there is a business necessity for that requirement. If the charging party, the victim, the plaintiff, is engaged in work that doesn't require customer contact that is not a matter of health or safety, that there appears to be no legitimate reason to require English only, then it becomes unlawful or at least——

Senator ALEXANDER. Well, whose job is it to prove that? It would be the employer's responsibility, right?

Ms. EARP. Well, the employer has a responsibility to articulate for us a business necessity.

Senator ALEXANDER. Right. So every employer in the country has got to come before the EEOC and prove that there is a reason for speaking English only. Do you conduct your staff meetings in more than one language?

Ms. EARP. No, sir.

Senator ALEXANDER. What's the reason for that?

Ms. EARP. I only speak one.

Senator ALEXANDER. Well, what about your employees? Do you hire employees who only speak English in your staff, for example?

Ms. EARP. No, we have staff that are bilingual.

Senator ALEXANDER. Well, no—only English. I mean, if Senator Shelby were to say, I only hire employees who can speak English because we have maybe 100 languages spoken in Alabama and I want to make sure that the common language is spoken here. Would he have to justify that to the EEOC that he has a business reason to do that?

Ms. EARP. No. I think the circumstances under which we would be interested or get involved are very specific and on a case-by-case basis. An employer who establishes an English only rule has a responsibility to show a business necessity for that rule.

Senator ALEXANDER. Madam Chairman, I only have 2 minutes left. I find that an astonishing waste of your time and contrary to every effort we're making in the United States today to try to have one country. I mean, I've spent the last 40 years voting for civil rights acts, but the reason was so that we could have a single country and there are only a few things that unite us.

One is our common language, English. One is a few principles that we learned in the Declaration of Independence—I mean, I hardly know where to start with this. The Senate, last year, in debating the immigration legislation, declared English our national language, which you're now suing the Salvation Army to say they can't require employees to speak, even though they clearly posted it and employees don't have to work for the Salvation Army—the Senate said, we're going to give 500 grants to help prospective citizens learn English.

The Senate said that people have to learn English before gaining legal status here. Since 1906, people have had to learn English to

become citizens of the United States. It's not a punitive requirement. It's a requirement to help us make a common language.

We have 28 languages spoken at the school my daughter went to. And it seems to me, completely contrary to everything I know about the importance of achieving unity in our country for us to, in effect, by your lawsuit, require every single employer in America to prove business necessity to the EEOC in order to require English in the workplace. Some may have to worry that if they post that in order to work here, you have to speak our common language, English, that they may be sued by you if they don't.

Carlos Ghosn is the head of Nissan. He went to Japan to take charge of that company. He requires them all to speak English in their meetings because they need a common language. I don't know how you can conduct a staff meeting at the Salvation Army Thrift Store if people speak 15 different languages. A 9–1–1 telephone call wouldn't be useful to a Chinese person if the person who answered the phone spoke Spanish.

So I would like to respectfully ask that if you have a backlog of 56,000 cases, that you put your resources on something other than harassing the Salvation Army Thrift Store, which is a nonprofit, charitable organization that relies on contributions for having to hire lawyers to defend for requiring their employees to speak our common language. I can't imagine why the EEOC would do that. And if necessary, I'll introduce legislation to permit employers in the United States to require their employees to speak our common language in the workplace. I never had imagined that might be necessary but if you persist in this, then I intend to do that.

Senator SHELBY. I just want to ask the chairperson, what is the origin of this lawsuit, assuming that what he is asking is factual and I believe, to me, that's—you know, we're promoting English as the language that unifies us. It binds us together. I think if you're doing this, you're going down a path that Congress is going to hit you hard on and I believe if you're doing this, I don't know what the legal basis of that is. I've never heard of such.

Ms. EARP. EEOC has had a longstanding policy that essentially says when an employer takes an action that could be construed as an action based on that person's ethnicity, their race or their gender, that the employer has a responsibility to articulate a reasonable, legitimate business necessity. In other words, an employer can't say to someone, you can't speak your foreign language, your native language on the job unless there is a business reason. If it were for health, a nurse, if it were for public safety, a police officer, then it is required. But if the person is cleaning your floor or if the person is pressing your clothes or in this case, merely folding clothes but not having—allegedly not having any contact with the public. There appears to be no business reason to deny that person the right to speak their native language.

Senator SHELBY. Are we talking about working or speaking? You know, why—I personally wouldn't hire anybody in my office here or anything else, any other business if they couldn't speak English because English is the business language of this country. They couldn't help me. They couldn't help. I think you're missing the point.

Senator MIKULSKI. Before the Chair responds, I'm going to, upon the completion of this line of questioning, the subcommittee will stand in recess and the first of the three to get back that wants to continue questioning can pick up on it. I'm going to excuse myself now. Did you want to?

Senator ALEXANDER [presiding]. Madam Chairman, that will be all my questions. I would just ask the Chairman in light of her 56,000 case backlog and the commitment of this country to English as our national language, to think very carefully about whether this not only is a wise use of resources, but to consider that we've required every new citizen in this country to learn English since 1906. That's not discrimination. That's a form of national unity and we seek ways to encourage people not to learn English, not to learn it at the beginning of the previous century.

Organizations all over America required the learning of English so that we could be one country, so we could talk with one another and that was one way we became Americans. Our oath of citizenship actually renounces where we've come from and says we've become an American and 650,000 people take it this year and they don't get to be Americans unless they speak English.

I introduced legislation last year the Senate passed to say you can become a citizen a year earlier if you become proficient in English to try to send a signal of the importance of our common language. So it seems to me that if a company posts this and believes it is important to speak the common language, to have an integrated team, that it shouldn't be required to hire lawyers and justify to the EEOC why that company requires its employees to speak our common language in the workplace. So I hope you'll think carefully about this and about the relative value of it in terms of all the other things that you have to do.

Ms. EARP. Senator, may I seek a private meeting with you at some point and perhaps your staff, to share the policies and to further discuss what your concerns are?

Senator ALEXANDER. I'd be happy to do that, Madam Chair and now if you'll excuse me, I'm going to join my colleagues and go vote.

Ms. EARP. Thank you.

Senator MIKULSKI [presiding]. The Subcommittee on Commerce, Justice, Science is officially reconvened and continues its oversight hearing on the Equal Employment Opportunity Commission.

REPOSITIONING PLAN

Madam Chair, I want to go into questions about the field offices and the results of the National Academy for Public Administration (NAPA) study. Ordinarily, I'm a big fan of NAPA studies. When I was both the Chair and the ranking member of VA/HUD, we used—Senator Bond and I used NAPA a lot. In fact, it helped start one of the initial reforms of the Federal Emergency Management Agency (FEMA) under President Bush One. But I'm not so sure about this NAPA set of recommendations and the field studies and the track it put us on and now where we are with that.

As I understand it, this resulted in—the number of district offices was reduced from 23 to 15. Is that correct?

Ms. EARP. Yes.

Senator MIKULSKI. And are there plans for further reductions now?

Ms. EARP. No.

Senator MIKULSKI. So you feel this is it?

Ms. EARP. The field repositioning has been effective since January 2006. For now, things seem to be working well. There are no plans to further realign the field although we are looking at restructuring headquarters.

Senator MIKULSKI. Well, we'll come back to headquarters because there is a lot in the—provided in the news about the headquarters.

Let me go to where I'm concerned about the field offices and then I'm going to talk about the Maryland field office, which put us in a very prickly relationship. Now, when the Equal Employment Opportunity Commission embarked upon the implementation of the reduction of the number of district offices, the authorizing committee that Senator Kennedy chaired and I was a member, voiced very strong opposition to that with your predecessor. So again, this is something again that you've inherited and we had very serious concerns about which offices were going to be downsized, not only numerically but in terms of stature and in terms of the focus of what their work would be and you're familiar with the district office, the local office has very different functions.

We were ignored and our problem is this—here's our national problem. Our national problem is number one, population centers are changing. So as you know, the growing populations, particularly in our border States. If our western Senators were here, Texas, New Mexico, of course California—with that is bringing other kinds of challenges on discrimination.

Also we have places in our country where there are centers of large Muslim populations. They feel that because of dynamics in the larger society, they are facing discrimination from the kind of clothes they could wear in the workplace to overtly being shut out of possible jobs.

So my question to you is the framework that we now have for district offices demographically outdated? And if you don't know the answer to that, that's okay because I'm going to get to another part of that. But do you see? This study was done in 2002. We're in a very different world order now, in many different ways.

I'm concerned that your location of your field offices—we're not talking about closing any but really helping you meet—we have a saying. I'm a professionally trained social worker. I know you come from a background of Federal agencies—to meet people where they are, not where you want them to be. You have to meet people where they are, not where you've got your field office.

So my question is, that in the analysis of where your cases are coming from, where your analysis is with the new demography of our country, is in fact the need for more field offices, more strategically located on the basis of the complaints that are coming. In other words, where the dynamics seem to be and also where the population centers are that seem to be experiencing significant barriers in terms of employment and employment discrimination. Do you see where I'm heading?

Ms. EARP. I do and I have two responses. One response is, we think for the short term that the decision to open the southern of-

fice in Mobile and the western office in Las Vegas, we're right on—that they were consistent with the demographic trends.

My longer answer is, one of the positive things about the National Contact Center is it allows us to capture the data from where the calls come in, not just the issue raised but what part of the country right down to the zip code, that call came in from. So in the long term, I think that we will be better able to refine where offices are located.

The only other point that I would make, Madam Chair, is we have historically tried to put the offices in a transportation center because often charging parties don't own cars. Sometimes they are not the highest socioeconomic rungs so it has been important to at least have those offices where public transportation is accessible.

Senator MIKULSKI. Well, first of all, I think that's a very important goal and we'll come back to again, to the Maryland situation. But to be sure I understand the answer to your question, you want to use the data from the call center as a way of analyzing trends, both in the nature and the type of complaint that you're getting, because it's supposed to be gateway and number two, you want to look at it in terms of where is the volume coming from, to then assess whether you need more field offices. Is that correct?

Ms. EARP. Well, we have the capability of looking at that data over time to see exactly what the issues are and where the issues are coming from. I don't think that we have given, at this particular point, any study or thought to opening additional field offices. Obviously that requires a lot of thought, a lot of deliberation, a lot of consultation with——

Senator MIKULSKI. But I'm thinking about it. And I believe that members of the subcommittee are thinking about it because one of the hallmarks of our country is the fact that if you feel you are discriminated against, you have legitimate channels for redressing grievances. There are countries that are facing challenges, European Union (EU) countries with immigrant populations where they feel that they are frozen in place and they become targets of recruitment for radical organizations.

We, on a bipartisan basis, believe in the opportunity ladder, which I believe you do believe in and you yourself, as I, have lived and benefited from this ladder. At the same time there must be a place to redress your grievances. In this country a person should not feel that you are frozen in place because of what your last name looks like or the clothes you wear or the accent that you might bring into the marketplace and if you feel that, if you feel you have a legitimate place—you have a place to take a legitimate grievance and that grievance will be met in a fair, open, consistent way, it's our way. It's the American way. And because it is an American way, that's why we've been able to, every generation, right or wrong, in every generation, welcome these new people.

So you see why we feel—it's not about field offices and it's not about my district or that district. It's about America and it's about having the opportunity to redress grievances.

FUNDING

I was looking at—first of all, I'm very disturbed that the EEOC has been flat funded for 5 years. We also know it's been under-

funded for a number of years so we're not pointing to an administration though this one has kept it flat funded while other benefits went in other areas.

So we're looking at that. I was going to suggest a study but before we get into that, what we will then ask for you and your team to think about it. Because if the call center is going to be your tool, then the call center has got to work right and I don't have a lot of confidence right this minute in the call center. So let's put this on hold because I'm going to come back to the field offices.

But you see where we are heading. It is to mission and to purpose. It's not about bureaucracy and these questions are meant so that we can have—we want America to be America. That's what we want. We want the Constitution and its laws to be able to be enforced and we want the people who are asked to do that to be in the right place with the right number of people, with the right tools to do this. That's where we're heading with this.

DOWNSIZING BALTIMORE OFFICE

Now, let me go to the field offices. My favorite topic of course, is Baltimore. We got into a very prickly relationship with your predecessor and we got into a prickly one for several reasons. One, we felt we were not listened to and I'll give the reasons why we raised our challenges to the downsizing or down grading of the Baltimore office.

Second, we felt that one, there was a promise made to take a look at it, which was never fulfilled. And number three, we felt that it was overall symbolic of what was felt by many employees, an imperial management style. So you need to know, that's where all the prickly comes from. Okay?

Now, let's start with not being heard. One of the reasons we were concerned about the Baltimore District Office is not because it's Baltimore and Senator Mikulski's going to fight for one more thing and don't close this and don't downgrade that. Part of that would be true. You know me. You're my constituent. So you know where we would be.

But I will go to the Baltimore office and what its job is. As you know, Maryland is the home to Federal employees. You yourself worked at, I believe, at NIH.

Ms. EARP. Yes.

Senator MIKULSKI. As well as other Federal agencies and I believe you developed certain diversity initiatives, which were much needed at the agency. As you know, it's had its own challenges with equal opportunity and you see, that's my whole point that within the National Capital region, not only Baltimore but also Northern Virginia.

We are home to probably the largest number of Federal employees than anywhere in the United States of America. Because of that and in the Baltimore area, we're the home to significant ones, like the Social Security Administration (SSA). There are over 15,000 people who work there because it functions 24/7. You just don't do Social Security—it's not only the people who take the claims—all of that processing, which means the right check to the right person right on time, goes 24/7.

That Social Security office in and of itself has an incredible history. When Lyndon Johnson was President and he said that the Federal Government would be the model employer, many African-Americans for the first time, felt that if you were talented, you could go to work for the Federal Government. So people like Kurt Schmoke's dad, with a background in chemical engineering, could go to work at Aberdeen. Men and women who had experience in law or business could come to Social Security.

If you came to me with the Woodlawn community and saw the people who work there and people who retired. They worked hard. They did the right check at the right amount to the right person at the right time but they also, because they had opportunity at Social Security, could move on up, raise a family, send their kids to school and make a life. I only use that as an example.

What we know in the Baltimore area is that because of the number of Federal employees that they needed a place to go. So just even in that larger metropolitan area, then also we are in tremendous economic change with populations. Twenty-five percent of our population in the State is African-American, still facing redlining and sidelining.

As you know, sometimes it is sidelining, not the overt discrimination and you are an expert in the field. So we were concerned that because they eliminated the regional attorneys, they eliminated 20 jobs and then they downsized, telling essentially the Baltimore metropolitan area, go to Washington.

But going to Washington along with the Washington metropolitan demands on EEOC, which again, looking back from your National Institutes of Health (NIH) hat, you know the stresses and strains and now you see it from a management capacity. If Webb and Warner were here, they would be talking about the Northern Virginia area. So you see why we didn't want Baltimore downsized? But we weren't heard. We were not heard. Then we were told, oh, I will take a look at it and then we were told that it would be kept a district office. That word was broken with me. Okay? And it was actually broken with Senator Kennedy, who also was aware of this.

So it seemed like the team was clueless about being involved with Congress. Now, we can get involved in a lot of tying you up into knots and into all that. I don't want to do that. I believe it is new leadership and it's time for a new start. And I think that's what you want. Am I right?

Ms. EARP. Absolutely.

Senator MIKULSKI. Do you want to respond to what I've said so far?

Ms. EARP. Yes. Let me start——

Senator MIKULSKI. I went through this narrative because I felt—one, because again, we have national responsibility but I want to use my situation as a cameo because other colleagues have some of the same questions.

Ms. EARP. Well, first of all, Madam Chair, let me say, I hear you. I hear you loud and clear and I thank you for giving me an opportunity to demonstrate my leadership and my commitment. I start by saying, I respect the role of the legislative branch, and obviously my Appropriations Committee, the subcommittee, I respect tremendously.

I intend to operate in a spirit of transparency and one of comity and respect for your role and to seek the subcommittee's advice and guidance on changes, proposals, activities at the Equal Employment Opportunity Commission and I would also say, I am a political appointee today but I have 20 years prior to today, of being a career civil servant. I don't think anyone who has ever worked with me would describe me as being imperial. My style is open——

No, no, no—I absolutely agree. I say that only as an example of what the changed environment is at the Commission today.

Senator MIKULSKI. I want to talk about a way forward. First of all, I'd like to talk about the National Capital region and the tremendous changes that are coming to the region and then the fact that I would like an evaluation of the field offices and so on, in the National Capital region.

The National Capital region, to me, is Northern Virginia, really up to around Aberdeen Proving Grounds. Okay? And what is happening is that base realignment and closure (BRAC) is coming. The base realignment and with that means more jobs. There are more jobs that are coming to Fort Belvoir than have ever come before.

If we look at Aberdeen, Fort Meade, Naval Bethesda, these are all—Walter Reed is consolidating but also more coming to Aberdeen and to Fort Meade. We estimate that anywhere from 10,000 to 30,000 new jobs are going to be created by base realignment that either will be direct civil servants jobs or private sector jobs and particularly in the area of security. Along with that will come support services in law, real estate, et cetera. So the good news is, our economy will continue to boom.

At the same time, there will be new populations coming and some directly related to Federal employment. What I would like is to evaluate what it is that the EEOC needs to do to be ready because this was a 2002 NAPA study, which is no longer relevant to what the population is or won't be or whatever, particularly for those who have responsibility to Federal employees or private contractors funded by the Federal Government.

Because if we're not the—you know this—if we're not the model employer, how do we go to the private sector? If we are not the best, then how can we ask them to do this? So, this is why I would like to both—we don't want to micromanage the nature of the study. We want to work with you in a very collegial way to take a look now at the National Capital region and what is here, both in public and private areas and how we need to reassess in a post-2002 world. Do you follow me?

Ms. EARP. Yes.

Senator MIKULSKI. So we can get at what do we need and where do we need it and is it really dysfunctional to get people who are working in certain areas to have to come to a Washington office that is already overburdened and overstressed because it's the Washington office. It's the mother ship office.

Ms. EARP. Madam Chair, would you anticipate that we would fund this study out of the 2008 budget?

Senator MIKULSKI. You mean fund the study? For whatever I'm going to ask you to do, I will make sure you have the money to do it.

Ms. EARP. Thank you.

Senator MIKULSKI. Okay? No, because we are—I will come back to the fact that I think I and others are concerned about the flat funding of the EEOC. We acknowledge that you've had to forage for funds so we're not—anything we're going to ask you to do, we will be a pay as you go subcommittee. Okay? That will be my contract with you. What I need back from you then is us to find out what it is that we need so we are focusing on the—I'm a data driven lady. So on the basis of sound data that has had rigorous intellectual analysis about what is it that we need, even if it takes us a while to get to it but we'll know then what we need. And we can discuss whether that should be done internally or done externally. Okay?

Because I come back to the fact that Maryland—we get casework calls but Maryland constituents are complaining about their complaints not being fully investigated. They feel that they are turned away early—that for a variety of reasons, they don't feel that their complaints are being rigorously investigated.

So what we want to be able to do is look not only at Baltimore but the Capital region, looking at BRAC. As I said, just in Maryland alone, over 40,000 jobs but they really won't be coming until 2009 and 2010. We can just take a look at what will come. We also know that—so that's where, that's kind of where we are. Does that sound like a good way to go?

Ms. EARP. Yes, ma'am.

NATIONAL CALL CENTER

Senator MIKULSKI. Now, this takes me to the call center. You know, I understand why NAPA recommended the call center but we were really concerned because the Federal Government has not had good experiences with national call centers, whether it has been the Equal Employment Opportunity Commission, whether it has been the Immigration Service call center and so on.

And what we were concerned about that with this 2-year contract, that with all the work that needs to be done, that they only agreed to 36 jobs. They got 7 days of training. They had training and experience in civil rights law. Calls never reached to the volume that EEOC predicted. I do acknowledge the facts that you have presented to the subcommittee seem to be different than what we heard even say, 3 months ago, about this call center.

But to us, the call center has never lived up to its promise. We're concerned about the fact that though we say it's 24 hours, it's really an answering machine, I believe, so could you tell me what you want to do with this call center? Because we're not happy with it. And yet, you're going to rely on it to be—play a very important role and then also to tell you trends.

Ms. EARP. I would absolutely stipulate that the call center, the National Contact Center got off to a rocky start. But it is so dramatically improved from its beginnings in March 2005. The call center currently will answer the phone in an average of 1 minute. There are times that the wait is somewhat longer but on average, in 1 minute. It allows us to track data, to do monitoring and the question about training for the customer service representatives—they receive the same training that we give brand new investigators.

Senator MIKULSKI. When did you do that? When was all that? That's not what we were told. We were told 7 days of training. I think you give your investigators more than that.

Ms. EARP. Not initially.

Senator MIKULSKI. You mean your investigators only get 7 days of training in civil rights law?

Ms. EARP. They get 1 week of basic training. Now the thing with investigators is, we have an opportunity over time, to refine that training and they're on the ground so they get to practice their skills. But the customer service representatives are not responding to in-depth inquiries. We think that they have sufficient training to do that first response to the caller coming in. It is—despite the problems in the beginning, it is admittedly substantially improved today.

The issue is, if we don't have a national way to answer phones of some sort, either the one that we're currently working with or one that is inside, we are going to be in a crisis because they answer more than 600,000 calls for us, which frees up—which frees up investigators and attorneys to do the real jobs that they are hired for.

Senator MIKULSKI. You know, you and I could go back and forth on the call center and I don't know where it would take us. Whenever I ask a question, I always wonder, what's the destination? In other words, where am I going? What I—I want to acknowledge the validity of the need for a call center. Okay? So we understand that.

The question is, is this call center really operating the way it should and what all does it need to be run effectively? I'm not disputing what you are saying. We could spend a lot of time going back and forth but I feel that I need an independent analysis of the call center. This is not being provocative with you. But where we then would have some type of document, again, for a way forward.

So you see where I'm heading with the EEOC? We've given the EEOC a forum that they have not had in a number of years. I—we checked our records. We can't find when was the last time this subcommittee asked the EEOC to come and tell us their story and that we could share this.

So this is one of the reasons we wanted to because our accountability and oversight is to see what is our job and then what is your job and again, for the way forward. So where I am, because we could talk about headquarters, et cetera, is to be sure that we have, for the need for the management reforms necessary, we're going to be looking at a way of getting an independent analysis.

HEADQUARTERS RELOCATION PLANS

I'm going to come back to this in 1 minute but please tell me, tell me about this headquarters situation. I read that you are moving. I read that people don't like the fact that you're moving. I read they don't like where you're moving. We wonder about—do you have to move? What is it going to cost to move? Is this something that will take a lot of time, energy and be a distraction from the mission? Do you want to talk to us about the move?

Ms. EARP. Well, change is always difficult and a move like this one—I was actually working for the Commission when the lease

was signed on the building that we're currently in and I remember some employees back then not wanting to move from Columbia Plaza, which is where we were at the time. So the move is difficult.

But in terms of managing our resources, we believe that a move is necessary. The Commission has factored into its budget process for the last 5 years, savings from rent. We moved the Washington field office into the headquarters building 1 year ago and immediately saved $500,000.

So the plan for some time has been as leases expire, to right size the office. We've lost employees so we don't need as much space. So the short answer is, yes, we think that we need to move, not only because we don't need as much space as we currently occupy but because the current landlord doesn't really want us to stay. He really wants to go back commercial with that building.

The General Services Administration (GSA) has served as our agent in this process. They effectively recommended a spot to us, which our very enterprising employees are speculating about where it is but really, because of the Procurement Integrity Act, we're not even at liberty to say exactly what the location is.

Senator MIKULSKI. You mean I have to go into a classified hearing like I would with the Federal Bureau of Investigation (FBI) to find this out?

Ms. EARP. Well, I——

Senator MIKULSKI. No, I understand. But what you're saying is you have to move?

Ms. EARP. Yes.

Senator MIKULSKI. And that the landlord has told you to move?

Ms. EARP. Essentially, the lease expires next year and he is——

Senator MIKULSKI. The lease expires when?

Ms. EARP. July 2008.

Senator MIKULSKI. So it's July 2008, not July 2007. Okay.

Ms. EARP. No but the process to plan for a move when you have technology, you have case files, you have to notify the public. We thought that we needed to get started. In fact, I feel we're starting a little bit late because we're only giving ourselves just a little more than 1 year when we probably should have had as many as 18 months to prepare.

Senator MIKULSKI. Well—but you are working with GSA?

Ms. EARP. Yes.

Senator MIKULSKI. Because all the street buzz is that you were acting on your own.

Ms. EARP. Not at all.

Senator MIKULSKI. Kind of like drive-by buying.

Ms. EARP. No.

Senator MIKULSKI. So you're not a drive-by buyer for a new Federal——

Ms. EARP. No, ma'am.

Senator MIKULSKI. Well, I think again, we're always concerned about the process and the integrity of the process. As long as EEOC feels that it has to move and it is working with GSA that really is along the path that the subcommittee would want to go.

It's now 11:30. We have many other questions, which we will submit for the record because we are—I'm due on the Senate floor for speaking on drug safety.

But I think this has been a very informative and constructive hearing but where I want to go forward is to really get a picture now of where is the EEOC? And I'm going to ask for—and I want you to know, I'm not now being—I don't want to be viewed as pugnacious, but I am going to ask for a Government Accountability Office (GAO) audit of EEOC because I want to get a sense of what was done.

And what they would recommend needs to be done, what was the financial impact of restructuring and ultimately, what does this mean in terms of enforcing our civil rights? And we'll look to your leadership team too, to discuss what additional studies do we need to do in addition to this, to see where EEOC needs to go.

This is the 21st century and we are righting the wrongs of so many centuries, in terms of the mission of this agency, yet we have new populations and new challenges and new other ways of discrimination. You said you were a career employee for how long?

Ms. EARP. Twenty years.

ADDITIONAL COMMITTEE QUESTIONS

Senator MIKULSKI. Twenty years. So you came in 1987. For those in 1977, it was another form of discrimination. For those first employees at the Social Security Administration, they had faced another kind, et cetera, et cetera. And we're just to make sure that the mission stays the same but we have new contemporary challenges. So we want to make sure that you're in the right place, meaning you are located in the right place with the right number of people, with the right resources so that we do the right thing by the people. So that's where we are.

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

QUESTIONS SUBMITTED BY SENATOR BARBARA A. MIKULSKI

BACKLOGS

*Question.* How can EEOC meet its mission when backlogs continue to grow and the organization cuts staff?

Answer. The Commission is keenly aware of the problems associated with a growing inventory of charges. Notwithstanding this challenge, the agency has and will continue to fulfill its mission of eliminating unlawful employment discrimination based on age, disability, race, color, sex, national origin and religion. We wish to put our rising inventory and other challenges in perspective. In 2006, during the last fiscal year, EEOC successfully mediated 8,200 charges—the most in EEOC history; resolved (closed) 74,000 charges filed by members of the public; processed to closure 5 Commissioner or systemic charges; recovered more than $274 million for victims of discrimination through administrative and legal enforcement; and filed 371 new lawsuits on the merits. Additionally, the agency secured, in thousands of cases, non-monetary relief such as changes in personnel policies, reasonable accommodations and modifications to employment testing. All of this was accomplished with existing staff.

It is true that over the last year, EEOC has eliminated several managerial positions. As senior individuals have left the agency, their specific jobs were not filled but associated savings were allocated to filling front line investigator, trial attorney and mediator vacancies. At present, EEOC hires managers only for those positions that are critical to the success of the agency mission, but we continue to conduct hiring of groups of investigators and trial attorneys. The National Contact Center is also producing efficiencies. Our front-line enforcement staff now can work on cases uninterrupted rather than having to respond to general inquiry calls, which

number nearly 700,000 calls annually. Thus, staff are focusing on the jobs they were hired to perform.

The Committee can be assured that EEOC will continue to manage our resources effectively, increasing supervisory spans of control, eliminating managerial layers and training our staff in new technological developments. We are most fortunate to have a talented, highly-motivated workforce so that we can continue our mission of eliminating unlawful employment discrimination "root and branch".

*Question.* How is employee morale at EEOC?

Answer. The Partnership for Public Service reported in their "Best Places to Work in the Federal Government 2007 Rankings" that when compared to 30 large agencies, EEOC ranked 24th. The EEOC ranked 2nd in Employee Skills/Mission match in this report.

Based on the "2006 Federal Human Capital Survey" conducted by the Office of Personnel Management, EEOC rated 21st on Job Satisfaction out of 36 agencies.

*Question.* How many cases, on average, does a single EEOC investigator handle at the same time?

Answer. Over the last 5½ years, the average workload per investigator based on end of year data has been approximately 40 assigned charges. However, as the chart below indicates, during the period in question, the average workload has increased steadily from a low of 28 charges per investigator assigned in 2002 to a high of 63 at mid-year 2007.

| | Pending End Inventory | | | Investigators Assigned | |
|---|---|---|---|---|---|
| | Total | ADR | Enforcement | Total | Charges Per |
| 2007 [1] | 45,943 | 6,997 | 38,946 | 619 | 63 |
| 2006 | 39,946 | 6,485 | 33,461 | 653 | 51 |
| 2005 | 33,562 | 5,700 | 27,862 | 711 | 39 |
| 2004 | 29,966 | 5,289 | 24,677 | 730 | 34 |
| 2003 | 29,368 | 5,229 | 24,139 | 785 | 31 |
| 2002 | 29,041 | 5,540 | 23,501 | 829 | 28 |
| Average | 34,638 | 5,873 | 28,764 | 721 | 40 |

[1] Mid-year data.

*Question.* How many support personnel help a single investigator handle his or her cases?

Answer. The number of support personnel varies from office to office depending on the on-board resources. Most field offices have an Investigator Support Assistant (ISA) on-board. See Attachment I for breakout of ISAs and other support personnel by office. The ISA performs a range of investigator-related duties that includes providing pre-charge counseling to potential charging parties. In some field offices, ISAs perfect charges received in the mail. Field support personnel also handle a large percentage of information calls from the public.

ATTACHMENT I.—FIELD STAFFING—AS OF 5/16/07

| District | Office | Office Total | Investigators | Investigator Support Assts | Support Staff |
|---|---|---|---|---|---|
| Atlanta | Atlanta | 75 | 35 | 4 | 10 |
| | Savannah | 9 | 5 | 1 | 2 |
| Atlanta Total | | 84 | 40 | 5 | 12 |
| Birmingham | Birmingham | 67 | 25 | 4 | 9 |
| | Jackson | 26 | 14 | 2 | 6 |
| | Mobile | 2 | 1 | 0 | |
| Birmingham Total | | 95 | 40 | 6 | 15 |
| Charlotte | Charlotte | 47 | 13 | 1 | 6 |

ATTACHMENT I.—FIELD STAFFING—AS OF 5/16/07—Continued

| District | Office | Office Total | Investigators | Investigator Support Assts | Support Staff |
|---|---|---|---|---|---|
| | Greensboro | 8 | 5 | 0 | 1 |
| | Greenville | 11 | 6 | 0 | 2 |
| | Norfolk | 15 | 5 | 1 | 3 |
| | Raleigh | 18 | 7 | 0 | 4 |
| | Richmond | 17 | 6 | 0 | 2 |
| Charlotte Total | | 116 | 42 | 2 | 18 |
| Chicago | Chicago | 85 | 36 | 4 | 11 |
| | Milwaukee | 35 | 11 | 1 | 5 |
| | Minneapolis | 17 | 6 | 1 | 4 |
| Chicago Total | | 137 | 53 | 6 | 20 |
| Dallas | Dallas | 64 | 21 | 2 | 10 |
| | El Paso | 16 | 10 | 0 | 2 |
| | San Antonio | 50 | 20 | 1 | 5 |
| Dallas Total | | 130 | 51 | 3 | 17 |
| Houston | Houston | 67 | 27 | 0 | 9 |
| | New Orleans | 36 | 11 | 2 | 6 |
| Houston Total | | 103 | 38 | 2 | 15 |
| Indianapolis | Cincinnati | 14 | 7 | | 2 |
| | Detroit | 40 | 16 | 1 | 5 |
| | Indianapolis | 73 | 30 | 2 | 11 |
| | Louisville | 19 | 8 | 1 | 4 |
| Indianapolis Total | | 146 | 61 | 4 | 22 |
| Los Angeles | Fresno | 3 | 1 | 0 | |
| | Honolulu | 7 | 3 | 0 | 1 |
| | Las Vegas | 6 | 2 | 0 | 1 |
| | Los Angeles | 56 | 15 | 1 | 8 |
| | San Diego | 12 | 5 | 0 | 2 |
| Los Angeles Total | | 84 | 26 | 1 | 12 |
| Memphis | Little Rock | 24 | 12 | 0 | 3 |
| | Memphis | 46 | 13 | 0 | 8 |
| | Nashville | 21 | 11 | 1 | 3 |
| Memphis Total | | 91 | 36 | 1 | 14 |
| Miami | Miami | 72 | 32 | 2 | 7 |
| | San Juan | 9 | 4 | 1 | 2 |
| | Tampa | 28 | 16 | 1 | 5 |
| Miami Total | | 109 | 52 | 4 | 14 |
| New York | Boston | 20 | 7 | 1 | 4 |
| | Buffalo | 10 | 7 | 0 | 2 |
| | New York | 72 | 20 | 1 | 10 |
| | Newark | 14 | 6 | 1 | 4 |
| New York Total | | 116 | 40 | 3 | 20 |
| Philadelphia | Baltimore | 44 | 13 | 2 | 7 |

ATTACHMENT I.—FIELD STAFFING—AS OF 5/16/07—Continued

| District | Office | Office Total | Investigators | Investigator Support Assts | Support Staff |
|---|---|---|---|---|---|
| | Cleveland | 48 | 14 | 3 | 9 |
| | Philadelphia | 64 | 21 | 0 | 8 |
| | Pittsburgh | 23 | 12 | 2 | 4 |
| Philadelphia Total | | 179 | 60 | 7 | 28 |
| Phoenix | Albuquerque | 20 | 8 | 2 | 4 |
| | Denver | 45 | 14 | 1 | 7 |
| | Phoenix | 58 | 21 | 1 | 9 |
| Phoenix Total | | 123 | 43 | 4 | 20 |
| San Francisco | Oakland | 3 | 2 | 1 | 1 |
| | San Francisco | 53 | 10 | 1 | 6 |
| | San Jose | 10 | 4 | 1 | 2 |
| | Seattle | 40 | 12 | 2 | 6 |
| San Francisco Total | | 106 | 28 | 5 | 15 |
| St. Louis | Kansas City | 19 | 10 | 1 | 2 |
| | Oklahoma City | 20 | 11 | 1 | 3 |
| | St. Louis | 40 | 15 | 1 | 6 |
| St. Louis Total | | 79 | 36 | 3 | 11 |
| Washington | Washington | 32 | 4 | 4 | 8 |
| Field Total | | 1,730 | 650 | 60 | 201 |

*Question.* How many front-line staff do you have in each area office to take initial complaints?

Answer. The chart in Attachment I provides an office-by-office breakout of the numbers of investigators, ISAs and support staff, all of whom may perform charge intake duties. The chart also reflects the overall total staff (both enforcement and legal) for each office.

*Question.* Can you provide the Committee with a strategic plan that includes benchmarks for reducing EEOC's backlog and improving morale? (OCH)

Answer. A copy of our current strategic plan (2007–2012) is attached. Many of the measures contained in that plan are to be determined. A revised strategic plan with specific performance measures is currently under development and will be voted on by the Commission when completed. We will of course share our plan with you when it is completed and approved.

With regard to employee morale, as part of our current strategic plan we are improving our strategic management of human capital. The EEOC has completed key steps toward developing and implementing a human capital initiative. Planning for human capital needs is more important than ever. Our human capital strategic plan guides our agency's actions, including:

—Revising our performance management system for executives and managers to link their performance with the agency's mission and goals.
—Developing and sustaining leadership and supporting succession planning through the agency's Management Development Institute, an umbrella program addressing managerial needs of supervisors and executives.
—Participating in the Office of Personnel Management's human capital surveys and implementing regular internal surveys to identify employee satisfaction with human capital management and developing action plans based on an analysis of feedback.
—Identifying and quantifying mission critical competencies for key positions, including investigators, attorneys and mediators, developing multi-year training plans to address any organizational gaps.
—Closing gaps through individual development plans, mentoring, training, rotational assignments and other staff development initiatives.
—Aggressively recruiting, developing and retaining high-quality talent.

The EEOC's program to reinvigorate our systemic discrimination program highlights the need to fine tune our human capital approaches. To succeed, the agency must enhance incentives for identifying, investigating, and litigating systemic cases, provide additional opportunities for training and the development of expertise related to systemic discrimination, and improve technology skills. Our systemic initiative will facilitate development of more refined approaches to enforcing the law. Our goal is to ensure that employees have the right skills, talents, and abilities to succeed in implementing this program.

EEOC OVERSIGHT OF EEO OFFICES

*Question.* How does EEOC evaluate each equal employment office?

Answer. The standards by which EEOC evaluates the sufficiency of federal agency Title VII and Rehabilitation Act programs are set forth in EEO Management Directive 715, which became effective in 2003. MD–715 divides the essential elements of model agency EEO programs into six broad categories: (1) demonstrated commitment from agency leadership; (2) integration of EEO into the agency's strategic mission; (3) management and program accountability; (4) proactive prevention of unlawful discrimination; (5) efficiency; and (6) responsiveness and legal compliance.

Pursuant to MD–715, agencies are required to conduct periodic self-assessments of their Title VII and Rehabilitation Act programs against the six model elements enumerated above. Agencies are required to report on a yearly basis to EEOC their progress toward establishing and maintaining a model workplace. That report includes the identification of any program deficiencies and the identification of any barriers to equal employment an agency has discovered along with plans to eliminate any such barriers. Agencies also are required to submit to EEOC a series of data tables showing snapshots of their agency workforce by race, national origin, sex and targeted disability. EEOC evaluates each agency's submission and provides written feedback and analysis on each agency's progress toward establishing and maintaining a model EEO workplace and identifies areas in which each agency's program needs improvement.

In addition to the written evaluations based upon agencies' MD–715 reports, EEOC conducts a limited number of in-depth, program evaluations each year.

*Question.* How often are evaluations conducted?

Answer. Evaluations based upon agencies' MD–715 reports are conducted each year. EEOC also conducts more in-depth evaluations of agency EEO programs. EEOC conducted 3 such evaluations in fiscal year 2004; 5 in fiscal year 2005; and 4 in fiscal year 2006. We plan to conduct 3 to 4 evaluations in fiscal year 2007.

*Question.* What can a federal employee do if he or she feels that the agency EEO office is not investigating the case properly?

Answer. There are several options available to a federal employee who feels that his or her complaint is not being properly processed. These options include raising these concerns with: (1) the agency officials responsible for conducting the investigation; (2) an EEOC Administrative Judge; and (3) the EEOC on appeal.

Complaints concerning the processing of complaints, including how complaints are investigated, are addressed in the U.S. Equal Employment Opportunity Commission (EEOC) Management Directive (MD) 110. Specifically, MD–110 Chapter 5 Section IV.D entitled "Allegations of Dissatisfaction Regarding the Processing of Pending Complaints," provides that if a complainant is dissatisfied with the processing of his/her pending complaint, whether or not it alleges prohibited discrimination as a basis for dissatisfaction, s/he should be referred to the agency official responsible for the quality of complaints processing.

Agency officials should earnestly attempt to resolve dissatisfaction with the complaints process as early and expeditiously as possible. Further, the agency official responsible for the quality of complaints processing must add a record of the complainant's concerns and any actions the agency took to resolve the concerns to the complaint file maintained on the underlying complaint. If no action was taken, the file must contain an explanation of the agency's reason(s) for not taking any action.

In cases where the complainant's concerns have not been resolved informally with the agency, the complainant may present those concerns to the EEOC at either of the following stages of processing: (a) Where the complainant has requested a hearing, to the EEOC Administrative Judge when the complaint is under the jurisdiction of the Administrative Judge; or (b) Where the complainant has not requested a hearing, to the EEOC Office of Federal Operations (OFO) on appeal.

Where the Administrative Judge or OFO finds that an agency has improperly processed the original complaint and that such improper processing has had a material effect on the processing of the original complaint, the Administrative Judge has

the authority to supplement the record at the hearing stage, and/or impose sanctions on the agency as s/he deems appropriate.

In some instances, if there appears to a particularly egregious or systemic issue with a particular agency, which may have been identified by multiple complaints received through complainant correspondence, and/or through our independent review of their policies, practices, and procedures as revealed by their annual 462 and MD–715 reports, the EEOC may select the agency for a Program Evaluation. This evaluation involves an intensive review of the agency's EEO practices after which we prepare a report documenting our findings on the factors that we determine are having a significant impact on the agency's program efficiency as well as EEOC's recommendations on how the agency should address these findings. Similarly, on occasion, if a complaint presents a conflict of interest, or if high-level agency officials are involved, the EEOC's Special Services Staff in its Office of Federal Operations may undertake an investigation of a complaint if requested by the agency where the discrimination allegedly occurred.

Finally, federal employees or applicants who are not satisfied with the outcome of the administrative process may elect to file a civil action in an appropriate United States District Court.

BRAC IN MARYLAND

*Question.* Maryland over the next five years will be undergoing tremendous growth due to BRAC. Did EEOC consider this when they decided to downgrade the Baltimore office?

Answer. EEOC was aware of the BRAC recommendations at the time that the repositioning plan was developed. EEOC regularly monitors its workload and staffing data, both at the national and at the local office levels, to identify any shifts or trends in charge receipts and resolutions from projected expectations. This monitoring allows us to develop needed adjustments to workload through the inter-district transfer of charges in the short term and, subject to budgetary constraints, by adjusting office staffing levels for the long-term. With respect to the Baltimore office, we have been keeping their front-line staff at close to an optimal level, which should allow them to take on additional work resulting from base build-ups in Maryland. In January 2006, when we implemented field repositioning, there were 11 investigators in the Baltimore District Office. Today, we have 12 investigators in the Baltimore Field Office. The redesignation of the Baltimore office as a result of repositioning did not result in fewer frontline positions.

*Question.* How will EEOC handle this influx of 55,000 new employees to Maryland?

Answer. See response to question 1 above.

*Question.* What is EEOC doing right now to plan for this increased caseload?

Answer. See response to question 1 above.

---

QUESTIONS SUBMITTED BY SENATOR TOM HARKIN

*Question.* What percentage of the EEOC cases that have been resolved or closed in the last three years originated with the state and local agencies?

Answer. Over the last three years, the state and local agencies (FEPAs) have resolved approximately 40 percent of the total combined resolutions of dual-filed charges with EEOC and the FEPAs. Specifically, the FEPA percentage of overall dual-filed charge resolutions during this period was: 40 percent in fiscal year 2004, 41.3 percent in fiscal year 2005 and 40.5 percent in fiscal year 2006.

*Question.* What percentage of callers to the national call center's 800 number are referred to state and local offices?

Answer. Slightly less than 2 percent of NCC calls are referred to FEPAs. For example, of the 222,350 calls handled by customer service representatives during the 7-month period between October 2006 to April 2007, 4,162 (1.9 percent) were referred to FEPAs.

*Question.* Please provide a justification for the agency proposal to place over 60 percent of the cuts proposed by the Administration on the state and local agencies that have the largest share of the caseload.

Answer. For fiscal year 2008, the Administration has proposed a $997,000 reduction from the fiscal year 2007 enacted level. From the enacted 2007 level, the State and local agencies were apportioned $30 million in 2007 and will receive $28 million (a budget reduction of less than 7 percent) under the Administration budget before Congress. The budget projections show the EEOC inventory to rise to 67,000 charges, while the FEPA charge inventory has been dropping and will flatten out at around 50,000 charges. The budget proposal seeks to provide more funds to

EEOC to avoid a worsening EEOC inventory rise. The cut in FEPA funds should not change the projected FEPA inventory.

---

QUESTIONS SUBMITTED BY SENATOR LAMAR ALEXANDER

*Question.* How many lawsuits and complaints against employers over English language workplace policies has the U.S. Equal Employment Opportunity Commission (EEOC) filed so far this year? How many lawsuits and complaints did the Commission file in 2006, 2005, 2004, 2003, 2002, and 2001?

Answer.

*Charges*

In the period of fiscal year 2001 to fiscal year 2006, EEOC has received charges alleging discrimination on the issue of English-only policies as follows:

CHARGE RECEIPTS WITH ENGLISH-ONLY ISSUE

| | Fiscal Year— | | | | | |
|---|---|---|---|---|---|---|
| | 2001 | 2002 | 2003 | 2004 | 2005 | 2006 |
| Receipts | 154 | 237 | 173 | 184 | 141 | 125 |

On average, this represents an average of 169 charge receipts per year, which equals less than 0.2 percent of receipts (using an average of 75,000), a small fraction of our total receipts. Additionally, we resolved the following number of charges during this same timeframe:

CHARGE RESOLUTIONS WITH ENGLISH-ONLY ISSUE

| | Fiscal Year— | | | | | |
|---|---|---|---|---|---|---|
| | 2001 | 2002 | 2003 | 2004 | 2005 | 2006 |
| Resolutions | 182 | 218 | 190 | 165 | 189 | 111 |

Of these resolutions, EEOC found reasonable cause to believe discrimination occurred in approximately 53 charges, on average, per fiscal year. The specific numbers, by fiscal year, are as follows:

CAUSE RESOLUTIONS WITH ENGLISH-ONLY ISSUE

| | Fiscal Year— | | | | | |
|---|---|---|---|---|---|---|
| | 2001 | 2002 | 2003 | 2004 | 2005 | 2006 |
| Cause Resolutions | 59 | 62 | 39 | 47 | 83 | 25 |

*Lawsuits*

EEOC has filed one case this fiscal year involving English-only policies. In prior fiscal years, EEOC has filed the following cases involving this issue:

LITIGATION FILINGS WITH ENGLISH-ONLY ISSUE

| | Fiscal Year— | | | | | |
|---|---|---|---|---|---|---|
| | 2001 | 2002 | 2003 | 2004 | 2005 | 2006 |
| Filings | 3 | 2 | 2 | 2 | 4 | 2 |

*Question.* How much money has the EEOC spent to prosecute lawsuits and file complaints against employers over English language workplace policies so far this year (including staff costs, court fees, etc.)? How much did the Commission spend on lawsuits and complaints in such cases in 2006, 2005, 2004, 2003, 2002, and 2001?

Answer.

*Charges*

Of the 169 charge receipts that EEOC receives on average each year, the cost of processing these charges is difficult to quantify. However, basing our calculations

on this six-year average for receipts, these charges represent the annual workload of approximately 1½ investigators. Computing out the annual salary, benefits and overhead for an investigator, and calculating their time spent on English-only charges, the cost would be approximately $250,000.

*Lawsuits*

The table below provides cost to EEOC for litigating English-only cases.

LITIGATION COST FOR ENGLISH-ONLY ISSUE

| | Fiscal Year— | | | | | | |
|---|---|---|---|---|---|---|---|
| | 2001 | 2002 | 2003 | 2004 | 2005 | 2006 | 2007 |
| Staffing Cost ..... | $6,515.00 | $35,394.00 | $38,038.00 | $7,103.00 | $130,804.00 | $105,786.00 | $54,793.00 |
| Litigation Cost ... | $123,026.78 | $71,432.00 | $24,435.00 | $87,062.00 | $14,098.63 | $399.00 | ..... |
| Total ..... | $129,542.78 | $106,826.00 | $62,473.39 | $94,165.69 | $144,902.63 | $106,185.00 | $54,793.00 |

*Question.* How many small-to-medium sized businesses (under 100 employees) has the EEOC filed complaints or lawsuits against over English language workplace policies this year? How many in 2006, 2005, 2004, 2003, 2002, and 2001? How many big businesses (100 or more)? How many of each category in Tennessee?

Answer.

*Charges*

Of the cause findings issued each year during the past six years, the number of those that were issued by the size of the employer is as follows:

CAUSE RESOLUTIONS WITH ENGLISH-ONLY ISSUE BY EMPLOYER SIZE

| | Fiscal Year— | | | | | |
|---|---|---|---|---|---|---|
| | 2001 | 2002 | 2003 | 2004 | 2005 | 2006 |
| Total Cause Resolutions ..... | 59 | 62 | 39 | 47 | 83 | 25 |
| 15–100 Employees ..... | 16 | 14 | 14 | 21 | 19 | 11 |
| 101–500 Employees ..... | 20 | 27 | 13 | 8 | 20 | 5 |
| 501+ Employees ..... | 23 | 19 | 11 | 14 | 39 | 6 |
| No. of Employees Unknown ..... | ..... | 2 | 1 | 4 | 5 | 3 |

During this six-year period, there were only three cause findings issued to employers in the State of Tennessee. All of these findings were issued in a single fiscal year, fiscal year 2001, and were evenly split between the three size categories above.

*Lawsuits*

EEOC has not filed any cases this fiscal year against small employers involving this issue. For prior fiscal years, we have filed the following:

LITIGATION FILINGS WITH ENGLISH-ONLY ISSUE AGAINST EMPLOYERS WITH 100 OR FEWER EMPLOYEES

| | Fiscal Year— | | | | | |
|---|---|---|---|---|---|---|
| | 2001 | 2002 | 2003 | 2004 | 2005 | 2006 |
| Filings ..... | ..... | 2 | 1 | ..... | 2 | 1 |

EEOC has filed one case this year against a large employer. In the past, we have filed the following:

LITIGATION FILINGS WITH ENGLISH-ONLY ISSUE AGAINST EMPLOYERS WITH MORE THAN 100 EMPLOYEES

| | Fiscal Year— | | | | | |
|---|---|---|---|---|---|---|
| | 2001 | 2002 | 2003 | 2004 | 2005 | 2006 |
| Filings ..... | 3 | ..... | 1 | 2 | 2 | 1 |

EEOC has filed no cases against employers in Tennessee involving this issue for the period October 1, 2000 to the present.

*Question.* How many lawsuits and complaints arising over English language workplace policies has the EEOC settled, won, and lost this year? How many in 2006, 2005, 2004, 2003, 2002, and 2001?

Answer.

*Charges*

The number of English-only policy resolutions involving settlements include successful conciliations—a component of the cause finding—as well as settlements. The annual tallies follow:

SETTLEMENTS WITH ENGLISH-ONLY ISSUE

| | Fiscal Year— | | | | | |
|---|---|---|---|---|---|---|
| | 2001 | 2002 | 2003 | 2004 | 2005 | 2006 |
| Successful Conciliations | 23 | 22 | 7 | 16 | 25 | 6 |
| Settlements | 13 | 28 | 26 | 20 | 14 | 18 |
| Total | 36 | 50 | 33 | 36 | 39 | 24 |

*Lawsuits*

EEOC has resolved three cases this fiscal year; all were settled by consent decree. In prior years, we resolved the following:

LITIGATION RESOLUTIONS WITH ENGLISH-ONLY ISSUE

| | Fiscal Year— | | | | | |
|---|---|---|---|---|---|---|
| | 2001 | 2002 | 2003 | 2004 | 2005 | 2006 |
| Consent Decree | 4 | 1 | ..... | 1 | 1 | 3 |
| Settlement Agreement | ..... | 1 | 1 | ..... | ..... | ..... |
| Favorable Court Order | ..... | ..... | ..... | ..... | 1 | ..... |
| Total | 4 | 2 | 1 | 1 | 2 | 3 |

---

QUESTIONS SUBMITTED BY SENATOR TED KENNEDY

*Question.* I understand that EEOC has undertaken a commitment to revitalize systemic litigation. I applaud this effort. However, in light of your significant and growing case backlog and the significant staff reductions the agency has undergone in recent years, do you believe that the Commission has the resources to implement this renewed commitment? What other areas will the Commission have to compromise in this effort?

Answer. We believe that in order to combat systemic discrimination effectively, the Commission must promote a culture that encourages staff to look for, recognize, and investigate systemic discrimination. We already have a core group of investigators, attorneys and other enforcement staff who have a proven record in this area including many significant settlements and conciliations over the years, and in some instances, major systemic litigation. We are enhancing this core group by adding positions for lead systemic investigators, systemic paralegal specialists, and labor economists to support this effort. In addition, we are devoting resources to systemic training programs to develop and enhance the expertise of existing investigators, attorneys and support staff.

We are able to leverage our existing resources by encouraging districts to partner with one another and form a national systemic practice along the lines of a national law firm model. This strategy allows the Commission to address systemic discrimination effectively nationwide while at the same time sharing and building expertise in all of our offices.

We budgeted $213,000 in fiscal year 2006 non-staff funds for information technology support for this activity. In fiscal year 2007, we have budgeted $150,000 for non-staff costs in the field for this activity. The funds were realized when planned new hires did not enter on duty within the new hire timeline. These funds will be used to hire expert and support services for manipulating systemic data, train staff

in systemic analysis, and pay for travel expenses for staff to meet on systemic cases that involve multiple offices.

Specifically, in our budget request, we project a slight decrease in lawsuit filings compared to previous years, due to a readjustment of our docket to include more large class cases. In fiscal year 2006, we filed 371 suits, and in fiscal year 2008 we estimate filing 340 suits. We anticipate a shift in the size and complexity of cases in our docket as the Commission's new Systemic Program produces some larger cases for enforcement litigation by fiscal year 2008. Our campaign to reinvigorate the systemic program may redirect some resources from smaller, individual cases. The Commission understands this potential trade-off and believes that it is worthwhile. When done correctly, systemic cases can transform whole industries or geographic areas—not just the named defendants. They are a way of leveraging the agency's limited resources to have the widest possible reach. Thus, we believe the Commission has the resources to implement its renewed commitment to systemic litigation, without compromising its overall enforcement program.

*Question.* The National Employment Lawyers Association recently released a report containing disturbing findings from a survey that the Association conducted about EEOC operations. I was particularly troubled by the report's discussion of the problems that members of the public have experienced with intake investigations. Potential claimants are receiving erroneous advice—e.g., that they cannot file a claim if they still have their job, or that they cannot name more than one grounds of discrimination in their charge—and this bad advice has compromised their rights. In addition, the agency's recent reorganization significantly reduced the number of frontline staff, particularly intake investigators. You testified at the hearing that EEOC's frontline investigators receive only one week of specialized training. I know that the agency's employees are dedicated and hardworking, but it appears that they do not have the capacity or the training to perform their jobs effectively. What steps can the agency take to increase the quality of frontline services it provides? Does the agency need to implement additional training programs? Do you need to hire more frontline investigative staff? How can the quality of services be improved without additional resources above and beyond the President's budget request?

Answer. First, I would like to note that when I became Chair in September 2006, I met with NELA representatives almost immediately, with the goal of beginning a close partnership with them in my new role. Since last September, I have maintained an on-going dialogue with NELA on many matters and spent two days with NELA representatives at the ABA off-the-record meeting in January of this year. As NELA itself states in the introduction to its report:

"The Chair and the Commissioners have taken affirmative steps in seeking NELA's input and feedback regarding EEOC operations. Indeed, open dialogue with and encouragement from Chair Earp, Vice Chair Silverman, and Commissioners Griffin and Ishimaru were a catalyst for NELA conducting the survey which is the subject of this report."

Second, I would like to reassure the Committee that the instances recounted in NELA's report are not the usual conduct of business at EEOC. The survey was sent to 2,500 NELA members with the request that they report problems with EEOC rejecting charges. Of those 2,500, 343, or 13.7 percent responded. A total of 77, or 3 percent of the members surveyed reported drafting a "discrimination charge . . . that was not accepted for filing . . . ." NELA's survey covered approximately two and a quarter calendar years; although our numbers follow fiscal years, instead of calendar years, they provide context to consider the numbers of complaints that NELA received. During fiscal year 2004-fiscal year 2006, EEOC received more than a half million inquiries (558,177) and took in over a quarter of a million charges (230,628). In light of this enormous workload, the instances reported are indeed a small number.

I want to emphasize that I take NELA's concerns very seriously. As a result of discussions with them on intake issues, long before we received the survey results, we began setting up an e-mail address to enable NELA members to inform us in real time of concerns they have with any particular intake session. We notified NELA informally of this e-mail address in February and in April formally notified them in a letter which they can distribute to their members. We intend to use the information provided by NELA members to remedy any situation where an individual who wishes to file a charge has encountered obstacles, as well as to train and counsel staff on correct intake procedures, when necessary. As we receive messages in this mailbox, we will be working with the appropriate office to resolve the situation promptly, ensure that charging party rights are preserved and that our staff deals properly with anyone who initiates intake activity.

We have also found that face-to-face meetings with stakeholders such as NELA are extremely helpful to both sides. For example, when NELA representatives in Atlanta informed us in 2005 of problems they encountered with filing charges in the Atlanta District Office, our Atlanta District Director met with them personally to resolve those issues. She then set up quarterly meetings with regional NELA representatives, which are on-going to this day. We understand that these meetings are well received on both sides and we have encouraged our other district directors across the country to meet regularly with their regional NELA representatives.

Of course, there are reasonable differences that our staff have had from time to time with charges drafted by private attorneys and some charges are reworked. For example, we routinely request that charges not include the specific disability on the face of the charge. The Americans with Disabilities Act limits the extent to which employers can disclose the medical information of employees. Charges are served on employers and may go through many hands and be seen by many people at the company. We would not want our charge process to produce results inconsistent with the statute. Another example is the honest mistake that some private attorneys make by naming witnesses to the alleged discrimination on the face of the charge. If such charges were taken "as-is" and served on the employer, those witnesses could easily become targets for retaliation. Consequently, our staff request that the names of witnesses be removed from the charge and provided separately to investigators.

Finally, you should know that EEOC has been working on maintaining the overall high quality of our intake process for several years, in part through Technical Assistance reviews that our headquarters staff conduct of our field offices. In 2005, we set up an Intake Workgroup, composed of deputy district directors and district enforcement managers, which drafted a proposed uniform intake questionnaire to assist the district offices with their intake procedures. We have also been working on redirecting staff resources to the intake function to allow better development of the allegations included in charges as well as the evidence necessary to support those allegations. We anticipate additional training for our intake staff sometime in the near future. This would augment the initial one-week classroom training provided to new investigators that is supplemented with local training conducted in each office, on-the- job training, and later advanced classroom training.

We have already given NELA's report to our Technical Assistance teams for their review and analysis of the specific problems noted in the survey. We will use their recommendations to improve our processes as necessary and reduce any such occurrences in the future.

*Question.* I am familiar with the findings of the Inspector General's report on the ineffectiveness of the Commission's call center pilot project. The center has been plagued with operational problems and is not serving the public effectively. Even if improvements have been made, it is clearly time to reexamine this problematic experiment. You have mentioned that there would be increased expense if this function were brought in-house, but your estimate of the cost seems extremely high. Can you provide for me the basis of your calculations about the cost of bringing the call center in-house? Wouldn't the Commission's client populations be better served by working with experienced EEOC employees when they contact the agency?

Answer. In September 2006, EEOC asked the National Academy of Public Administration (NAPA) to conduct an assessment of the requirements to establish an in-house contact center and to provide an independent estimate of the costs. NAPA issued a report in January 2007 that estimated that it would cost an initial $2.3 million to move the National Contact Center (NCC) in-house and annual ongoing costs of $5.5 million; therefore, the first year of operating an in-house contact center would be $7.8 million. By comparison, annual on-going costs for the contractor-run center costs about $2.5 million. In developing their cost estimates, NAPA used comparable staffing, processes, technology, and equipment as that used by the NCC. The NAPA estimates took into account that the software application, knowledge base, and training materials used by the NCC are the property of EEOC under the terms of the contract and would not have to be purchased. According to the NAPA report, which is available at, "the staffing estimates are based upon a representative month and the metrics currently in place to meet service requirements including speed of answer and qualitative measures." The NAPA estimates also presumed the rental of a stand-alone facility located in a labor market designated as "rest of USA."

It is important to note that the customer service representatives (CSRs) who answer the phones for EEOC are dedicated to the EEOC contract, are well-trained to represent EEOC and allow us to present a consistent face to the public for 12 hours each work day. This is an important service to our client population—to be accessible, at convenient hours, and providing accurate information or referrals. A report

issued by the Claes Fornell International (CFI) Group in May 2006 indicated the overall Customer Satisfaction Score for the EEOC contact center was 77, which is six points higher than the average for Federal Government contact centers. This report is accessible on the EEOC external website at the following URL: http://www.eeoc.gov/abouteeoc/oig/reports/ncc/cs_survey.html. In addition, we receive very few complaints from our field offices regarding the services provided by the contact center. The volume of calls handled by the CSRs, more than 38,000 a month (with an average wait time of 30 seconds), could not be handled using existing experienced EEOC employees and technology.

A March 2003 survey indicated that 61 percent of the calls to our public numbers in the field were for reasons other than potential charge filing and could easily be answered by clerical level employees. These figures still hold true today in that more than 60 percent of the calls coming to the NCC are for reasons other than filing a charge. Callers who have questions about filing a charge are pre-screened for coverage and mailed an intake questionnaire. Contact center employees have been trained to handle the variety of calls coming in to EEOC and our EEOC monitors believe they are doing a very good job of collecting data, answering questions, and as several field supervisors noted recently, "providing a portal to EEOC." The training for customer service representatives does not end after the initial two weeks (including six days devoted to EEOC content) and also includes on-going monitoring and refresher training at least four times each month. The CSR's job is to be quickly accessible, to quickly determine the reason for the call, and to provide the appropriate level of assistance. Do they use scripts to do this? Yes, they do, but they are trained to ask appropriate questions to determine which scripts to use and when. These same scripts have been shared with all field offices at the request of field supervisors. CSRs hold a dialogue with the caller and because they are constantly monitored, we are able to follow up on any incomplete or incorrect information.

In order to set up an EEOC-operated contact center, we will have to make a significant investment in technology and additional resources to provide the same level of service the public is receiving from the contract call center. When we used only EEOC employees answering the phone, we found we could not adequately do the job without using some 21st century technology and strategies. Our volume of calls, currently over 60,000 per month to the NCC alone, is clear evidence that we need to take advantage of industry best practices to meet our customer service needs. It is better for our customers that we are making the best use of our limited budgetary resources to operate a contract call center, because in this way:

—the caller can be certain of reaching a CSR 12 hours-a-day and only having to wait less than a minute on average to do so;

—the caller can be assured of getting consistent information, consistent treatment, and consistent service, regardless of whether he or she resides in the country, or what language he or she speaks; and

—our investigators are able to devote their time to deal with potential charges and investigations rather than handling phone duty of general inquiries, which currently number 60,000 per month.

## CONCLUSION OF HEARINGS

Senator MIKULSKI. We'll look forward to further conversations with you as we move ahead. This subcommittee will stand in recess, subject to the call of the Chair.

[Whereupon, at 11:36 a.m., Thursday, May 3, the hearings were concluded, and the subcommittee was recessed, to reconvene subject to the call of the Chair.]

# COMMERCE, JUSTICE, SCIENCE, AND RELATED AGENCIES APPROPRIATIONS FOR FISCAL YEAR 2008

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

## NONDEPARTMENTAL WITNESSES

[The following testimonies were received by the Subcommittee on Commerce, Justice, Science, and Related Agencies for inclusion in the record. The submitted materials relate to the fiscal year 2008 budget request for programs within the subcommittee's jurisdiction.]

### PREPARED STATEMENT OF THE NATIONAL EMPLOYMENT LAWYERS ASSOCIATION

#### EXECUTIVE SUMMARY

In March of this year, the National Employment Lawyers Association[1] (NELA) prepared and distributed to its membership a brief on-line survey to gain a better and more current understanding of (1) the frequency with which charging parties and/or their attorneys encounter refusals by the U.S. Equal Employment Opportunity Commission (EEOC) to accept charges; and (2) the extent to which charging parties and/or their attorneys experience other problems with charge filing at the EEOC (see Appendix A attached to the full report). NELA spearheaded the survey in response to comments it regularly receives from NELA members and local NELA affiliate members about the EEOC's charge filing process as well as by our discussions with the leadership of the EEOC. Both the EEOC and the Congress also have recently expressed concerns about the need for charging parties to have effective access to the Commission's compliance procedures.

The survey sought to elicit information about what happens when a charge is presented to the Commission—whether charging parties encounter problems, the types of problems they experience, and the frequency and timing of such problems. The survey covers the period from January 1, 2005 to April 2, 2007; questions were cat-

[1] The National Employment Lawyers Association (NELA) advocates for employee rights and workplace fairness while promoting the highest standards of professionalism, ethics and judicial integrity. NELA was founded in 1985 to provide assistance and support to lawyers in protecting the rights of employees against the greater resources of their employers and the defense bar. NELA is the country's largest professional organization that is comprised exclusively of lawyers who represent individual employees in cases involving employment discrimination, wrongful termination, employee benefits, and other employment-related matters. NELA and its 67 state and local affiliates have more than 3,000 members nationwide.

As a group, NELA members have represented thousands of individuals seeking equal employment opportunities. NELA is one of a limited number of organizations dedicated to protecting the rights of all employees who rely on the U.S. Equal Employment Opportunity Commission (EEOC) and the courts for protection against illegal workplace discrimination. NELA's members serve the same constituency as the Commission, namely, employees who have been and are being subjected to invidious race, color, national origin, gender, religious, age, and disability discrimination prohibited by Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act, and the Americans with Disabilities Act. NELA's members interface with the EEOC on a daily basis. They are involved with the Commission's compliance procedures, its investigation practices, and its disposition of cases. That involvement is nationwide and reaches to all of EEOC's regional and district offices.

egorized by calendar year. The survey was conducted from March 16, 2007 through April 2, 2007. NELA received 343 unique responses to the survey, for a total response rate of 14 percent. The responses represent the experiences of plaintiff employment lawyers (and their clients) from 30 states, the District of Columbia and Puerto Rico who practice before EEOC offices in every region, including 15 district, 9 field, 12 area and 11 local offices. (A list of the EEOC offices referenced by survey respondents is contained in Appendix B of the full report.)

The cumulative responses reveal an agency that is resistant to the filing of employment discrimination charges. Of the survey respondents, nearly one-quarter (23 percent) indicated that they had drafted charges for clients that had not been accepted for filing by the EEOC during the twenty-seven month period covered by the survey.[2] In response to the broader question, "[H]ave you had other problems with the EEOC in the processing of charges or intake questionnaires (e.g., resistance by EEOC office identified above to accepting filing as prepared by you, substantial modification by EEOC of what you prepared, etc.)?"—the "yes" response rate was even higher.[3] Thirty-six percent (36 percent) of respondents reported that they had encountered such problems at some time since January 1, 2005. Moreover, more than a quarter of the respondents who had experienced such problems did so more than once in calendar years 2005 (26 percent) and 2006 (28 percent).[4] In 2005, 12 percent, and in 2006, 13 percent, of them had encountered such problems three or more times in the year.[5]

The comments of survey respondents illuminate the pervasiveness of the problems that charging parties and plaintiff's attorneys have with the EEOC's intake, charge filing and investigation processes. The respondents cite several recurrent problems with EEOC charge intake as well as with EEOC investigations after charges are filed (see pages 6–13 of the full report).

These findings, as alarming as they are, do not come as a surprise to anyone who is familiar with the EEOC. They are, in substantial part, symptomatic and the consequence of an inadequate budget which has resulted in an understaffed agency burdened with a massive flow of charges and an ever growing backlog. Indeed, the Commission has struggled to meet the mounting pressures of this burden and has tried to adjust to the realities of its budget through a major reorganization and reallocation of staff.

When the chaff is separated from the wheat, however, the key fact that emerges is that the EEOC has for many years only been able to budget a small amount of its funding to enforcement and virtually nothing to training personnel. This renders the Commission ill-equipped to achieve its mission, produces never-ending delays, prevents even minimal training of staff, and breeds inordinate pressures not to add to a burgeoning backlog by junking potential and actual cases at every step of the administrative process. More specifically, it produces an inherent resistance to the filing of charges by compliance staff, shortchanges investigations (if and when they take place), and increases an administrative "washing of hands" of cases through the convenience of boilerplate Notices of Right to Sue that include nothing but a mere check-off box for "insubstantial evidence to determine" discrimination.

In enacting various anti-discrimination laws, Congress has signaled that addressing and eliminating invidious discriminatory employment practices is one of the nation's highest priorities. Thus, it is incumbent upon Congress to ensure that the Commission—the federal agency that it has mandated to enforce these laws—receives the necessary funding to rectify the untenable morass described in the report. If the EEOC is to overcome the dire consequences of past budget reductions, then funding well beyond the current levels must be made available.

At the same time, the EEOC also must be held accountable to Congress and the public it serves. Thus, oversight and assessment mechanisms must be put into place to assure that additional resources are directed toward viable and meaningful enforcement of the EEOC's mandates (see page 15 of the full report). The findings cited in NELA's survey lend credence to the problems faced by the EEOC and those Americans the agency is mandated to protect from unlawful employment discrimination. For the EEOC to fulfill its mission as the federal agency most responsible for the enforcement of the nation's equal employment opportunity laws, these problems must, at a minimum, be addressed with more resources targeted at improving basic enforcement functions.

---

[2] See Question 3, Appendix A.
[3] See Question 11, Appendix A.
[4] See Questions 12 and 13, Appendix A.
[5] Supra.

For more information, contact Donna R. Lenhoff, Legislative & Public Policy Director, National Employment Lawyers Association, 1090 Vermont Avenue, NW, Suite 500, Washington, DC 20005 (Tel: 202–898–2880; E-mail: dlenhoff@nelahq.org).

WORKERS' RIGHTS IN JEOPARDY: EEOC'S ENFORCEMENT OF EQUAL EMPLOYMENT OPPORTUNITY LAWS IMPEDED BY INADEQUATE FUNDING

A REPORT BY THE NATIONAL EMPLOYMENT LAWYERS ASSOCIATION—APRIL 27, 2007

*Introduction*

The National Employment Lawyers Association (NELA) advocates for employee rights and workplace fairness while promoting the highest standards of professionalism, ethics and judicial integrity. NELA was founded in 1985 to provide assistance and support to lawyers in protecting the rights of employees against the greater resources of their employers and the defense bar. NELA is the country's largest professional organization that is comprised exclusively of lawyers who represent individual employees in cases involving employment discrimination, wrongful termination, employee benefits, and other employment-related matters. NELA and its 67 state and local affiliates have more than 3,000 members nationwide.

As a group, NELA members have represented thousands of individuals seeking equal employment opportunities. NELA is one of a limited number of organizations dedicated to protecting the rights of all employees who rely on the U.S. Equal Employment Opportunity Commission (EEOC) and the courts for protection against illegal workplace discrimination. NELA's members serve the same constituency as the Commission, namely, employees who have been and are being subjected to invidious race, color, national origin, gender, religious, age, and disability discrimination prohibited by Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act, and the Americans with Disabilities Act. NELA's members interface with the EEOC on a daily basis. They are involved with the Commission's compliance procedures, its investigation practices, and its disposition of cases. That involvement is nationwide and reaches to all of EEOC's regional and district offices.

NELA members and the staff of the EEOC share the common goal of ensuring that the nation's equal employment opportunity laws are enforced as mandated by Congress. Indeed, several current and past EEOC staff are or have been members of NELA, including former Commissioners as well as senior attorneys in the Office of General Counsel and Regional Offices. These EEOC alumnae are passionate about their years at EEOC. They remain committed to helping the EEOC to advance its mission, to establish and develop a vibrant body of employment law, to address discrimination where it has operated and is continuing to be practiced, and to secure remedies for unlawful employment practices. In short, NELA and its members are uniquely positioned to comment upon EEOC's compliance efforts and the extent to which the Commission meets its mission, exercises its responsibilities, and provides relief to individuals who are discriminated against in the workplace.

Effective, attentive and responsive enforcement procedures hold out the hope for resolution and relief for victims of workplace discrimination. By the same token, ineffective, inattentive and irresponsible administrative processing by EEOC precludes and/or directly impacts the nature and scope of the relief charging parties—even those represented by attorneys—can obtain during the administrative process. Furthermore, because utilization of the Commission's administrative procedures is a mandatory gateway to private enforcement of Title VII and defines the scope of any ensuing litigation, NELA's members and their clients have a vital stake in ensuring charging party accessibility to the EEOC and effective compliance efforts.

It is essential to underscore that EEOC leaders, especially its current Chair, have recognized this commonality between EEOC's responsibilities and the interests and experiences of NELA's members. They are acutely aware that working in partnership with NELA, as well as other stakeholders, is key to fulfilling the EEOC's mission of enforcing the nation's equal employment opportunity laws. The Chair and the Commissioners have taken affirmative steps in seeking NELA's input and feedback regarding EEOC operations. Indeed, open dialogue with and encouragement from Chair Earp, Vice Chair Silverman, and Commissioners Griffin and Ishimaru were a catalyst for NELA conducting the survey which is the subject of this report. The same is true with respect to a planned project that NELA hopes to implement in the near future regarding EEOC's National Contact Center.

*The Survey and Methodology*

In March of this year, NELA prepared and distributed to its membership a brief on-line survey, a copy of which is attached as Appendix A. The purpose of the survey was to gain a better and more current understanding of: (1) the frequency with which charging parties and/or their attorneys encounter refusals by the EEOC to

accept charges; and (2) the extent to which charging parties and/or their attorneys experience other problems with charge filing at the EEOC. NELA spearheaded the survey in response to comments it regularly receives from NELA members and local affiliate members about the EEOC's charge filing process as well as by our discussions with EEOC leadership. In addition, both the EEOC and the Congress have recently expressed concerns about the need for charging parties to have effective access to the Commission's compliance procedures.

The survey sought to elicit information about what happens when a charge is presented to the Commission—whether charging parties encounter problems, the types of problems they experience, and the frequency and timing of such problems. The survey covers the period from January 1, 2005 to April 2, 2007; questions were categorized by calendar year.

Instructions and a link to the on-line survey were sent by electronic mail to NELA members. In addition, NELA's sixty-seven state and local affiliate leaders were encouraged to forward the survey link to their membership (which include members who are not members of the national organization). The survey was conducted from March 16, 2007 (the date it was first distributed) through April 2, 2007 (the date the survey was closed). NELA received 343 unique responses to the survey, for a total response rate of 14 percent.

The responses represent the experiences of plaintiff employment lawyers (and their clients) from 30 states, the District of Columbia and Puerto Rico. The respondents practice before EEOC offices in every region, including 15 district, 9 field, 12 area and 11 local offices. (A list of the EEOC offices referenced by respondents is contained in Appendix B.)

*The Findings*

The responses reveal an agency that is resistant to the filing of employment discrimination charges. Of the survey respondents, nearly one-quarter (23 percent) indicated that they had drafted charges for clients that had not been accepted for filing by the EEOC during the twenty-seven month period covered by the survey.[6] In response to the broader question, "[H]ave you had other problems with the EEOC in the processing of charges or intake questionnaires (e.g., resistance by EEOC office identified above to accepting filing as prepared by you, substantial modification by EEOC of what you prepared, etc.)?"—the "yes" response rate was even higher.[7] Thirty-six percent (36 percent) of respondents reported that they had encountered some such problems at some time since January 1, 2005. Moreover, more than a quarter of the respondents who had experienced such problems did so more than once in calendar years 2005 (26 percent) and 2006 (28 percent).[8] In 2005, 12 percent, and in 2006, 13 percent, of them had encountered such problems three or more times in the year.[9]

These experiences were not specific to just one or two of EEOC's local offices, but involved, as mentioned above, 47 offices nationwide. These 47 EEOC offices are not, however, necessarily any worse than EEOC offices not reflected in the survey. On the other hand, the offices not on the list (Appendix B) are not necessarily any better than those that are on the list. Indeed, NELA has no reason to believe that these 47 EEOC offices are either better or worse than the EEOC offices that were not mentioned by survey respondents.

The comments of those responding to the survey, which are compiled in Appendix C, illuminate the pervasiveness of the problems that charging parties and plaintiff's attorneys have with the EEOC's intake, charge filing and investigation processes. As reflected below, the comments indicate several recurrent problems with EEOC charge intake as well as with EEOC investigations after charges are filed. This is not to suggest, however, that all is bad at the EEOC; in fact, some respondents recognized and complimented particular offices or personnel.

*Problems with Charge Intake*

While NELA attorneys, more often than not, succeed in filing charges for their clients, they report that these same clients in many instances were previously turned away by EEOC's intake personnel based on the same alleged incidents of discrimination. For example:

—Our clients who come to [us] after going to the EEOC have numerous horror stories about being told they couldn't file because they still had their job, didn't have a case, etc.——Comment 16 (Atlanta)

[6] See Question 3, Appendix A.
[7] See Question 11, Appendix A.
[8] See Questions 12 and 13, Appendix A.
[9] Supra.

—While I have not had problems with the EEOC accepting my charges or questionnaires, I have had many potential clients report that the EEOC would not accept their charges—at least 4 in the past two months. I cannot say how many have reported this since January 2005, but the numbers seem to be increasing of late. In addition, the EEOC does not want any information before the 180 day filing period, whether or not this information is relevant to the discrimination claims in the charge.——Comment 118 (Atlanta)

—Because of previous problems with the EEOC I always draft the charges and have them hand delivered and stamped. I stopped sending my clients in to file on their own behalf because the EEOC . . . tell[s] clients they don't have a case even though I have already determined that they do.——Comment 45 (Chicago)

—[T]he problem seems to be mainly with people who attempt to file charges without an attorney. I get many, many calls from people who say that the EEOC told them that they do not have a case when in fact they do have one, or would have if they had filed the charge when they contacted EEOC. EEOC gave them bad legal advice which caused them not to file when they should have, and their rights were compromised.——Comment 86 (Dallas)

—I don't have problems . . . It is the unrepresented people who have problems. For instance, I have had people come to see me who have been told by the intake folks that they don't have a case and don't know they can insist on filing a charge. I draft and file the charge and there is no problem. I really worry about the folks who don't have a lawyer, not the ones who do!!——Comment 175 (St. Louis)

—[A]ggrieved individuals go [to the EEOC and] are often told that they have no case and no charges are accepted. How many people with legitimate claims then exit the process, demoralized? If they come to us, we have to fight to get the charges filed, including writing them ourselves (which I have not had rejected but never results in much of an investigation).——Comment 99 (Detroit)

Often, before accepting a charge (even one prepared by an attorney), EEOC intake personnel have required that the charge be narrowed (for example, to one incident or to one form of discrimination, such as gender or race discrimination but not both). For example:

—Refusal to allow charging party to check more than one box; refusal to allow charging party to name employment agency or joint employer; not allowing charging party to mention events outside 180 days on the face of the charge; telling charging party she doesn't have a charge and not letting her file.——Comment 173 (Atlanta); see also Comment 84 (Dallas)

—[T]he EEOC often will not include all claims (even when client has been instructed by me as to what claims).——Comment 45 (Chicago)

The EEOC resists accepting charges, primarily due to untrained intake personnel. For example:

—Some investigators are more notorious than others. The intake investigators are not attorneys but are making legal decisions. Of course, this could be critical if the individual does not first see an attorney or delays seeing an attorney until after the charging party's deadline has passed.——Comment 23 (Raleigh)

—Unqualified people tell me what does and does not fall under Title VII.——Comment 170 (San Antonio)

—The EEOC told one client that they had too many cases to really read his case or deal with it since his did not involve a termination.——Comment 30 (Boston)

—Intake investigators do not seem to understand the elementary principles of discrimination cases, do not seem to understand the significance of certain facts when those facts are presented to them during the intake interview, and can hardly write an intelligent sentence in either the charge or the affidavit.——Comment 132 (San Antonio)

—I have been told by investigators that the charge cannot be accepted without more detailed information, particularly comparative information. The detail required appears to exceed the notice pleading standard in federal court.——Comment 24 (El Paso)

—I have seen cases of non-represented complainants in which the intake person at the EEOC drafts a charge and immediately issues a notice of right to sue, telling the complainant he/she "doesn't have a case" based on the intake person's inaccurate understanding of the law (e.g., "If you were the only person it happened to it can't be discrimination. . . ."). I wonder how many persons with legitimate complaints rely on that "advice" and decide not to pursue their claim."——Comment 148 (St. Louis)

Timely claims are jeopardized due to delays in the EEOC's procedures. For example:

—[R]ecently I was contacted by a charging party who had submitted his questionnaire in October, but as of mid-February had heard nothing from EEOC. His 180 days to file was within a month of running. I contacted EEOC on his behalf and was told that they were "just getting to" the October questionnaires and that the fact that his time was close to running did not give it any priority over other charges. I ended up filing a charge on his behalf instead of waiting for the EEOC.——Comment 92 (Atlanta)

—I have a case now where the EEOC told my client that he did not have a case, and that they wouldn't accept his charge. He insisted, so they accepted the charge (that they drafted). Months later (after 300 days post-incident) he got a call from the EEOC telling him that he needed to sign another (identical) charge. He did, sent it back, and it was stamped "filed" for that new date. Then, the EEOC dismissed him for filing too late. Luckily, he had a copy of the original stamped charge, and we survived a motion to dismiss on this.——Comment 2 (Chicago); see also, Comment 37 (Dallas)

—The EEOC routinely attempts to re-write the charge, invariably leaves [information] out, and then sends the revised charge to the client for signature. It then tries to substitute the date of the "new" charge for the original filing date. I then have to write to the EEOC and demand that they use the original charge and original filing date. The EEOC has backed down after receiving my correspondence, but my intervention should not be necessary. In [another] case in 2006 the EEOC told [my client] that it could not accept his charge unless he came into the EEOC personally and complete[d] an intake with an EEOC employee. The EEOC then sent a letter to the client informing him that his charge was not valid and would not be accepted until he followed through on the personal interview. I wrote to the EEOC, explained the statutory requirements for filing, and it ultimately accepted the charge with the original date. Again, this should not have been necessary, particularly since I had entered my appearance.——Comment 104 (Philadelphia)

Arbitrary and capricious actions by EEOC personnel jeopardize employees' rights. For example:

—They required a whole new charge to be filed for one typo.——Comment 70 (Indianapolis)

—In the past 30 days . . . a charge [was] returned to me telling me that normally they have staff to make corrections on charges, but because they do not have enough staff currently, they were sending back my charge and giving me 33 days to correct the charge. They said that the charge was deficient because I stated the type of disability on the charge form, I described damages and my charge narrative was too lengthy (it fit on the front of the charge form).——Comment 168 (Philadelphia)

—[O]n several occasions from 2005 to the present, [the Miami office] tried to reject charges [I'd filed] (the most recent occasion being this month). When I challenged them and asked them to cite the provision of the EEOC regulations that authorized them to reject the charge, they backed off. The most egregious of these instances was a disability discrimination charge in which "disability" and "retaliation" were checked off and the charge alleged that my client was an individual with a disability who was being denied urgently needed accommodations and whose medical information was not being kept confidential. (My client was literally dying because of the employer's change in his work schedule, which interrupted his regime for taking HIV medication.) Someone from the Miami EEOC office called and said the charge was being rejected because it didn't expressly mention the Americans with Disabilities Act. I hit the roof and told them that the description of the discrimination and checking off of "disability" made it patently obvious that this was an ADA charge.——Comment 101 (Miami)

Inability to contact EEOC personnel. For example:

—Complete inability to talk to any EEOC personnel about status of charge, investigation, etc.; complete failure of EEOC to conduct any investigation of charges that clearly are meritorious.——Comment 185 (Baltimore)

—I have had . . . numerous occasions where I have attempted to get in touch with investigators to convey information or inquire into case status and my calls have not been returned.——Comment 128 (Cincinnati)

Other Intake Problems Confronted by Survey Respondents and Their Clients:

—Lack of Spanish-speaking personnel.——Comment 80 (Birmingham)

—The EEOC charge form is not readily available.——Comment 82 (Dallas); see also Comment 32 (Cincinnati)

—Lack of coordination among EEOC personnel (e.g., different investigators assigned to charges against the same employer involving the same discriminatory practice).——Comment 86 (Dallas)
—Lost charges and files.——Comments 114 (Philadelphia); Comment 65 (St. Louis); Comment 128 (Cincinnati); Comment 62 (Baltimore)
—Failure to provide right-to-sue letter.——Comment 116 (Charlotte)

*Problems with Investigations and Post-charge Processing*

The narrative comments that accompanied the survey responses also enumerate repeated concerns about what takes place after charges are accepted by the EEOC. These concerns include the following:

—Cursory investigations by untrained investigators. For example:
  —The problems I have encountered have occurred after the charge is filed. We have had several cases where the EEOC simply decided not to investigate or even [to] require a response from the Respondent because the EEOC decided the charging party could not be discriminated against on the basis of race if the decision maker was the same race. That is not the law, but it is making it hard to prosecute these cases.——Comment 13 (Chicago) [emphasis supplied]
  —My problems have been with the EEOC's lack of investigation and routine acceptance of the respondent's position.——Comment 116 (Charlotte)
  —Zero knowledge of pretext. EEOC requires direct evidence or they dismiss the claim. Also, zero knowledge of the single enterprise theory. If the employer says they don't employ 15 people or 50 people, etc., EEOC makes no further inquiry.——Comment 52 (New Orleans)
  —The EEOC routinely contacts clients who are represented by counsel and gives them advice which is often incorrect, and causes the clients unnecessary confusion.——Comment 104 (Philadelphia)
  —Pregnancy discrimination charge dismissed because client was replaced by a female. Investigator didn't understand that the female that replaced my client was not pregnant. Recently, same investigator would not allow my client to amend charge to include retaliation which occurred after the filing of the first charge. New charge had to be filed after discussion with investigator's supervisor.——Comment 113 (Denver)
  —[T]he investigators are overwhelmingly unqualified (can't even identify the prima facie elements to claims, and have no clue how to investigate). There is very little access and transparency, since the District Director . . . is more interested in closing files and denying access to position statements than he is in having his investigators do their job.——Comment 73 (El Paso)
  —Another EEOC problem: they are not investigating a lot of charges. I've had a few potential clients come in with charges that received no substantial evidence findings within 7 days of filing.——Comment 2 (Chicago)

—Perfunctory acceptance of the employer's written response to the charge, and little or no assessment of the merits or follow-up to test the representations contained in the employer's response (such as contacting witnesses or obtaining relevant comparative data). For example:
  —[The] most frequent and significant problem I have encountered is resistance by some investigators to conduct a meaningful investigation if they have determined that the case has no merit. Investigators will often receive the employer's position statement and reach a premature conclusion that the charge has no merit. The investigators are then resistant to conduct[ing] an investigation (e.g., contact witnesses or obtain documents) that might indicate that the employer's position statement is inaccurate or is not meritorious. In my opinion, this resistance occurs from a need to move and close files at a certain rate.——Comment 77 (St. Louis)
  —We get almost no feedback on the [investigation] process. Conciliation ends up undervaluing the claims dramatically. There are a few good investigators, but for the most part there seems to be no will to question, let alone rebut, the proffered explanation of the employers. When we FOIA the records afterward there is almost no discovery conducted. There is almost never a "for cause" finding. I think I have seen at most three or four throughout a fifteen year career. Needless to say I have settled many a case in which the EEOC found no cause. The administration at our [EEOC] office seems completely oblivious to the problems. When the issues are raised, the reaction is, "Well, that is not our policy, so, it must not be happening the way you describe it." I was on the verge of FOIAing the Detroit district office annual reports to use to request some sort of Congressional oversight from our senators.——Comment 99 (Detroit)

—The problems I have with the EEOC occur during the supposed "investigation" of the charge. The investigators typically receive the employer's position statement, treat it like the gospel, do nothing more, and then issue a terrible letter telling my clients that they were horrible employees and that there was no discrimination. I have repeatedly complained about this to the [EEOC] Cleveland counsel, to no avail.——Comment 98 (Cleveland)

—They simply notify us of their intent to dismiss based on the employer's position statement without giving the charging party an opportunity to refute what the employer has said.——Comment 29 (Detroit)

—Perfunctory issuance of boilerplate right-to-sue letters at intake or after a pro forma investigation. For example:

—I have seen several instances of clients who file charges and receive their notice of right to sue at the same time, with no investigation.——Comment 83 (Dallas)

—My problems arise after filing and the EEOC does nothing. I draft questions and investigators do not investigate or are just too busy to do anything. I file at least a half dozen charges each year. Inevitably we get back the punt, unable to determine if discrimination took place."——Comment 57 (Philadelphia)

*Inadequate Funding: The Source of the Problems*

These findings, as alarming as they are, do not come as a surprise. They clearly are, in substantial part, symptomatic and the consequence of an inadequate budget which has resulted in an understaffed agency burdened with a massive flow of charges and an ever growing backlog. The Commission has struggled to meet the mounting pressures of this burden and has tried to adjust to the realities of its budget through a major reorganization and reallocation of staff. Members of Congress, NELA, and other stakeholder organizations were critical of and voiced their skepticism about the reorganization, fearing it would, if anything, further deplete enforcement and would not result in staffing that would achieve the results forecast by EEOC. Whether those criticisms were well founded or whether the Commission's blueprints for reorganization make sense are appropriate subjects of debate and scrutiny. That controversy, however, ignores an overwhelming reality.

When the chaff is separated from the wheat, the key fact that emerges is that the EEOC has for many years only been able to budget a small amount of its funding to enforcement and virtually nothing to training personnel. This renders the Commission ill-equipped to achieve its mission, produces never-ending delays, prevents even minimal training of staff, and breeds inordinate pressures not to add to a burgeoning backlog by junking potential and actual cases at every step of the administrative process. More specifically, it produces an inherent resistance to the filing of charges by compliance staff, shortchanges investigations (if and when they take place), and increases an administrative "washing of hands" of cases through the convenience of boilerplate Notices of Right to Sue that include nothing but a mere check-off box for "insubstantial evidence to determine" discrimination.

The inescapable conclusion is that the reductions in the EEOC's budget over the past several years have wreaked havoc upon the Commission's enforcement efforts. For all intents and purposes, these budget levels have imposed upon the EEOC a paralysis that frustrates Congressional intent in enacting equal employment opportunity laws, the Commission's efforts in achieving its mission and, moreover, the rights of American workers to be free from unlawful employment discrimination. For those who do succeed in obtaining relief from illegal employer conduct, that relief is likely to be only after years of delay.

In enacting various anti-discrimination laws, Congress has signaled that addressing and eliminating invidious discriminatory employment practices is one of the nation's highest priorities. Thus, it is incumbent upon Congress to ensure that the Commission—the federal agency that it has mandated to enforce these laws—receives the necessary funding to rectify the untenable morass described in this report. If the EEOC is to overcome the dire consequences of past budget reductions, then funding well beyond the current levels must be made available.

At the same time, the EEOC also must be held accountable to Congress and the public it serves. Thus, oversight and assessment mechanisms must be put into place to assure that additional resources are directed toward viable and meaningful enforcement of the EEOC's mandates. In particular:

—Immediate attention should be given to how many investigators and attorneys are assigned to each of EEOC's offices as well as to the past and anticipated case flow at each of these offices.

—A critical examination is needed to determine what, if any, training is provided to EEOC's compliance staff.

—If EEOC intends to make good on its commitment to revitalize systemic cases, then the agency needs to assess whether it has sufficient staff attorneys and support personnel to fulfill this promise.
—Mechanisms are required to ensure that individual cases are not short-changed while the Commission pursues systemic cases.
—Factors relating to employee performance incentives and awards should be based on enforcement of the laws, vindication of civil rights and changing business practices as opposed to speeches and community outreach.

*Conclusion*

The findings of NELA's survey lend credence to the problems faced by the EEOC and those Americans the agency is mandated to protect from unlawful employment discrimination. For the EEOC to fulfill its mission as the federal agency most responsible for the enforcement of the nation's equal employment opportunity laws, these problems must, at a minimum, be addressed with more resources targeted at improving basic enforcement functions.

APPENDIX A.—NELA EEOC CHARGE PROCESSING SURVEY—NUMERICAL DATA

Total Responses: 343
1. Name:
2. EEOC Office you primarily practice before:
3. Since January 1, 2005, have you drafted a discrimination charge (or charges) for a client (or clients) that was (were) not accepted for filing by the EEOC office identified above?

| | Number | Percent |
|---|---|---|
| Yes | 77 | 22.60 |
| No | 264 | 77.40 |
| Total Respondents | 341 | ..... |

4. If yes, how many times did it occur in calendar year 2005:

| | Number | Percent |
|---|---|---|
| 0 | 155 | 74.20 |
| 1 | 18 | 8.60 |
| 2 | 19 | 9.10 |
| 3–5 | 13 | 6.20 |
| 6–10 | 1 | 0.50 |
| 11 or more | 3 | 1.40 |
| Total Respondents | 209 | ..... |

5. How many times did it occur in calendar year 2006:

| | Number | Percent |
|---|---|---|
| 0 | 153 | 70.50 |
| 1 | 37 | 17.10 |
| 2 | 15 | 6.90 |
| 3–5 | 10 | 4.60 |
| 6–10 | ..... | ..... |
| 11 or more | 2 | 0.90 |
| Total Respondents | 217 | ..... |

6. How many times did it occur from January 1, 2007 to present:

| | Number | Percent |
|---|---|---|
| 0 | 198 | 92.50 |
| 1 | 13 | 6.10 |
| 2 | 1 | 0.50 |
| 3–5 | 2 | 0.90 |
| 6–10 | ..... | ..... |

| | Number | Percent |
|---|---|---|
| 11 or more | ..... | ..... |
| Total Respondents | 214 | ..... |

7. Since January 1, 2005, have you prepared an EEOC intake questionnaire (or questionnaires) that was (were) not accepted by the EEOC office identified above:

| | Number | Percent |
|---|---|---|
| Yes | 19 | 5.70 |
| No | 316 | 94.30 |
| Total Respondents | 335 | ..... |

8. If yes, how many times did it occur in calendar year 2005:

| | Number | Percent |
|---|---|---|
| 0 | 156 | 94.00 |
| 1 | 2 | 1.20 |
| 2 | 5 | 3.00 |
| 3–5 | 1 | 0.60 |
| 6–10 | 2 | 1.20 |
| 11 or more | ..... | ..... |
| Total Respondents | 166 | ..... |

9. How many times did it occur in calendar year 2006:

| | Number | Percent |
|---|---|---|
| 0 | 155 | 90.60 |
| 1 | 10 | 5.80 |
| 2 | 3 | 1.80 |
| 3–5 | 2 | 1.20 |
| 6–10 | 1 | 0.60 |
| 11 or more | ..... | ..... |
| Total Respondents | 171 | ..... |

10. How many times did it occur from January 1, 2007 to present:

| | Number | Percent |
|---|---|---|
| 0 | 166 | 96.50 |
| 1 | 5 | 2.90 |
| 2 | ..... | ..... |
| 3–5 | 1 | 0.60 |
| 6–10 | ..... | ..... |
| 11 or more | ..... | ..... |
| Total Respondents | 172 | ..... |

11. Since January 1, 2005, have you had other problems with the EEOC in the processing of charges or intake questionnaires (e.g., resistance by EEOC office identified above to accepting filing as prepared by you, substantial modification by EEOC of what you prepared, etc.):

| | Number | Percent |
|---|---|---|
| Yes | 117 | 35.70 |
| No | 211 | 64.30 |
| Total Respondents | 328 | ..... |

12. If yes, how many times did it occur in calendar year 2005:

| | Number | Percent |
|---|---|---|
| 0 | 130 | 62.20 |
| 1 | 24 | 11.50 |
| 2 | 30 | 14.40 |
| 3–5 | 21 | 10.00 |
| 6–10 | 4 | 1.90 |
| 11 or more | ..... | ..... |
| Total Respondents | 209 | ..... |

13. How many times did it occur in calendar year 2006:

| | Number | Percent |
|---|---|---|
| 0 | 117 | 55.70 |
| 1 | 34 | 16.20 |
| 2 | 32 | 15.20 |
| 3–5 | 23 | 11.00 |
| 6–10 | 3 | 1.40 |
| 11 or more | 1 | 0.50 |
| Total Respondents | 210 | ..... |

14. How many times did it occur from January 1, 2007 to present:

| | Number | Percent |
|---|---|---|
| 0 | 164 | 79.20 |
| 1 | 28 | 13.50 |
| 2 | 8 | 3.90 |
| 3–5 | 5 | 2.40 |
| 6–10 | 2 | 1.00 |
| 11 or more | ..... | ..... |
| Total Respondents | 207 | ..... |

APPENDIX B.—NELA EEOC CHARGE PROCESSING SURVEY LIST OF EEOC OFFICES REFERENCED BY RESPONDENTS

Atlanta District Office
Birmingham District Office
Charlotte District Office
Chicago District Office
Dallas District Office
Houston District Office
Indianapolis District Office
Los Angeles District Office
Memphis District Office
Miami District Office
New York District Office
Philadelphia District Office
Phoenix District Office
San Francisco District Office
St. Louis District Office
Baltimore Field Office
Cleveland Field Office
Denver Field Office
Detroit Field Office
New Orleans Field Office
San Antonio Field Office
Tampa Field Office
Seattle Field Office
Washington Field Office
Albuquerque Area Office
Boston Area Office
Cincinnati Area Office
El Paso Area Office
Kansas City Area Office
Louisville Area Office
Milwaukee Area Office
Minneapolis Area Office
Nashville Area Office
Newark Area Office
Pittsburgh Area Office
Raleigh Area Office
Buffalo Local Office
Greenville Local Office
Honolulu Local Office
Las Vegas Local Office
Norfolk Local Office
Oakland Local Office
Richmond Local Office
San Diego Local Office
San Jose Local Office
San Juan Local Office
Savannah Local Office

APPENDIX C.—NELA EEOC CHARGE PROCESSING SURVEY COMMENTS ORGANIZED BY OFFICE

*Atlanta District Office*

16. [No problems] in the charges we file except that when we have more than one employer the EEOC now insists upon having separate charges and they have ended up going to different investigators. Our clients who come to us after going to the EEOC, on the other hand, have numerous horror stories about being told they couldn't file because they still had their job, didn't have a case, etc.

34. I receive many calls from potential clients that describe being turned away from EEOC and not allowed to file a charge of discrimination.

41. The problems with the EEOC usually arise when the charging party is NOT represented by an attorney. That's usually when I hear about instances of the EEOC refusing charges, or advising charging parties that they don't have any claims, etc. When the charge comes from a lawyer, it's been my experience that they usually accept the charge.

49. Requests to interview my clients directly without informing me of the nature or specific purpose of the interview, other than saying that the charge as drafted was insufficient.

59. One of my clients just had his case, a strong religious discrimination case, dismissed due primarily to the EEOC's incompetence. The client went to the EEOC, pro se, complaining about religious discrimination in the workplace. The investigator said that much of the supporting evidence my client had was more than 6 months old, and discouraged my client from filing a religious [discrimination] claim. The investigator asked my client the race of client's boss, who is white. The client is black. The investigator said he'll check off the race box. My client said no, it's not a race claim, it's a religious discrimination claim. The investigator said that he can only check off one box, and since a lot of client's evidence is more than 6 months old on the religious [discrimination] claim (but his termination was within 6 months), he will go with race only. My client was pro se, at the EEOC for the first time, and wrongly trusted the investigator to get it right. My client subsequently put on the questionnaire that it is a religious discrimination as well as race matter. The Court denied Defendant's motion to dismiss for failure of notice in the early stages of the litigation. We then went through full discovery, costing the client over $7,000. Then, a new judge took over the case. He tossed the case on summary judgment due primarily to the EEOC mishandling of the charge. He also briefly went over the facts of the case and determined the underlying facts were not strong enough. That was argued very poorly and we would have had a good shot on appeal on that argument. Unfortunately though, his primary argument—the EEOC matter—has enough case law on both sides. We decided not to appeal.

92. The primary problems of which I am aware are related to unrepresented charging parties who try to file charges. For example, recently I was contacted by a charging party who had submitted his questionnaire in October, but as of mid-February had heard nothing from EEOC. His 180 days to file was within a month of running. I contacted EEOC on his behalf and was told that they were "just getting to" the October questionnaires and that the fact that his time was close to running did not give it any priority over other charges. I ended up filing a charge on his behalf instead of waiting for the EEOC.

93. NELA–GA is in communication with the Atlanta EEOC office about joint employers. The EEOC wants separate charges filled out for each employer (meaning the charges are assigned to different mediators, different investigators . . .); NELA–GA wants all employers to be listed on the same charge.

110. EEOC often pigeon holes a complaint into "race" or "gender" rather than check multiple boxes to cover discrimination based on more than one factor. EEOC also often gives clients incompetent and wrong legal advice.

118. While I have not had problems with the EEOC accepting my charges or questionnaires, I have had many potential clients report that the EEOC would not accept their charges—at least 4 in the past two months. I cannot say how many have reported this since January 2005, but the numbers seem to be increasing of late. In addition, the EEOC does not want any information before the 180 day filing period, whether or not this information is relevant to the discrimination claims in the charge.

119. Individuals going to the EEOC alone and having the intake office refuse to take their charge or telling them they have no case.

142. Telling people who come in, even if they have a witness with them that they have no case. In one instance it involved touching sexual harassment and an eye witness and they were turned away. They tell the potential charging party they have no case and never inform them that there are other laws that the EEOC does

not enforce that may apply to their situation. Also have had preemptory dismissals without any defect on the face of the charge.

173. Refusal to allow charging party to check more than one box; refusal to allow charging party to name employment agency or joint employer; not allowing charging party to mention events outside 180 days on the face of the charge; telling charging party she doesn't have a charge and not letting her file.

175. One investigator threatened not to accept an amended charge. I filed it anyway.

*Birmingham District Office*

80. Lack of Spanish-speaking EEOC personnel in the South.

95. Years ago, in the 1990s, the Birmingham office would not take a charge by fax. I haven't tried since then. I think charges should be accepted by fax, email, etc.

151. Most investigators are lazy and rude; one black male hated all complaints from females, asking "Who do you think you are?" to a sexual harassment victim. He was equally threatening to me. Had to go to the national director to get him removed. Turned out he was having a gay affair with an executive of the employer. With no state employment discrimination laws, we must go through EEOC.

*Charlotte District Office*

7. I have not really had any problems in connection with the filing of a charge. My problems have been with the EEOC's lack of investigation and routine acceptance of the respondent's position. Also, I have had some incidents where the EEOC has not provided the right to sue letter to the complainant.

116. My clients who go in person to file charges have been turned away and told they do not have a charge. They have also encountered some rude intake people. I have had to tell clients to go back and insist they have a right to file a charge. I have also had EEOC people discourage people from retaining an attorney.

141. I have two problems with the EEOC. One, they will not issue a right to sue letter 180 days after the charge is filed. Two, they will not keep me informed of the status of the charge.

*Chicago District Office*

1. Particular EEOC investigator [deleted] is pre-disposed to employer stances/defenses. [Deleted] has completely unreasonable demands of clients for specific dates and times of discussions from over a year prior. [Deleted.] demands both shorter CODs and more details and facts. [Deleted] even accused attorney of coaching witness to change testimony and of witness of changing testimony.

2. The EEOC-Chicago now has a rule that they any charges that come in notarized automatically get sent to the Illinois Department of Human Rights. The EEOC will take only un-notarized charges. I learned of this rule from an investigator. Another EEOC problem: they are not investigating a lot of charges. I've had a few potential clients come in with charges that received no substantial evidence findings within 7 days of filing. I have a case now where the EEOC told my client that he did not have a case, and that they wouldn't accept his charge. He insisted, so they accepted the charge (that they drafted). Months later (after 300 days post-incident) he got a call from the EEOC telling him that he needed to sign another (identical) charge. He did, sent it back, and it was stamped "filed" for that new date. Then, the EEOC dismissed him for filing too late. Luckily, he had a copy of the original stamped charge, and we survived a motion to dismiss on this. But the EEOC file had notes saying that he chose not to file the first charge—total cover-your-#$@ language. I'm guessing they lost the first charge. Another client of mine had his Chicago charge ignored for 8 months, when he called on it, the Chicago office hadn't heard of him. He got a call a few days later from the Cleveland office; they were investigating it. He talked to the investigator and she said she'd get back to him in 30–45 days. Four hours later she called back, said never mind the previous call, she was issuing a right to sue now because she determined from reading the charge that he was not a qualified person with a disability. (!!!!!) In other words, she was not investigating it, period. I have another case at the EEOC that has been there for a couple of years. It has class action potential against a major retailer, so the legal department is thinking about it. I check in periodically, get told they are still thinking about it. I don't want to rock the boat because it would be GREAT for the clients if the EEOC took this on, but it's been way too long.

3. EEOC refused to accept charge of my client last September 2006. Two weeks before the 300th day, senior investigator sent a letter in mid-December saying she would not accept the charge. After I finally made a scene on the 300th day, EEOC accepted the charge and pulled the investigator off the file. Then when new investigator called to interview my client, she refused to give me the name of the attorney representing the company so I could discuss settlement with the attorney. I was told

the EEOC never gives out names of lawyers and if we wanted to discuss settlement, we could only do so through EEOC (translate: so they can get credit for any settlement amounts). On other fronts, we have seen a great deal of foot dragging on issuing right to sue letters.

10. Twice my office was told by an EEOC representative that they changed a policy and now any charge that was notarized would not be accepted for filing. We had to have the client re-sign the cover sheet and filed it unnotarized. However, since mid-2006 when this occurred, we have filed several other charges where the charge was accepted notarized without incident.

13. The problems I have encountered have occurred after the charge is filed. We have had several cases where the EEOC simply decided not to investigate or even require a response from the Respondent because the EEOC decided charging party could not be discriminated against on the basis of race if the decision maker was the same race. That is not the law, but it is making it hard to prosecute these cases.

14. Re: filing charges—they don't investigate, they won't litigate good cases and choose to litigate horrid cases—they've got it all backwards here.

31. Apart from my personal experience, potential clients report EEOC turning them away when they attempt to file a charge. EEOC will opine they don't have a case. On at least two occasions they misplaced written appearance notice and contacted client directly.

40. I have never had the EEOC reject for filing a charge I have drafted, although there was a lot of confusion last year when the EEOC suddenly began to refuse to accept charges that had been notarized. In my experience, however, problems with charge filing at the EEOC's Chicago office are more likely to occur when an individual is not represented by an attorney. I have had clients first come to me after they filed a charge that they had EEOC drafted for them, and the charge often omits important allegations that the client told the EEOC about. In addition, charge intake personnel sometimes give individuals misinformation about the strengths or weaknesses of their claims.

45. Because of previous problems with the EEOC I always draft the charges and have them hand delivered and stamped. I stopped sending my clients in to file on their own behalf because the EEOC often will not include all claims (even when client has been instructed by me as to what claims, or they tell clients they don't have a case even though I have already determined that they do.

60. EEOC refused to file various charges, but I eventually talked them into it. EEOC eventually accepted all charges.

72. Chicago office refuses to release the respondent's position statement "to the claimant's counsel or to the claimant."

75. The triage system for handling charges is not well implemented. Some investigations done are haphazard. The office does not timely respond to FOIA requests for documents in investigative files, even after the right-to-sue is issued.

143. Although I primarily work with the EEOC in Chicago, the office our firm had "problems" with was either Tampa or Miami (I'm fairly certain Miami). We were forced to significantly reduce the length of a charge, which required leaving out certain factual allegations we wanted to include. I'm fairly certain this was 2006, but it could have been late 2005. It could have been very problematic, given varying judicial interpretations of the "scope of the charge" doctrine, but the matter resolved.

155. I have not encountered significant problems filing charges; however, I have been encountering increasing resistance during the investigative phase and even in mediation. Specifically, I have found an increasing desire by investigators and mediators to close their files at the expense of the charging party. Many times in recent years, the investigators have conducted themselves more like an opposing counsel would when taking my client's deposition (e.g., very adversarial and confrontational). I certainly don't believe that is the proper role of the EEOC.

156. Investigator who rolled her eyes during the intake (my client was not represented then) was assigned to the investigation during which she "no caused" the case in record breaking time based on her impressions during intake.

181. Problem I had was with Miami, Florida office. The EEOC would not accept the charge we drafted and instead re-wrote a shorter and less complete charge.

186. The time for a charge to be processed from start until we get right to sue is wildly inconsistent. We get right to sues within a few months finding no evidence or get a right to sue over 1 year later. There is no consistency that I have recognized either in terms of the type of charge, merit of the charge, or any other possible pattern.

*Dallas District Office*

9. I file many charges with the EEOC. I prepare my clients' charges. I have never had a problem with the EEOC in accepting the charges.

26. Failure to investigate, failure to interview witnesses, failure to request documents, difficulty in getting in touch with EEOC investigators.

37. I had one disturbing situation with a client who met with me after first going to the Dallas EEOC. What he told me about his treatment there concerned me, as it may signal a more widespread problem in terms of acceptance of charges. In his situation, he was told that he did not have a case and that if he insisted on filing a charge they would give him a right to sue notice that day and he would have only 90 days to file suit. Since he didn't have an attorney at the time, he did not file the charge that day. Luckily, he met with me in sufficient time to still file a charge, which we did without trouble, and the case later resolved during litigation. The fact that he was turned away initially, however, bothers me a great deal. How many others are told they don't have a case and are turned away?

58. Telling me what the law is even if they are wrong and therefore wanting to dictate dates of discrimination and whether I can mark continuing action. Not wanting to accept more explanation, such as a letter detailing the charge, as opposed to just limiting the information to the small space on the form. I got my way in the end each time, but was a hassle. For clients—not processing the intake questionnaire in a timely manner, such that questionnaire pre-dates by weeks actual charge while deadlines tick.

82. The EEOC Charge form is not readily available.

83. I have seen several instances of clients who file charges and receive their notice of right to sue at the same time, with no investigation. I have also had clients tell me that they were told that they did not have a case and were not allowed to file a charge.

84. A client who filed her charge with the San Antonio, TX office in 2005 (prior to my representation of her) was forced to substantially modify her claims and description of events supporting her charge. The EEOC staff member said that the EEOC would not accept her charge unless she made the changes. These changes substantially and negatively impacted the client's case.

85. Client filed initial race discrimination charge. After reporting some possible retaliation to me, I instructed her to write a letter to EEOC to amend charge to add retaliation. EEOC did not amend charge, and her charge received no attention for several months.

86. Multiple clients filing charges against a single employer for the same reason. Charges are assigned out to different investigators. If one investigator were to take the charge, then they would have a more complete picture of what is going on at the employer. Also, the problem seems to be mainly with people who attempt to file charges without an attorney. I get many, many calls from people who say that the EEOC told them that they do not have a case when in fact they do have one, or would have if they had filed the charge when they contacted EEOC. EEOC gave them bad legal advice which caused them not to file when they should have, and their rights were compromised.

96. I have had potential clients who tell me the EEOC told them there is "no discrimination" and refuse to take a charge.

134. Other than the fact that for at least the last 25 years, the EEOC intake staff has demonstrated hostility to working people in general and a great capacity for leisure, nothing out of the ordinary—but then I have come to expect nothing from the EEOC of a positive nature, either.

136. Local offices have been resistant to providing a qualified sign language interpreter for interviews so that a person who is deaf can fully understand the questions they are being asked. At times, I have had to bring my own sign language interpreters to the EEOC office in order to ensure that my clients can understand what is going on in the interview.

187. Sometimes I have to submit a legal brief to support the charge, but the EEOC office has always accepted the briefing.

192. I have had clients go to the EEOC to try to file a charge before they have retained counsel. They were told by the EEOC that they did not have a case and were not allowed to file a charge. Once I was hired, I would send the client back to the EEOC, but there were times when the claim would be time barred if the EEOC did not use the initial date of the client visit. I have run into problems where the EEOC would not go back and use that initial first visit date as the date for filing the charge even though the EEOC told the client he/she could not file a charge because he/she did not have a case.

*Houston District Office*

47. EEOC officials routinely tell individuals they cannot file charges or their grounds do not constitute violations. They are NOT in a position to know and have done no investigation. Usually they are wrong anyway for a plethora of reasons, in-

cluding philosophic reasons. All charges should be allowed to be filed. Also, charges filed are incomplete and strictly boiler plate and missing essential facts and claims, usually discrimination and national origin claims as it relates to race and color claims. Also, the EEOC officials fail to identify 42 USC 1981 claims which have no punitive damages limits as well and advise.

87. I am now having trouble with multiple employers in two areas: (1) where we are not sure if the underlying employer is a separate company of the parent so we name both and both need to be noticed . . . am not sure they are; and, (2) where there are co-employers, I heard by the grapevine that they should be two separate charges on the same facts, but have not had anything rejected yet.

103. They do not always confirm they have received a charge and return it with a charge number. Also, they often do not send a copy of the right to sue or other correspondence to the attorney.

149. Not precisely relevant, but a couple years ago I represented a woman who went to the EEOC and met with an intake person. She was scared to death to file a charge and wasn't committed to doing so. She went just to get information and discuss her options. The intake person prepared a charge and mailed it to her. She wasn't prepared to file a charge. The next thing she knew, she received a notice of right to sue, copied to the employer, dismissing the charge she never filed on the grounds that she'd failed to cooperate. No investigation was done of course, and nor had she ever actually filed a charge. This was during the time that Houston was headed by [deleted], an incompetent management tool who remains in charge of the Dallas and San Antonio offices. I contacted him to seek some redress of the situation. He agreed to withdraw the notice of right to sue only if my client agreed to immediately file a charge with the understanding that it would be promptly dismissed without an investigation, thereby giving her an untainted right to sue. It was truly an appalling abuse of the Commission's authority, all around.

158. People who file (or try to file) before obtaining our assistance have problems—they are refused, or the wrong claims are asserted, or joint employers are not named.

183. Numerous clients over the years, including 2005–2007 have reported to me that the Houston District Office of the EEOC refused their attempt to file a charge. I also have had some reports of intake personnel at the office strongly discouraging individuals from contacting an attorney regarding their claims.

*Indianapolis District Office*

70. They required a whole new charge to be filed for one typo.

109. The Indianapolis EEOC office asked plaintiff's attorneys to cooperate with them by NOT preparing written filings to them for our clients. They want the intake questionnaires and charges to be drafted by their trained personnel. Given this request, we have provided our clients with contact information and sent them to file directly with the EEOC. Many, many of them have called me to complain that the EEOC intake officer told them they do not have a case and refuse to file a charge for them. Only after my client has become belligerent—because I warn them this may happen and they need to insist—then a charge is finally prepared and it is usually pretty sloppy. I then rewrite the charge for the client to sign and file. At the investigation stage, there is no such thing as an investigation anymore. I have not had the EEOC actually do an on-site investigation and take witness interviews in a case since they started the A,B,C classification system. Instead, I get a letter summarizing the respondent's legitimate non-discriminatory action and a demand that I submit proof to rebut it—which is ignored if I submit it—followed by issuance of a dismissal and notice of rights. I treat the EEOC process as just a time waster that allows my client to save up the filing fee so we can file a complaint as soon as the right to sue notice is issued. It is a real waste of taxpayer dollars.

*Los Angeles District Office*

6. Inability of intake officers to distinguish important from unimportant information provided by claimant.

8. The EEOC process is a complete mystery to me. I rarely file with the EEOC, so the numbers above represent 100 percent of my filings with the EEOC. In one case, there was such a substantial delay in communicating with me, I sent a letter asking for a right to sue letter. Despite follow-up calls and letters, to date, my client has never received a right to sue letter. Over six months has elapsed. I really do not understand the procedures.

23. Most of our charges are initiated by the Nevada Equal Rights Commission (NERC) as the deferral agency to the EEOC. The NERC frequently to my understanding refuses to take charges from individuals acting in proper person.

78. I personally have not had any situations where the EEOC has refused to accept a charge drafted by me. However, it should be noted that many years ago I worked at the EEOC as an attorney (and prior thereto as a Paralegal and Investigator) and still know some of the individuals at the agency. I do know that the Los Angeles office is VERY short staffed. The number of investigators is dismal in comparison to the number of investigators that were at the agency when I was there in the 1980s.

*Memphis District Office*

42. Intake person did not want to accept charge which I prepared and filed on behalf of a client. After that resistance, I began to file the charges by mail and did not meet with any further resistance.

137. They have tried to rewrite the charge to be very vague and non-specific, which leads to all kinds of trouble later. When I protested, the EEOC intake worker said that they had been instructed to take out specifics and leave vague, bare-bones allegations.

*Miami District Office*

4. The EEOC office in Florida is overwhelmed and conducts little or no investigation. They do not forward any documents to us and actually read the position over the phone as opposed to sending it to the firm. Often the investigator is uninformed on the law and has an out-dated definition of the law. Honestly, I see little benefit to the process and wonder if the budget could not be used in other ways.

15. We are concerned that the EEOC rarely, if ever, contacts the witnesses that we provide before it makes a final determination/decision. Needless to say, clients are upset if the EEOC does not contact the witnesses provided when making decisions. In fact, may clients feel that it is the firm's fault that the EEOC doesn't contact witnesses.

17. My charges are frequently rewritten.

21. Most recent problem was charging party worked at home and employer had no Florida address. I file charges with EEOC and FCHR, requesting EEOC mediate and investigate. Eliminates problems.

44. None, but I am utilizing a local OEO office, which acts as an intake office for the Miami EEOC.

53. The biggest issue is getting the investigator to actually do an investigation beyond reading the charge, position statement and reply. I have rarely seen that they contact witnesses, for example, or demand documents relevant to the charge.

69. I have never experienced a problem with the Tampa office in nearly nine years of dealing with them. [Deleted] and [deleted] are especially helpful.

101. The Miami office has accepted all the charges that I've drafted but on several occasions from 2005 to the present, they tried to reject charges (the most recent occasion being this month). When I challenged them and asked them to cite the provision of the EEOC regulations that authorized them to reject the charge, they backed off. The most egregious of these instances was a disability discrimination charge in which "disability" and "retaliation" were checked off and the charge alleged that my client was an individual with a disability who was being denied urgently needed accommodations and whose medical information was not being kept confidential. (My client was literally dying because of the employer's change in his work schedule, which interrupted his regime for taking HIV medication.) Someone from the Miami EEOC office called and said the charge was being rejected because it didn't expressly mention the Americans with Disabilities Act. I hit the roof and told them that the description of the discrimination and checking off of "disability" made it patently obvious that this was an ADA charge. The most recent instance concerned a sexual harassment and retaliation charge that generally alleged that my client had been subjected to sexual and retaliatory harassment by managers. I received a phone call from an investigator at the Miami office in which he indicated that the charge would not be accepted for filing unless we provided specific facts on the face of the charge. In a not-very-friendly tone, he asked how could I expect the employer to respond to the charge without putting it on notice of the instances of harassment.

111. Would not let me file a single charge against two respondents that I was alleging constituted a joint employer.

145. What I find is that unrepresented individuals are still being told "you don't have a case" and are turned away. Sometimes their time has passed before they decide to hire counsel. Otherwise, I have to say that I've had better luck the past couple of years with the EEOC process. More "cause" findings, although they are still unusual (I tell people they are more likely to be struck by lightning). And I had the first conciliation that actually resulted in a settlement in 20 years of practice. Most still result in nothing but additional delay. I would definitely like to see more pres-

sure put on parties to resolve in conciliation, such as mandatory participation in mediation.

*New York District Office*

5. Often inadequate investigation, extremely slow but sometimes the investigator is very good.

18. Investigations seem half hearted, with the outcome pre-determined. I especially object to the New York office transferring matters to Boston, where the investigators seem to almost object to having to handle the file.

36. Filing is usually no problem. It's the lack of meaningful action after that's the problem.

39. I have never had a problem filing a charge with the NYDO. I have never had an intake officer refuse a charge or otherwise practice law without a license. I don't know if this happens to pro se charging parties but I have never had a client make such a complaint to me. I do make sure to file the charge in quintuplicate by certified mail return receipt requested.

105. Investigation stage is very slow.

122. The Boston Area Office waits 180 days and then dismisses the charge. The investigators are often deceived by a lengthy and organized position statement, regardless of substance.

131. I sent a charge to the NYDO for filing in November 2006 and it was not processed until January 2007. Fortunately the statute of limitations had not run, but it caused significant anxiety for my client.

178. Several years ago, maybe before 2005, I had to write letters to senior attorneys in Washington, D.C., to get someone to pay attention to the fact that I had to make an urgent filing. In general, I have found that the phone numbers listed on the EEOC website prior to the phone center were simply not answered at all in some cities. Most of my practice is outside of NY.

*Philadelphia District Office*

11. The Philadelphia office sent one of my cases to the Baltimore office. The Baltimore office excluded my involvement even though I, the attorney for the charging party, filed the charges and had my name on record. The Baltimore office then made a determination solely on the employer's position statement that was filled with misrepresentations. The charging party was denied opportunity for a rebuttal because I never was notified after the case went to Baltimore for investigation. I learned of the Baltimore office's involvement only after a right to sue was issued. I was not sent a copy of the right to sue. Now the case is pending in USDC, Eastern District PA.

22. Mailed charge. Intake called me and said the EEOC does not handle "Black on Black" discrimination. Claim was that an African American supervisor subjected employees to disparate treatment. A call to the office intake supervisor ([deleted]) took care of it.

28. The only problem I have had is filing a charge and then receiving a stack of questionnaires in the mail which I have to fill out with my client before EEOC will docket the charge. All of the information in the questionnaires had been included in the charge and affidavit. Since then, I attended their intake training and even though I think the intake questionnaires are burdensome, I followed their instructions to the letter and have had no further problems with intake. My charges have tended to settle early so I have no further info re: handling subsequent to intake.

46. Charges never get processed at all. I filed a charge two months ago and have not received any correspondence from any investigator on it.

56. The only problem I have is that it takes weeks for the intake personnel to time stamp the charges making them appear to be filed later than they actually are. I have never had a problem with filing.

57. I have never had a problem with filing charges. My problems arise after filing that the EEOC does nothing. I draft questions and investigators do not investigate or are just too busy to do anything. I file at least a half dozen charges each year. Inevitably we get back the punt, unable to determine if or if not discrimination took place.

74. This was before 2005, but I had a client who was told by an investigator that he didn't have a claim because he lied on his employment application. The lie was that he said that he resigned from his prior job when he actually was fired and had a prior lawsuit claiming discrimination there. I had to go to Philadelphia with a letter that was a mini-brief before they overturned Newark and reopened the case. The Newark investigator never heard of the after-acquired evidence rule.

88. More recently our problems with the EEOC have included misplacement of files and failure to notify our office of dismissals of charges and the issuances of

notices of right sue letters. This has occurred twice thus far in 2007 from Philadelphia and once from Newark in 2006.

104. I ordinarily file my own EEOC charges for my clients with an entry of appearance. The EEOC routinely attempts to re-write the charge, invariably leaves out, and then sends the revised charge to the client for signature. It then tries to substitute the date of the "new" charge for the original filing date. I then have to write to the EEOC and demand that they use the original charge and original filing date. The EEOC has backed down after receiving my correspondence, but my intervention should not be necessary. For unrepresented clients or people represented by attorneys unfamiliar with the statute this could present some really difficult problems. In one case in 2006 the EEOC called my client, on whose behalf I had entered an appearance, and told him that it could not accept his charge unless he came into the EEOC personally and complete an intake with an EEOC employee. The EEOC then sent a letter to the client informing him that his charge was not valid and would not be accepted until he followed through on the personal interview. I wrote to the EEOC, explained the statutory requirements for filing, and it ultimately accepted the charge with the original date. Again, this should not have been necessary, particularly since I had entered my appearance. The EEOC routinely contacts clients who are represented by counsel and gives them advice which is often incorrect, and causes the clients unnecessary confusion.

114. Charges have been lost. I believe charges from counsel should be accepted before questionnaires or other confirming information is provided.

121. Intake workers and investigators who do not understand the law and, more importantly, decline to let you educate them about it.

138. EEOC normally will not accept a charge unless it is accompanied by numerous other forms (which could be provided during the course of the investigation). These include: Allegations of discrimination; Witness Questionnaire; Remedy form; Discharge (or other) form; etc.

139. I have filed a charge of discrimination on behalf of a client over 2 months ago and have yet to receive any correspondence even saying it has been received.

140. The EEOC is consistently resistant to accepting charges drafted by my office as drafted and does not accept charges that require investigation on a systemic basis. After the charge is filed, it is often difficult to secure the cooperation of the investigators in seeking appropriate information and documents.

146. Unfortunately most of the charges I file are with the Delaware Department of Labor that has a reciprocal working relationship with the EEOC. The EEOC can then do a substantial weight review, which means in most cases they adopt the DDOL findings.

152. I handle many federal employee cases, so the procedure is different. When I have private sector cases I refer and file them at the PHRC because I do not like the EEOC procedures. Since I also take many small cases that have potential settlement value, I find that the "triage" procedure at the EEOC is not conducive to getting such a case settled.

157. Delays in docketing, not returning time-stamped copies.

168. In the past 30 days I received a charge returned to me telling me that normally they have staff to make corrections on charges, but because they do not have enough staff currently, they were sending back my charge and giving me 33 days to correct the charge. They said that the charge was deficient because I stated the type of disability on the charge form, I described damages and my charge narrative was too lengthy (it fit on the front of the charge form).

174. They are quite hostile to any charge that's actually carefully drafted by counsel. In Philadelphia anyway, they like to have one big, fat, run-on paragraph that throws in (supposedly) everything. It's the kind of drafting that any advocate would be ashamed of, has no persuasive value, and has no utility later in the case. They really resent a lawyer's effort to represent the client.

177. My partner had a problem in the past year with an investigator trying to rewrite a Charge of Discrimination in an ADA case claiming that they were not allowed to accept charges that describe the disability in detail.

188. Supposedly required information was missing from our charge. The charge was initially rejected but through discussions with the Buffalo office, those problems were resolved and the charge was accepted.

*Phoenix District Office*

162. The time to get a Notice of Right to Sue once a request for dismissal of the case has been submitted.

163. The EEOC doesn't seem to follow-up or even investigate some of the worst charges.

*San Francisco District Office*

19. I generally discourage clients from filing with the EEOC because California's FEHA gives greater protection. But, I intervened in an EEOC case in 2005. I was appalled at how the EEOC investigator allowed the employer to limit the scope of his investigation to an interview with the general manager only. The EEOC investigator interviewed some of the witnesses and reviewed a few of the documents that my client had identified only after I complained. However, I found working with EEOC Deputy Attorney [deleted] both a privilege and a pleasure.

33. Offices in our area follow different procedures and constantly demand more information or different formats to accept charges. We have not experienced refusals because we do not accept refusals and are persistent about filing charges. I would not send a client to file a charge himself/herself.

43. None with the EEOC but lots with the California Department of Fair Employment and Housing.

94. Sent a non-African-American client to EEOC to complain that he had been fired because employer thought he was African-American. EEOC told him he could not file a complaint.

129. Several years ago I participated in a mediation conducted by a very biased mediator. It was obvious the mediator had a strong bias in favor of the University of Nevada (the defendant). I walked out of the mediation (I settled the case the next day (no thanks to the mediator)). I wrote to the EEOC and described the inappropriate and biased conduct of the mediator. This mediation occurred approximately in 2001. I have also experienced a couple of incidents whereby the EEOC basically attempted to hijack cases. I resisted these efforts successfully. The EEOC targeted my best cases, i.e., cases involving multiple sexual harassment victims, egregious conduct, blatant failure by management to redress the conduct, and strong corroborating evidence. I resisted the attempt to wrest control of the cases because I have had experience with the EEOC at mediation, i.e., I've witnessed an attempt by the EEOC to effect a nominal damage settlement in an extremely strong case involving seven plaintiffs. I effected a settlement for approximately 700 percent of what the EEOC mediator proposed the case be resolved for. It was obvious the EEOC mediator was intent on improving the EEOC's statistics—as opposed to achieving an acceptable resolution for the plaintiffs. Therefore, when the EEOC attempted to cherry pick my best cases, I resisted this effort. In my opinion, the EEOC tends to devalue good cases, i.e., they explain to plaintiffs (with extremely strong cases) the average settlement is something like $17,000 (I can't recall the exact figure used, but it is in this range). This is an appropriate settlement for a relatively weak case. The EEOC attempted to foist off this figure in one of my cases which involved seven women, who had been subjected to protracted, crystalline abuse (fucking c---, etc.). The response of management consisted of, "if you don't like it, there's the door." I easily obtained six, devastating corroborating affidavits. The defendant employed approximately 20,000 persons.

167. None. My problems in the last six years have been with the Oakland DFEH.

191. Many, many problems pre-2005 with various offices, including San Jose and Miami. Much better experience recently.

*St. Louis District Office*

77. Most frequent and significant problem I have encountered is resistance by some investigators to conduct a meaningful investigation if they have determined that the case has no merit. Investigators will often receive the employer's position statement and reach a premature conclusion that the charge has no merit. The investigators are then resistant to conduct an investigation (i.e. contact witnesses or obtain documents) that might indicate that the employer's position statement is inaccurate or is not meritorious. In my opinion, this resistance occurs from a need to move and close files at a certain rate.

108. I haven't experienced any charge filing problems with the St. Louis District Office since 1/31/2006 when I started private practice. It is difficult to get a blank charge, so once you get one, the best thing to do is keep it on your computer for future use.

135. I've had them "lose" an entire charge in 2005 that I had hand-delivered to the office. The internal "mediators," [deleted] and [deleted], are wholly worthless and investigator [deleted] REFUSED to find a Title VII violation where active KKK recruitment was ongoing at the jobsite! He classed that as a Title VIII (and, yes HUD is involved and a Title VIII retaliation charge has been filed and is being litigated in KS USDC) case—but was overruled by the Regional Director and a Cause Finding issued leading to Conciliation (which failed).

148. I have seen cases of non-represented complainants in which the intake person at the EEOC drafts a charge and immediately issues a notice of right to sue,

telling the complainant he/she "doesn't have a case" based on the intake person's inaccurate understanding of the law; e.g. "if you were the only person it happened to it can't be discrimination . . ." I wonder how many persons with legitimate complaints rely on that "advice" and decide not to pursue their claim.

176. I don't have problems—we have schooled over the years so that now they just take the charges we draft, give them a number and docket them. However, we hand deliver them and get them stamped received just to be safe. It is the unrepresented people who have problems. For instance, I have had people come to see me who have been told by the intake folks that they don't have a case and don't know they can insist on filing a charge. I draft and file the charge and there is no problem. I really worry about the folks who don't have a lawyer, not the ones who do!!

*Baltimore Field Office*

55. The personnel don't seem to be very well trained and don't provide the follow-up or keep their commitments. The Baltimore office seems to be a low performer.

62. Lost charges; when clients go to the EEOC on their own, EEOC representatives inadequately write up the complaint on the charging form or fail to allege all types of discrimination, thereby limiting the client's recovery.

64. I have not filed any charges in the specified time frames, so have not had any problems.

65. Charge not assigned to investigator for months, charge then transferred without reason to Baltimore.

79. The Baltimore, MD EEOC initially would not accept a charge alleging discrimination against an employment agency. At first they didn't realize they had jurisdiction over employment agencies. Then they erroneously stated that in the 4th Circuit, the employment agency had to meet the definition of employer (i.e. at least 15 employees). The representative I spoke with finally agreed they should investigate, and then referred it to an investigator who didn't understand the notes that were supposedly in the file and dismissed it for lack of jurisdiction.

127. Long periods of time without communication; erratic investigations—some investigators send the Respondents' position paper for us to rebut and others just dismiss the charge; mediation coordinator supervisor in Baltimore is terrible. (Keep this anonymous please.)

165. I have not experienced any problems regarding the filing of charges. The main problem that I have experienced is being able to speak with an actual person when I call an office.

185. Complete inability to talk to any EEOC personnel about status of charge, investigation, etc.; complete failure of EEOC to conduct any investigation of charges that clearly are meritorious.

*Cleveland Field Office*

91. They make the clients wait to talk.

98. The problems I have with the EEOC occur during the supposed "investigation" of the charge. The investigators typically receive the employer's position statement, treat it like the gospel, do nothing more, and then issue a terrible letter telling my clients that they were horrible employees and that there was no discrimination. I have repeatedly complained about this to the Cleveland counsel, to no avail.

133. EEOC is resistant to lawyers being involved in the process. And they require too much bureaucratic involvement at the front end, causing cases to be untimely. For this reason, I almost always refer clients to the state agency, where you can file a charge on-line, without the micromanaging that EEOC uses. They are useless, as far as investigation and providing any information regarding the employer's position, and I only recommend them when the charge is an age discrimination charge, based on our state's idiosyncratic way of dealing with them.

144. No problems with filing (although I know that charging parties have contacted me after they've filed because of problems they've had). Always a problem getting EEOC to investigate!

150. Investigators contacting the charging party directly despite my request to be involved with the intake and circumventing my attempts to set up a conference call.

*Denver Field Office*

90. 1. Refusing to provide a copy of Position Statement or even a Summary of a Position Statement makes preparing a meaningful rebuttal nearly impossible. 2. Asking that rebuttals—even in complicated cases—be prepared within 5 days although the EEOC has had the Position Statement for more than a year. 3. Being asked by investigators to draft charges in a rigid manner when the facts are more wide-ranging and some context is necessary. As lawyers, we have to anticipate ways our charges may be attacked—which might require something other than what the investigator wants. 4. Disputes as to what is an amended charge or a new charge.

113. Pregnancy discrimination charge dismissed because client was replaced by a female. Investigator didn't understand that the female that replaced my client was not pregnant. Recently same investigator would not allow my client to amend charge to include retaliation which occurred after the filing of the first charge. New charge had to be filed after discussion with investigator's supervisor.

169. The EEOC makes it very difficult to file class charges or to file multi-charges for a number of class members who need a joint investigation. Our problems are not so much with the EEOC process in accepting charges, but in their failure to investigate cases and their biases against charging parties and their attorneys.

180. The Denver office has turned individuals away who were NOT represented. In one case during 2006, they advised the client to get an attorney, but they still turned the client away. Thanks!

*Detroit Field Office*

29. They simply notify us of intent to dismiss based on the employer's position statement without giving the charging party an opportunity to refute what the employer has said.

76. My client went to file an EEOC charge against Cintas, a company that the EEOC has had multiple claims against. I wrote out the charge for the client and she went down. She called me in tears because the EEOC refused to take the claim. Told her she did not have a claim. Our office wrote a letter to the EEOC and I then accompanied her back to the EEOC. After the charge was taken, nothing was done in terms of investigation. After several inquiries I was told the case was being sent to Washington to be handled along with other claims against Cintas. A few months later the case was dismissed, citing the defendant's claims verbatim. I do not believe any real investigation was done into my client's case.

99. We have many problems. In the Detroit area the EEOC office acts as a palliative: aggrieved individuals go there, uncounseled as a first step in the process. They are often told that they have no case and no charges are accepted. How many people with legitimate claims then exit the process, demoralized? If they come to us, we have to fight to get the charges filed, including writing them ourselves (which I have not had rejected but never results in much of an investigation). We get almost no feedback on the process. Conciliation ends up undervaluing the claims dramatically. There are a few good investigators, but for the most part there seems to be no will to question, let alone rebut, the proffered explanation of the employers. When we FOIA the records afterward there is almost no discovery conducted. There is almost never a "for cause" finding. I think I have seen at most three or four throughout a fifteen year career. Needless to say I have settled many a case in which the EEOC found no cause. The administration at our office seems completely oblivious to the problems. When the issues are raised, the reaction is, "Well, that is not our policy, so, it must not be happening the way you describe it." I was on the verge of FOIAing the Detroit district office annual reports to use to request some sort of Congressional oversight from our senators. My understanding is their entire litigation office only brought three cases to litigation in 2006. This is outrageous.

120. People who we speak to and send to EEOC on their own have reported that they are turned away from the EEOC and their charge is rejected.

*New Orleans Field Office*

20. Very negative in general. Usually don't understand retaliation claims.

52. Zero knowledge of pretext. EEOC requires direct evidence or they dismiss the claim. Also, zero knowledge of the single enterprise theory. If the employer says they don't employ 15 people or 50 people, etc., EEOC makes no further enquiry. Finally, EEOC requires the complainant to sign the questionnaire and charge under penalty of perjury, but the employer can respond via unsworn letter or even from the company attorney, without being bound by the response.

124. The whole process is just very slow. It usually takes anywhere from 30–60 days to get a response back from the EEOC.

*San Antonio Field Office*

50. I've had numerous situations where the client has been told it's your word against theirs and it would be a waste of time. Employees of the EEOC would try to dissuade the client from filing.

51. The times that the EEOC has rejected a charge or redrafted it were for purely stylistic reasons that in my opinion were unwarranted, such as rejecting a 1½ page charge that supposedly included "too much information." This has not happened frequently but it is annoying and seems non-sensical when it does happen.

67. I have a problem with the new process at the San Antonio branch. They will not give me a copy of the employer's response but will only read it to me over the telephone. Also, I am not notified if and when the employer files a response, so I

usually just get a letter from the investigator regurgitating the employer's position and ignoring the witness affidavits that I submitted.

71. Primary problem is EEOC turning away those who wish to file charges when NOT accompanied by a lawyer. They often do not make it to a private lawyer until many months later and sometimes miss the state 180-day deadline or even the federal 300-day deadline because they were discouraged from filing what was, in my opinion, a perfectly viable claim.

106. Back in perhaps 2002, the local office refused to accept a charge I had prepared. But, it was during the lunch hour, when a back-up person was working the front desk. When I went later that week myself, they accepted my charge with no problems.

112. I frequently counsel my clients that they WILL meet resistance to filing their complaints at the EEOC and they must INSIST that they be filed.

132. Intake investigators do not seem to understand the elementary principles of discrimination cases, do not seem to understand the significance of certain facts when those facts are presented to them during the intake interview, and can hardly write an intelligent sentence in either the charge or the affidavit.

147. Timeliness—even though charge was faxed in timely, but received by mail after deadline. Summary conclusion—the charge does not apply to any laws we enforce.

164. Rejecting the charge we prepared, rewriting it and leaving things out, refusing to accept a Form 5 from a private attorney.

170. Unqualified people telling me what does and does not fall under Title VII.

*Tampa Field Office*

25. Transferring a charge from Tampa to Miami and then not keeping me informed of the progress, including after dismissing the charge for alleged lack of jurisdiction. Tampa had me on their referral list, but I recently found out they had my wrong area code.

172. I filed a charge where the 300th day was a Sunday. The charge was sent by Fed Ex on Friday and delivered on Monday. It was returned as untimely. I call the Director and left messages about this but he never returned my call. Additionally, within the last year or so I have had extreme difficulty getting through to a live person when I call the EEOC—I get put into the "circular voice mail" thing and end up hanging up in frustration.

*Seattle Field Office*

35. No meaningful investigation—witnesses not contacted, no employer records requested, etc.

48. I had them "lose track" of my client's charge for 9 months.

171. I think the Seattle EEOC office does a great job and they have always been responsive to my clients' need. I live in Anchorage, Alaska, and practice statewide in Alaska. We do not have our own EEOC office, but the Seattle office makes a big effort to outreach to Alaska.

182. EEOC is now so overworked that I am hesitant to use them for anything but getting a NRTS.

*Washington Field Office*

63. We have a strong local law and need not exhaust administrative remedies first before going to court. Therefore the EEOC is not usually involved in most of our cases as we spend most of our time in the private sector.

66. Charges are not promptly prepared after questionnaire is completed and submitted. There are long delays in getting the final, typed up charge. Often, the language in the final charge is not accurate and needs to be corrected; this results in more delay. Telephone calls to make appointments, ask questions, inquire about status, etc. are not returned. Waiting periods in the lobby are long, even if no one else is sitting there.

97. I practice federal-sector law before the EEOC, and that process is slightly different than the private-sector cases. The biggest problem in the federal-sector is the inordinate delays in the assignment of an EEOC Administrative Judge.

154. We tend to file charges we prepare ourselves with supporting declarations of 5 to 15 pages. In several cases, EEOC has substantially delayed processing the charges while they rewrite our charges. As far as I can tell, the rewrites are pointless because they don't change the substance of the charge.

*Boston Area Office*

30. The EEOC told one client that they had too many cases to really read his case or deal with it with his since his did not involve a termination.

68. Connecticut is a deferral state, so we have little contact with EEOC, other than filing the initial charge. I have had only one case that was processed solely by EEOC, since it was filed more than 180 days after the discriminatory act. EEOC sent the case to mediation which was successful. They used a great mediator and I was very happy with the outcome.

89. Basically, I have a problem in their lack of investigation. I almost never file directly with the EEOC, but with our State agency. I do that even if it is going to get bumped to the EEOC.

115. In Maine, we file with the Maine Human Rights Commission and they forward our charges to the EEOC. I have not known of any charges returned to the MHRC during that process but am not sure that I would be told about it. I dislike dealing with the EEOC so much that I virtually never file directly with them.

*Cincinnati Area Office*

32. Two problems: (1) no charge form available online (which is ridiculous); and (2) inconsistency between local practice and general charge form (which our office had to create from a hard copy "EEOC form."

128. I have had several times where the office has been overly technical with the content of the charges. I have had charges get lost there and have had numerous occasions where I have attempted to get in touch with investigators to convey information or inquire into case status and my calls have not been returned.

*El Paso Area Office*

24. I have been told by investigators that the charge cannot be accepted without more detailed information, particularly comparative information. The detail required appears to exceed the notice pleading standard in federal court.

73. This survey is not very useful. The multitude of problems which charging parties face occur almost exclusively when they are proceeding pro se, not when they are represented by counsel. In El Paso, the investigators are overwhelmingly unqualified (can't even identify the prima facie elements to claims, and have no clue how to investigate). There is very little access and transparency, since the District Director (out of Dallas), is more interested in closing files and denying access to position statements, than he is in having his investigators do their job.

190. Southern New Mexico is now assigned to El Paso, which has caused many problems. We used to file in Albuquerque and they did a great job. El Paso is slow and also frequently applies 5th Circuit law it its analysis—but we're in the 10th. Also they have no discernable relationship with New Mexico's state administrative agency. I hear many complaints and wish they would change it back!

*Kansas City Area Office*

179. I file 90 percent of my client complaints with my state agency. The Kansas Human Rights Commission investigative staff makes a more thorough and timely investigation of complaints. I receive a letter determination for each case with a case investigation report. Then we seek review and/or a notice of suit rights from EEOC. I only file with EEOC when my client is outside the 180 day period for filing a state complaint.

*Milwaukee Area Office*

100. EEOC here very much resists letting attorneys draft their own charges. They insist on intake interviews and will draft their own charges or redraft a charge to suit themselves. We have seen some turning away of attempts to file charges but whenever our state affiliate hears of it, we get active. It comes in spurts.

159. Very, very slow investigation of a charge filed in October 2005. Lack of communication from investigator.

161. Iowa is a deferral state—so all processing is through the Iowa State Civil Rights Commission. My problems with the EEOC all stem at the end of the process—getting rights to sue.

*Minneapolis Area Office*

27. The only real problem we have with the EEOC is time. We have had charges sit for over two years. Most of the time we will pull it out and sue, but on class cases where the EEOC hinted we would get PC we did not want to do that. Otherwise it has been mostly okay. We have more problems with the state human rights department.

38. I have never had a charge not accepted. A few times in the past two years I have had charges merely dismissed because the employer denied the charges—a reason I find pretty outlandish to support a dismissal of charge.

107. I have not had any problems with filing—I had a problem with a no probable cause finding based on my client's refusal to accept an unconditional offer of reinstatement—which goes to damages, not liability.

160. I have received numerous reports from clients who came to me after first visiting the EEOC where those clients were told they did not have a claim or the intake person at the EEOC refused to prepare and file a charge. Consequently, we have begun preparing the entire charge, including the text, and filing that—which the EEOC has always accepted without change. It's just when a charging party is unrepresented and visits the EEOC first that resistance by the EEOC occurs. Some investigators are more notorious than others. The intake investigators are not attorneys but are making legal decisions. Of course, this could be critical if the individual does not first see an attorney or delays seeing an attorney until after the charging party's deadline has passed.

*Nashville Area Office*

153. It takes about 9 months to a year for the EEOC to complete its investigation. I don't know how that compares to other offices.

166. I have never had a problem but individuals have expressed to me about 6 to 10 times over last 2 or 3 years that the EEOC intake person said that they did not have claim and did not take a charge. I do not know if it is true but I believe they must be discouraging employees from filing charges.

*Newark Area Office*

54. Very slow follow-up on the part of the investigators. Lack of good training or knowledge of the law by investigators, who routinely reject cases that are then won in court or settled.

*Pittsburgh Area Office*

102. In my experience, the Pittsburgh office does an excellent job processing charges no matter what is alleged. It will take the charge, evaluate it as required and then make a decision. While I don't agree with the decisions made, my experience is that they do not dismiss a charge out of hand.

117. When charges are transferred from Pittsburgh to Cleveland, I am not notified and at times when there is more than one Respondent, not all the charges are transferred together.

*Raleigh Area Office*

12. I have not personally had any problems with the EEOC. However, I am aware of several clients who have experienced problems with having the EEOC accept their charges of discrimination and/or omit claims from the charge that the EEOC prepared (which were clearly covered in the intake questionnaire).

*Buffalo Local Office*

61. EEOC investigator objected to describing specific health condition in ADA charge.

123. My comment is neither profound nor new. The EEOC has very limited resources. The quality of a decent percentage of the investigators is not terribly high. They do not require a college degree and are being asked to evaluate issues that many lawyers outside the employment field would not immediately get. If private counsel is involved, my view is that they should either partner with them if the agency is interested in the case or willing to help, or otherwise simply stay out of the case so as not to mess stuff up. They should concentrate their resources on good cases brought by those without an attorney.

189. Office failed to respond to status inquiries for an extended period of time and then refused to perform investigation.

*Norfolk Local Office*

126. The Norfolk EEOC office is WOEFULLY understaffed. Just over a year ago the office had 12 investigators—it now has 5. EEOC personnel are working valiantly, but there are simply not enough of them. My clients are best protected from "frivolous" lawsuit claims by a cause finding. Obtaining one, however, can take over a year.

*Richmond Local Office*

81. EEOC has done almost no meaningful investigation: no follow-up after receipt of employer's position paper; no interest in contacting witnesses, etc.

125. Once charges are filed, it is often months or even years before anything is done or the charge is even assigned to an investigator.

*San Juan Local Office*

184. Very high rate of "no cause" rulings without any investigation.

*Savannah Local Office*

130. During reorganization last year, we were reassigned from the Greenville, South Carolina office to the Savannah, Georgia office, and have encountered some problems with filing, and some problems with one particular investigator who did not conduct much of an investigation, and sent the right to sue letter after several months directly to our client's mother, despite the fact that I left a number of messages over the course of 3 months, to which he never responded. It was clear on our paperwork that we were her attorneys from the start. The Savannah office does not seem to have been able to hire additional personnel, despite having a significant portion of South Carolina added to their region.

---

PREPARED STATEMENT OF THE INVESTMENT COMPANY INSTITUTE

The Investment Company Institute appreciates this opportunity to submit testimony to the Subcommittee in support of the Administration's fiscal year 2008 Appropriations request for the Securities and Exchange Commission (SEC). We commend the Subcommittee for its consistent past efforts to assure adequate resources for the SEC.

Mutual funds are an integral part of the U.S. economy and continue to be one of America's primary savings and investment vehicles for middle-income Americans. Since 1990, the percentage of U.S. retirement assets held in mutual funds has more than quadrupled. Today, more than 96 million investors in nearly 55 million U.S. households own mutual fund shares; the median household income of fund shareholders is $68,700. These millions of ordinary Americans continue to recognize that mutual funds are the best means of achieving their long-term financial goals. They deserve and benefit from continued vigilant regulatory oversight of mutual funds.

In addition to their role as the investment vehicle of choice for millions of Americans, mutual funds are major investors in securities and participants in the marketplace. As such, they have a strong interest in assuring the SEC's continued ability to soundly and effectively regulate securities offerings, other market participants, and the markets themselves.

For all of these reasons, sufficient funding of the SEC is critically important to the Institute and its members.

The Administration's fiscal year 2008 budget proposes SEC funding at a level of $905.3 million, which is a very slight increase from the $904 million appropriated in fiscal year 2007. The SEC has determined that this level provides it with adequate funding to fulfill its regulatory mandate and to continue protecting the nation's investors. Accordingly, the Institute urges Congress to provide appropriations at this funding level.

We believe it is significant that the SEC has specifically requested funding to allow it to continue to invest resources in technology. We are particularly pleased that the top strategic priorities for the SEC's Division of Investment Management include revamping the mutual fund disclosure regime by making disclosures more useful to investors through better use of new technologies, such as interactive data tagging (XBRL) and the Internet. Division Director Andrew Donohue recently outlined plans to develop a short-form disclosure document for fund investors, which would be coupled with giving investors the ability to obtain additional information via the Internet or in paper form.[1] As Director Donohue said, mutual fund shareholders "deserve a streamlined disclosure system that better meets their needs and is consistent with the manner in which most Americans retrieve and process information in the 21st century." We agree, and we strongly support funding for these important initiatives.

While providing adequate funding is vitally important, it is equally important that the SEC deploy available resources in ways designed to assure the effectiveness of its regulatory and law enforcement efforts. We therefore strongly support the continued focus on internal reforms that will improve the performance of the SEC. This includes, for example, providing regulatory guidance that better anticipates issues, developing closer integration of the activities of different SEC divisions and branch offices, implementing new inspection strategies, and conducting empirical research that informs major rulemakings. Indeed, the importance of these kinds of reforms

---

[1] Speech by SEC Director of the Division of Investment Management Andrew J. Donohue, Keynote Address at the 2007 ICI Mutual Funds and Investment Management Conference, March 26, 2007.

has been underscored in a series of recent reports.[2] We support appropriate funding of the SEC to facilitate these and other initiatives to enhance the effectiveness of the SEC.

In conclusion, the SEC and the fund industry share a common objective of assuring that mutual funds remain a vibrant, competitive and cost effective way for average Americans to access the securities markets and realize their long-term financial goals. Future regulatory and oversight actions by the SEC will play a key part in this process. It is therefore critically important that the SEC have sufficient resources to enable it to be an effective and efficient regulator and fulfill its mission of protecting the nation's investors, including the more than 91 million Americans who own mutual funds. Accordingly, we support providing the SEC with the requested level of funding.

We appreciate your consideration of our views.

The Investment Company Institute is the national association of American investment companies. ICI members include 8,821 open-end investment companies (mutual funds), 664 closed-end investment companies, 385 exchange-traded funds, and 4 sponsors of unit investment trusts. Mutual fund members of the ICI have total assets of approximately $10.481 trillion (representing 98 percent of all assets of U.S. funds); these funds serve approximately 93.9 million shareholders in more than 53.8 million households.

---

## PREPARED STATEMENT OF THE NATIONAL TREASURY EMPLOYEES UNION

Chairman Durbin, ranking member Brownback, and distinguished members of the subcommittee, I would like to thank you for allowing me to provide comments on the administration's fiscal year 2008 budget request for the Internal Revenue Service (IRS). As President of the National Treasury Employees Union (NTEU), I have the honor of representing over 150,000 Federal workers in 30 agencies including the men and women at the IRS.

### IRS FISCAL YEAR 2008 BUDGET REQUEST

Mr. Chairman, as you know, the IRS budget forms the foundation for what the IRS can provide to taxpayers in terms of customer service and how the agency can best fulfill its tax enforcement mission. Without an adequate budget, the IRS cannot expect continued improvement in customer service performance ratings and will be hampered in its effort to enhance taxpayer compliance. I would like to applaud the administration for acknowledging in its fiscal year 2008 Budget in Brief (page 65) that "assisting the public to understand their tax reporting and payment obligations is the cornerstone of taxpayer compliance and is vital for maintaining public confidence in the tax system." However, I was disappointed in the administration for failing to request a budget for fiscal year 2008 that meets the needs of the Agency to meet its customer service and enforcement challenges. In fact, the President's budget anticipates a "savings" equal to nearly 1,200 full-time equivalent positions, including 1,147 in enforcement and taxpayer service programs.

Although it's widely recognized that additional funding for enforcement provides a great return on the investment, the administration seems reluctant to request an adequate budget for the IRS. In addition, despite citing a lack of resources as the primary rationale for contracting out a number of inherently governmental activities, such as the collection of taxes, the Commissioner of the IRS has told Congress that the IRS does not need any additional funding above the President's budget request.

NTEU believes that Congress must provide the IRS with a budget that will allow the Service to replenish the depleted workforce, particularly with respect to enforcement personnel.

History has shown that the IRS has the expertise to improve taxpayer compliance but lacks the necessary personnel and resources. The President's own fiscal 2008 budget proposal trumpets the increased tax collections produced by IRS's own employees and cites the increased collections of delinquent tax debt from $34 billion in 2002 to $49 billion in 2006, an increase of 44 percent. Unfortunately, instead of providing additional resources to hire more enforcement staff, IRS personnel resources have been slashed in recent years resulting in a 36 percent decline in combined collection and examination function enforcement staff between 1996 and 2003.

---

[2] See Interim Report of the Committee on Capital Markets Regulation (November 30, 2006, as revised on December 5, 2006); Report of the U.S. Chamber of Commerce, Commission on the Regulation of U.S. Capital Markets in the 21st Century (March 2007); and Sustaining New York's and the U.S.' Global Financial Services Leadership (January 2007).

In addition, these staffing cuts have come at a time when the IRS workload has dramatically increased.

According to IRS's own annual reports and data, taxpayers filed 114.6 million returns in 1995. After a steady annual climb, 11 years later, the Service saw more than 132 million returns filed. Yet, between 1995 and 2005, total numbers of IRS employees shrunk from 114,000 to 94,000. Even more alarming is that during that period, revenue officers and revenue agents—two groups critical to IRS enforcement and compliance efforts—shrunk by 32 and 23 percent respectively. Revenue officers who collect large delinquent accounts went from 8,139 to 5,462 and revenue agents who do audits fell from 16,078 to 12,355. Unfortunately, instead of reversing this trend, the IRS has continued efforts to reduce its workforce and has moved forward with downsizing in several different areas which have targeted some of the Service's most productive employees.

These include last year's re-organization of the Estate and Gift Tax Program which sought the elimination of 157 of the agency's 345 estate and gift tax attorneys—almost half of the agency's estate tax lawyers—who audit some of the wealthiest Americans. The Service pursued this drastic course of action despite internal data showing that estate and gift attorneys are among the most productive enforcement personnel at the IRS, collecting $2,200 in taxes for each hour of work.

The IRS decision to drastically reduce the number of attorneys in the estate and gift tax area flies in the face of several reports made to Congress by Treasury and IRS officials over the past few years, indicating that tax evasion and cheating among the highest-income Americans is a serious and growing problem. In fact, an IRS study found that in 1999, more than 80 percent of the 1,651 tax returns reporting gifts of $1 million or more that were audited that year understated the value of the gift. The study found that the average understatement was about $303,000, on which about $167,000 in additional gift taxes was due. This alone cost the government about $275 million. Consequently, it is difficult to understand why the IRS sought the elimination of key workforce positions in an area that could produce significant revenue to the general treasury.

In addition, the Service continues to move forward with its plan to close five of its ten paper tax return submission facilities by 2011. The IRS originally sought the closings of the five paper return submission centers due to the rise in the use of electronic filing (e-filing) and in order to comply with the IRS Restructuring and Reform Act of 1998 (RRA 98) which established a goal for the IRS to have 80 percent of Federal tax and information returns filed electronically by 2007. But in their recent report to Congress on e-filing, the IRS Oversight Board noted that the IRS will fall well short of the 80 percent goal and urged Congress to extend the deadline to 2012. The report noted that in 2006 just 54 percent of individuals e-filed their returns, well short of the 80 percent goal. Furthermore, the report cited a decline in 2006 in the number of e-file returns received from individual taxpayers who self-prepared their taxes. And finally a recent GAO report on the 2006 filing season noted the year over year percentage growth in individual e-filing slowed to a level lower than any of the previous 3 years.

While overall use of e-filing may be on the rise, the number of taxpayers opting to use this type of return is not increasing as rapidly as the IRS had originally projected. Combined with the fact that almost a third of American taxpayers do not even have internet access and changes to the IRS Free File Program that are expected to increase the number of paper filing returns, it is clear that paper submission processing facilities are still necessary and that serious thought and consideration must be given before any additional closings are undertaken.

Mr. Chairman, it is clear that drastic reductions in some of the agency's most productive tax law enforcement employees directly contradict the Service's stated enforcement priority to discourage and deter non-compliance, particularly among high-income individuals. In addition, we believe these staffing cuts have greatly undermined agency efforts to close the tax gap which the IRS recently estimated at $345 billion. As Nina Olson, the National Taxpayer Advocate noted, this amounts to a per-taxpayer "surtax" of some $2,600 per year to subsidize noncompliance. And while the agency has made small inroads and the overall compliance rate through the voluntary compliance system remains high, much more can and should be done. NTEU believes that in order to close the tax gap, the IRS needs additional employees on the frontlines of tax compliance and customer service. In addition, we believe Congress should establish a dedicated funding stream to provide adequate resources for those employees.

NTEU STAFFING PROPOSAL

In order to address the staffing shortage at the IRS, NTEU supports a 2 percent annual net increase in staffing (roughly 1,885 positions per year) over a 5-year period to gradually rebuild the depleted IRS workforce to pre-1998 levels. A similar idea was proposed by former IRS Commissioner Charles Rossotti in a 2002 report to the IRS Oversight Board. In the report, Rossotti quantified the workload gap in non-compliance, that is, the number of cases that should have been, but could not be acted upon because of resource limitations. Rossotti pointed out that in the area of known tax debts, assigning additional employees to collection work could bring in roughly $30 for every $1 spent. The Rossotti report recognized the importance of increased IRS staffing noting that due to the continued growth in IRS' workload (averaging about 1.5 to 2.0 percent per year) and the large accumulated increase in work that should be done but could not be, even aggressive productivity growth could not possibly close the compliance gap. Rossotti also recognized that for this approach to work, the budget must provide for a net increase in staffing on a sustained yearly basis and not take a "one time approach."

Although this would require a substantial financial commitment, the potential for increasing revenues, enhancing compliance and shrinking the tax gap makes it very sound budget policy. One option for funding a new staffing initiative would be to allow the IRS to hire personnel off-budget, or outside of the ordinary budget process. This is not unprecedented. In fact, Congress took exactly the same approach to funding in 1994 when Congress provided funding for the administration's IRS Tax Compliance Initiative which sought the addition of 5,000 compliance positions for the IRS. The initiative was expected to generate in excess of $9 billion in new revenue over 5 years while spending only about $2 billion during the same period. Because of the initiative's potential to dramatically increase Federal revenue, spending for the positions was not considered in calculating appropriations that must come within annual caps.

A second option for providing funding to hire additional IRS personnel outside the ordinary budget process could be to allow IRS to retain a small portion of the revenue it collects. The statute that gives the IRS the authority to use private collection companies to collect taxes allows 25 percent of collected revenue to be returned to the companies as payment, thereby circumventing the appropriations process altogether. Clearly, there is nothing magical about revenues collected by private collection companies. If those revenues can be dedicated directly to contract payments, there is no reason some small portion of other revenues collected by the IRS could not be dedicated to funding additional staff positions to strengthen enforcement.

While NTEU agrees with IRS' stated goal of enhancing tax compliance and enforcement, we don't agree with the approach of sacrificing taxpayer service in order to pay for additional compliance efforts. That is why we were disappointed to see that the President's proposed budget calls for the elimination of 527 taxpayer services positions. NTEU believes providing quality services to taxpayers is an important part of any overall strategy to improve compliance and that reducing the number of employees dedicated to assisting taxpayers meet their obligations will only those efforts. The administration's own budget proposal for 2008 notes that in fiscal year 2006, IRS' customer assistance centers answered almost 33 million assistor telephone calls and met the 82 percent level of service goal, with an accuracy rate of 91 percent for tax law questions. In addition, a recent study commissioned by the Oversight Board found that more than 80 percent of taxpayers contacted said that IRS service was better than or equal to service from other government agencies. And while these numbers show that IRS taxpayer services are being effective, more can and should be done.

Mr. Chairman, in order to continue to make improvements in taxpayer services while simultaneously processing a growing number of tax returns and stabilizing collections and examinations of cases, it is imperative to reverse the severe cuts in IRS staffing levels and begin providing adequate resources to meet these challenges. With the future workload expected to continue to rise, the IRS will be under a great deal of pressure to improve customer service standards while simultaneously enforcing the Nation's tax laws. NTEU strongly believes that providing additional staffing resources would permit IRS to meet the rising workload level, stabilize and strengthen tax compliance and customer service programs and allow the Service to address the tax gap in a serious and meaningful way.

SPAN OF CONTROL

And while it is imperative that Congress provide the IRS with sufficient staffing resources, we also believe that the IRS should look at the management to bargaining unit employee ratio to find additional resources for increased frontline tax

compliance efforts. As noted previously, while the number of employees at the IRS has decreased by almost 20,000 since 1995, the number of managers who supervise these employees has increased over this same period. If we just look at the period between 2000 and 2005, we see that the number of bargaining unit employees, the frontline employees who do the work, decreased by 4,756, a decrease of 5.1 percent. During that same time, the number of managers and management officials increased by 170, an increase of 1 percent. If the IRS decreased the number of managers and management officials at the same rate as it decreased its rank and file employees during that period, there would be 5.1 percent fewer managers and management officials or a savings of 808 full time equivalents (FTE's) that could be saved and redirected to the frontlines. While the IRS has previously cited concerns about the number of employees that would have to be taken offline to train additional frontline employees, we believe this training could be done with minimal disruption to current operations. One possibility would be to use the increasing number of managers and management officials to do the training. This would ensure that these employees are afforded the best possible training while allowing current operations to continue to run efficiently.

PRIVATE TAX COLLECTION

Mr. Chairman, as stated previously, if provided the necessary resources, IRS employees have the expertise and knowledge to ensure taxpayers are complying with their tax obligations. That is why NTEU continues to strongly oppose the administration's private tax collection program, which began in September of last year. Under the program, the IRS is permitted to hire private sector tax collectors to collect delinquent tax debt from taxpayers and pay them a bounty of up to 25 percent of the money they collect. NTEU believes this misguided proposal is a waste of taxpayer's dollars, invites overly aggressive collection techniques, jeopardizes the financial privacy of American taxpayers and may ultimately serve to undermine efforts to close the tax gap.

NTEU strongly believes the collection of taxes is an inherently governmental function that should be restricted to properly trained and proficient IRS personnel. When supported with the tools and resources they need to do their jobs, there is no one who is more reliable and who can do the work of the IRS better than IRS employees.

As you may know, under current contracts, private collection firms are eligible to retain 21 percent to 24 percent of what they collect, depending on the size of the case. In testimony before Congress, former IRS Commissioner Mark Everson repeatedly acknowledged that using private collection companies to collect Federal taxes will be more expensive than having the IRS do the work itself. The Commissioner's admission directly contradicts one the administration's central justifications for using private collection agencies—that the use of private collectors is cost efficient and effective.

In addition to being fiscally unsound, the idea of allowing private collection agencies to collect tax debt on a commission basis also flies in the face of the tenets of the IRS Restructuring and Reform Act of 1998. Section 1204 of the law specifically prevents employees or supervisors at the IRS from being evaluated on the amount of collections they bring in. But now, the IRS has agreed to pay private collection agencies out of their tax collection proceeds, which will clearly encourage overly aggressive tax collection techniques, the exact dynamic the 1998 law sought to avoid. Furthermore, the IRS is turning over tax collection responsibilities to an industry that has a long record of abuse. For example, in 2006, consumer complaints about third-party debt collectors increased both in absolute terms and as a percentage of all complaints that consumers filed with the Federal Trade Commission (FTC). Last year the FTC received 69,204 consumer complaints about debt collection agencies—giving debt collectors the impressive title of the FTC's most complained-about industry.

NTEU believes that a better option would be to provide the IRS with the resources and staffing it needs. There is no doubt that IRS employees are—by far—the most reliable, cost-effective means for collecting Federal income taxes. As noted previously, the former IRS Commissioner himself has admitted that using IRS employees to collect unpaid tax debts is more efficient than using private collectors. In addition, the 2002 budget report submitted to the IRS Oversight Board, former Commissioner Charles Rossotti made clear that with more resources to increase IRS staffing, the IRS would be able to close the compliance gap.

This is not the first time the IRS has tried this flawed program. Two pilot projects were authorized by Congress to test private collection of tax debt for 1996 and 1997. The 1996 pilot was so unsuccessful it was cancelled after 12 months, despite the

fact it was authorized and scheduled to operate for 2 years. A subsequent review by the IRS Office of Inspector General found that contractors participating in the pilot programs regularly violated the Fair Debt Collection Practices Act, did not adequately protect the security of personal taxpayer information, and even failed to bring in a net increase in revenue. In fact, a 1997 GAO report found that private companies did not bring in anywhere near the dollars projected, and the pilot caused a $17 million net loss.

Despite IRS assurances that it has learned from its past mistakes, two recent reports indicate otherwise. A March 2004 report by the Treasury Inspector General for Tax Administration raised a number of questions about IRS' contract administration and oversight of contractors. The report found that "a contractor's employees committed numerous security violations that placed IRS equipment and taxpayer data at risk" and in some cases, "contractors blatantly circumvented IRS policies and procedures even when security personnel identified inappropriate practices." (TIGTA Audit #200320010). The proliferation of security breaches at a number of government agencies that put personal information at risk further argue against this proposal. These security breaches illustrate not only the risks associated with collecting and disseminating large amounts of electronic personal information, but the risk of harm or injury to consumers from identity theft crimes.

In addition, a September 2006 examination of the IRS private collection program by the Government Accountability Office (GAO) reveals that like the 1996 pilot, the program may actually lose money by the scheduled conclusion of the program's initial phase in December 2007. The report cited preliminary IRS data showing that the agency expects to collect as little as $56 million through the end of 2007, while initial program costs are expected to surpass $61 million. What's more, the projected costs do not even include the 21–24 percent commission fees paid to the collection agencies directly from the taxes they collect.

In addition to the direct costs of the program, I am greatly concerned about the potential negative effect that the private tax collection program will have on our tax administration system. In her recent report to Congress, the National Taxpayer Advocate voiced similar concern about the unintended consequences of privatizing tax collection. Olson cited a number of "hidden costs" that private tax collection has on the tax system including reduced transparency of IRS tax collection operations, inconsistent treatment for similarly situated taxpayers, and reduced tax compliance. Clearly the negative effects of contracting out tax collection to private collectors hampers the agency's ability to improve taxpayer compliance and will only serve to undermine future efforts to close the tax gap.

NTEU is not alone in its opposition to the IRS' plan. Similar proposals allowing private collection agencies to collect taxes on a commission basis have been around for a long time and have consistently been opposed by both parties. In fact, the Reagan Administration strongly opposed the concept of privatizing tax collections warning of a considerable adverse public reaction to such a plan, and emphasizing the importance of not compromising the integrity of the tax system. (Treasury Dept. Statement to House Judiciary Comm. 8/8/86). More recently, opposition to the private tax collection program has been voiced by a growing number of members of Congress, major public interest groups, tax experts, as well as the Taxpayer Advocacy Panel, a volunteer Federal advisory group—whose members are appointed by the IRS and the Treasury Department. In addition, the National Taxpayer Advocate, an independent official within the IRS recently identified the IRS private tax collection initiative as one of the most serious problems facing taxpayers and called on Congress to immediately repeal the IRS' authority to outsource tax collection work to private debt collectors (National Taxpayer Advocate 2006 Report to Congress).

Instead of rushing to privatize tax collection functions which jeopardizes taxpayer information, reduces potential revenue for the Federal Government and undermine efforts to close the tax gap, the IRS should increase compliance staffing levels at the IRS to ensure that the collection of taxes is restricted to properly trained and proficient IRS personnel.

IRS AUDITS OF HIGH-INCOME INDIVIDUALS AND LARGE BUSINESSES AND CORPORATIONS

Mr. Chairman, the final issue that I would like to discuss is IRS enforcement efforts with regard to high-income individuals and large businesses and corporations. I previously noted the drastic staff reductions in the estate and gift tax division that occurred last year and will obviously hamper the Service's ability to achieve greater compliance from the wealthiest Americans. In addition, recent IRS data shows that IRS audits of high-income individuals have dropped dramatically over the past decade. The audit rate for face-to-face audits fell from 2.9 percent of high-income tax

filers in fiscal year 1992 to 0.38 percent in fiscal year 2001 and then drifted down to 0.35 percent in fiscal year 2004. While the audit rate has rebounded somewhat in the last 2 years, it is still far below the level of the mid-1990's. These facts seem to directly contradict claims by the IRS that the Service's first enforcement priority is to discourage and deter non-compliance, with an emphasis on high-income individuals.

We are seeing similar troubling trends with respect to large corporations. While this issue has just started receiving public attention in recent weeks, it has long been of concern to IRS employees that believe recent IRS currency and cycle time initiatives are resulting in the premature closing of audits of large companies, possibly leaving hundreds of millions of dollars of taxes owed on the table. IRS data shows the thoroughness of IRS enforcement efforts for the Nation's largest corporations—measured by the number of hours devoted to each audit—has substantially declined since fiscal year 2002. IRS data also show that the annual audit rates for these corporations, all with assets of $250 million or more, while increasing in fiscal year 2004 and 2005, receded in 2006 to about the level it was in 2002 and is much lower than levels that prevailed a decade or more ago.

Although the number of the largest corporations is small, they are a very significant presence in the American economy. In fiscal year 2002, the largest corporations were responsible for almost 75 percent of all additional taxes the IRS auditors said were owed the government. By comparison, low and middle income taxpayers in the same year were responsible for less than 10 percent of the total.

Agency data shows that audit attention given those corporations with $250 million or more in assets has substantially declined in the last 5 years. In 2002, an average of 1,210 hours were devoted to each of the audits of the corporations in this category. The time devoted to each audit dropped sharply in 2004 and by 2006 the number of hours per audit remained 20 percent below what it was in 2002.

But what may be most disturbing is that according to IRS' own data, while the coverage rate of large corporation returns (identified as those with assets of $10 million and higher) increased in fiscal year 2004 and 2005, the number of audits for these corporations actually decreased in 2006. Clearly, the rationale the IRS is using to justify a reduction in time and scope of large corporation audits, that is, to allow for expanding the total number of companies audited is not working.

IRS officials have continued to point to a rise in additional tax recommended for each hour of audit as a sign that the policy is working, but most auditors know that this rise can be primarily attributed to the proliferation of illegal tax shelters which makes it easier to find additional taxes due.

Warnings about the potential negative consequences of such policy decisions were made by a number of IRS employees in a recent New York Times article and are not new. In fact, when the IRS first began limiting the time and scope of business audits through implementation of the Limited Issue Focused Examination (LIFE) process in 2002, the former chief counsel of the IRS said that the IRS' proposed reductions in cycle time of corporate audits would "virtually guarantee that IRS auditors would miss tax dodges, fail to explore suspicious transactions, or even walk away from audits that are on the verge of finding wrongdoing."

In addition, IRS employees have raised concerns about this shift in approach to the auditing of business tax returns since its implementation several years ago. Their concerns are multi-fold. Primarily, employees' feel that their experience and professional judgment is being ignored when the scope of audits is limited and cycle times are reduced. Revenue agents need flexibility to determine the scope of an audit and need the ability to expand the examination time when necessary. The men and women of the IRS that perform these audits are highly experienced employees who know which issues to examine and when more time is necessary on a case. But under current IRS policies, this is just not the case.

Mr. Chairman, we have heard directly from a number of our members about the detrimental effect this policy has had not just on efforts to ensure corporations are in full compliance, but also how this misguided policy is damaging employee morale. In one instance, an IRS agent with 29 years of experience, including 19 as an international specialist examining tax returns of large, multinational corporations was given an unreasonably short period of time to examine 3 tax years of a very large company. The agent reported being constantly harassed for refusing to further limit the scope of the examination beyond that which was set at the beginning of the audit, even though he had successfully completed two prior examinations of the same taxpayer in a timely manner. The employee knew the issues and how to examine them but also knew they would need more than the allotted time to complete his part of the examination. But, despite past successes, management refused to provide the employee with additional time to complete his portion of the audit and labeled the employee as uncooperative and not a "team player." Although the em-

ployee refused to compromise, he believed that other members of the examination team had been pressured into dropping issues which likely would have resulted in additional tax.

Mr. Chairman, in the face of a rising tax gap and exploding Federal deficits, it is imperative that the agency is provided with the necessary resources to allow IRS professionals to pursue each and every dollar of the taxes owed by large businesses and corporations. Allowing these corporations to pay just a fraction of what they owe in taxes greatly hinders efforts to close the tax gap and is fundamentally unfair to the millions of ordinary taxpayers that dutifully pay their taxes. Only by increasing the overall number of IRS employees that do this work can the Service ensure that businesses and large corporations are complying with their tax obligations and that the tax gap is being closed.

CONCLUSION

It is an indisputable fact that the IRS workforce is getting mixed signals regarding its value to the mission of the Service and the level of workforce investment the Service is willing to make. NTEU believes that the drastic reductions of some of the IRS's most productive employees, reliance on outside contractors to handle inherently governmental activities such as the collection of taxes, and a shift in philosophy which focuses enforcement efforts too much on wage earners and not enough on high-income individuals and large businesses and corporations, only serve to undermine the agency's ability to fulfill its tax enforcement mission and hamper efforts to close the tax gap.

---

PREPARED STATEMENT OF THE PACIFIC SALMON COMMISSION

Mr. Chairman, my name is Roland Rousseau and I serve as an alternate commissioner on the Pacific Salmon Commission (PSC) and the chair of the Budget Committee for the U.S. section of the Commission. The Pacific Salmon Treaty (Treaty) between the United States and Canada was established in 1985. An subsequent agreement was concluded in June of 1999 (1999 agreement) that established new abundance-based fishing regimes under the treaty and made other improvements in the treaty's structure. During fiscal year 2008, the PSC will conduct very important negotiations to renew provisions of treaty fishing regimes that are scheduled to expire at the end of 2008. The U.S. section recommends that Congress:

For Department of Commerce:

—Fund the Pacific Salmon Treaty line item of the National Marine Fisheries Service at $8,000,000 for fiscal year 2008, restoring $1,000,000 previously provided by Congress. This funding provides the technical support for the States of Alaska, Washington, Oregon and Idaho and the National Marine Fisheries Service to conduct the salmon stock assessment and fishery management programs required to implement the treaty fishing regimes. Included within the total amount of $8,000,000 is $400,000 to continue a joint Transboundary River Enhancement Program required by the treaty.

—Fund the Pacific Salmon Treaty Chinook Salmon Agreement line item of the National Marine Fisheries Service for fiscal year 2008 at $1,844,000, level funding from what was provided by Congress for fiscal year 2006. This funding continues to be necessary to acquire the technical information to implement abundance-based Chinook salmon management provided for under the 1999 agreement.

For Department of State fund the PSC at $3,049,000, under International Fisheries Commission, Department of State. This is approximate level funding from that provided in fiscal year 2006 to fund the bilateral PSC office and staff, and to support U.S. section activities required to implement provisions of the treaty. Funding for the total International Fisheries Commission line item should be $24,000,000, the funding level for fiscal year 2006, to provide full funding for the operations of all the fishery commissions, including the PSC.

The base treaty implementation projects include a wide range of stock assessment, fishery monitoring, and technical support activities for all five species of Pacific salmon in the fisheries and rivers from Southeast Alaska to those of Washington, Oregon, and Idaho. The States of Alaska, Washington, Oregon, and Idaho, and the National Marine Fisheries Service (NMFS), are charged with carrying out major portions of the salmon fishery stock assessment and harvest management actions required under the treaty. Federal funding for these activities is provided through NMFS on an annual basis. The agency projects carried out under PSC funding are directed toward acquiring, analyzing, and sharing the information required to implement the salmon conservation and sharing principles of the treaty.

A wide range of programs for salmon stock size assessments, escapement enumeration, stock distribution, and catch and effort information from fisheries, are represented. The information from many of these programs is used directly to establish fishing seasons and harvest levels. Congress increased this funding by $2,000,000 in fiscal year 2005 to a total of $8,000,000 to provide for programs needed to implement the new abundance-based fishing regimes established under the 1999 agreement, but the level was reduced to $7,000,000 in fiscal year 2006. The U.S. section recommends that $8,000,000 be restored in fiscal year 2008 to allow full implementation of treaty provisions. The 1999 agreement updated provisions of the Pacific Salmon Treaty including fishing arrangements and abundance-based management approaches for Chinook, southern coho, Northern Boundary and Transboundary River fisheries. The $400,000 that has been provided since 1988 for a joint Transboundary River enhancement program with Canada is included in this amount.

In 1996, the United States adopted an abundance-based approach to managing Chinook salmon fisheries in Southeast Alaska. Under this approach, Chinook harvest levels are based on annual estimates of Chinook abundance. This system replaced fixed harvest ceilings agreed to in 1985, which did not respond to annual fluctuations in Chinook salmon populations. The revised 1999 agreement adopted this abundance-based management approach for all Chinook fisheries subject to the treaty. In recognition of this new management approach, since 1998, Congress has provided $1,844,000 annually to allow for the collection of stock assessment and fishery management information necessary for implementation. Through a rigorous competitive technical review process, the States of Alaska, Washington, Oregon, and Idaho, and the 24 treaty tribes are using the funding to implement abundance-based Chinook salmon management coast-wide under the new agreement. The U.S. section recommends level funding of $1,844,000 for fiscal year 2008 to support the implementation of abundance-based Chinook salmon management.

The United States and Canada agreed in 1988 to a joint salmon enhancement program on the Transboundary Rivers, which rise in Canada and flow to the sea through Southeast Alaska. Since 1989, Congress has provided $400,000 annually for this effort through the National Marine Fisheries Service International Fisheries Commission line item under the Conservation and Management Operations activity. Canada provides an equal amount of funding and support for this bilateral program. This funding is included in the $8,000,000 the U.S. section is recommending for the fiscal year 2008 Pacific Salmon Treaty line item.

The U.S. section of the PSC recommends that $3,049,000 for implementation of the treaty be provided in the Department of State's International Fisheries Commissions line item in fiscal year 2008. This is $20,000 more than the amount provided by Congress for fiscal year 2006 and is vitally needed to support U.S. commitments made in the 1999 agreement and support costs for U.S. section participation. This funding provides for the United States contribution to the bilateral PSC staff and offices based in Vancouver, British Columbia. It also provides for travel for U.S. commissioners, panel members, and technical committee members and stipends for authorized commissioners and panel members. Increasing travel costs, less favorable currency exchange rates with Canada and increased costs associated with the renegotiation of fishing regimes that will be in progress during fiscal year 2008, make it very important that this funding is available to support PSC operations.

This concludes the statement of the U.S. section of the PSC submitted for consideration by your committee. We wish to thank the committee for the support that it has given us in the past.

SUMMARY OF PROGRAM FUNDING FOR THE UNITED STATES-CANADA PACIFIC SALMON TREATY

| | Fiscal Year 2006 Appropriation | Fiscal Year 2008 Recommendation | Section Shortfall |
|---|---|---|---|
| Department of Commerce: | | | |
| Pacific Salmon Treaty Line Item | $7,000,000 | [1] $8,000,000 | $1,000,000 |
| Pacific Salmon Treaty—Chinook Salmon Agreement Line Item | 1,844,000 | 1,844,000 | ..... |
| Department of State: International Fisheries Commissions: Pacific Salmon Commission | 3,029,000 | 3,049,000 | 20,000 |

[1] The recommended fiscal year 2008 amount includes $400,000 provided for the Joint Transboundary River Enhancement Program previously funded under the NMFS International Fisheries Commission account.

PREPARED STATEMENT OF THE AMERICAN ASTRONOMICAL SOCIETY

I appreciate the opportunity to comment on NASA's 2008 science budget from my perspective as president of the American Astronomical Society (AAS).

The AAS believes that NASA's Science Mission Directorate (SMD) should be part of the American innovation agenda, which seeks to bolster funding for the National Science Foundation (NSF), the Department of Energy's (DOE) Office of Science, and the National Institute for Standards and Technology (NIST). These agencies have been identified as vital to America's leadership in innovation, by training a highly-skilled workforce and fostering the discovery and development of new ideas. NASA science is a partner in these endeavors. Specifically, we advocate for increasing NASA SMD's fiscal year 2008 budget to $5.566 billion, which is 6 percent over the final fiscal year 2007 amount and a modest increase over the President's fiscal year 2008 request.

The AAS is the major organization of professional astronomers in the United States. The basic objective of the AAS is to promote the advancement of astronomy and closely related branches of science. The membership, numbering approximately 7,000, includes physicists, mathematicians, geologists, and engineers whose interests lie within the broad spectrum of modern astronomy. AAS members advise NASA on scientific priorities, participate in NASA missions, and use the data from NASA's outstanding scientific discoveries to build a coherent picture for the origin and evolution of the Earth, the solar system, our galaxy, and the universe as a whole.

In the recent past, the astronomical community, working together with NASA, has produced a remarkable string of successes that have changed our basic picture of the universe. Observations with the Hubble Space Telescope (HST) of exploding stars whose light has been traveling for half the age of the universe, combined with the exquisite map of the glow from the big bang itself from the Wilkinson Microwave Anisotropy Probe and information from other observatories, shows that the universe we live in is not the universe we see. Mysterious dark matter makes the ordinary particles clump together to form stars and galaxies. Even more mysterious dark energy makes the expansion of the universe speed up. Both of these concepts challenge our understanding of the nature of matter and energy in the universe and open up broad new vistas for future work. An ambitious set of great observatories, now including Spitzer in the infrared and Chandra at X-ray wavelengths, is hard at work, enriching our understanding of how the universe works.

Similarly, exploration of the solar system has been a resounding success for NASA, with exciting missions to Mars and to Saturn revealing a beautiful and intricate history that is interwoven with the history of our planet Earth. The discovery of planets around other stars has been a great triumph of the past decade, raising hopes for seeing planets like our own Earth, and placing our own solar system, and life itself, in a new context.

NASA's key role in these discoveries makes its science program of deep interest to AAS members. In the past, NASA has worked with the astronomical community to find the most promising paths forward. The James Webb Space Telescope (JWST) is a large program that was endorsed by the National Academy of Sciences (NAS) Decadal Survey in astronomy. When completed in the next decade, it will help expand the frontier of knowledge to the deepest reaches of space and time and into the hidden places where stars and planets are formed. The astronomical community also recommended, and NASA plans to execute, a wide range of other programs—some of moderate scope and others that nourish the infrastructure for a healthy and vibrant community. This balanced approach has proved best—with a range of opportunities carefully crafted to get the best science from NASA's science budget.

Recognizing the current challenging budget climate, in which federal non-security, discretionary spending is declining by about 1 percent, the current NASA budget for science is nonetheless cause for concern. The continuing resolution (CR), now Public Law 110–005, provided funding for many federal agencies including NASA for fiscal year 2007. NASA science has suffered a $78.8 million shortfall from the President's fiscal year 2007 request. The President's fiscal year 2008 budget request represents a 0.9 percent increase in NASA science spending over the fiscal year 2007 request; however, with inflation currently around 2 percent, the fiscal year 2008 request still represents a decline in real dollars available for research in science compared to the President's fiscal year 2007 request. A key question is what will become the new baseline for NASA science funding, the fiscal year 2007 request or the CR. If the CR is adopted as the new baseline, this could represent a loss to NASA science in the out-years of $1 billion or more.

The AAS therefore recommends that Congress increase the fiscal year 2008 budget for NASA science by 6 percent over the CR level. This modest increase over the

President's fiscal year 2008 request will help maintain balance within the science portfolio, which is critical to our community. It is important to support small missions and research grants to individual investigators. Otherwise, many exciting programs to explore the solar system, to detect planets around other stars, to measure gravitational waves from astronomical events, to explore black holes in all their manifestations, and to seek the nature of the dark energy may be threatened. In particular, we advocate for restoring funding to the Explorer program and protecting the Beyond Einstein mission.

We further advocate that NASA science should be part of the American innovation agenda. Maintaining and strengthening American innovation in science and technology has broad bipartisan support, both in Congress and the administration. Our recommended increase of 6 percent in NASA science is smaller than the increases proposed for the science component of other agencies identified as strategically important for innovation. These include an 8.7 percent increase for NSF, a 16 percent increase for Department of Energy's Office of science, and nearly 21 percent for NIST (all increases over the CR levels). For AAS members, the cuts in NASA's support for science threaten to offset or overwhelm the increases that have been aimed at improving America's innovation through the NSF, DOE, and NIST. A real effort to improve science and engineering in the United States should treat NASA's science program as part of the solution. NASA's science missions inspire new generations of young people to pursue careers in science, engineering, and mathematics and train these students and young scientists to become the innovators of the future.

Finally, the AAS applauds the administration and Congress for upholding the priorities of the NAS Decadal Survey in astronomy. We are pleased that the development of JWST and HST servicing mission are priorities in the new budget, but we stress that balance is critical in the science portfolio.

NASA science has been and continues to be a beacon of innovation and discovery by inspiring generations of young people, capturing the imagination of the public, developing new technologies, and discovering profound insights into the nature of our universe.

The AAS and its members are prepared to work with Congress and with NASA to help find the best way forward. We will give you our best advice and we will work diligently to make the most of NASA's investment in science.

---

## PREPARED STATEMENT OF THE NATIONAL FISH AND WILDLIFE FOUNDATION

Madam Chairman and members of the subcommittee: I appreciate the opportunity to submit testimony regarding the fiscal year 2008 funding request for the National Fish and Wildlife Foundation (Foundation). The Foundation respectfully requests that the committee fund these efforts at the following levels: $4 million through the National Oceanic and Atmospheric Administration appropriation.

This request lies well within the authorized levels and will allow the Foundation to better meet the demand for new or expanded strategic conservation programs. The appropriations provided by the committee are also used by the Foundation to attract additional funding for conservation projects through mitigation, settlements, and direct gifts.

These dollars will be focused on mutually agreed upon projects across the country. Furthermore, the appropriated $4 million will be turned into a minimum of $8 million, according to the Foundation's Congressional Charter which requires a minimum of a 1-to-1 match. We have been operating on a 3-to-1 match historically, which means that the $4 million has the potential to become $16 million or more for on-the-ground and in-the-water conservation. One other note of special interest is that according to the Foundation's charter, all directly appropriated funds have to be obligated to grants as they are not available to the Foundation for any direct or indirect expenses.

Since our inception in 1984 through fiscal year 2006, the Foundation has supported over 8,865 grants and leveraged over $374 million in Federal funds for more than $1.2 billion in on-the-ground conservation. This has resulted in more than 18.35 million acres of restored and managed wildlife habitat; new hope for countless species under stress; new models of private land stewardship; and stronger education programs in schools and local communities. We recognize that without the seed money this committee provides, many of these conservation benefits would not be realized.

The federal dollars appropriated by this committee allow the Foundation to assist NOAA in accomplishing its mission. Whether it involves coastal-habitat conservation, species management, or conservation education, the Foundation strategically

invests the federal funds entrusted to us in sound projects. This request would allow the Foundation to expand its highly successful grant programs to better assist NOAA in maximizing protection and restoration of marine and coastal resources. Over the 14 years of the NOAA-Foundation partnership, more than $47 million in NOAA funds have been leveraged to produce over $142 million for on-the-ground and in-the-water conservation. From 2002–2006, 788 projects have been awarded, focusing on the conservation needs of at-risk species, habitat enhancement, coastal restoration, marine debris clean-up, environmental education, and community-based stewardship. With our fiscal year 2006 NOAA appropriations, we were able to fund 39 projects, representing over $1.4 million in Foundation federal funds, leveraging it with $8.4 million in other federal and non-federal funds to commit $9.8 million for coastal and marine conservation.

The National Fish and Wildlife Foundation continues to be one of, if not the most, cost-effective conservation program funded in part by the Federal Government. Congress established the Foundation 23 years ago, and since that time the Foundation's vision for more healthy and abundant populations of fish, wildlife, and plants has flourished through the creation of numerous valuable partnerships. The breadth of our partnerships is highlighted through our active agreements with 14 federal agencies, as well as numerous corporations, foundations, and individual grantees. Through these unique arrangements, we are able to leverage federal funds, bring agencies and industry together, as well as produce tangible, measurable results. Our history of collaboration has given way to programs and initiatives such as the Chesapeake Bay Small Watershed Grants Program, Chesapeake Bay Targeted Watershed Grants, North American Waterfowl Management Plan, the Neotropical Migratory Bird Conservation Program, and the National Fish Habitat Initiative. With the support of the committee in fiscal year 2008, we can continue to uphold our mission of enriching fish, wildlife, and the habitat on which they depend.

*Working Marine and Coastal Habitats.*—The Foundation and NOAA work together to identify the highest priority coastal and marine conservation projects to sustain, restore, and enhance marine and coastal habitats, as well as increase populations of imperiled marine species. Funds available through the NOAA/Foundation partnership seek to achieve three specific objectives, through our Marine and Coastal Life and Habitats Keystone Initiative. These three objectives include: increase and sustain productivity of key spawning grounds and unique marine habitats by reducing unintended human impacts; increase populations of imperiled marine species; and improve and sustain the health of the Nation's major estuaries and the Great Lakes by restoring and protecting critical coastal habitat, improving water quality in tributaries, and enhancing populations of keystone species.

*Conserving Fish, Wildlife, and Plants.*—The Foundation also administers several programs which are directed to specific species or habitats and which are administered to rally private donations and contributions from other agencies around these strategic focus areas. Examples of such programs include: the Marine Debris Prevention and Removal Program, the Coral Reef Conservation Fund, the National Whale Conservation Fund, the Chesapeake Bay Small Watershed Grants Program, the Pacific Grassroots Salmon Initiative, the Delaware Estuary Grants Program, and the Pinellas County Environmental Fund.

—*Coral Reef Conservation Fund.*—Responding to an alarming decline in both the quantity and productive quality of the world's coral reef ecosystems, the Foundation partnered with NOAA to establish the Coral Reef Conservation Fund. Through this fund, the Foundation supports local to ecosystem level projects that restore damaged reef systems and prevent further negative impacts through both on-the-water and up-the-watershed projects. By focusing on specific areas of human impact such as anchor damage and sedimentation, we maximize the outcome of our programs. The Foundation has provided funding for over 166 projects with $5.7 million in federal and non-federal funds, leveraged with $9.5 million in non-federal matching funds, for a total of $15.2 million for coral conservation in 35 countries, including 4 U.S. States and 8 U.S. territories and freely associated States, giving the program a truly global reach

—*Marine Debris Prevention and Removal Program.*—In 2006, the Foundation formed a partnership with the NOAA Marine Debris Program to establish a competitive grants program aimed to foster public and private relationships and support research, prevention, and reduction activities related to the issue of marine debris. Through this program, our goals are to build a well informed public that acts as a steward of coastal and marine ecosystems, thereby sustaining the health and productivity of this ecosystem for the benefit of society as a whole. In 2006, the Foundation awarded 18 projects with over $782,000 in federal funds, which was leveraged with over $1 million in non-federal matching funds for projects in 9 States and 2 U.S. territories.

With our NOAA appropriations, the Foundation also leveraged resources to fund projects that directly benefit endangered and threatened fish and marine species, including such species as North Atlantic right whales, Loggerhead turtles, Hawskbill turtles, Pacific coho salmon, and Atlantic salmon. We also measure our success in part by preventing the listing of species under the Endangered Species Act, as well as by stabilizing and hopefully moving others off the list. We invested in common sense and innovative cooperative approaches to endangered species, building bridges between the government and the private sector.

*New Strategic Plan.*—During 2006, the Foundation underwent a detailed self-evaluation, which resulted in the development of a new strategic plan for the organization. The strategic planning process revealed that the Foundation maximizes conservation benefits when it targets a series of grants towards a specific geographic region, habitat type, or conservation challenge. To ensure that future grants achieve a sustainable and measurable conservation impact, the Foundation is establishing targeted Keystone Initiatives around the core conservation investment areas in which the Foundation has historically specialized. The Keystone Initiatives represent the new core portfolio of the Foundation's grant making with clearly defined long-term goals, well-articulated strategies, and defined budgets to reach desired outcomes.

The four initial Keystone Initiatives, launched by the Foundation in 2007, include birds; wildlife and landscape scale habitats; freshwater fish and habitats; and marine and coastal life and habitats. Additional Keystone Initiatives being developed include wildlife and agriculture, wildlife and energy development, invasive species, and future conservation Leaders. Each grant approved under a Keystone Initiative will be designed to provide a measurable outcome that brings us one step closer to the final long-term conservation goal of the initiative. Where appropriate, the strategies and outcomes of the Foundation's Special Grant programs, such as the Great Lakes Restoration Fund, Bring Back the Natives, and the Coral Reef Conservation Fund, will be designed to directly contribute to the long-term Keystone Initiative goal. Through our targeted grants, the Foundation seeks to achieve measurable success in "moving the needle" on these critical conservation objectives over the next 5 to 10 year period.

*Accountability and Grantsmanship.*—During the strategic planning process, Foundation staff spent time listening to feedback from our agency partners and grantees. Choke points in our grant making process were identified, and the Foundation is in the process of revising portions of our grant review and contracting process to ensure we maximize efficiency while maintaining strict financial and evaluation-based requirements. The Foundation has also launched a new website that is more user-friendly and content rich than the previous version. This new interactive tool will allow the Foundation to improve communication with our stakeholders and will help streamline our grant making process.

To ensure that only those grants with the greatest likelihood of obtaining conservation outcomes directly related to a Keystone Initiative are funded, the Foundation has implemented a thorough review process. Applicants are required to submit a pre-proposal which allows staff to proactively work with applicants to refine and improve their application before submitting a full proposal. All full proposals are then submitted to a peer review process which involves five external reviews representing State agencies, federal agencies, affected industry, environmental nonprofits, and academics. Grants are also reviewed by the Foundation's Keystone Initiative staff, as well as evaluation staff, before being recommended to the board of directors for approval. In addition, the Foundation provides a 30-day notification to the members of Congress for the congressional district and State in which a grant will be funded, prior to making a funding decision, according to our congressional charter.

*Basic Facts About the Foundation.*—The Foundation is governed by a 25-member board of directors, appointed by the Secretary of Interior and in consultation with the Secretary of Commerce. At the direction of Congress, the board operates on a nonpartisan basis. Directors do not receive any financial compensation for service on the board; in fact, most all of our directors make financial contributions to the Foundation. It is a diverse board, and includes the director of the U.S. Fish and Wildlife Service, the administrator of the National Oceanic and Atmospheric Administration, as well as corporate and philanthropic leaders with a tenacious commitment to fish and wildlife conservation.

None of our federally appropriated funds are used for lobbying, litigation, or the Foundation's administrative expenses. By implementing strategic real-world solutions with the private sector, while avoiding regulatory or advocacy activities, we serve as a model for developing cooperative solutions to environmental issues. We

are confident that the money you appropriate to the Foundation is making a positive difference.

NATIONAL FISH AND WILDLIFE FOUNDATION'S FEDERAL APPROPRIATIONS FOR FISCAL YEAR 2006 [1]
[In millions of dollars]

| Agency Funding Source | Funding Amount |
|---|---|
| Natural Resources Conservation Service | 2.970 |
| Fish and Wildlife Service | 7.656 |
| Washington Salmon | 1.971 |
| Atlantic Salmon | 0.985 |
| Bureau of Land Management | 2.955 |
| Forest Service | 2.637 |
| National Oceanic and Atmospheric Administration | 1.400 |
| Pinellas County Environmental Fund | 0.937 |

[1] We are providing the Foundation's appropriations for the last full fiscal year, as we are continuing to work with our agencies to finalize our fiscal year 2007 funding allocations.

---

PREPARED STATEMENT OF THE NATIONAL FEDERATION OF COMMUNITY BROADCASTERS

Thank you for the opportunity to submit testimony to this Subcommittee requesting a $30 million appropriation for the Commerce Department's Public Telecommunications Facilities Program (PTFP) in fiscal year 2007. As the President and CEO of the National Federation of Community Broadcasters, I speak on behalf of 250 community radio stations and related organizations across the country including many of the new Low Power FM stations. NFCB is the sole national organization representing this group of stations, which provide independent local service in both the smallest communities and largest metropolitan areas of this country. Nearly half of NFCB's members are rural stations, and half are controlled by people of color.

In summary, the points we wish to make to this Subcommittee are that NFCB:

—Supports funding for PTFP that will cover the on-going needs of public radio and television stations.
—Supports funding for conversion of public radio and television to digital broadcasting.
—Supports funding to help public and community radio stations prepare to provide emergency information during natural or manmade disasters.
—Supports restoration of administrative funding for the program which was cut in fiscal year 2005.

Community Radio supports $30 million in funding for the Public Telecommunications Facilities Program in fiscal year 2008. Federal support distributed through the PTFP is essential to continuing and expanding the public broadcasting service throughout the United States. It is particularly critical for rural stations and for those stations serving low income communities. PTFP funds new stations, expanding the reach of public broadcasting to rural areas and to audiences that are not served by existing stations. In addition, it replaces obsolete and worn out equipment so that the existing public stations can continue to broadcast high quality programming. PTFP funding is critical to ensuring public radios' readiness to provide lifesaving information in case of local disasters, as we have seen during the weather emergencies the last few years. Finally, with the advent of digital broadcasting, PTFP funding is helping with the conversion to this new technology.

We support $30 million in funding to ensure that both the on-going program—currently funded in fiscal year 2007 at $21.8 million—will be continued, and that the increase to $30 million will be available to help cover the cost of improving the emergency infrastructure of public broadcasting stations. This increase in funding is an urgent need in order for stations to withstand and broadcast through extreme weather or other emergency situations. In addition, increased funding is needed to assist the conversion of public radio and television to digital. This is particularly important because the FCC has endorsed a standard for digital radio broadcasting, the television conversion deadline is imminent, and commercial radio stations are converting to digital transmission and public radio should not be left behind.

PTFP funding is unique. It is the only source of funding available to help get new stations on the air and to ensure that public broadcasting is available everywhere in the United States. At a time when local service is being abandoned by commercial radio, PTFP aids communities to develop their own local stations which provide local information and emergency notifications.

Funding from PTFP has been essential to keep public radio stations on the air by funding replacement of equipment, often after 20 or more years of use. The program is administered carefully to be sure that stations are acquiring the most appropriate type of equipment. They also determine that equipment is being properly maintained and will not fund the replacement of equipment before an appropriate length of time. PTFP has also helped bring public radio service to rural areas where it is not available. Often they fund translators to expand the coverage of an existing station and they help with the planning and equipment needs of a new station. Recently, many of these new projects have been for Native American controlled stations on Indian Reservations or new local Low Power FM installations.

Federal funding is particularly critical to stations serving rural and underserved audiences which have limited potential for fundraising because of sparse populations, limited number of local businesses, and low income levels. Even so, PTFP funding is a matching program so federal money is leveraged with a local commitment of funds. This program is a strong motivating factor in raising the significant money necessary to replace, upgrade and purchase expensive broadcast equipment.

Community Radio stations need to be prepared to provide continuing service during emergency situations. As we saw during the hurricanes and severe weather the last couple of years, radio is the most effective medium of communication about evacuations, weather forecasts, traffic, services available, etc. Since everyone has radios and they are portable and battery operated, a radio is the first source of this critical information. But stations must have emergency power at both the studios and the transmitter in order to provide this service.

Community Radio supports funding for conversion to digital broadcasting for public radio and television. While public television's digital conversion is mandated by the Federal Communications Commission, public radio is converting to digital to provide more public service and to keep up with the market. The digital standard for radio has been approved and over 300 public radio transmitters have been converted. Most exciting to public radio is that stations can broadcast two or more high quality signals, even while they continue to provide the analog signal. The development of additional digital audio channels will potentially more than double the public service that public radio can provide, particularly to unserved and underserved communities.

Community Radio supports additional administrative funding for the PTFP. While we thank the Senate for continuing funding of PTFP, financial support for the skilled dedicated staff who administer these funds was cut nearly in half in fiscal year 2005. Restoration of administrative funds to the earlier level will assure that the program will be carefully and thoroughly administered.

Over the last few years, the number of administrative staff for the Public Telecommunications Facilities Program has been decreased. With fewer Program Officers there is less support for applicants or outreach about the program and reduced administrative funding hurts the review process. NFCB supports the restoration of these funds.

Thank you for your consideration of our testimony.

---

## PREPARED STATEMENT OF THE AMERICAN PUBLIC POWER ASSOCIATION

The American Public Power Association (APPA) is the national service organization representing the interests of over 2,000 municipal and other state and locally owned utilities in 49 of the 50 States (all but Hawaii). Collectively, public power utilities deliver electricity to one of every seven electric consumers (approximately 44 million people), serving some of the nation's largest cities. However, the vast majority of APPA's members serve communities with populations of 10,000 people or less.

The Department of Justice's (DOJ) Antitrust Division and the Federal Trade Commission (FTC) play critical roles in monitoring and enforcing antitrust laws affecting the electric utility industry. With the repeal of the Public Utility Holding Company Act (PUHCA) included in the Energy Policy Act of 2005, the electric utility industry is likely to experience an increase in mergers that could result in increased market power in certain regions. This development coupled with the volatility and uncertainty continuing to occur in wholesale electricity markets makes the oversight provided by DOJ and the FTC more critical than ever.

APPA supports adequate funding for staffing antitrust enforcement and oversight at the FTC and DOJ. Specifically, we support the Administration's request of $241 million for fiscal year 2008 for the FTC. We are heartened that the downward trend in funding for the DOJ's Antitrust Division over several years has been reversed,

and are pleased with the Administration's request of $155 million for fiscal year 2008.

We appreciate the opportunity to submit this statement outlining our fiscal year 2008 funding priorities within the Commerce, Justice and Science Subcommittee's jurisdiction.

---

PREPARED STATEMENT OF THE GAVIOTA COAST CONSERVANCY

Madame Chairwoman and Honorable members of the Subcommittee, I appreciate the opportunity to present this testimony in support of an appropriation of $1.5 million from NOAA's Coastal and Estuarine Land Conservation Program to acquire a 42-acre property at Gaviota Cove in California.

The Gaviota Coast Conservancy is the primary land conservation, advocacy group for the Gaviota Coast. Since our incorporation in 1996 as a non-profit, public benefit organization, we have been working to secure permanent protection of the Gaviota Coast's significant resources.

Located in western Santa Barbara County between Coal Oil Point and Point Sal, the Gaviota Coast is approximately 100 miles north of Los Angeles and lies between the Channel Islands National Marine Sanctuary and the Los Padres National Forest. Offering a wide variety of natural, recreational and agricultural resources, it is a high priority area for conservation and is Southern California's largest remaining stretch of pristine coastline. This remarkable 76-mile landscape includes 15 percent of the Southern California coast, representing about 50 percent of its remaining undeveloped coastline. More than 40 sensitive species inhabit this area, including the California red-legged frog, western snowy plover, southern steelhead trout, southern sea otter, peregrine falcon and tidewater goby. More than 525 plant species, representing approximately one-half of the plant families found in California, live in the Gaviota Coast area. This relatively undisturbed area spans more than 30 coastal watersheds, allowing it to serve as a migration corridor between inland, mountainous and coastal habitat areas, and makes the Gaviota Coast the best opportunity to provide a safe-harbor for the threatened biodiversity of Southern California's coastal Mediterranean biome. This biome is unique in America.

The Gaviota Coast also contains some of the most significant archaeological sites in California, preserving at least 9,000 years of prehistory. The Chumash tribe resided in the area, and sites of several Chumash towns, as well as numerous tribal rock art sites, are located along the coast. Large cattle ranches and adobes still exist and are testimony to the early settlements and agricultural history of the region. The Gaviota Coast is a much-loved area for outdoor recreation due to its proximity to major metropolitan areas, its scenic vistas, rugged beaches, excellent wildlife viewing, and panoramic coastal hillsides and mesas. It is home to several state and county parks that are popular venues for activities such as hiking, camping, swimming, picnicking, hang-gliding, and surfing. A study by the National Park Service in 2004 determined that the natural and cultural resources of the Gaviota Coast are nationally significant and encouraged efforts to conserve them.

Situated within the Santa Barbara Coast State Seashore, and abutting Gaviota State Park on two sides, the 42-acre Gaviota Cove property has outstanding natural resource, recreation and scenic values. As an in-holding within state park lands, and historically used for coastal-dependent industry, this project is an excellent opportunity to achieve coastal resource enhancements and public recreational access. The property also has several known Chumash cultural sites. Gaviota Cove is comprised of a variety of habitat types, including grasslands, riparian habitat, willow scrub and coastal sage scrub, freshwater aquatic, coastal strand, and marine habitats. These habitat types are home to many plant and wildlife species, including California thrashers, coyotes, white-crowned sparrows, rainbow trout, western fence lizards, snowy egrets, and California ground squirrels. Some of the sensitive species that may be found on the project site are Gaviota tarplant, southern steelhead, globose dune beetle, California red-legged frog, yellow-billed cuckoo, two-striped garter snake, San Diego horned lizards, and cactus wren. The western portion of the northern parcel and the entirety of the southern parcel are designated as environmentally sensitive habitat (ESH) areas under state law.

There are two creeks which run through the property: Alcatraz Creek, and Cementerio Creek. Both creeks reach the Pacific Ocean at a confluence on the southern part of the property. Documented occurrence of southwestern pond turtle, a California species of special concern, has occurred on both Alcatraz and Cementerio Creeks. Habitat sustained by these blue-line creeks includes riparian woodlands, such as arroyo willow and black cottonwoods, eucalyptus stands, oak woodlands, chaparral, coastal bluff/sage scrub and native perennial and introduced

annual grassland communities. The property's southern boundary abuts the shoreline's sandy beach. The drainages provide critical corridors for wildlife movement and the other habitats provide living space for both terrestrial and aquatic species.

As an addition to Gaviota State Park, this project will expand recreational opportunities along this beautiful stretch of Southern California coast, and protect the magnificent coastal viewshed of Gaviota State Park for visitors on and offshore. The Gaviota Cove property offers the unique opportunity to link isolated beach portions of the Gaviota State Park, adding more than a quarter-mile of shoreline to the park and creating a contiguous corridor of publicly accessible beach for 6.5 miles. The Gaviota State Park is an extremely popular facility, welcoming 86,000 visitors annually for hiking, soaking in hot springs, swimming, diving, surfing, fishing and boating. It currently has 41 developed campsites, which are popular and often full to capacity. In expanding the state park, this project provides excellent opportunities to enhance this public recreation resource, allowing State Parks to increase its number of campsites and create and enhance new trail linkages.

Increased demand for housing and other development, coupled with the rising value of agricultural land, contribute to the rising development pressures on the Gaviota Coast. In fact, the county is projected to grow by 50 percent by 2025. The California Wilderness Coalition has identified the Gaviota Coast as one of California's ten most threatened wild places. Development would threaten the area's biodiversity and the agricultural way of life. It would adversely compromise the area's scenic vistas, air and water quality, and invaluable cultural resources.

An fiscal year 2008 appropriation of $1.5 million from NOAA's Coastal and Estuarine Land Conservation Program (CELCP) is needed to acquire and protect this 42-acre property. If added to Gaviota State Park, it will increase public beach access, expand recreational opportunities, provide much needed visitor facilities, protect scenic viewshed, and conserve important wildlife habitat.

In addition to specifically funding Gaviota Cove, I urge your support for a substantial increase in overall funding for the Coastal and Estuarine Land Conservation Program in fiscal year 2008 to enable the protection of significantly more coastal resources than in previous years. While I am pleased that the program has finally been recommended in the President's budget for $15 million, this level—while a good first step—is inadequate when compared to the needs from across the country, and what Congress has historically provided for this program.

It is well established that coastal land uses can have direct and significant adverse impacts on marine resources. In light of the fact that most Americans live in coastal counties, resulting in ever-increasing demands on coastal resources, it is imperative that a high priority be placed on coastal, estuarine land conservation if we are to properly manage our marine resources.

Thank you, Madame Chairwoman, for the opportunity to present this testimony in support of the Gaviota Cove acquisition and of the CELCP program.

---

## PREPARED STATEMENT OF FIGHT CRIME: INVEST IN KIDS

Ms. Chairman and Members of the Senate Appropriations Subcommittee on Commerce, Justice, Science and Related Agencies: Thank your for the opportunity to submit this written testimony. My name is Mary Ann Viverette. I've been with the Gaithersburg Police Department since 1979 and Chief since 1986. My public safety career has included service on the Executive Committee of the Maryland Chief of Police Association, service as a Commissioner with the Commission on Accreditation for Law Enforcement Agencies, and I am currently the Immediate Past President of the International Association of Chiefs of Police. I am also a member of Fight Crime: Invest in Kids, an anti-crime group of more than 3,000 police chiefs, sheriffs, prosecutors, and victims of violence from across the country who have come together to take a hard-nosed look at the research about what really works to keep kids from becoming criminals.

As a police chief, I know there is no substitute for tough law enforcement. Dangerous criminals must be prosecuted and put behind bars. Yet law enforcement leaders like myself know better than anyone that we cannot arrest and imprison our way out of the crime problem. Fortunately, research—and our experiences—show that targeted investments that help kids get a good start in life and that intervene effectively to redirect offending juveniles onto a different path can prevent crime, and can make our communities safer. The federal Juvenile Accountability Block Grant (JABG) and Title II and Title V of the Juvenile Justice and Delinquency Prevention Act (JJDPA) provide needed support for these evidence-based prevention and intervention approaches. The bipartisan Second Chance Act, once enacted, will authorize additional support for these approaches. On behalf of my fel-

low law enforcement leaders around the nation, I urge you to increase our nation's investments in these proven crime-prevention strategies that save lives and taxpayer dollars.

Programs that connect children to caring adults and provide constructive activities, especially during the after-school hours of 3 p.m. to 6 p.m.—the "prime time for juvenile crime" on school days—are among our most powerful tools for preventing crime. For example, a study compared five housing projects without Boys & Girls Clubs to five receiving new clubs. At the beginning, drug activity and vandalism were the same. But by the time the study ended, the projects without the programs had 50 percent more vandalism and scored 37 percent worse on drug activity. Similarly, a study of Big Brothers Big Sisters found that young people who were randomly assigned to a Big Brother or Big Sister mentor were about half as likely to begin illegal drug use and nearly one-third less likely to hit someone compared to those who were assigned to a waiting list. Despite these proven benefits, more than 14 million children nationwide still lack adult supervision after school, and millions lack a caring, responsible adult mentor in their lives.

One source of funding for after-school and mentoring programs is Title V of the federal Juvenile Justice and Delinquency Prevention Act (JJDPA). The Title V Local Delinquency Prevention Grants program is the only federal funding source dedicated solely to the prevention of youth crime and violence. Almost 1,500 communities have received Title V grants since 1994 through a competitive grant process that requires states and localities to match at least 50 percent of the grant with cash or in-kind contributions.

For the most dangerous young offenders, especially those who are involved in violent gangs, a combination of intensive police supervision, expedited sanctions for repeated violence, and expedited access to jobs, drug treatment or other services—a carrot-and-stick approach—has shown in a number of cities that it can cut homicides among violent offenders in high-crime neighborhoods. In Chicago, for example, this comprehensive, community-wide approach was tried in a group of west side Chicago neighborhoods with a long history of high levels of homicide, with another set of dangerous neighborhoods on the south side of Chicago serving as the control group. In the carrot-and-stick approach area there was a 37 percent drop in quarterly homicide rates when the project was implemented, while the decline in homicides in the other neighborhood during the same period was 18 percent. In a number of locations, Juvenile Accountability Block Grant (JABG) or JJDPA state formula grant funds have been used to support these efforts.

Effective interventions that incorporate community sanctions have also been shown to reliably cut crime. One such program is the Functional Family Therapy (FFT) program. FFT works to engage and motivate youth and their families to change behaviors that often result in criminal activity. In one evaluation from Salt Lake City, families with troubled youths were randomly assigned to either a group that received FFT or one that did not. The youths who families received FFT were half as likely to be re-arrested as the youth whose families did not receive the family therapy. By reducing recidivism among juvenile offenders, FFT saves the public an average of $32,000 per youth treated.

Similarly, the Multi-Systemic Therapy (MST) program targets kids who are serious juvenile offenders by addressing the multiple factors—in peer, school, neighborhood and family environments—known to be related to delinquency. One MST study followed juvenile offenders until they were, on average, 29-years-old. Individuals who had not received MST were 62 percent more likely to have been arrested for an offense, and more than twice as likely to be arrested for a violent offense. It is also less expensive than other mental health and juvenile justice services like residential treatment and incarceration, saving the public $4.27 for every dollar invested.

The transition of juvenile offenders from confinement to "life on the outside" presents great risks and opportunities for young people and society. Juveniles released from confinement still have their likely "prime crime years" ahead of them. Perpetrators over age 17 commit 85 percent of all violent crimes and young adults aged 18 to 21 account for a greater percentage of crime than any other four-year age group. Unsuccessful transitions into the community result in an alarmingly high recidivism rate for juvenile offenders of 55–75 percent. Fortunately, the likelihood that young people will successfully transition back into society after confinement improves markedly with comprehensive, research-based reentry efforts. Comprehensive reentry programs are especially effective among young people. With their brain development still in progress, young ex-offenders are more amenable to effective behavior modification interventions, thus saving lives, anguish, and public tax dollars.

Effective offender reentry efforts include programs like Multidimensional Treatment Foster Care (MTFC). Foster care may sound like a pass for juveniles who

should be paying a more severe price for the crime they committed. But for teens who are often used to running the streets, and who see a month in custody as just another chance to socialize with delinquent friends or learn new criminal behaviors, this is a more controlled experience and a tough intervention. MTFC provides specially trained foster parents and ongoing supervision by a program case manager, as well as frequent contact and coordination of services with a youth's parole or probation officer, teachers, work supervisors and other involved adults during and after a youth's out of home placement. Compared to similar juveniles placed in non-secure group facilities, the MTFC approach cuts the average number of repeat arrests for seriously delinquent juveniles in half, and six times as many of the boys in MTFC as boys in a group home were not arrested again. MTFC is also cost-effective: it saves the public an average of over $77,000 for every juvenile treated.

The bi-partisan Second Chance Act of 2007 (H.R. 1593/S. 1060) is a step toward reducing the high recidivism rate among juvenile and adult offenders. The legislation authorizes assistance to states and localities to develop and implement strategic plans for comprehensive efforts to enable ex-offenders to successfully reenter their communities such as: family reunification, job training, education, housing, substance abuse and mental health services. The bill would also provide for research on reentry, as well as create a national resource center to collect and disseminate information on best practices in offender reentry. This legislation is moving towards enactment in 2007, with funding first authorized for fiscal year 2008.

JABG and JJDPA Title II state formula grants already support research-proven programs like FFT, MST and MTFC. But funding falls far short of meeting the need. In 2002, approximately 150,000 juvenile offenders were placed out-of-home, and nearly 400,000 others were placed on probation. Some juvenile offenders must be placed in secure custody to protect public safety, and many others are first-time offenders who will not become repeat offenders and therefore are not high-risk enough to justify the expense and intrusion of the aforementioned programs. But even if only half of those on probation and half of those placed out of home are eligible for these effective intervention programs, the number of young offenders who could benefit from evidenced-based approaches would still amount to 7 times the 35,000 total currently being served by MST, FFT, and MTFC. In other words, these programs will have to expand 7 times their current capacity nationwide before they start running out of youth who could and should be receiving their services.

Unfortunately, the Administration's fiscal year 2008 budget proposes to eliminate all of the JJDPA funding sources and create a single, new "Child Safety and Juvenile Justice" block grant. This block grant would be funded at a level that is 25 percent lower than the total fiscal year 2007 funding for the programs eliminated. We encourage Congress to demonstrate its commitment to crime prevention by rejecting proposed cuts and block-granting, and by increasing funding for federal juvenile justice and delinquency prevention programs. We urge you to restore funding for Title II State Formula Grants to $89 million, Title V funding to $95 million, and JABG funding to $250 million—levels appropriated by Congress in fiscal year 2002—and ensure that the new Second Chance Act of 2007 is fully funded.

If we do not invest in research-proven crime-prevention programs for America's most vulnerable kids, many of them will grow up to become America's most wanted adults. By failing to adequately invest in proven crime-prevention strategies, Congress is not only failing to facilitate a better future for millions of kids but is also permitting the cultivation of criminals—jeopardizing the safety of all Americans for years to come.

Thank you for this opportunity to present our views on how your Subcommittee can help to reduce crime and make us all safer.

---

PREPARED STATEMENT OF THE WEST CREEK PRESERVATION COMMITTEE

Madam Chairwoman and Honorable members of the Subcommittee, I appreciate and am honored by the opportunity to provide this testimony in support of an appropriation of $1,100,000 from NOAA's Coastal and Estuarine Land Conservation Program to protect the 10-acre West Creek Confluence property in the city of Independence, Ohio.

In addition, I would like to urge your support for a substantial increase in overall funding for the Coastal and Estuarine Land Conservation Program in fiscal year 2008. The coastal resources of this nation, including Ohio's, are under intense and increasing development pressure. It is of the utmost importance that we balance future development with greater protection of our coastal resources and natural heritage. For instance, in Ohio alone approximately $10 billion is generated annually

from Lake Erie tourism and recreation-related activities, which are dependent upon a healthy and aesthetically pleasing coastal area.

Ohio is not alone in regard to its need for greater coastal resource protection. Across this great nation coastal areas are among the most densely populated and heavily utilized. We are pleased that the program has been recommended in the President's budget for $15 million. However, when compared to the needs from across the country and to what Congress has historically provided for this program, we believe that the protection and future wellbeing of our coastlines and coastal watersheds requires a substantially greater investment.

To be specific, the protection and future wellbeing of Ohio's coastal resources and coastal watersheds are why I have traveled to be before you today. I am the Watershed Coordinator for the West Creek Preservation Committee, a citizen-led nonprofit organization that works within the Greater Cleveland area of the Cuyahoga River and Lake Erie watersheds. Our mission is to conserve, protect and restore the environmental, recreational and cultural resources of this area. Our thousands of supporters and members are comprised of a diverse mixture ranging from your average citizens, to business leaders, to elected officials, all with the common goal of protecting environmental quality, furthering outdoor urban recreational opportunities and quality of life, and increasing economic prosperity.

In the ten years that the West Creek Preservation Committee has been in existence we have protected approximately 500 acres of urban and suburban greenspace including the creation of Cleveland's newest Metropark, we have created and restored acres of urban wetlands, we are developing a recreational trail system and greenway that will span multiple communities and be a part of and connect with the Ohio & Erie Canalway National Scenic Byway, and we are undertaking one of the most ambitious and important stream restoration projects in the Greater Cleveland area.

We are proud to be working with the City of Independence, Ohio, and numerous other project partners, including The Trust for Public Land, the Northeast Ohio Regional Sewer District and Cleveland Metroparks, on what we consider to be one of our most critical projects to date, the West Creek Confluence Project. Located within Cuyahoga County in the City of Independence, and within the Cuyahoga River Area of Concern, the West Creek Confluence Project involves the acquisition, and future complete restoration, of ten acres of land at the confluence of two extremely important waterbodies, West Creek and the Cuyahoga River.

The property contains approximately 850 feet of West Creek main stem and includes its confluence with the Cuyahoga River. The property is positioned at the northern end of the Cuyahoga Valley National Park, is adjacent to the Ohio & Erie Canalway National Scenic Byway, and will provide an access point to the Cuyahoga Valley Scenic Railroad and to the Ohio & Erie Canal Towpath Trail.

Several decades ago the property was developed with what is now an empty warehouse, which severely impacted West Creek and has contributed to extensive flooding, degraded aquatic and riparian habitat, and enormous influxes of nonpoint source pollution to the Cuyahoga River and Lake Erie Basin.

Once permanently protected the Confluence Property will be fully restored and the empty warehouse and parking lot removed. Proper hydrology will be restored to the waterway by re-meandering it through the property and re-connecting it with its floodplain. Aquatic and riparian habitat will be restored to the stream and an expansive array of floodplain wetlands and vernal pools will be created to increase ecological habitat and diversity for everything from waterfowl to amphibians, to store and retain stormwater during flooding events, and to filter and reduce sediment influxes and other nonpoint source pollution, one of the greatest contributors to water quality problems within Lake Erie.

Perhaps most importantly, the West Creek Confluence Project will herald in a new era of sustainable land use for the Cuyahoga River floodplain and its development away from previously poor and incompatible land uses. This project will not only improve the environment and Lake Erie Basin water quality, it will also create a dynamic recreational and educational focal point along the Ohio & Erie Canalway Scenic Byway that will attract large numbers of citizens, tourists and new business opportunities.

When completed, as visitors veer west from the Ohio & Erie Canal Towpath Trail onto the West Creek Greenway Trail System, they will see a meandering, willow-lined West Creek, they will see a broad and vibrant floodplain, and they will see numerous floodplain wetlands and vernal pools and the animals that inhabit them. The West Creek Confluence Project will become a gateway to the endless possibilities that exist within the realm of urban coastal conservation and stewardship.

Realizing the importance and value of this project, the State of Ohio (through the Clean Ohio Conservation Fund), the Northeast Ohio Regional Sewer District

(through the Water Resources Restoration Sponsorship Program) and the City of Independence are all making substantial monetary investments in the West Creek Confluence Project. The appropriation of $1,100,000 from NOAA's Coastal and Estuarine Land Conservation Program will leverage and be matched with the committed funding from the State of Ohio, Northeast Ohio Regional Sewer District and City of Independence to bring the protection of this important property through to fruition.

Millions of Ohioans depend upon Lake Erie for clean drinking water, recreational enjoyment and economic prosperity. It is the eleventh largest freshwater lake in the world and, of the five Great Lakes basins, it is the most densely populated and most affected by both urbanization and agriculture. Lake Erie supports one of the world's most significant commercial freshwater fisheries and the largest sport fishery among the five Great Lakes. Lake Erie alone produces more fish for human consumption than the other four Great Lakes combined!

Ohio's North Coast has seen a significant increase in recreation and tourism related revenue over the past decade, which is directly attributable to the environmental and aesthetic health and wellbeing of Lake Erie. Over 7 million people recreate at Ohio's portion of the Lake Erie Basin annually resulting in the sustenance of a quarter of a million jobs and netting $5.8 billion in yearly wages. An additional approximately $10 billion per year is generated from Lake Erie tourism and recreation-related activities.

Lake Erie is key to Northern Ohio's future economic prosperity! The West Creek Confluence Project represents a key step in sustaining and improving Lake Erie watershed water quality and environmental health!

In fiscal year 2008, $1.1 million is needed from NOAA's Coastal and Estuarine Land Conservation Program to complete the protection of the West Creek Confluence Property. Substantial State of Ohio and local investment has been secured to match this Coastal and Estuarine Land Conservation Program funding request. However, due to time limitations associated with some of the State and local matching funds it is critical that this Coastal and Estuarine Land Conservation Project be funded in fiscal year 2008.

On behalf of the West Creek Preservation Committee, our members, supporters and citizens of Greater Cleveland and Northeast Ohio, I thank you, Madam Chairwoman and Honorable members of the Subcommittee, for the opportunity to provide this testimony.

---

## PREPARED STATEMENT OF THE AMERICAN INSTITUTE OF BIOLOGICAL SCIENCES

The American Institute of Biological Sciences (AIBS) encourages Congress to appropriate at least the President's fiscal year 2008 request of $6.43 billion for the National Science Foundation (NSF). Providing at least $20 million more than the request would enable NSF to increase funding for the Biological Sciences Directorate (BIO) by roughly 7 percent, an increase over the requested 4.1 percent and just below the agency-wide average increase for the various research directorates.

AIBS is a nonprofit scientific association dedicated to advancing biological research and education for the welfare of society. Founded in 1947 as a part of the National Academy of Sciences, AIBS became an independent, member-governed organization in the 1950s. AIBS is sustained by a robust membership of some 5,000 biologists and nearly 200 professional societies and scientific organizations; the combined individual membership of the latter exceeds 250,000. AIBS advances its mission through coalition activities in research, education, and public policy; publishing the peer-reviewed journal BioScience and the education website ActionBioscience.org; providing scientific peer review and advisory services to government agencies and other clients; convening meetings; and managing scientific programs.

Invigorating our nation's innovation enterprise, improving science education, and addressing energy, security, and environmental problems are bipartisan national priorities. NSF is the primary federal research agency with the capacity to support the breadth of scientific research programs that have the potential to drive discovery to meet these priorities. Moreover, NSF-sponsored biological and environmental sciences research will contribute to the development of sustainable and cost-effective solutions for these challenges.

NSF's BIO is vital to our nation's continued leadership in the biological sciences, the fields of science dedicated to understanding how organisms and ecological systems function. Research disciplines heavily dependent upon the directorate include botany, ecology, microbiology, zoology, basic molecular and cellular biology, systematics and taxonomy. Equally important, NSF provides essential support for our na-

tion's biological research infrastructure, such as field stations and natural science collections (e.g. university-based natural history museums), and education and training programs for undergraduate, graduate and post-doctoral students.

According to NSF data, BIO provides 68 percent of federal grant support for fundamental biological research conducted at our nation's universities and other nonprofit research centers.

The Administration's fiscal year 2008 budget request would provide $5.131 billion to support disciplinary research programs within the Research and Related Activities (R&RA) account. This funding level would provide an average 7.7 percent increase for the various programs within the R&RA account, and a 4.1 percent increase for the biological sciences.

Members of the biological sciences community appreciate the proposed increase. However, there is growing concern that BIO funding is not keeping pace with the need and demand for biological sciences research. When adjusted for inflation, the requested fiscal year 2008 budget for BIO places the program only slightly above the 2001 funding level and near the 2003 funding level. Scientists dependent upon BIO grants for research support are feeling the pressure. Over the past four years, the research grant funding rate for BIO has been lower than the NSF-wide funding rate. Yet the number and scope of problems requiring biological information continues to increase. In 2006, the research grant funding rate was only 14 percent compared with an agency-wide rate of 21 percent.

Under the requested budget, BIO would receive $633 million in fiscal year 2008 to support its six core programs. These programs and their proposed funding levels are: Molecular and Cellular Biosciences $116.37 million; Integrative Organismal Systems $105.49 million; Environmental Biology $114.66 million; Biological Infrastructure $96.1 million; Emerging Frontiers (a cross-discipline, "virtual" directorate) $99.16 million; and Plant Genome Research $101.2 million.

The fiscal year 2008 budget request includes important funding for the National Ecological Observatory Network (NEON), the first national ecological measurement and observation system designed to answer regional- to continental-scale scientific questions. NEON is an innovative facility that is designed to transform the way science and education are conducted by enabling integration of data from natural- to human-dominated systems and from genomes to the biosphere. A total of $24 million has been requested for NEON in fiscal year 2008. Roughly $16 million would be funded from BIO and $8 million would be funded from the Major Research Equipment and Facilities Construction (MREFC) account.

Research support is only one of NSF's important missions. NSF is a vital component of our nation's formal and informal science education system. Whether through programs such as Research Experiences for Undergraduates, Integrated Graduate Education and Research Traineeships, or other fellowships for graduate and postdoctoral researchers, NSF provides the resources required to recruit, educate and train our next generation of scientists.

The informal science education programs supported by the Education and Human Resources Directorate could benefit from increased funding. Economic growth demands a scientifically aware and technically skilled workforce—one in which employees have the scientific awareness adequate to generate the next great idea. Moreover, we live at a time when the citizenry is increasingly called upon to make informed decisions. Informal science education programs, whether through a natural history museum, science center or other venue, reach large audiences and provide a valuable mechanism for reaching the general public.

Thank you for your thoughtful consideration of this request and for your prior support of the National Science Foundation. If you have any questions or require additional information, please contact me at 202–628–1500.

---

## PREPARED STATEMENT OF THE AMERICAN MUSEUM OF NATURAL HISTORY

### ABOUT THE AMERICAN MUSEUM OF NATURAL HISTORY

The American Museum of Natural History (AMNH) is one of the nation's preeminent institutions for scientific research and public education. Since its founding in 1869, the Museum has pursued its joint mission of science and public education. It is renowned for its exhibitions and collections of more than 32 million natural specimens and cultural artifacts. With approximately 4 million annual on-site visitors—approximately half of them children—it is one of the largest, fastest growing, and most diverse museums in the country. Museum scientists conduct groundbreaking research in fields ranging from all branches of zoology, comparative genomics, and informatics to Earth science, biodiversity conservation, and astro-

physics. Their work forms the basis for all the Museum's activities that seek to explain complex issues and help people to understand the events and processes that created and continue to shape the Earth, life and civilization on this planet, and the universe beyond.

THE AMERICAN MUSEUM—NASA PARTNERSHIP

NASA and the AMNH have been engaged in a multi-year partnership founded on a joint commitment to cutting-edge research and the integration of that research into unique educational tools and resources. The AMNH has worked with the Agency to develop innovative technologies and resources that provide an unparalleled platform for interpreting, displaying, and distributing NASA content to audiences nationwide.

—The Museum has built a set of singular national resources that bring cutting-edge science and integrated NASA content to total audiences of more than 15 million in New York City, across the country, and around the world. In the New York area alone, the Museum reaches nearly four million annual visitors, including more than 450,000 children in school groups and more than 5,000 teachers, with millions visiting online.

—We have launched a successful program to disseminate project resources to informal learning venues nationally and internationally, with Science Bulletins already on view in 39 locations and Space Shows at 32, with more being added.

—We have created Science Bulletins—technologically innovative, immersive multimedia science encounters, presenting space, Earth, and life science news and discoveries in visually stunning feature documentaries, data visualizations, and weekly updates.

—The Museum has made numerous technological breakthroughs—it has established leadership in science visualization and high resolution renderings of massive data sets; it has converted its Space Shows to digital format, making the AMNH the only full planetarium dome content provider that crosses all major platforms; it has pioneered a unique online distribution network that each week streams new science content in HD MPEG2 encodes to partners across North America and most recently, has simplified the technical requirements of the network, including new server and/or lower bandwidth for downloading, so that content is more accessible to more venues.

—AMNH routinely hosts major events celebrating NASA's mission highlights and milestones. Recent events have included live, large-scale events of broadcasts of the New Horizons launch, Stardust sample return, and Mars Reconnaissance Orbiter arrival at Mars.

—The Museum's educational mission is fueled by and reflects cutting-edge science, including the work of our scientists in collaboration with NASA centers and researchers.

Building on this foundation, the Museum seeks in fiscal year 2008 to advance the AMNH–NASA collaboration—with a particular focus on scaling up to reach even larger audiences—with a program for communicating current science content, and content about NASA science and missions in particular, to diverse national audiences. The Museum's activities will include the development of current NASA science education resources, such as Science Bulletins, and continuing to scale up their national distribution for presentation in public spaces and for classroom use.

Science Bulletins (SB) is a nationally distributed, multimedia science exhibition program targeted to informal learning settings. It presents cutting-edge research and discoveries in visually compelling feature documentaries and updates in flexible, large-screen, high-definition video and interactive kiosk versions, as well as in a free online version adapted for classroom use. Our SB program for the following year includes expanding dissemination significantly, developing new visualization methods for use in the development and distribution of SB, and reaching out in diverse ways to the formal education sector to maximize access to the Science Bulletins at the K–12 level.

Museum activities for the next year also include R&D on new techniques for visualizing massive space and Earth science data sets, creating visualization tools for presenting NASA missions and other dynamic science stories, and for advancing innovative solutions to technical challenges in presenting digital planetarium shows. AMNH will conduct extensive internal and external evaluation of this program's activities.

Recognizing its potential to support NASA in its goals to pioneer the future in space exploration, scientific discovery, and aeronautics research; to develop a balanced overall program of science, exploration, and aeronautics; and to establish new and innovative programs to enhance understanding of our Earth, other planets, as-

teroids, and comets in our solar system, as well as the search for life around other stars, the Museum looks forward to advancing its successful multi-year collaboration with NASA and to contributing its unique science, education, and technological capacity to helping the Agency to meet these goals.

---

## PREPARED STATEMENT OF THE AMERICAN MUSEUM OF NATURAL HISTORY

### ABOUT THE AMERICAN MUSEUM OF NATURAL HISTORY

The American Museum of Natural History (AMNH) is one of the nation's preeminent institutions for scientific research and public education. Since its founding in 1869, the Museum has pursued its mission to "discover, interpret, and disseminate—through scientific research and education—knowledge about human cultures, the natural world, and the universe." It is renowned for its exhibitions and collections of more than 32 million natural specimens and cultural artifacts. With nearly four million annual visitors, its audience is one of the largest, fastest growing, and most diverse of any museum in the country. Museum scientists conduct groundbreaking research in fields ranging from zoology, comparative genomics, and informatics to Earth, space, and environmental sciences and biodiversity conservation. Their work forms the basis for all the Museum's activities that seek to explain complex issues and help people to understand the events and processes that created and continue to shape the Earth, life and civilization on this planet, and the universe beyond.

The Museum's Center for Biodiversity and Conservation, founded in 1993, is dedicated to enhancing the use of scientific data to mitigate threats to global biodiversity, and to integrating this information into the conservation process and disseminating it widely. It conducts conservation-related field projects around the world, trains scientists, organizes scientific symposia, presents public programs, and produces publications geared toward scientists, policy makers, and the lay public. Each spring, the CBC hosts symposia that focus on conservation issues. The 2006 symposium, Conserving Birds in Human-Dominated Landscapes, focused on unique challenges to and key opportunities for invigorating bird diversity in the areas most heavily impacted by human activities, and the 2007 symposium, Small Matters: Microbes and Their Role in Conservation, will bring together a diverse group of microbiologists and conservation biologists to explore broad questions of the planet's microbial diversity and how conservation practices take microbial life into account.

The Museum's renovated Hall of Ocean Life, reopened in spring 2003, is a major focal point for public education on marine science issues. Drawing on the Museum's world-renowned expertise in Ichthyology as well as other areas of Vertebrate as well as Invertebrate Zoology, the Hall is pivotal in educating visitors about the oceans' key role in sustaining life on our planet. The renovated Hall of Ocean Life, together with the new Halls of Biodiversity, Planet Earth, and the Universe and the rebuilt Hayden Planetarium (part of the new Rose Center for Earth and Space) provide visitors with a seamless educational journey from the universe's beginnings to the formation and processes of Earth to the extraordinary diversity of life on our planet.

### COMMON GOALS OF NOAA AND AMNH

The National Oceanic and Atmospheric Administration (NOAA) is committed to understanding and predicting changes in the Earth's environment and to conserving and managing coastal and marine resources to meet the nation's needs. NOAA's Education Plan outlines a broad vision for reaching various audiences to build awareness and knowledge of issues related to the world's atmosphere, climate, oceans, and coastal ecosystems. Addressing the needs of teachers, students, and policy makers as well as the general public, the agency's goals include enhancing environmental literacy and knowledge, application of NOAA science, and development of a capable and diverse workforce for environmental science.

The American Museum of Natural History shares NOAA's commitment to these environmental goals and to the scientific research and public education that support them. Since its founding in 1869, the American Museum has pursued its mission of scientific investigation and public education. Its exhibitions and collections serve as a field guide to the entire planet and present a panorama of the world's cultures. Museum collections of some 32 million specimens and cultural artifacts provide an irreplaceable record of life. More than 200 Museum scientists conduct groundbreaking research in fields as diverse as systematic and conservation biology, astrophysics, and Earth and biodiversity sciences. The work of scientific staff fuels exhibitions and educational programming that reach annually an on-site audience of nearly four million visitors—nearly half of them children.

MARINE SCIENCES INITIATIVE

In fiscal year 2004, as a result of Congressional leadership, the Museum entered into a partnership with NOAA that launched a multi-year marine science and education initiative. Support for this initiative, which encompasses a broad range of education and research activities closely aligned with NOAA goals and purposes, was continued in fiscal year 2005 (and recommended in the fiscal year 2007 report), and further leveraged by Museum scientists who successfully secured competitive NOAA funding. Building upon this strong foundation, and in concert with the strategic priorities of NOAA and the Museum, we seek $1 million in fiscal year 2008 to join with NOAA in aquatic research and education activities that promote environmental literacy. Over a one year period, activities will include: ecosystem-based research, training, and research tool development concerning oceans and aquatic environments; professional development for teachers; special programs on New York waterways for New York City schoolchildren; and public education programs—including some built around a special water exhibition—that will increase understanding of the importance of healthy oceans and atmosphere.

Recognizing its potential to support NOAA in its goals to understand and predict changes in the Earth's environment; to conserve and manage coastal and marine resources; and to protect, restore, and manage the use of coastal and ocean resources to meet our Nation's economic, social, and environmental needs, the Museum looks forward to advancing a partnership with the agency in an education, outreach, and research initiative to promote public understanding and stewardship of marine environments.

---

PREPARED STATEMENT OF THE UNIVERSITY CORPORATION FOR ATMOSPHERIC RESEARCH

On behalf of the University Corporation for Atmospheric Research (UCAR) and the university community involved in weather and climate research and related education, training and support activities, I submit this written testimony for the record of the Senate Committee on Appropriations, Subcommittee on Commerce, Justice and Science. UCAR is a 70-university member consortium that manages and operates the National Center for Atmospheric Research (NCAR) and additional programs that support and extend the country's scientific research and education capabilities. UCAR is supported by the National Science Foundation (NSF) and other federal agencies including the National Aeronautics and Space Administration (NASA), and the National Oceanic and Atmospheric Administration (NOAA).

Innovation research is about chemistry and physics, but it's also about earth science. Understanding the earth is a basic necessity, because we need to understand our planet and its environments in order to make sound policy decisions. And if we don't understand the earth, we can't save it.——Barbara Mikulski, Chair, Appropriations Commerce, Justice, Science Subcommittee

The American Competitiveness Initiative (ACI) is proposed to double the physical sciences research budget by 2016, thereby strengthening this nation's economic competitiveness. In this most critical moment for the health of our planet and therefore the future of life as we know it, the geosciences contribute knowledge that is absolutely necessary to understanding climate, weather, the dynamics of water resources, solar effects on Earth, space weather, the interactions of Earth's systems, energy resources, geologic hazards, and all aspects of the global oceans. The economic effects are very substantial, with estimates of the component of the U.S. economy exposed to risks associated with weather and climate variability reaching $3 trillion annually.

The strength of the country's R&D investment is a result of multiple agencies playing numerous, complementary and interlocking roles. Through NSF, NASA and NOAA funding of the geosciences, critical information is provided for economic planning and to produce a better equipped work force to deal with environmental challenges. The atmospheric sciences community strongly supports the nation's innovation agenda—an investment that will pay great dividends for this country if it is funded over the next ten years. We urge the Committee to do everything possible to include the geosciences within NSF, as well as NASA and NOAA science programs, in this initiative.

*National Science Foundation (NSF)*

NSF plays a unique role among all federal agencies in strengthening the ability of the country to: create new ideas; develop new technologies; create a diverse, knowledgeable workforce; and set new standards that challenge any boundaries of

invention and intellect. These are all key components of our capacity to compete globally in the 21st Century and are fundamental drivers of wealth producing growth and job creation. I urge the Committee to support the President's overall fiscal year 2008 request of $6.4 billion for the National Science Foundation and, within NSF, the request of $5.1 billion for Research and Related Activities (R&RA), the heart of NSF's scientific enterprise. In addition, I urge the Committee to support the Administration's goal of doubling the research budget of NSF over the course of a decade, realizing the promise of the National Science Foundation Authorization Act of 2002.

*Geosciences Directorate (GEO)*.—GEO is the principal source of federal funding for university based, basic research in the geosciences, providing 61 percent of the total federal support in these areas. As stated directly in the fiscal year 2008 budget request, "GEO directly contributes to innovation and competitiveness through its broad portfolio of investments in fundamental research, facilities, and instrumentation that enable discovery, innovation, and integrated education and research activities that increase the effectiveness of the science and engineering workforce." I urge the Committee to support the President's fiscal year 2008 request of $792.0 million for the Geosciences Directorate and, within GEO, to provide the President's request of $240.8 million for the Atmospheric Sciences Division which provides resources for the atmospheric sciences community that are critical to the physical safety of our citizens, our economic health, and global issues of national security such as severe weather hazards, climate change, the security of our communications infrastructure, and the environmental health of the planet.

*Education and Human Resources (EHR) Directorate*.—Key to the success of the innovation agenda and to the future of this country, is the improvement of math and science education. However, EHR funding has declined steadily for the last several years, particularly in the K–12 and undergraduate areas. We believe those reductions should be reversed so that a strong NSF presence in the K–12 and undergraduate areas can be maintained. The strengthening of science education, so critical to the nation's future, must be intimately connected with the best scientific practices and results being produced via the NSF scientific directorates. We appreciate the recognition in the request of the value of digital libraries to major communities of learners. Within the Division of Undergraduate Education (DUE), the National STEM Education Digital Library (NSDL) receives a modest increase of $500,000. The value of this program continues to rise as its capacity to bring first-rate education tools into the classroom is broadened and enhanced. I urge the Committee to provide as healthy an increase as possible, above the request of $750.6 million, for the Education and Human Resources Directorate so that it may play its rightful, critical role in achieving the country's ACI goals.

*National Aeronautics and Space Administration (NASA)*

NASA's Science Mission Directorate (SMD) plays a unique and central role in our nation's ability to attract students into science and engineering fields, and to understand the universe, our own planet's environmental complexities and its relationship to the Sun, and major factors contributing to climate change. Despite this essential role, NASA's fiscal year 2008 federal budget request would significantly decrease the science portfolio, defer or eliminate many of the nation's most successful and promising missions, and fund only a relatively small number of scientific missions (albeit promising ones) in the next five to ten years. While the manned program is important, it cannot come at the expense of this critical investment. Within SMD, NASA also plays a unique and central role in the study of the complexities of the Earth system and the equally complex relationship of the Sun to Earth. NASA's continued funding for Landsat Data Continuity Mission (LDCM), Glory, NPOESS Preparatory Project (NPP), and the Global Precipitation Measurement (GPM) mission to maintain current schedules is strongly endorsed. However, given the recent release of the National Research Council's Decadal Survey on Earth Science, NASA should increase its funding levels for earth sciences consistent with the report's recommendations to ensure that future critical missions are supported.

Moreover, NASA's investment in Earth Science Research and Analysis (R&A) and the missions and tools associated with this research makes possible the study of Earth from space providing data that simply are not available from any other sources. These observations, used in research and in the construction of computer models to predict weather, climate, and natural hazards, provide a critical basis from which our understanding of our planet evolves and on which informed policy decisions, both long term and emergency response, can be made. Given the tremendous importance of this underlying activity, I urge the Committee to restore Research and Analysis (R&A) programs to funding levels at least commensurate with fiscal year 2006 levels.

In addition to investments in Earth-Sun System, NASA must preserve the essential PI-led programs that serve as a primary conduit through which the nation's best scientists can engage NASA in cutting-edge problems. NASA should support the Explorer, Discovery, and New Frontier programs and fully commit to missions unless there are technical or cost related issues. When NASA promotes premature termination of those missions for non-technical or cost reasons, it is in danger of sending the message to the community that it is an unreliable partner and that this is not a field that future scientists and engineers should pursue. Moreover, balanced, highly skilled teams of talent are lost, as are discoveries on the immediate horizon. NASA also sends a troubling message to graduate students and young investigators by delaying new opportunities in these programs. The long delay in Explorer opportunities from a once annual opportunity runs the risk of depleting the nation's pipeline of scientists and program managers capable of leading the next generation of earth and space missions.

While the exploration initiative and International Space Station are of great human interest and of scientific value, we are far from unlocking all the mysteries of our own planet. NASA programs that are in progress and others that are yet to be implemented will enable us to protect space vehicles, astronauts, and satellites from the devastating radiation of solar storms; mitigate some of the property damage and prevent some of the deaths caused by severe weather; and help us to mitigate, understand, and cope with the inevitable effects of natural and human-induced climate change. These programs are critical to the health of our economy, to the health of the Earth, and to our national security. As the Administration's new vision for U.S. space exploration unfolds, I urge the Committee to protect the vibrant NASA science accounts and missions, current and planned, that make possible the study of our own planet and the environment that sustains life on Earth.

*National Oceanic and Atmospheric Administration (NOAA)*

NOAA's contributions to the nation's safety, economy and environment more than justify increased investment in its research and education programs, its personnel and related scientific support facilities. One of NOAA's most important contributions is its support for the weather enterprise—a partnership between government, academic and private sector organizations. For example, NOAA maintains a world-class satellite and surface-based observational system without which weather research and operational forecasts simply could not function. NOAA also makes its own key contributions to both research and to developing and maintaining operational systems. Without the R&D and operations behind the accurate forecasts and warnings that moved tens of thousands of people out of the path of Hurricane Katrina, the number of deaths caused directly by the storm would have been catastrophic. This is just one example of the manner in which NOAA provides a critical link that often means the difference between life and death, between research results, research applications, technology development, and operations.

We strongly support an appropriation of $4.5 billion for NOAA in fiscal year 2008—a level recommended by the Senate for the past two fiscal years and endorsed by the House Oceans Caucus and the Friends of NOAA Coalition. The fiscal year 2008 request is $3.8 billion, a decrease of more than $96.0 million from the fiscal year 2006 enacted level. We believe that under-funding NOAA is a false economy that will degrade critical weather and climate services all too often taken for granted. For NOAA to address all areas of concern and priority that have been identified by Congress and that are listed below, and to restore core funding that has decreased in recent years, I urge the Committee to fund NOAA at $4.5 billion for fiscal year 2008 and to do so while maintaining vital support for other portion's of the Subcommittee's research and development portfolio.

*National Weather Service (NWS)*.—The fiscal year 2008 President's request for NWS contains modest growth above the fiscal year 2007 request and joint resolution. This amount will modestly help to ease demoralizing pressures put on NWS operations staff in recent years. Unfortunately, several important programs continue to fare poorly. The Space Environment Center (SEC) provides space weather and solar radiation warnings for, among other things, modern telecommunications and electricity grid operations. Yet the fiscal year 2008 request is only $6.2 million, down from $7.3 million in fiscal year 2007. The NOAA Profiler Network (NPN) gathers vertical wind data of proven value for weather prediction and severe storm warnings. We appreciate the stated commitment to beginning the NPN conversions needed to avoid a near complete shutdown by 2010, but note that the fiscal year 2008 request would leave 90 percent of the conversions to be completed in only two years. Additional funds in the PAC account for NPN may provide a more realistic completion schedule. The U.S. Weather Research Program (USWRP) request reduces funding to multi-national cooperative research efforts by $1.5 million, in par-

ticular pulling out of the THORPEX Pacific-Asia Regional Campaign (T–PARC) designed to improve pacific coast winter storm forecasts. This would renege on U.S. commitments and slow forecast improvements. I urge the Committee to increase the President's fiscal year 2008 request of $903.5 million for the NWS by the amount necessary, approximately $3.5 million to fund SEC, NPN, and THORPEX at reasonable levels.

*Office of Oceanic and Atmospheric Research (OAR)*.—The OAR fiscal year 2008 budget request is $368.8 million, a decrease of over $10.0 million from the fiscal year 2006 enacted level. The fiscal year 2008 request will allow modest increases for implementation of the National Integrated Drought Information System (NDIS) and improving hurricane intensity research, extremely important and timely progress that we welcome. The climate research programs of OAR, including the competitive grants program within Climate and Global Change, have been combined into a new account titled, Competitive Research Program. Since the overwhelming percentage of the programs funded within this account are operated by NOAA and not open to competition, this new title is misleading. However, many of the programs within this account are certainly of importance to the atmospheric sciences community, in particular the extramural, merit-based grants program which could address shortfalls in critical areas such as badly needed improved observations provided through programs such as ARGO, if it were fully funded. I urge the Committee to provide at least the President's fiscal year 2006 enacted level of $379.6 million for OAR in fiscal year 2008 in order to allow for a robust and truly competitive extramural climate research program.

*National Environmental Satellite, Data and Information Service (NESDIS)*.—NESDIS is responsible for managing all aspects of NOAA's remotely gathered environmental data that form the basis for environmental research meeting the needs of policy makers and users. Continued support for the Global Earth Observation System of Systems (GEOSS) is appreciated, but the overall NESDIS request is down as is the request for the National Data Centers which are of critical importance in making data available to researchers and policy makers. Our community is well aware of the significant budget problems that the National Polar-orbiting Operational Environmental Satellite (NPOESS) will surely cause as it becomes operational. The NPOESS program is essential to maintaining and upgrading a comprehensive satellite and surface observational system, 40 percent of which, according to a recent NRC report, is quickly coming to the end of its functional life. At a time when the nation should be fixing the NPOESS problem, we do not understand how NESDIS could be slated for a budget cut. I urge the Committee to protect other NOAA research and operational programs that serve this nation well, while addressing the NPOESS issue and giving NESDIS the resources it needs in fiscal year 2008 to keep this country ahead of all others in our ability to gather environmental data that are essential for policy decisions, the management of resources, and the health of our economy.

*National Ocean Service (NOS) and Ocean Research Priorities Plan*.—NOAA is the nation's preeminent agency for ocean research and for the transfer of research results into products and services that affect the health of the oceans, coastlines, and coastal water sheds; the nation's economy; and the well being of many U.S. citizens. In 2004, the U.S. Commission on Ocean Policy recommended approximately $3 billion in projects to improve the state of our oceans, yet NOAA's budget has fared poorly since then and many ocean programs of NOAA have been cut. There is an urgent need to implement programs such as the Integrated Ocean Observing System at this particular time when our environment is changing rapidly and we need to monitor changes in the oceans as well as interactions between the atmosphere and oceans. I urge the Committee to fund NOS at the fiscal year 2006 enacted level of $590.4 million in fiscal year 2008.

The Administration has recently completed and released an interagency Ocean Research Priorities Plan and implementation strategy in a report entitled Charting the Course for Ocean Science in the United States for the Next Decade. This plan is an important first step toward building the scientific foundation to improve society's stewardship and use of, and interaction with, the ocean and understanding its impact on our weather and climate systems. I urge the Congress to examine this interagency plan closely—particularly as it relates to NSF and NOAA—and provide as much support as possible for its implementation.

On behalf of the UCAR community, I want to thank the Committee for your stewardship of the nation's scientific enterprise and your understanding that the future strength of the nation depends on the investments we make in science and technology today.

PREPARED STATEMENT OF THE NATIONAL MARINE SANCTUARY FOUNDATION

Dear Chairwoman Mikulski and Ranking Member Shelby: We, the Board of Directors of the National Marine Sanctuary Foundation, are writing as supporters of the oceans programs of the National Oceanic and Atmospheric Administration (NOAA). We strongly encourage you to consider appropriations for NOAA at the $4.5 billion level for fiscal year 2008.

This investment in NOAA yields great returns for the nation, especially when you consider that over half of the nation's gross domestic product is generated in coastal counties and adjacent waters, yielding $2.5 trillion. Through its weather forecasting, nautical charting, fisheries management, hazard mitigation, and ocean protection and management responsibilities, no other federal agency affects this country's 300 million Americans every day the way NOAA does. An investment of $4.5 billion averages out to just $15 per person annually.

Despite the many benefits NOAA provides, shifts in funding priorities in recent years have led to substantial cuts in key NOAA programs with long-standing reputations for excellence. The National Marine Sanctuary System (NMSS), for example, is a crucial thread in the larger fabric of ocean science, conservation and education. To enhance and sustain the effectiveness of the system, we strongly urge you to fund NMSS at no less than $78 million for fiscal year 2008, which would restore the fiscal year 2005 enacted level and provide a $10 million increase to support the system's growth since then.

The National Marine Sanctuary System includes 14 sites nationwide that serve as living laboratories, classrooms, and playgrounds for all Americans by making areas of the ocean realm manageable and accessible for state and local partners, research centers, educators, and other partners. The most recent addition to the system is the newly designated (June 2006) Northwestern Hawaiian Islands Marine National Monument, which provides 140,000 square miles with the nation's highest form of marine environmental protection, while preserving access for native cultural activities and allowing for carefully regulated educational and scientific activities.

During this fiscal year 2008 appropriations process, we urge you to be the ocean champion that this country so desperately needs by supporting a $4.5 billion appropriation for NOAA, which would collectively provide critical funding for many important ocean programs and activities around the nation, including the National Marine Sanctuary System, the Ocean Exploration Program, the National Sea Grant College Program, the Education Initiative, and many others. Such NOAA programs are not only vital to our nation's environment, economy, and competitiveness, but also to the health and well being of every resident of your state.

# SANCTUARY HIGHLIGHTS

**You can learn more about these and other accomplishments by visiting http://sanctuaries.noaa.gov**

**Channel Islands**
Researchers looked at how the recent establishment of no-take zones within the boundaries of the sanctuary affects ocean users in an innovative aerial survey program. Shipwrecks were explored and two major marine debris clean-up efforts were completed.

**Cordell Bank**
A new local radio program highlighting sanctuary life was launched this year. Staff monitored potential threats to marine life from marine debris, and created detailed maps of the sanctuary that will aid in habitat restoration efforts.

**Fagatele Bay**
To help control soil erosion which impacts water quality, staff developed a project to plant rows of non-invasive grass. Staff launched an innovative education program to help Samoans develop stewardship for their coral reefs, and 2006 marked 20 years serving Samoa.

**Florida Keys**
Urchins that play a critical role in reef health were moved to safer ground. Studies show increases in several fish species in largest U.S. no-take zone, and sanctuary staff introduced a continuing education course at a local community college. The Nancy Foster Eco-Discovery Center opened in January 2007.

**Flower Garden Banks**
Scientists monitored reefs following coral bleaching events. Whale shark and manta ray tagging effort was launched, and a new partnership began with the Aquarium at Moody Gardens in Galveston, Texas.

**Gulf of the Farallones**
California seabirds got a helping hand in a cooperative effort to lessen human impact on bird nesting and breeding grounds. Researchers documented reduction of krill in the ocean food web, and a settlement was reached with a dredging company for spilling dredged mud into sanctuary waters.

**Gray's Reef**
The sanctuary turned 25 and continued its ocean stewardship by promoting ocean awareness in students through student/teacher workshops, and conducted studies that revealed new species of sponges. Staff prepared analysis of the region's diverse habitat and marine life.

**Hawaiian Islands Humpback Whale**
Sanctuary staff worked with state partners to continue marine mammal protection, completed the field study portion of the largest whale study ever and developed innovative methods to reduce ship strikes to whales.

***Monitor***
A summer expedition to the USS *Monitor* gave the public an up-close-and personal with researchers studying the historic wreck. Major restoration efforts continue on *Monitor* artifacts. A *Monitor* replica was christened in summer 2006 and a new *Monitor* Center opened in March 2007.

**Monterey Bay**
Scientists studied deep sea corals on Davidson Seamount, an area proposed for inclusion in the sanctuary. The Coastal Discovery Center, the sanctuary's first public visitor center opened its doors, and staff published a new sanctuary field guide.

**Northwestern Hawaiian Islands Marine National Monument**
While monument proclamation took center stage, work continued on looking at the ecosystem connectivity between Johnston Atoll and the islands. Scientists believe the atoll may be a key stepping stone that links marine species from other areas in the Pacific to the Hawaiian archipelago.

**Olympic Coast**
NOAA teamed with Canadian government on spill response drill, and staff worked with four Indian tribes to provide a forum for discussing ocean management in the sanctuary. Scientists observed several cases this summer where oxygen in the ocean dipped to dangerously low levels.

**Stellwagen Bank**
Two sunken schooners were listed on the National Register of Historic Places. A sanctuary exhibit was unveiled at the Gloucester Maritime Heritage Center, and innovative acoustic studies continue to reveal new findings on humpback and right whale behavior.

**Thunder Bay**
Archaeologists documented the sanctuary's oldest known shipwreck. Researchers used remote sensing technology in shallow waters to further characterize some areas of the sanctuary, and the Great Lakes Maritime Heritage Center continues to draw thousands of visitors each year to learn about the region's maritime history.

**National Oceanic and Atmospheric Administration**

U.S. Secretary of Commerce
**Carlos M. Gutierrez**

Undersecretary of Commerce for Oceans and Atmosphere and NOAA Administrator
**Vice Admiral Conrad C. Lautenbacher, Jr., U.S. Navy (Ret.)**

Assistant Administrator for Ocean Services and Coastal Zone Management, National Ocean Service
**John H. Dunnigan**



**National Marine Sanctuary Program**

**Director:** Daniel J. Basta
**Deputy Director:** Michael Weiss
**Communications and Development:** Matt Stout
**Managing Editor:** Michael Murphy
**Writer:** Walter Baxter
**Graphic Designer:** Aurelea Kenney
**Copy Editors:** Matt Dorier & Sharon Sa
**Contributors:** All sanctuary staff who assisted on project

Scale varies in this perspective.
Adapted from National Geographic maps.

---

PREPARED STATEMENT OF THE NORTHWEST INDIAN FISHERIES COMMISSION

Thank you for the opportunity to appear before this Committee and provide oral testimony on the Department of Commerce fiscal year 2008 appropriations. We support full funding for the NOAA Fisheries and NOAA-National Ocean Service (NOS) budgets that include appropriations necessary for key Federal and State partnerships with the twenty Treaty Indian Tribes in Western Washington. We would like to highlight the following requests:

SUMMARY OF FISCAL YEAR 2008 APPROPRIATIONS REQUEST

NWIFC Specific Requests:

—$100 million for the Pacific Coastal Salmon Recovery Fund with a $9 million allocation for the twenty affected Treaty Tribes in Western Washington for their management responsibilities and the Northwest Indian Fisheries Commission along with support language (NOAA/National Marine Fisheries)

—$500,000 for Coastal Marine Resource Management

*$100 million for the Pacific Coastal Salmon Recovery Fund with a $9 million allocation for the twenty affected Treaty Tribes in Western Washington and the Northwest Indian Fisheries Commission*

The Pacific Coastal Salmon Recovery Fund (PCSRF) is a multi-state, multi-tribe program established by Congress in fiscal year 2000 with a primary goal to help recover wild salmon throughout the Pacific Northwest and Alaska. The PCSRF seeks to aid the conservation, restoration and sustainability of Pacific salmon and their habitats by financially supporting and leveraging local and regional efforts. Recognizing the need for flexibility among Tribes and the States to respond to salmon recovery priorities in their watersheds, Congress earmarked the funds for salmon habitat restoration, salmon stock enhancement, salmon research, and implementation of the 1999 Pacific Salmon Treaty Agreement and related agreements. PCSRF is making a significant contribution to the recovery of wild salmon throughout the region. Since the program's inception, Pacific coastal Tribes, including the 20 Treaty Tribes in Western Washington, who are members of the NWIFC, have used PCSRF monies to remove 79 fish passage barriers-opening up 47 stream miles; restore 282 miles of instream habitat; restore 747 acres and 113 stream miles of riparian habitat; restore 129 acres of wetland habitat and protect 288 acres of habitat through land acquisition, easement or lease. The Tribes are using these funds to implement the recovery plan for ESA-listed Puget Sound Chinook recently approved by NOAA. However, even though Tribes were to receive at least a 10 percent set aside from PCSRF funding every year, the $90 million base dropped to $67 million in fiscal year 2006 and Tribes were disproportionately cut to $4.4 million. Restoration of these funds to support this important recovery work by the Tribes is vital.

*$500,000 for Coastal Marine Resource Management*

The NOAA/Marine Sanctuary Program has provided nominal funding from its base to enable the four coastal Tribes to effectively participate in sanctuary management, based on the federal/state/tribal Memorandum of Understanding that established the Intergovernmental Policy Council earlier this year. National programs currently are in place and budgets exist and are funded for the NOAA/National Marine Sanctuary Program. Early planning and negotiation has occurred, setting the framework for Pacific Ocean planning. This funding will allow Tribes to build their staffing expertise and support their policy involvement in the later detailed work processes.

The economic value associated with effective marine resource protection is huge. Not only are marine areas crucial for our natural resources and those that use them; they are bridges of commerce between nations and continents. Healthy oceans are essential if we value stable climates that will sustain our economies and our lives. Tribes must be partners in the efforts to research, clean up and restore the environs necessary to deal with such problems as:

—Damage to Dungeness Crab Fisheries—The State commercial crab season annually nets more than 20 million pounds of Dungeness crab, valued at nearly $1 billion. Tribes presently harvest a fraction of that amount. Yet declining salmon runs caused by lost and degraded habitat have made fisheries such as those for Dungeness crab increasingly important to Tribal communities.

—Groundfish, such as black cod, whiting and halibut have also grown in economic importance to Tribes. Unfortunately, just as coastal Treaty Tribes are beginning to fully access some of their treaty-reserved harvest of groundfish, several rockfish species have declined sharply. As a result, severe harvest restrictions have had to be implemented, threatening the cultural, spiritual and economic vitality of coastal Treaty Tribes.

As co-managers of groundfish with the Federal and State governments, Tribes want to work collaboratively to address a significant lack of data on groundfish populations. Better data will enable Tribes to make more informed management decisions. Better data also facilitates the move to an ecosystem-based management approach that takes into consideration the differences among groundfish populations in different areas.

Tribes have proven that we can bridge different interests for the good of the whole. Tribes have been actively involved in marine issues off the coast of Washington. As described earlier, Tribes, NOAA and the State of Washington have jointly signed a working MOU to guide Olympic Marine Sanctuary planning and implementation. The Tribes also participate in the State Ocean Policy Workgroup. Besides State and Federal government partners, the Tribes work closely with business, industry, sportsman and commercial fishing groups, environmental and community groups and individuals. Incidentally, Tribes are also key partners in the Puget

Sound Shared Salmon Strategy and the Puget Sound Partnership. Tribal leaders have consistently been early advocates, leaders and technicians as these efforts were brought to fruition.

BACKGROUND

When our ancestors signed treaties, ceding millions of acres of land to the United States government, they reserved fishing, hunting and gathering rights in all traditional areas. These Constitutionally-protected treaties, the Federal Trust Responsibility and extensive case law, including the *U.S.* v. *Washington* Decision of 1974, all consistently support the role of Tribes as natural resource managers, on and off reservation. In Washington State, these provisions have developed into a generally successful co-management process between the Federal, State and Tribal governments. The co-management route is the one and only path that leads to true sustainability in our region, and is the tool that must be used to meet the many environmental challenges we face, such as polluted and over-appropriated waters, species decline and climate change. Treaties are nation-to-nation accords, and Tribes have always been outstanding natural resource managers and stewards of the land.

However, the Federal government has chosen to cut funding to Tribal natural resource management programs over the past six years. There is no question that this jeopardizes the bond of trust between our governments. It also jeopardizes management programs and infrastructure critically important to co-management and to the health and vitality of natural resources, and the Tribal and non-tribal people they sustain. The timing of funding cuts could not have been worse. We are facing many environmental and natural resource management challenges in the Pacific Northwest, caused by human population expansion and urban sprawl, increased pollution problems ranging from storm water runoff to de-oxygenated or "dead" areas in the Hood Canal, parts of Puget Sound and in the ocean off the coast. The pathway to the future is clear to us. The Federal, State and Tribal governments must strengthen our bond and move forward, together, with the determination and vigor it will take to preserve our heritage. Together, we must focus on the needs of our children, with an eye on the lessons of the past.

OUR MESSAGE

Our message to you now is that achieving such objectives requires adequate funding. The Tribes strive to implement their co-management authority and responsibility through cooperative and collaborative relationships with the state and local communities. We constantly seek ways to restore and manage these precious natural resources in a manner that can be supported by all who live in this area. The work the Tribes do benefits all the citizens of the State of Washington, the region and the nation. But the increasing challenges I have described and the growing demand for our participation in natural resource/environmental management requires increased investments of time, energy and funding. Restoring and protecting these natural resources is essential to the economy and the quality of life that is so valued by those who live in the Northwest.

We are sensitive to the budget challenges that Congress faces. We recognize that this Administration has greatly reduced the allocation to discretionary domestic spending during the last several years, which makes it increasingly difficult to address the many requests you receive. Still, we urge you to maintain and increase the allocation and appropriations for priority ecosystem management initiatives. The need for an ecosystem-based management approach for Washington's marine waters have come into sharp focus in recent years. Major studies by the U.S. Commission on Ocean Policy and the Pew Charitable Trust, and the appearance of the low-oxygen dead zones are clear signals that the health of our rivers and marine waters is in rapid decline. In its report, "An Ocean Blueprint for the 21st Century," the Ocean Commission essentially concluded that the oceans are sick, and estimated the costs for reversing declines and restoring coasts and oceans nationwide at about $4 billion annually. Follow through on that report has obviously not approached that level of investment—and it might not for some time. But, for the sake of sustainable health, economies and the natural heritage that sustains them, it is critically important for Congress to do more than it has, and to direct federal agencies to do even more to coordinate their efforts with State and Tribal governments.

In Washington State, the Ocean Policy Workgroup, created by Gov. Chris Gregoire, was an outgrowth of the Ocean Commission. This group consists of 20 members, made up of state agency heads, legislators, the Governor's Office and Tribes. Among the group's recommendations was the creation of a governing board and council, with representatives from management agencies and Tribes, scientific communities, and stakeholder groups, to establish management needs, align re-

search priorities and monitor the progress through specific work plans. We have been actively engaged in this process, and see great value in continuing our participation. We also look forward to increased participation in multi-state agreements and efforts on the Pacific Coast as well as the Puget Sound Estuary. Tribes hope to stay active with the Ocean Policy Workgroup, as well as with such programs as the Oil Spill Advisory Committee. Early this year, the coastal Treaty Indian Tribes, the State of Washington and the U.S. Government created a policy council to guide the Olympic Coast National Marine Sanctuary. An MOA between the parties has resulted in the creation of an Inter-governmental Policy Council with members from each coastal Tribe and the State to ensure coordinated and comprehensive management of the sanctuary and its resources. Related to all of these efforts, we look forward to participating in the development of a coast-wide cooperative ecosystem management approach in response to the Ocean Commission Report.

As frequently attributed to Chief Seattle (Sealth), Tribes believe all things are connected. That is why we believe only through a holistic ecosystem management approach can we find success in achieving a healthy environment and robust natural resources. We believe failure to deal with the natural resource/environmental challenges forced upon us, with an ecosystem approach, can only result in ruinous impacts on treaty-protected resources.

All of this requires adequate funding.

CONCLUSION

Clearly, Western Washington Tribes are leaders in the Northwest salmon recovery effort. The Tribes possess the legal authority, technical and policy expertise, and effective programs to address impacts on wild salmon from harvest and hatcheries. The Tribes are strategically located in each of the major watersheds, and no other group of people knows salmon like the Tribes. No one else so deeply depends on salmon for their cultural, spiritual and economic survival either, although the habitat and salmon restoration work we do will definitely benefits everyone who lives here. Tribes seize every opportunity to coordinate with other governments, and non-governmental entities, to avoid duplication, maximize positive impacts and emphasize the application of holistic ecosystem management. We continue to participate in salmon recovery, habitat restoration, etc. on an equal level with the State, because we understand the great value of such cooperation. It is said that salmon are our miners' canary. They absolutely depend on clean water and healthy habitat—and so do we. We ask Congress to help us in the effort to restore salmon, other species and habitat by supporting our funding requests.

I thank the Committee for allowing me this opportunity to make these budget requests of the fiscal year 2008 Appropriations for the Department of Commerce.

---

## PREPARED STATEMENT OF THE POPULATION ASSOCIATION OF AMERICA/ASSOCIATION OF POPULATION CENTERS

INTRODUCTION

Thank you, Senator Mikulski, Senator Shelby, and other distinguished members of the Subcommittee, for this opportunity to express support for the Census Bureau and the National Science Foundation (NSF), two agencies important to the Population Association of America and the Association of Population Centers (PAA/APC).

BACKGROUND ON THE PAA/APC AND DEMOGRAPHIC RESEARCH

The PAA is an interdisciplinary, scientific organization comprised of over 3,000 research professionals, including demographers, economists, sociologists, and statisticians. The APC is a similar organization comprised of over 30 universities and research groups that foster collaborative demographic research and data sharing, translate basic population research for policy makers, and provide educational and training opportunities in population studies.

Demography is the study of populations and how and why they change. Demographers, as well as other population researchers, collect and analyze data on trends in births, deaths, immigration and disabilities as well as racial, ethnic and socioeconomic changes in populations. Among the major policy issues, population researchers study the demographic causes and consequences of population aging, trends in fertility, marriage, divorce and their effects on the health and well being of children, and immigration and migration and how these patterns affect the ethnic and cultural diversity of our population and the nation's health and environment.

PAA/APC members rely on a number of federal agencies charged with funding demographic research and generating reliable, accessible data. The ability of our mem-

bers to produce meaningful research, often used to inform policy decisions, requires the use of substantial data sets and support for research projects and research training.

THE CENSUS BUREAU

The Census Bureau is the premier source of information about the American people and the U.S. economy. In addition to the decennial census and the American Community Survey, the Census supports a variety of surveys to measure changes in individual and household demographic and economic conditions. PAA and APC members rely on accessible data produced by the Census Bureau to conduct their research.

NATIONAL SCIENCE FOUNDATION

The mission of NSF is to promote the progress of science; to advance the national health, prosperity, and welfare; and to secure the national defense. The demography of our population directly impacts the health, prosperity, welfare, and security of our nation. NSF support of demographic research, particularly its support of large-scale longitudinal surveys, such as the General Social Survey and Panel Study of Income Dynamics, is central to the agency's mission and essential for the field of population research. NSF provides about 20 percent of all federally supported basic research conducted by America's colleges and universities, including basic behavioral and social research. Demographic research also depends on support from NSF for support of individual research projects and research centers.

RECOMMENDATIONS

PAA and APC urge you to support the Administration's request for the Census Bureau, which is $1.23 billion in fiscal year 2008. Substantial preparation is required to ensure the success of an accurate 2010 Census and fully implemented American Community Survey. In 2008, the Census Bureau will be conducting the only dress rehearsal of the decennial census. The rehearsal, which will be conducted in San Joaquin County, California, and nine counties in the Fayetteville area of North Carolina, will evaluate the integrated census plan in a census-like environment. Also, in 2008, the Bureau will design and test a system for capturing and processing census data, open 12 regional census centers nationwide, and verify address information submitted by state, local, and Tribal governments. All of these key planning, or ramping up, activities are central to the success of the 2010 Census. Thus, it is imperative the Bureau receive the Administration's request in 2008. Receiving anything less than the President's request, jeopardizes the accuracy of the 2010 Census, increasing the chances of over counts, undercounts, and, ultimately, geographic misallocations of federal resources, and threatens the availability of key demographic and economic data researchers and policymakers require.

PAA and APC, as members of the Coalition for National Science Funding, support the President's budget request for NSF in fiscal year 2008, which is $6.43 billion. This budget will enable the NSF Social, Behavioral and Economic Science Directorate (SBE) to continue its support of social science surveys and a rich population research portfolio. Furthermore, the proposed budget will enable SBE to fully implement the Science of Science and Innovation Policy initiative. The goal of this initiative is to develop an evidence-based platform from which policymakers and researchers may assess the impacts of the Nation's science and engineering enterprise.

The Census Bureau and the National Science Foundation support, indirectly and directly, the collection and availability of rich data sources to PAA/APC members. Our economists, statisticians, and social survey design experts rely on federally supported data to conduct their research and inform public policy. Investments in these data sets are investments in good policy.

Thank you for considering our requests and for supporting federal programs that benefit the field of demographic research.

---

PREPARED STATEMENT OF THE NATIONAL ASSOCIATION OF MARINE LABORATORIES

Madam Chair and Members of the Subcommittee, on behalf of the National Association of Marine Laboratories (NAML) I am pleased to submit this statement in strong support of the research and education programs under the subcommittee's jurisdiction that are vitally important for a vibrant oceans, coastal, and Great Lakes research and education enterprise. I will focus my remarks on four key areas: federal extramural research funding, innovation and competitiveness, implementation

of ocean commission recommendations and other federal ocean research reports, and ocean education, literacy and workforce development.

NAML (www.naml.org) is a nonprofit organization of over 120 institutions employing more than 10,000 scientists, engineers, and professionals and representing ocean, coastal and Great Lakes laboratories stretching from Maine to the Gulf of Mexico, Guam to Bermuda, and from Alaska to Puerto Rico. NAML labs support the conduct of high quality ocean, coastal and Great Lakes research and education in the natural and social sciences and the effective use of that science for decision-making on the important issues that face our country.

FEDERAL SUPPORT FOR EXTRAMURAL OCEAN, COASTAL AND GREAT LAKES RESEARCH AND INFRASTRUCTURE

NAML strongly urges federal commitment to enhance support for cutting-edge ocean, coastal, and Great Lakes research and infrastructure across federal funding agencies.

The marine sciences have much to offer the Nation as it seeks to strengthen its ability to innovate and compete in today's global economy. They are inherently interdisciplinary, address science, technology, engineering, and mathematics (STEM) disciplines, push the envelope in terms of technology development, test the boundaries of our data collection and analysis systems, and offer an effective training ground for future scientists and engineers. NAML asks that the value of extramural research funding at all relevant federal agencies not be overlooked, but recognized as essential to the overall progress of coastal, ocean and Great Lakes science and education. Further, in order to support this research and ensure that this country is achieving the best possible results, all types of infrastructure-marine laboratories, observatories, ships, underwater vehicles, and satellites-must be supported across the board.

—*National Science Foundation*.—NAML supports increased federal funding for the National Science Foundation (NSF) consistent with the President's budget request of $6.5 billion for fiscal year 2008. Basic research and the transfer and use of the knowledge developed through research are vital for the long-term economic competitiveness and national security of this Nation. NSF provides vital support for basic research and education which enhances public understanding of the Nation's oceans, coastal areas, and the Great Lakes. NSF also provides important support for basic laboratory facilities, instrumentation, support systems, computing and related cyberinfrastructure, and ship access. The final report of the U.S. Commission on Ocean Policy makes several recommendations on the need to develop and enhance ocean, coastal and Great Lakes research infrastructure. To that end, NAML strongly supports the development of the Ocean Observatories Initiative at NSF. Further, NAML urges the Subcommittee to significantly enhance the NSF Major Research Instrumentation (MRI) program and its Field Stations and Marine Laboratories (FSML) program. FSML is of particular interest to marine labs as it provides researchers with access to state of the art instrumentation for research and education and necessary cyberinfrastructure and data management systems that compliment the Ocean Observatories Initiative. We urge the Subcommittee to double the modest FSML budget from $2.5 million to $5 million for fiscal year 2008 and further request that the program ultimately be increased to $10 million annually.

—*National Oceanic and Atmospheric Administration*.—NAML requests a top-line appropriation of $4.5 billion for NOAA for fiscal year 2008. This is consistent with the position take by the Friends of NOAA (www.friendsofnoaa.org) coalition which represents a diverse group of NOAA stakeholders.

A Congressionally requested study of NOAA's research programs, entitled, Review of the Organization and Management of Research in NOAA completed August 2004, concluded that extramural research is critical to accomplishing NOAA's mission. The access to such enhanced research capacities provides NOAA with world-class expertise not found in NOAA laboratories; connectivity with planning and conduct of global science; means to leverage external funding sources; facilitation of multi-institution cooperation; access to vast and unique research facilities; and access to graduate and undergraduate students. Academic scientists also benefit from working with NOAA, in part, by learning to make their research more directly relevant to management and policy. It is an important two-way interaction and exchange of information.

NAML strongly supports robust NOAA extramural research activities expressed though such programs as the National Sea Grant College Program, the National Undersea Research Program (NURP), Ocean Exploration, research related to aquaculture, invasive species, and the various joint and cooperative in-

stitutes supported by NOAA. The Bush Administration has proposed to maintain the Sea Grant program at $55 million for the third straight year. Sea Grant is already feeling the pinch of a flat-funding environment and the President's request will only further hinder the programs' ability to address local, regional and national ocean research and education needs. A budget of $72 million for Sea Grant will allow the program to mend past cuts and address emerging needs facing our coasts. In addition, the Bush Administration has proposed to the merge NURP with the Ocean Exploration program. NAML hopes that if or when this merger comes to fruition the new program will still provide an extramural research component that is so valued by the research community. While the merger of the two programs is still under development, we support funding NURP at $20 million and Ocean Exploration at $28 million for fiscal year 2008. These noted partnership programs are not only consistent with the findings of the August 2004 review of NOAA research, but are also consistent with NOAA's missions. As such they should be strongly supported and made accessible to the ocean, coastal, and Great Lakes research community on a competitive basis.

NAML is encouraged that the Administration has included in its budget request for fiscal year 2008 a line for the development of an Integrated Ocean Observing System (IOOS) within NOAA with $16 million set aside for initial funding. However, the amount needed to sustain and enhance current observing system efforts by the research community is closer to $100 million annually. Integrated observations offer critical information on coastal processes necessary for addressing issues, such as the health of humans and marine life, weather and climate nowcasts and forecasts, homeland security, and resource management. Much work is still needed to shape the federal government's involvement in IOOS and larger global observing efforts. NAML urges the Subcommittee to provide adequate funding for IOOS in fiscal year 2008 consistent with the needs of the community.

—*National Aeronautics and Space Administration*.—NASA's support for earth and space sciences is vital in helping us better understand our planet. NASA's Earth Science Applications theme benchmarks practical uses of NASA-sponsored observations from Earth observation systems and predictions from Earth science models. The National Academy of Sciences released a report[1] this year which calls on NASA to "renew its investment in Earth observing systems and restore its leadership in Earth science and applications." NAML is one of many groups that believe we need a balanced investment in NASA that will maintain a strong and vibrant earth and space science enterprise. If we are concerned about the fate of the planet, NASA's support for science is absolutely crucial to understanding and ultimately deciding how to address the concerns we are facing. NAML urges the Subcommittee to renew its investment in the NASA Earth Science budget for fiscal year 2008.

INNOVATION AND COMPETITIVENESS

NAML strongly supports efforts by the Administration and Congress to strengthen the nation's position as a world leader in scientific innovation and competitiveness.

As the Nation seeks to expand its investment in the physical sciences to increase its international competitiveness, NAML calls on the Subcommittee to recognize the integrated and strategic relationship between all scientific and engineering disciplines and to support an enhanced investment in science and technology across the board as part of any long-term economic competitiveness policy. NAML is encouraged that the federal government has begun focusing on the physical sciences for targeted funding increases, particularly through efforts to double the budget of the National Science Foundation (NSF) over the next 10 years. However, we must ensure that the entire breadth of the physical sciences, which include the earth and ecosystem sciences as well, is supported so we do not hinder this nation's true innovative potential. Other federal agencies involved in the "physical sciences" need to be supported within the context of innovation, namely the extramural research programs within the National Oceanic and Atmospheric Administration (NOAA) and the National Aeronautics and Space Administration (NASA). Improvements in the quality of education provided to our students with a strong foundation in math and science as well as support for universities and laboratories that provide world-class

[1] *Earth Science and Applications from Space: National Imperatives for the Next Decade and Beyond*, Committee on Earth Science and Applications from Space: A Community Assessment and Strategy for the Future, National Research Council, January 2007.

education and research opportunities will only benefit the nation and its science enterprise. As the Subcommittee sets its funding priorities for the year we hope it will consider the relevance of NOAA and NASA to U.S. innovation and competitiveness.

IMPLEMENTATION OF OCEAN COMMISSION RECOMMENDATIONS AND OTHER FEDERAL OCEAN RESEARCH REPORTS

NAML continues to strongly support implementation of the recommendations made by the U.S. Commission on Ocean Policy (2004)[2]. In addition, NAML looks forward to the implementation of the interagency Ocean Research Priorities Plan (2007)[3].

NAML believes that public policy with respect to the nation's oceans, coasts and Great Lakes should always be based on sound science and the most up-to-date information. The U.S. Commission on Ocean Policy's analysis of existing policies and future needs has resulted in a collection of bold and broad-reaching recommendations for reform. The Congress has taken these recommendations to heart in recent years and has begun addressing the nation's ocean needs. Federal implementation of these recommendations will enable the United States to maintain and strengthen its role as a world leader in protecting and sustaining the planet's oceans and coasts. NAML is particularly supportive of the Commission's recommendation to re-align NOAA's functions to support ecosystem-based management approaches. In addition, we fully endorse the Commission's recommendations to double the federal investment in ocean, coastal, and Great Lakes research as well as its recommendation to promote a strong federal investment in ocean, coastal, and Great Lakes education, outreach, and stewardship.

As the Bush Administration states in its decade-focused Ocean Research Priorities Plan, "Scientific discovery driven by competitive peer-reviewed investigations is the foundation of the nation's research enterprise." This plan identifies the nation's most urgent short- and longer-term ocean research needs. NAML is encouraged that the Administration proposed new funding for ocean issues in its budget request for fiscal year 2008. However, we urge the Administration and Congress to not overlook the importance of the extramural research community to the implementation of the plan's goals. The external research community stands equipped and ready to assist the federal government in implementing its identified priorities. NAML hopes that the dedication to ocean, coastal and Great Lakes issues expressed by the federal government in recent years will continue and be further enhanced to ensure that the external research community is being utilized to the fullest extent possible as the valuable resource that it is. In order to be successful, the federal government will need to look to the extramural research community to tap into existing capabilities to ensure that they are taking the most practical approach to ocean governance.

OCEAN EDUCATION, LITERACY, OUTREACH AND WORKFORCE DEVELOPMENT

NAML believes that an ocean literate populace will lead to a well-informed and safe nation. NAML encourages the federal government to strengthen its commitment to enhancing ocean, coastal and Great Lakes education, literacy and outreach as well as workforce development.

A strong national ocean policy can only be sustained with the most up-to-date and reliable scientific information. To ensure that the nation will continue to have the ability to address emerging ocean issues in the future, investments are needed today in coastal, ocean, and Great Lakes education programs that support learning at all age levels, by all disciplines, and for all Americans. NAML strongly supports the NSF Centers for Ocean Science Education Excellence (COSEE) program, NSF education and human resources generally, and NOAA's Office of Education. Such programs provide a rich environment for which collaborations and partnerships flourish. A greater understanding of the oceans and coastal ecosystems will instill in the American population a sense of stewardship for these important environments. These programs also yield a diverse workforce that includes a significant percentage from underrepresented groups. Preparing these cultural bridges would allow us to capitalize upon diverse national strengths, ensuring the flow of intellectual talent into ocean, coastal, and Great Lakes-related fields.

NAML member laboratories contribute to maintaining a competitive and first-rate marine research and education workforce by providing a unique training ground that is conducive to on-the-job learning and mentoring. Marine labs, because of their

[2] *An Ocean Blueprint for the 21st Century*, U.S. Commission on Ocean Policy, April 20, 2004.

[3] *Charting the Course for Ocean Science in the United States for the Next Decade: An Ocean Research Priorities Plan and Implementation Strategy*, NSTC Joint Subcommittee on Ocean Science and Technology, January, 2007.

flexibility and interdisciplinary nature, are leaders in addressing science, technology, engineering, and mathematics (STEM) education disciplines and hope to see support for these disciplines enhanced. Marine labs are also committed to enhancing diversity within the field of ocean, coastal and Great Lakes research and education by fostering relationships with community colleges and minority-serving institutions (MSIs) to provide distinctive learning opportunities for individuals who may not otherwise have an opportunity to participate in ocean, coastal and Great Lakes research. NAML hopes to be seen as a model to the nation for this type of collaboration.

The 2006 Conference on Ocean Literacy (CoOL), which convened in Washington, DC, and at satellite sites throughout the country, provided an unprecedented national platform for discussion on the essential principles of ocean literacy and the current challenges and opportunities for both formal and informal education efforts in educating the public to make informed, responsible decisions about the ocean and its resources. NAML hopes that the topics addressed during this conference will continue to reach policymakers and the general public and will shape future ocean, coastal and Great Lakes education policy.

Thank you for the opportunity to express these views on behalf of the National Association of Marine Laboratories. We hope the Subcommittee will take these points into consideration as you move forward in the fiscal year 2008 appropriations process.

---

## PREPARED STATEMENT OF THE SEA GRANT ASSOCIATION

Madam Chair and Members of the Subcommittee, on behalf of the Sea Grant Association (SGA) I respectfully submit this written testimony for the official record. Thank you for the opportunity to express these views. The Sea Grant Association joins with other stakeholders in urging the Subcommittee to recognize and support the vital research and outreach programs of the National Oceanic and Atmospheric Administration (NOAA). The community requests that the Subcommittee fund NOAA at $4.5 billion in fiscal year 2008. This is a modest request when considering the immense impact such an increase would have in terms of assisting NOAA in carrying out its mission: to understand and predict changes in the Earth's environment and conserve and manage coastal and marine resources to meet our Nation's economic, social, and environmental needs. Further, SGA requests that, within the overall fiscal year 2008 appropriation for NOAA, the Subcommittee appropriate $72 million in base funding for the National Sea Grant College Program. I will use the remainder of this statement to discuss why it is so important to support Sea Grant at realistic levels this year and in the future.

The National Sea Grant College Program is a key component of NOAA's extramural research, education and outreach enterprise. This request of $72 million is well within the $103 million authorized for fiscal year 2008 in Public Law 107–299, National Sea Grant College Program Act Amendments of 2002, and consistent with the level of base funding approved by your Subcommittee (Commerce, Justice and Science) last year. Further it is the amount supported in the Senate Dear Colleague Letter for Sea Grant which was submitted with 27 signatures to the Subcommittee on March 29, 2007 by Senators Maria Cantwell and Olympia Snowe.

The Bush Administration's request of $55 million for fiscal year 2008 would put Sea Grant at a hard freeze for the third year in a row. Implications of such a freeze for the nation with respect to the economy, sustainability of natural resources, and national safety and security are significant. With the costs of research and education rising, the flat-funding of Sea Grant during the last few years have forced programs to cut jobs and leave countless high-quality research and outreach projects unsupported. The Sea Grant network cannot sustain current activities, staff, and operations within this budget scenario. This request of $72 million would allow Sea Grant to sustain ongoing research and education efforts, address emerging needs, and continue assisting NOAA in carrying out its many missions.

### SCIENCE SERVING THE NATION'S COASTS

Research and outreach programs supported by Sea Grant are based on competition, undergo rigorous peer-review, and are geared to address the many marine, coastal and Great Lakes challenges and opportunities that face our citizens. The federal investment in Sea Grant enables a nationally coordinated network embedded in the best research universities to apply unparalleled intellectual capital to address these problems and opportunities while assisting NOAA in addressing its missions. Cost-effectiveness is enhanced by access to existing university management infrastructure.

Sea Grant serves the nation in many ways. Sea Grant's unmatched access to regional, state and local constituencies through its extension and outreach programs ensures that the federal investment is targeted at relevant issues. The Sea Grant model contributes to the missions of NOAA and other federal agencies, and state and local governments, to the benefit of the general public. In addition, marine education programs supported by Sea Grant funds reach from kindergarten to marine-related business people to elder hostels.

Sea Grant is a national program addressing national, regional, state and local needs. It is a partnership among government, academia, business, industry, scientists, and private citizens to help Americans understand and wisely use our precious coastal waters and Great Lakes for enjoyment and long-term economic growth. This network unites 32 Programs, over 300 universities, and millions of people. Sea Grant is an agent for scientific discovery, technology transfer, economic growth, resource conservation, and public education. It is government as our citizens want it—visible, tangible, relevant, efficient, and effective.

AN ECONOMIC DRIVER

Sea Grant is an investment in America's economic future. Attempts to balance our booming coastal economy with its associated impacts on the coastal and marine environment have raised the stakes for effective government action. America's ocean, coastal and Great Lakes resources encompass an immense area with more than 95,000 miles of coastline and more than 3.4 million square miles of ocean within the U.S. territorial sea. Over half the nation's 280 million people live in coastal counties that comprise less than one-fifth of the total land area of the United States. The economy of these coastal counties is critical to the economic well being of the entire nation, providing a wide array of goods and services that account for at least 50 percent of the gross national product of the United States. By 2010, U.S. foreign trade in goods is expected to double to $5 trillion, with ocean-going cargo increasing by 30 percent. Coastal tourism and recreation account for 85 percent of all U.S. tourism revenues. The oceans, in one way or another, account for one out of every six jobs. Tax revenues in coastal areas are among the fastest growing revenue sources for state and local governments. In fact, the collective economic impact of the coastal economy far exceeds U.S. agriculture, and yet federal investments in Sea Grant colleges and universities are much smaller than investments in the Land Grant college and university system funded by the U.S. Department of Agriculture for agriculture and land-based natural resource activities, the program after which Sea Grant was modeled.

Sea Grant has been leading the quest for practical solutions by providing research and education on national coastal and Great Lakes issues for four decades. Federal dollars appropriated to the Sea Grant program are leveraged and matched by state and private funds by at least 2 to 1, some states matching 60 percent or more. The matched federal investment fills an enormous demand for expertise to tackle rapid growth, change, and pressure on coastal resources. In addition, the 32 Sea Grant programs, located in every coastal, Great Lakes and Gulf Coast state, conduct policy-relevant research linked to an extensive outreach and education network. This structure ensures that Sea Grant research is useful to coastal resource managers at the regional, state and local levels, marine-related businesses and industries, and most importantly the general public. Some examples where Sea Grant has contributed to economic growth and vitality at the local, state and regional levels include:

—Following the devastation of Hurricanes Katrina and Rita in the Gulf Coast in 2005, approximately 3,000 commercial and 35,000 to 40,000 recreational boats were in need of salvage due to the storms. The Washington and Alaska Sea Grant Programs donated a surplus 60-ton Traveliftr from Alaska to Plaquemine Parish, Louisiana. Without that hoist to move displaced boats to dry land for repair, fishermen affected by the hurricanes would have been out of work for several years, potentially costing millions of dollars in loss to the fishing industry.

—Sea Grant plays an instrumental role in nature-based tourism by promoting low impact uses of natural resources. For example, efforts to develop state designated underwater preserves have led to new diving activity in Great Lakes coastal communities providing an economic stimulus of at least $1.5 million over a two-year period.

—Sea Grant saved taxpayers $120,000 in the annual Beach Sweep/River Sweep litter cleanup program in South Carolina. Over the past 14 years, more than 75,000 volunteers have collected 728 tons of trash and have saved state taxpayers more than $1.6 million.

—Sea Grant research efforts to develop new drugs from marine organisms have resulted in discovery and description of more than 1,000 compounds that may be vitally important to the health industry.
—Sea Grant training at 5,000 seafood processing plants will prevent 20,000 to 60,000 seafood-related illnesses a year, which could cost consumers as much as $115 million annually.
—Sea grant specialists are working directly with seaport managers, resource managers, commercial interests and the general public to address issues associated with ports, harbors and marine transportation—ecological and economic centers of America's coasts. For example, in Southern California, Sea Grant continues to educate local businesses on maritime security and business continuity in this, the busiest port complex in the United States.
—Sea Grant research and extension work with hybrid striped bass aquaculture has expanded this species from being a demonstration project ten years ago to a $25 million annual business.
—In North Carolina, 200 of the 205 new oceanfront homes built to the Sea Grant hurricane standards survived Hurricane Fran in 1996, compared to more than 500 older oceanfront houses in the same area that were destroyed.

A LOCAL APPROACH TO ADDRESSING NATIONAL PRIORITIES

Sea Grant has established long-standing working relationships with a broad spectrum of stakeholders in every coastal state. Because it is science-based and non-regulatory, Sea Grant is viewed as an honest broker among a wide range of constituents. The U.S. Commission on Ocean Policy called on Congress in its 2004 report to expand the Sea Grant program in conjunction with a doubling of all ocean and coastal research funding. Further, in January 2007, the Bush Administration released its inter-agency Ocean Research Priorities Plan and Implementation Strategy, Charting the Course for Ocean Science in the United States for the Next Decade. Several of the plan's most important priorities dovetail with Sea Grant's strength, experience, and relationships with state and local decision makers and ocean, coastal and Great Lakes resource managers. Here are just two examples:

*Sea Grant Increases Resiliency to Natural Hazards*.—Coastal areas of the United States comprise only 10 percent of our nation's land mass, yet they are home to over half of all Americans. As witnessed by recent record-breaking storm seasons, coastal communities and the natural resources and infrastructure on which they depend are at increasing risk from hurricanes, tsunamis, coastal storms, shoreline change, and sea level rise. Sea Grant institutions and their partners pool research, education and outreach capabilities to enhance mitigation, preparedness, planning, education, response, and recovery in coastal communities throughout the nation. As a result of the 2005 hurricanes, Sea Grant is working to improve storm modeling and community resiliency through regional research initiatives. In addition, Sea Grant is working closely with coastal communities to develop and implement long-term planning that will allow communities to become more resilient to storm events.

*Sea Grant is a Dedicated Steward of Natural and Cultural Ocean and Great Lakes Resources*.—Domestic seafood production has not kept pace with consumer demand; the United States imports an ever-increasing amount of seafood consumed domestically. Issues with quality assurance and consistent supplies are increasing. At the same time, the nation's commercial seafood industry is threatened by the loss of coastal access and multiple use conflicts in coastal waters. Sea Grant institutions, through the use of their fisheries extension, address the increasing needs of the nation's seafood industry by utilizing expertise in seafood safety and technology and marine aquaculture.

The above examples illustrate Sea Grant's connectivity to the Administration's stated priorities. As the federal government works to implement these priorities, we hope it will look to the National Sea Grant College Program—a major component of NOAA's extramural research arm—as a resource and as a partner.

The SGA recognizes and appreciates the difficult funding tradeoffs the Subcommittee is forced to make each year. We urge you to consider Sea Grant as an investment in the future health and well-being of our coastal communities and support the program at $72 million in fiscal year 2008.

Thank you for the opportunity to present these views.

ABOUT THE SGA

The Sea Grant Association is a non-profit organization dedicated to furthering the Sea Grant program concept. The SGA's regular membership consists of the academic institutions that participate in the National Sea Grant College Program, located within the National Oceanic and Atmospheric Administration (NOAA). SGA pro-

vides the mechanism for these institutions to coordinate their activities, to set program priorities at both the regional and national level, and to provide a unified voice for these institutions on issues of importance to the oceans, coasts and Great Lakes. The SGA advocates for greater understanding, use, and conservation of marine, coastal and Great Lakes resources.

---

PREPARED STATEMENT OF THE NATIONAL CENTER FOR VICTIMS OF CRIME

The National Center for Victims of Crime submits this testimony to urge members of the Subcommittee on Commerce, Justice, Science, and Related Agencies to reject the Administration's proposed cancellation of the Victims of Crime Act (VOCA) Fund. This proposal would result in the removal of nearly $1.3 billion in funds currently designated to support crime victim services programs. Moreover, it would change VOCA from a reliable, offender-supported program to one dependent on annual appropriations from the General Treasury. Such an action would be disastrous for the state and local programs that already struggle to meet the needs of all crime victims. We urge Subcommittee members to instead raise the cap on VOCA Fund distributions by $375 million for the 2008 fiscal year and to provide further program stability by extending the time states have to spend this one-time increase in funds from the current four years to six years.

As the leading national resource and advocacy organization for victims of crime, the National Center knows the considerable and urgent funding needs of those who serve crime victims. Since our founding in 1985, we have worked with public and nonprofit agencies throughout the country, providing information, support, and technical assistance to thousands of victims, victim service providers, allied professionals, and advocates. Our toll-free information and referral Helpline alerts us to the needs of crime victims nationwide. Through our Training Institute and our daily interactions with both our members and the more than 11,000 crime victim service providers in our referral network, we stay informed of their work and know the impact of federal-level funding decisions on their ability to meet the needs of victims. In short, we hear from victims and service providers every day about the impact and importance of the VOCA Fund.

*Understanding the VOCA Fund*

Congress created the VOCA Fund over twenty years ago to ensure on-going, dedicated federal support for state and local programs for crime victims. The Fund receives no taxpayer dollars; it is made up of solely criminal fines and penalties imposed on federal offenders. Most of the funds are distributed each year by formula grants to the states to support two specific types of programs: (1) crime victim compensation programs; and, (2) crime victim assistance programs.

Crime victim compensation programs directly reimburse crime victims or their families for many of the out-of-pocket expenses that directly result from the crime. These statutorily defined expenses include medical and counseling costs, funeral bills, crime scene cleanup, and lost wages. Essentially, these programs step in when victims have no insurance, no workman's compensation, and no other assistance available to help them meet expenses incurred as a result of the crime.

In addition to compensation programs, the VOCA Fund supports more than 4,400 state and local victim assistance programs. Victim assistance programs include rape crisis centers, domestic violence shelters, victim assistants in law enforcement and prosecutor offices, and other direct service providers for victims of crime. For instance, the Fund supports: Child Protect, Inc., serving victims of child abuse in Montgomery, Alabama; the Shenandoah Women's Center, serving victims of domestic violence and sexual assault in Martinsburg, West Virginia; an advocate for elder victims of domestic violence at the Women's Community in Wausau, Wisconsin; Jackson Urban League, serving victims of homicide in Jackson, Mississippi; Advocates for Survivors of Torture and Trauma, serving victims of torture and war trauma in Baltimore, Maryland; the state MADD office in Baton Rouge, Louisiana; and the Virginia Network for Victims and Witnesses of Crime in Chesterfield, Virginia.

VOCA assistance grant money is crucial in enabling both criminal justice system-based and community programs to serve victims of crime. As crime increases across the country, so too does the need for victim services. If VOCA funding remains stagnant or becomes unreliable due to a shift away from the current offender-supported system, states and their subgrantees will be unable to adequately address the needs of their communities. Moreover, their ability to reach more isolated and vulnerable populations will be diminished.

*Why the VOCA Fund Currently Has a Balance*

Seven years ago, Congress acted to ensure the continuing stability of VOCA funding. For many years, all the money collected in a given year was disbursed during the following year. The nature of the funding stream—criminal fines and penalties imposed on federal offenders—caused the level of available funding to vary significantly. For example, in some years, large fines against corporate offenders would cause a surge in deposits. However, in 1999, Congress chose to reserve a portion of the deposits from such years to offset lower collections in leaner years by placing a cap on the amount of disbursements from the Fund. The appropriations conference report noted that "the conferees have taken this action . . . to ensure that a stable level of funding will remain available for these programs in future years."[1] Therefore, as a result of this decision, a variable sum of money—called the "rainy day fund"—is routinely carried over from one fiscal year into the next.

*Reject the Proposed Cancellation and Protect the VOCA Fund Balance*

For the past two fiscal years, the Administration unsuccessfully sought to rescind the balance of the VOCA Fund, withdrawing the money from the "rainy day fund" and leaving the Fund with a zero balance. The Administration's 2008 fiscal year budget request now seeks an outright cancellation of the Fund, resulting in the transfer of the current balance of the Fund to the General Treasury. Annual tax dollars would be used to fund the $625 million VOCA cap, to be offset by federal fines collected over the course of the year. Additionally, the proposal would take $50 million from under the $625 million cap to be designated for the emergency reserve, effectively lowering the amount available to states.

Due to the Fund's allocation formulas, the impact of fluctuations falls most heavily on victim assistance grants. A cancellation of the VOCA Fund would eliminate the dedicated funding stream that has enabled steady support for crime victim services. Each year, victim advocates would have to lobby for funding, competing against each other and every other federal budget item. Moreover, the proposed cancellation and system shift would undermine the Fund's principal philosophy of offender accountability as originally proposed by President Reagan's 1982 President's Task Force on Victims of Crime. As Reagan Administration Attorney General Ed Meese testified before a Senate subcommittee last year, such a profound change "would be a perversion of the original concept of the Crime Victims Fund and would violate its integrity."[2]

*Fiscal Year 2008 VOCA Funding Should Be Raised by $375 Million; States Should Have Six Years to Spend This Money*

Approximately 4,400 agencies rely on continued VOCA funding to serve 3.8 million crime victims a year.[3] Even so, the recent increase in crime across the country has meant a heightened demand for victim services. Moreover, victim service programs report an urgent need to expand their outreach and service components in order to reach all victim populations. Without increased VOCA funding, programs in all fifty states and six additional jurisdictions will be unable to adequately address the needs of their communities and may have to lay off staff and limit, or even suspend, programs.

One of the most underserved populations of crime victims is victims with disabilities. Victims with mental or physical disabilities are frequently targets for criminals, and face increased barriers in seeking services. For example, studies have shown that almost two-thirds of women with disabilities report abuse and violence; additionally, in domestic violence situations, these women reported staying with their batterers almost twice as long as women without disabilities.[4] However, only 35 percent of shelters recently surveyed have disability awareness training for their staff and only 16 percent have a dedicated staff person to deliver services to women

---

[1] H.R. Rep. No. 106–479, at 239 (1999) (Conf. Rep.).

[2] *Crime Victims Fund Rescission: Real Savings or Budget Gimmick?: Hearing Before the Subcomm. on Fed. Financial Mgmt., Gov't Info., and Int'l Security of the S. Comm. on Homeland Security and Governmental Affairs*, 109th Cong. (2006) (statement of Ed Meese, Att'y Gen., Ronald Reagan Distinguished Fellow in Pub. Pol'y and Chairman of the Ctr. for Legal and Judicial Studies, The Heritage Foundation).

[3] *See* Office for Victims of Crime, U.S. Dept. of Justice, Victims of Crime Act: 2005 Victim Assistance Grant Program Nationwide Performance Report (2005); full text available at: http://www.ovc.gov/fund/vocanpr__va05.html (accessed on April 11, 2007).

[4] M.E. Young et al., *Prevalence of Abuse of Women with Physical Disabilities*, 78 Arch. Phys. Med. & Rehabil., Special Issue (1997).

with disabilities.[5] Without the proper training, shelters and victim services programs cannot expect to adequately respond to the needs of victims with disabilities.

Similarly, dating and sexual violence is frighteningly prevalent in the youth population, yet there is a serious dearth of appropriate services and resources geared toward helping this underserved age group. One in three teens knows a friend or peer who has been hit, punched, kicked, slapped, choked, or physically hurt by a dating partner.[6] Approximately 25 percent of high school girls have been the victims of physical abuse, sexual abuse, or date rape.[7] Understandably, many service providers express a strong desire to expand their services to better serve teen victims of crime; however, they lack the funding for the staff, training, and outreach programs that would make this feasible.[8]

Service providers also recognize that there are significant populations of immigrant victims of crime who do not have access to services. These victims are often culturally and linguistically isolated from the general society, making them vulnerable to crime but also unaware of the services that can help them. Victim service providers know that to make inroads in reaching these populations, they must make an investment in personnel and in the time needed to build trust with existing community members. Without additional funding, such critical expansions in services, outreach, and programs are not possible.

There are many other underserved populations of victims across the country. In a recent National Center poll of our members, service providers indicated a need to reach and serve homeless victims, victims with mental illness, racial or ethnic minority victims, and victims who are members of the GLBTQ population.[9] Respondents also mentioned that indigent or poor victims, incarcerated victims, and Native American victims remain underserved and at risk for greater victimization.

A one-time increase in VOCA funds, coupled with an extension of time for states to use that extra funding, would allow the development of services targeted at these vulnerable and underserved victim populations. Such an investment of funding would enable victim service providers to form partnerships with agencies already connected to and trusted by those communities.

Raising the cap on VOCA Fund distributions by $375 million for the 2008 fiscal year would allow a comfortable Fund balance of approximately $300 million to remain for future years to help guarantee reliable funding for victim services programs. Moreover, it would ensure that the money collected from offenders was actually used for the purpose for which it was originally designed and authorized by law. Finally, allowing six instead of four years to spend VOCA grant money would provide states with the flexibility necessary to address the specific assistance needs of their communities.

*Conclusion*

In closing, we urge Congress to reject the Administration's proposed cancellation and to affirm the vital importance of protecting the VOCA Fund for years to come. Raising the VOCA Fund cap for the 2008 fiscal year by $375 million and extending the time states have to spend the money to six years will permit states to reach additional victims while ensuring the future stability of the Fund.

---

## PREPARED STATEMENT OF THE AMERICAN INDIAN HIGHER EDUCATION CONSORTIUM

This statement focuses on two areas: National Aeronautics and Space Administration (NASA) and National Science Foundation (NSF).

Mr. Chairman and Members of the Subcommittee, on behalf of the nation's 34 American Indian Tribal Colleges and Universities (TCUs), which comprise the American Indian Higher Education Consortium (AIHEC), thank you for the opportunity to express our views and recommendations for fiscal year 2008 on programs that directly affect our institutions.

---

[5] Margaret A. Nosek, Ph.D., et al, Baylor College of Medicine, Violence Against Women With Disabilities—Fact Sheet #1: Findings From Studies 1992–2002.

[6] *See* Liz Claiborne Inc., Omnibuzz Topline Findings: Teen Relationship Abuse Research (Feb. 2005).

[7] *See* Cathy Schoen et al., The Commonwealth Fund, the Commonwealth Fund Survey of the Health of Adolescent Girls (Nov. 1997).

[8] *See* National Center for Victims of Crime, Results From the National Center's 2006–2007 Public Policy Poll (a compilation of the National Center's member responses to a survey regarding legislative priorities, underserved victims in communities, coming legislative sessions, and requests for general feedback); available at: http://www.ncvc.org/ncvc/AGP.Net/Components/documentViewer/Download.aspxnz?DocumentID=41511 (accessed on April 13, 2007).

[9] Id.

SUMMARY OF RECOMMENDATIONS

*National Aeronautics and Space Administration (NASA)*.—In fiscal year 2001, tribal colleges established a formal cooperative agreement with NASA for a project designed to increase access, participation, and success of American Indians in high quality K–16 science, technology, engineering, and mathematics (STEM) programs. The agreement includes a modest program to support TCU STEM education and research programs, as well as a summer research opportunities program for TCU faculty and students to participate in NASA research projects at the various NASA centers around the country. This program and other minority-serving programs have demonstrated success in improving STEM education and research programs at TCUs and encouraging more American Indians and other minorities to pursue degrees and careers in the hard sciences. However, NASA recently reorganized its funding priorities resulting in severe cuts in education programs overall and the near elimination of this modest TCU program. We are requesting that no less than $2.5 million of the NASA budget be made available to continue to support TCU STEM research and education programs.

—*Strengthen NASA's Role in Developing the American STEM Workforce*.—The ability of NASA to help develop and train the American STEM workforce has been severely undercut by NASA's current budget policy. In general, we urge the Subcommittee to ensure that funding for NASA education programs, particularly, those targeting minority serving institutions, is restored to levels necessary for a meaningful impact on the ability of Tribal College and Universities and other MSIs to prepare their students to enter the national science, technology, engineering and mathematics workforce. We further urge the Subcommittee to examine and address the disproportionate impact that NASA's current budget priorities have on minority serving institutions and minority students, which represent America's best hope for securing a well trained STEM workforce in the future.

—*National Science Foundation (NSF): Tribal Colleges and Universities Program (TCUP)*.—Over the past seven years, this program has provided vital assistance to TCUs as they build their capacity to provide strong science, technology, engineering, and mathematics (STEM) teaching and learning programs for American Indians. Since its inception, 29 of the 31 eligible TCUs have participated in this program, along with six Alaska Native and Native Hawaiian serving institutions. While the impact of the TCUP program on Tribal Colleges and Alaska Native and Native Hawaiian institutions has been significant, the program funding level has not grown above the initial $10 million/year, and can no longer sufficiently address the needs of eligible institutions. We request that the Subcommittee increase the amount of funding for the NSF–TCU program by $5 million, for a total of $15 million.

—*TCU STEM Blue Ribbon Panel*.—We request that funding be appropriated to establish and support a Blue Ribbon Panel comprised of national leaders in scientific research and education, to be organized and convened by the National Academies to (1) monitor and review developments and changing policy issues related to STEM research and education at the nation's Tribal Colleges and Universities; (2) examine and evaluate the current state of Federal program opportunities available to TCUs for developing and sustaining STEM education and research programs; and (3) prepare a report recommending strategies at all levels for improving STEM education and research programs at TCUs. Sources of information that will be reviewed by the Blue Ribbon Panel will include public symposia organized by the Panel, published documents, and written comments by members of the scientific research and education community, and examination of past and current STEM education and research programs at, and technical assistance programs for, Tribal Colleges and Universities. We request that the Subcommittee appropriate $500,000 for the purpose of establishing this TCU STEM Blue Ribbon Panel.

JUSTIFICATIONS

In 2007, the report "Rising above the Gathering Storm—Energizing and Employing America for a Brighter Economic Future" (National Academies Press (NAP) 2007) prepared by the Committee on Science, Engineering, and Public Policy, warns that America's place as the world's leader in science and technology is at risk. The report lists the growing need for a competitive and qualified workforce and government investment in national research and development as two essential ingredients of a formula for maintaining America's continued leadership in science and technology. This request addresses the role of Tribal Colleges and Universities specifically and minority serving institutions generally in these two critical areas.

America's minority serving institutions—Tribal Colleges and Universities, Historically Black Colleges and Universities (HBCUs), and Hispanic Serving Institutions (HSIs)—are a primary provider of higher education programming for their respective populations. Although only a relative small percentage of colleges and universities in the country, MSIs serve a much greater proportion of underrepresented minority students, for example, HSIs are only about 6 percent of the higher education institutions in the country, but produce 33 percent of Hispanic science baccalaureates. HBCUs produce the same percentage for African Americans (National Science Board, 2004). Studies have shown the reservation-based American Indians attending mainstream institutions of higher education have a failure rate of 70–80 percent. However, these same students have a success rate of 70–80 percent at TCUs. Despite these successes, Native Americans, African Americans and Hispanics continue to be seriously underrepresented in the sciences even as their numbers and proportion in higher education grow (National Science Board (NSB), 2004). Supporting MSIs is critical for reaching the growing number of underrepresented minority college students, the next generation of scientists and engineers.

*National Aeronautics and Space Administration (NASA)*

The NASA AIHEC Cooperative Agreement has served 27 Tribal Colleges and Universities with support for faculty and student research at NASA Centers, STEM course and curriculum development, research instrumentation, research projects, professional development for STEM faculty, and information infrastructure improvements supporting the delivery of high quality STEM education and research programs. These NASA-supported activities have impacted nearly 700 K–12 students and teachers, 2,700 Tribal College and University students, and over 150 faculty members, significantly furthering TCU efforts at recruitment and retention of American Indian students, and their preparation for careers in science, engineering, and technology fields.

In 2007, NASA support for Tribal Colleges and Universities under the NASA–AIHEC Cooperative Agreement was reduced from $1.2 million to approximately $400,000. This reduction has necessitated a significant re-scoping of the activities supported under the Cooperative Agreement, and thereby has significantly reduced resources available to positively affect the educational experience of American Indian students. In addition, over the past two years, other vital TCU STEM programs funded by NASA were eliminated entirely due to budget restructuring. For example, a program to train TCU faculty at multiple campuses in geospatial technologies, and another STEM education program involving a TCU partnership with other key institutions of higher education were both eliminated entirely. The funding for these and other programs must be restored to a level at which a significant impact on the TCU educational community can be realized.

*National Science Foundation Programs*

Since 2001, NSF's Tribal Colleges and Universities Program has been a primary resource for Tribal Colleges and Universities and Alaska Native/Native Hawaiian institutions to plan and develop STEM education and research programs designed to respond to local and regional STEM workforce challenges and opportunities. To date, 29 of the 31 eligible TCUs have participated in the program, along with 6 Alaska Native and Native Hawaiian serving institutions. Participating colleges and universities have enhanced existing degree programs and developed entirely new program offerings. Funded institutions have upgraded their laboratory facilities, hired instructors, and introduced innovative strategies to recruit and retain students. While these TCUP-funded activities have had a significant impact on college STEM programs and on the students who have enrolled in them, this initiative is still too modest in scope to ensure that these activities can be sustained by all TCUP-eligible institutions for a period necessary to realize significant outcomes in terms of student success in STEM, particularly at the baccalaureate and graduate education levels. Additional funding is necessary to ensure that all TCUP-eligible institutions are able to receive sustained funding necessary to continually develop and improve their STEM program offerings in response to changing local and regional STEM workforce demands and research opportunities.

In addition to the TCUP program, a number of other programs for which Tribal Colleges and Universities compete within the Education and Human Resources Directorate have experienced reductions. Overall, there has been a 19 percent cut in inflation adjusted dollars for NSF's Education and Human Resources budget since 2004. This is particularly difficult to understand given the severe challenges facing the nation in preparing the nation's science, technology, engineering, and mathematics workforce documented in the above-referenced report "Rising above the Gathering Storm". The TCUP program should be expanded by at least $5 million

annually for a total of $15 million to allow TCUP-eligible institutions to fully implement STEM education and research improvement plans that are responsive to local and national STEM workforce development needs, particularly given the shortfall in funding for other Education and Human Resources programs.

Further, based on a motion of the AIHEC Board of Directors, which is comprised solely of TCU presidents, we recommend that a policy be put in place that stating that any grants or contracts for technical assistance under any NSF–TCU program shall be awarded to an Indian organization which: (a) the NSF Director finds is nationally based, (b) represents a substantial American Indian constituency, and (c) has expertise in the field of Tribal Colleges and Universities and American Indian higher education. This will help ensure that the unique needs of the TCUs, their students and faculties are addressed effectively and efficiently in a productive and responsive manner.

Finally, given the limited pool of applicants and the tremendous need to sustain STEM programs for a length of time deemed sufficient to achieve improvement at all levels, we urge the subcommittee to direct NSF to:

—Award grants under the NSF–TCU program for a period of five years, with ongoing support for an additional five years (without the need to re-enter a program competition), provided the programs meet appropriate NSF criteria for satisfactory progress; and

—Refrain from expanding funding priorities under the NSF–TCU program into new areas (e.g. K–12 teacher education, which previously had been supported by NSF under the Urban and Rural Systemic Initiatives) until sufficient funding exists to meet the basic STEM needs of TCUs and reliable data demonstrates a significant improvement in basic STEM education participation and completion rates across TCUs.

We recognize that a tremendous need exists to address STEM education at all levels. However, funding is severely limited under the NSF–TCU program and it has not grown in seven years. Therefore, should NSF personnel believe additional areas should be addressed or additional programs established, beyond those proposed by TCUs under the general NSF–TCU program, then new funding should be requested or designated, rather than taking funds appropriated for desperately needed basic STEM/Technology education and research programs. This is particularly important when the new funding priorities imposed on grantees under programs such as NSF–TCUP are simply replacing programs that have been eliminated elsewhere within NSF.

*TCU STEM Blue Ribbon Panel*

An independent Blue Ribbon Panel on TCU STEM would be empowered to examine, evaluate, and make recommendations regarding the design and delivery of STEM programs at the Tribal Colleges and Universities, as well as research and education funding programs operated by the federal agencies. Recommendations provided by such a Panel would provide significant impetus in moving Tribal Colleges and University programs toward greater effectiveness while ensuring greater accountability. The National Academies are the primary source of expert guidance in science, engineering, and medicine to academia, industry, the U.S. Government, and the general public and as such is the appropriate organization to convene and conduct activities within the intended scope of this request.

CONCLUSION

In light of the justifications presented in this statement, we respectfully request that Congress appropriate funding for NASA and NSF programs that directly impact the STEM programs at Tribal College and Universities at the levels recommended. This relatively small investment will go a long way toward helping to build the nation's STEM workforce while fostering economic self-sufficiency in Indian Country. Fulfillment of AIHEC's fiscal year 2008 recommendations will strengthen the missions of all of the TCUs and significantly enhance the strong positive impact that they have on their respective communities. We respectfully request your continued support of TCUs and full consideration of our fiscal year 2008 appropriations recommendations.

---

PREPARED STATEMENT OF THE CALIFORNIA INDUSTRY AND GOVERNMENT CENTRAL CALIFORNIA OZONE STUDY (CCOS) COALITION

Madam Chairman and Members of the Subcommittee: On behalf of the California Industry and Government Central California Ozone Study (CCOS) Coalition, we are pleased to submit this statement for the record in support of our fiscal year 2008

funding request of $150,000 from the Department of Commerce/NOAA account for CCOS. These funds are necessary for the State of California to address the very significant challenges it faces to comply with new national ambient air quality standards for ozone and fine particulate matter. The study design incorporates technical recommendations from the National Academy of Sciences (NAS) on how to most effectively comply with federal Clean Air Act requirements.

First, we want to thank you for your past assistance in obtaining federal funding for the Central California Ozone Study (CCOS) and California Regional $PM_{10}/PM_{2.5}$ Air Quality Study (CRPAQS). Your support of these studies has been instrumental in improving the scientific understanding of the nature and cause of ozone and particulate matter air pollution in Central California and the nation. Information gained from these two studies is forming the basis for the 8-hour ozone, $PM_{2.5}$, and regional haze State Implementation Plans (SIPs) that are due in 2007 (ozone) and 2008 (particulate matter/haze). As with California's previous and current SIPs, all future SIPs will continue to be updated and refined due to the scientific complexity of our air pollution problem. Our request this year would fund the completion of CCOS to address important questions that won't be answered with results from previously funded research projects.

To date, our understanding of air pollution and the technical basis for SIPs has largely been founded on pollutant-specific studies, like CCOS. These studies are conducted over a single season or single year and have relied on modeling and analysis of selected days with high concentrations. SIPs are now more complex than they were in the past. The National Academy of Sciences (NAS) now recommends a weight-of-evidence approach that will involve utilizing more broad-based, integrated methods, such as data analysis in combination with seasonal and annual photochemical modeling, to assess compliance with federal Clean Air Act requirements. This will involve the analysis of a larger number of days and possibly an entire season. In addition, because ozone and particulate matter are formed from some of the same emissions precursors, there is a need to address both pollutants in combination, which CCOS will do.

Consistent with the NAS recommendations, the CCOS study includes corroborative analyses with the extensive data provided by past studies, advances the state-of-science in air quality modeling, and addresses the integration of ozone and particulate pollution studies. In addition, the study will incorporate further refinements to emission inventories, address the development of observation-based analyses with sound theoretical bases, and includes the following four general components:

| | Year |
|---|---|
| Performing SIP modeling analyses | 2005–2011 |
| Conducting weight-of-evidence data analyses | 2006–2008 |
| Making emission inventory improvements | 2006–2010 |
| Performing seasonal and annual modeling | 2008–2011 |

CCOS is directed by Policy and Technical Committees consisting of representatives from Federal, State, and local governments, as well as private industry. These committees, which managed the San Joaquin Valley Ozone Study and are currently managing the California Regional $PM_{10}/PM_{2.5}$ Air Quality Study, are landmark examples of collaborative environmental management. The proven methods and established teamwork provide a solid foundation for CCOS.

For fiscal year 2008, our Coalition is seeking funding of $150,000 from the Department of Commerce/NOAA account in support of CCOS. California has a very complex terrain that includes mountain ranges, flat valleys, and long coastal regions. Some meteorological models are known to have difficulty in simulating high-resolution airflow over such complex terrain. NOAA has a vast amount of experience in applying meteorological models in several different areas of the country and their scientific know-how is a valuable asset to CCOS. This request will be used to continue NOAA's involvement in developing meteorological simulations for Central California, specifically longer-term simulations of seasonal and annual meteorology. The long-term record of meteorological data in the CCOS database can be used to improve NOAA's meteorological forecasting abilities and in the evaluation of U.S. western boundary conditions for weather forecasting models.

As you know, NOAA is at the scientific forefront of the development of meteorological models including the Weather Research and Forecasting (WRF) model that is viewed as a replacement for the Mesoscale Meteorology Model, Version 5 (MM5). Thus, NOAA's involvement would facilitate the use of CCOS measurements in the development and refinement of WRF. In addition, NOAA has conducted prior research in the CCOS region on atmospheric airflows, sea breeze circulation patterns,

nocturnal jets and eddies, airflow bifurcation, convergence and divergence zones, upslope and down-slope flows, and up-valley and down-valley airflow. Thus, CCOS provides the opportunity to draw from or extend this research for a longer, multi-year time period. This research provides fundamental data needed to understand airflow over complex terrain, and has national applicability.

If we receive the funds requested this year to complete this research project, this will be our final request.

Thank you very much for your consideration of our request.

COOPERATIVE PARTNERSHIP

*Private Sector*

Western States Petroleum Association; Pacific Gas and Electric Company; Electric Power Research Institute; NISEI Farmers League and Agriculture; Independent Oil Producers' Agency; and California Cotton Ginners and Growers Associations.

*Local Government*

San Joaquin Valley Unified Air Pollution Control District (on behalf of local cities and counties); Bay Area Air Quality Management District; Sacramento Metro Air Quality Management District; San Luis Obispo County Air Pollution Control District; Mendocino County Air Pollution Control District; and Yolo-Solano Air Quality Management District.

*State Government*

California Air Resources Board; and California Energy Commission.

*Federal Government*

Environmental Protection Agency; Department of Agriculture; Department of Commerce; National Oceanic and Atmospheric Administration; Department of Transportation; Department of Interior; and Department of Energy.

---

PREPARED STATEMENT OF THE MARINE CONSERVATION BIOLOGY INSTITUTE

On behalf of the Marine Conservation Biology Institute (MCBI), I thank the members of the Commerce, Justice, Science, and Related Agencies Appropriations Subcommittee for the opportunity to submit written testimony on fiscal year 2008 appropriations for NOAA. MCBI is a national, nonprofit environmental organization interested in advancing the science of marine conservation biology and securing protection for ocean ecosystems. Our headquarters are in Bellevue, Washington and we also have offices in California and Washington, DC.

MCBI is a member of the Friends of NOAA Coalition and supports the Coalition's recommendation for funding NOAA at $4.5 billion in fiscal year 2008, the same amount recommended by the Senate for fiscal year 2006 and 2007, and the same amount currently being recommended by the House Oceans Caucus. In addition, we support funding augmentation for several important conservation programs and activities as follows: $3.2 million for the Marine Protected Areas Initiative; $14.5 million for the National Undersea Research Program; $78 million for the National Marine Sanctuaries Program; and $7.7 million for conservation of the Hawaiian monk seal. Our justifications for these requests are as follows:

National Marine Protected Areas Center (MPA Center) is responsible for the implementation of Executive Order 13158, "Marine Protected Areas" (MPAs), which President Clinton issued in May 2000. The objective of the executive order is to protect "significant natural and cultural resources within the marine environment for present and future generations by strengthening and expanding the Nation's system of marine protected areas." (Exec. Order No. 13158, 65 Fed. Reg. 34,909 (2000)). Federal agencies are directed to use their existing legal authorities to develop an effective national system of marine protected areas, including expansion of existing protected areas and the creation of new ones. The MPA Center is housed within NOAA's National Ocean Service (Office of Ocean and Coastal Resource Management).

MPAs are designated to protect marine ecosystems, processes, habitats, and species, and contribute to the restoration and replenishment of resources for social, economic, and cultural enrichment. The MPA Center's specific goals include designing a framework for a national system of MPAs, developing innovative approaches to understanding the ecosystem effects and human dimensions of MPA design and management, facilitating coordination among MPA agencies and stakeholders, and conducting outreach and education about place-based ocean management. Cuts in funding have greatly impacted the MPA Center's activities. The Center has lost 75

percent of its staff since 2005. This has severely impacted the Center's ability to implement the President's executive order, and to facilitate national, state and local MPA coordination.

MCBI recommends $3.2 million for the MPA Center in fiscal year 2008, enabling it to get back on track with its goals and work plans. In addition to allowing the Center to continue the work below, this funding would also allow the Center to rehire the seven staff that were lost under previous budgets. Funding at this level would enable the Center to:

—Complete its Draft Framework for a national system of MPAs. Funding at the fiscal year 2006 level could delay this project another 1–2 years.

—Allow for more stakeholder and advisory committee participation. Funding at the fiscal year 2006 level will only allow minimal external consultation with stakeholders.

—Continue and accelerate the West Coast Pilot Project. Funding at fiscal year 2006 levels would delay critical components of this important project another 3–4 years, and significantly limit its ultimate utility to the region as a model for the rest of the national system of MPAs. Completion of the Pilot Project would be extremely helpful to the Governors of California, Oregon, and Washington, who jointly seek to create an ocean and coastal resource action plan for the Pacific Coast.

National Undersea Research Program (NURP) is a key vehicle in implementing many of the priority topics identified by the U.S. Commission on Ocean Policy's Ocean Research Priority Plan. These topics include "Stewardship of Natural and Cultural Resources," "Improving Ecosystem Health," the "Ocean's Role in Climate," and "Increasing Resilience to Natural Hazards." Through its regional science centers, NURP provides scientists with the advanced underwater technologies needed to conduct important research, such as remotely operated and autonomous underwater vehicles, human occupied submersibles, advanced technical diving, and underwater laboratories. NURP is the nation's only federal scientific program that specializes in providing the undersea technology needed to help us better manage Earth's last frontier.

NURP-sponsored research has contributed to improving methods for assessing fish populations, locating and mapping areas of deep sea corals, and assessing the impacts of overfishing, climate change, and water pollution. Additionally, NURP activities will be an integral part of the Deep Sea Coral Research and Technology Program at NOAA, newly authorized by the Magnuson-Stevens Fishery Conservation and Management Act in 2006.

In fiscal year 2008 NURP and NOAA's Ocean Exploration (OE) Program will be merged into a new Office of Ocean Exploration and Research (OER). The office will support exploration, research, and advanced technology development efforts.

Cuts in funding have greatly impacted NURP's activities. In fiscal year 2006, funding was cut by more than 60 percent of fiscal year 2005 levels to $4.1 million. This reduced level of funding has continued in fiscal year 2007. MCBI recommends $14.5 million for NURP in fiscal year 2008. This amount would enable NURP to:

—Complete the second year of an east coast MPA site identification project, organized by the NURP University of Connecticut Center. This project, at the Stellwagen Bank National Marine Sanctuary, aims to identify the full range of ecosystems and habitats that should be protected in an MPA network.

—Map deep sea coral habitat in the Gulf of Maine, providing valuable information to marine resource managers. Funding at fiscal year 2006 levels would not support this project.

—Continue a Lake Superior project examining the impacts of PCBs on fish and human health.

—Map and characterize the new deep sea coral Habitat Areas of Particular Concern (HAPCs) and shelf edge MPAs off the southeast U.S. coast.

—Obtain vital climate records from west coast deep-water corals. This project was approved for funding in fiscal year 2006 and fiscal year 2007 but was deferred in both cases due to budget cuts, and is at risk of cancellation.

—Undertake an ecosystem connectivity cruise off the west coast and Northwestern Hawaiian Islands. This project was originally planned for fiscal year 2008 but has been delayed because budget uncertainties.

The National Marine Sanctuaries Act authorizes the Secretary of Commerce to designate and manage areas of the marine environment for resource protection. Currently, the National Marine Sanctuary Program (NMSP) is responsible for the management and oversight of 13 national marine sanctuaries comprising over 18,000 square miles, and for the Papahānaumokuākea Marine National Monument.

The NMSP is responsible for education, research, monitoring and management programs. In order to successfully carry out its objective, each sanctuary develops,

reviews, and implements a comprehensive management plan. Each site also carries out local research, monitoring programs, cultural programs, education and outreach programs, enforcement, and permitting. The NMSP headquarters offers oversight, guidance, and support to each sanctuary site. Recent NMSP accomplishments include the discovery of deep sea corals in the Olympic Coast National Marine Sanctuary, the documented increase of marine life in the Florida Keys Tortugas Ecological Reserve (part of the Florida Keys National Marine Sanctuary), and research that led to the International Maritime Organization approving a shift in the shipping lanes in the Stellwagen Bank National Marine Sanctuary region to reduce whale/ship strikes to protect endangered whales.

For the last few years the NMSP has seen its budget fall from approximately $68 million (including ORF and PAC accounts) in fiscal year 2005 to approximately $55 million in fiscal year 2006. As of April 13, 2007, the NMSP has received approximately $35 million of its fiscal year 2007 budget for ORF; the PAC numbers are still unknown. In fiscal year 2008, the President requested approximately $50 million for the NMSP. However, $8 million of the allocation is specifically for the Papahānaumokuākea Marine National Monument. As it stands now, the NMSP operations budget of approximately $36 million has been unchanged for three consecutive years.

Increased funds are needed to ensure that the NMSP can continue to meet its growing responsibilities and keep up with inflation. Furthermore, the NMSP will be unable to meet the management benchmarks that must be met before the congressional moratorium imposed on new sanctuary designations can be lifted. MCBI recommends that the NMSP receive $78 million for fiscal year 2008. This amount would restore the NMSP's funding to the fiscal year 2005 enacted level of $68 million, plus another $10 million for construction and facilities. This amount includes the President's $8 million request for the management of the Papahānaumokuākea Monument. As it stands now, the NMSP operation budget has been roughly the same for three consecutive years.

The Hawaiian monk seal is one of the most endangered marine mammals in the world and is the only marine mammal species whose entire range lies within the U.S. jurisdiction. Most Hawaiian monk seals reside in the Papahānaumokuākea Marine National Monument in the Northwestern Hawaiian Islands (NWHI). Over the last 50 years, the Hawaiian monk seal population has declined by more than 60 percent to an estimated 1,252 individuals, its lowest level in recorded history. A number of human and environmental factors have contributed to this decline, including overfishing; environmental cycles; entanglement in marine debris; predation by sharks; injuries and deaths caused by aggressive adult male monk seals; habitat modification and loss; and disturbance by humans.

The Hawaiian monk seal is currently spiraling into extinction. What happens next will be crucial to the monk seal's recovery prospects. The National Marine Fisheries Service (NMFS) and its partner agencies must aggressively budget for and carry out key recommendations of the draft recovery plan, which include the following:

—Implement a suite of actions to improve female survival in the 6 main subpopulations, including: conservation of habitats and prey base; research on juvenile survival factors; interventions to protect juveniles, especially females, until they are strong enough to care for themselves; and protection of females from male seal aggression and shark predation.

—Continued removal of hazardous debris from monk seal habitat.

—Maintain and expand field efforts to carry out research and management actions in the NWHI.

—Develop and implement a coordinated plan with the state, local, and non-governmental organizations to encourage growth of the monk seal population in the Main Hawaiian Islands (MHI) and prevent harmful human interactions with the seals that reside there; and consider a best-site relocation program for seals in the MHI to optimize their survival prospects.

—Determine and take reasonable steps to reduce the probability of exposure of monk seals to new diseases (e.g. distemper).

Historically, Hawaiian monk seal recovery efforts have been funded primarily by NMFS and have focused heavily on scientific research. Much more attention now needs to be paid to hands-on interventions to save the seals from dying. For fiscal year 2008, MCBI recommends $7.7 million for monk seal conservation under the following programs:

—$3 million allocated to the monk seal in the Marine Mammal and Sea Turtle ESA base, under the NMFS, Office of Protected Resources. These funds would support direct intervention and research activities.

—$500,000 as part of the Marine Mammal Initiative (Cetaceans and Monk Seals), under NMFS, Office of Protected Resources. These funds support the annual

summer field camp and monk seal population assessment through the Marine Mammal Initiative. NOAA staff and volunteers must be supported on the six main seal islands over a five-month period to observe seals, collect data, and undertake urgent conservation activities.

—$3 million is needed for marine debris removal through the Coral Reef Conservation Program line item and the National Marine Sanctuaries Program under the National Ocean Service. These funds would ensure debris removal from all islands in the Papahānaumokuākea Marine National Monument and protect seals, birds, and sea turtles from entanglement death.

—$1.2 million is needed in for the Hawaiian Monk Seal Program line item. These funds support salaries, benefits, and travel costs for NMFS seal program staff. Additional staff is needed to carry out the required level of conservation activities.

In summary, MCBI respectfully requests that the subcommittee augment funding for the ecosystem and species protection programs mentioned above. Thank you for the opportunity to share our views on appropriations for NOAA.

---

PREPARED STATEMENT OF THE NATIONAL CORN GROWERS ASSOCIATION

The National Corn Growers Association (NCGA) appreciates the opportunity to share with the subcommittee our appropriations priorities for fiscal year 2008. Specifically, our top priority in the fiscal year 2008 Science, State, Justice and Commerce appropriations bill is the National Science Foundation's (NSF) Plant Genome Research Initiative (Initiative).

NCGA is a national organization founded in 1957 and represents more than 32,000 members in 48 states, 47 affiliated state organizations and more than 300,000 corn farmers who contribute to state checkoff programs for the purpose of creating new opportunities and markets for corn growers.

NCGA's top priority in the fiscal year 2008 Science, State, Justice and Commerce appropriations bill is increased funding to $150 million for the National Science Foundation (NSF) Plant Genome Research Initiative (initiative). The initiative is supported by the Interagency Working Group on Plant Genomes under the auspices of the National Science and Technology Council within the Office of Science and Technology Policy.

In 1997, NCGA spearheaded the effort on legislation that authorized major plant genome research, which resulted in the Plant Genome Research Initiative. Obtaining genome sequence information frequently leads to breakthroughs in the study of a particular organism. The goal of the initiative is to understand the structure and function of all plant genes at all levels from molecules to organisms and to ecosystems and indeed, the initiative has led to an unprecedented increase in our understanding of the genomics and genetics of plants. The initiative also changed the way research is conducted in plant biology and helped to attract a new generation of scientists to the plant sciences field at U.S. colleges and universities.

Bringing agriculturally important plant species into the genomic age is an important goal. Initial major accomplishments included the completion of the model laboratory plant Arabidopsis and rice genome sequences. Completion on those genomes demonstrated that genomic sequence was the most comprehensive way toward gene discovery—a first step toward identifying the role of each gene. Building upon lessons learned sequencing smaller plant genomes, sequencing the corn genome became feasible. Arabidopsis, a member of the brassicaceae, or mustard, family, has a genome of 125 million base pairs. Rice's genome, has 430 million base pairs. Sequencing the corn genome had been considered difficult because of its large size and complex genetic arrangement. The genome has 50,000 genes scattered among the haploid genome size of 2.3 billion nucleotides—molecules that form DNA—that make up its 10 chromosomes.

In 2004, valuable corn research was made available through NCGA to research scientists working to understand the maize genome through the availability of sequencing data from Ceres, DuPont and Monsanto. This information, combined with the corn sequence data already in the public domain, significantly accelerated the identification of genes within the entire corn genome and was a precursor to the effect that the full corn sequence will have on the research community.

In 2005, NSF, the United States Department of Agriculture (USDA) and the Department of Energy (DOE) awarded $32 million to sequence the corn genome. NSF selected a consortium of four research institutions to sequence the maize genome: The University of Arizona, Washington University in St. Louis, Iowa State University in Ames and Cold Spring Harbor Laboratory in Cold Spring Harbor, New York. The goal of the Maize Genome Sequencing Project is to unravel the complete DNA

sequence of the maize plant and to determine the number of genes and their position on the chromosomes—the tiny bundles of DNA that form the storage units of genetic information. Corn is pushing the state of the art of genetic research to new levels as its genome has complexities beyond any plant sequenced to date. The highly repetitive regions of DNA, formerly considered "junk" DNA, are extremely prevalent in corn, and have been shown to have a significant impact on how the genetic engine of life truly works. These issues have posed significant challenges to researchers interested in crop improvement, plant molecular biology, or genome evolution. Using a physical map that covers about 95 percent of the maize genome map, scientists generate a draft sequence to reveal the locations of regulatory elements within stretches of so-called non-coding "junk" DNA. Focus of the project does center on gene-containing regions and are sequenced in detail. This sequencing strategy enables the consortium to sequence the corn genome at a fraction of the cost that was necessary to decipher the human genome, which is only slightly larger than the corn genome.

Today, genomic research technology and techniques are ready to complete a high quality corn genome sequence. The result will be the complete sequence and structural understanding of the entire corn genome, annotated functional sequences, and their locations on corn's genetic and physical map. This genome will be the most complex eukaryotic genome to be sequenced to date, including the human genome. The corn genome sequence will, in turn, help in the eventual completion of other major crop genome sequences, as itself benefited from knowledge gained through the prior completion of other genome sequences. It will also hold clues to improve the growth and development of other related grass crops, such as wheat, sorghum, millet and barley. Importantly, access to all of this information is shared through GenBank, a public repository for genome-sequence data.

With increased funding, we will be much closer to achieving the goal of this initiative—understanding the structure and function of all plant genes. The corn industry, including the academic research community, grain handlers, growers, and seed companies support the corn genome sequencing project. A complete corn genome sequence and the application of its information will provide a wide range of benefits. Industry, both public and private, will be able to expedite their breeding programs and increase their knowledge of corn's important agronomic traits. Corn growers will be able to plant varieties of corn that are better suited to market and environmental needs, such as pest resistant traits. Quality researchers will continue to be attracted to the field of plant genomics and genetics.

Consumers will also benefit from more abundant and sustainable food, feed and fuel supplies. Corn is not only grown for food and feed, it is converted to a myriad of processed food products—literally thousands of products in the typical supermarket contain corn. Improvements aim at increasing yield and nutritional value and optimizing the properties crucial for grain products such as flour and pasta. The production of corn-based products with enhanced nutritional value that are safer and less allergenic will directly benefit consumers.

Corn is also an important material for many industrial purposes and products including rubber, plastics, fuel and clothing. Corn is a model system for studying complex genomic structure, organization and function, and its high quality genetic map will serve as the foundation for studies that may lead to improved biomass and bioenergy resources from corn and related plant species.

The request for the Directorate for Biological Sciences (BIO) is $633 million, and increase of $25.15 million, or 4.1 percent, over the fiscal year 2007 request of $607.85 million. The Directorate for Biological Sciences supports research, infrastructure, and education in the biological sciences at U.S. colleges, universities, nonprofit research institutions, and other research and education organizations.

BIO includes a subactivity request for Plant Genome Research (PGR) of $101.22 million, an amount that does not contemplate an increase from the fiscal year 2007 request and is a slight decrease from fiscal year 2006 actual spending. PGR subactivity was initiated in fiscal year 1998, as part of the initiative. In general, 36 percent of the PGR portfolio is available for new research grants. The remaining 64 percent is used primarily to fund continuing grants made in previous years, which includes corn genome sequencing. PGR supports corn genome sequencing jointly with USDA and DOE. The Administration's proposal would contribute the third and last increment in support of the interagency corn sequencing project that began in fiscal year 2005.

PGR also supports the Arabidopsis 2010 project. This project in fiscal year 2007 and 2008 could receive up to $25 million per year. It is important to note that model systems research such as this project, has been traditionally supported through NSF's core budget and not PGR. This change may result in a reduction of resources available for economically significant plants, such as continued work on new projects

involving the rice genome and future new project stemming from corn genome work, during flat budget cycles. The Arabidopsis 2010 project and the NSF's PGRP complement each other and provide a broad base of support for the plant biology research community. It is critical that both activities receive enough support to achieve their goals.

Maintaining and improving upon the resources available for crop systems is now more important than ever, as agriculture tries to meet the demands of consumers worldwide by providing a safe and secure supply of resources for human and animal nutrition, fiber, bioenergy, and industrial feeds. Continued strong governmental support of basic agricultural research is essential to ensure that the innovation pipeline remains robust. NCGA requests that this subcommittee include in the fiscal year 2008 Science, State, Justice and Commerce appropriations bill an increase in funding to $150 million for the National Science Foundation Plant Genome Research Initiative.

Thank you for the support and assistance you have provided to corn growers over the years. Please feel free to contact Lisa Kelley at 202–628–7001 if you need any additional information.

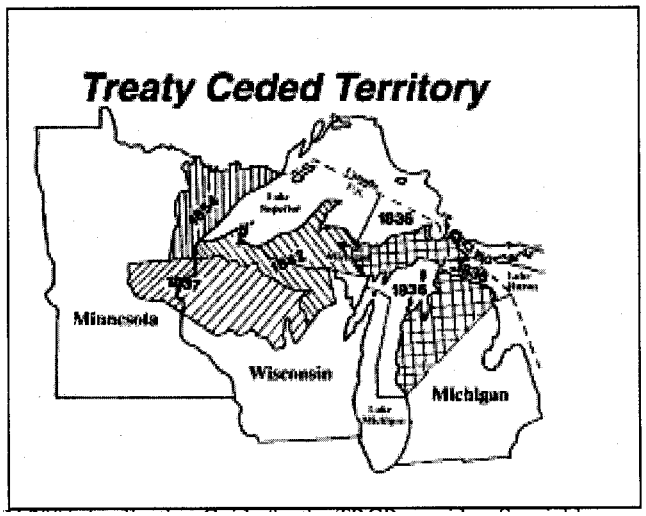
---

PREPARED STATEMENT OF THE GREAT LAKES INDIAN FISH AND WILDLIFE COMMISSION

Agency Involved: Department of Justice
Program Involved: COPS Tribal Resources Grant Program (TRGP)

*Summary of GLIFWC's Fiscal Year 2008 Testimony*

GLIFWC requests that Congress: (1) continue funding the DOJ COPS Tribal Resources Grant Program at $31,065,000 in fiscal year 2008 (i.e. the same level as requested by the Administration in fiscal year 2007 and appropriated by both the House and Senate), and (2) specifically authorize eligibility for tribes' special law enforcement agencies, including fish and wildlife departments and game wardens, to participate in the COPS Tribal Resources Grant Program.[1]




*Ceded Territory Treaty Rights and GLIFWC's Role*

GLIFWC was established in 1984 as a "tribal organization" within the meaning of the Indian Self-Determination Act (Public Law 93–638). It exercises authority delegated by its member tribes to implement federal court orders and various inter-

[1] Unlike previous years and without notice or explanation, the Fiscal Year 2006 Application Guide for the TRGP provides: Special law enforcement agencies such as fish and wildlife departments, game wardens, park and recreation departments, and environmental protection agencies are not eligible to apply under this program at this time. The status of GLIFWC's fiscal year 2007 TRGP eligibility is unknown at this time.

jurisdictional agreements related to their treaty rights. GLIFWC assists its member tribes in: securing and implementing treaty guaranteed rights to hunt, fish, and gather in Chippewa treaty ceded territories; and cooperatively managing and protecting ceded territory natural resources and their habitats.

For the past 23 years, Congress and Administrations have funded GLIFWC through the BIA, Department of Justice and other agencies to meet specific federal obligations under: (a) a number of U.S./Chippewa treaties; (b) the federal trust responsibility; (c) the Indian Self-Determination Act, the Clean Water Act, and other legislation; and (d) various court decisions, including a 1999 U.S. Supreme Court case, affirming the treaty rights of GLIFWC's member tribes. GLIFWC serves as a cost efficient agency to conserve natural resources, to effectively regulate harvests of natural resources shared among treaty signatory tribes, to develop cooperative partnerships with other government agencies, educational institutions, and non-governmental organizations, and to work with its member tribes to protect and conserve ceded territory natural resources.

Under the direction of its member tribes, GLIFWC operates a ceded territory hunting, fishing, and gathering rights protection/implementation program through its staff of biologists, scientists, technicians, conservation enforcement officers, and public information specialists.

*Community-based Policing*

GLIFWC's officers carry out their duties through a community-based policing program. The underlying premise is that effective detection and deterrence of illegal activities, as well as education of the regulated constituents, are best accomplished if the officers live and work within tribal communities that they primarily serve. The officers are based in reservation communities of the following member tribes: In Wisconsin—Bad River, Lac Courte Oreilles, Lac du Flambeau, Red Cliff, Sokaogon Chippewa (Mole Lake) and St. Croix; in Minnesota—Mille Lacs; and in Michigan—Bay Mills, Keweenaw Bay and Lac Vieux Desert.

*Interaction With Law Enforcement Agencies*

GLIFWC's officers are integral members of regional emergency services networks in Minnesota, Michigan and Wisconsin. They not only enforce the tribes' conservation codes, but are fully certified officers who work cooperatively with surrounding authorities when they detect violations of state or federal criminal and conservation laws. These partnerships evolved from the inter-governmental cooperation required to combat the violence experienced during the early implementation of treaty rights in Wisconsin. As time passed, GLIFWC's professional officers continued to provide a bridge between local law enforcement and many rural Indian communities. GLIFWC remains at this forefront, using DOJ funding to develop inter-jurisdictional legal training attended by GLIFWC officers, tribal police and conservation officers, tribal judges, tribal and county prosecutors, and state and federal agency law enforcement staff. DOJ funding has also enabled GLIFWC to certify its officers as medical emergency first responders trained in the use of defibrillators, and to train them in search and rescue, particularly in cold water rescue techniques. When a crime is in progress or emergencies occur, local, state, and federal law enforcement agencies look to GLIFWC's officers as part of the mutual assistance networks of the ceded territories. These networks include the Wisconsin Department of Natural Resources, Minnesota Department of Natural Resources, Michigan Department of Natural Resources, U.S. Coast Guard, USDA-Forest Service, State Patrol and Police, county sheriffs departments, municipal police forces, fire departments and emergency medical services.

*GLIFWC Programs Funded by DOJ*

GLIFWC recognizes that adequate communications, training, and equipment are essential both for the safety of its officers and for the role that GLIFWC's officers play in the proper functioning of interjurisdictional emergency mutual assistance networks in the ceded territories. GLIFWC's COPS grants for the past six years have provided a critical foundation for achieving these goals. Significant accomplishments with Tribal Resources Grant Program funds include:

*Improved Radio Communications and Increased Officer Safety*.—GLIFWC replaced obsolete radio equipment to improve the capacity of officers to provide emergency services throughout the Chippewa ceded territories. GLIFWC also used COPS funding to provide each officer a bullet-proof vest, night vision equipment, and in-car video cameras to increase officer safety.

*Emergency Response Equipment and Training*.—Each GLIFWC officer has completed and maintains certification as a First Responder and in the use of life saving portable defibrillators. Since 2003, GLIFWC officers carried First Responder kits and portable defibrillators during their patrol of 275,257 miles throughout the ceded

territories. In remote, rural areas the ability of GLIFWC officers to respond to emergencies provides critical support of mutual aid agreements with federal, state, and local law enforcement agencies.

*Ice Rescue Capabilities*.—Each GLIFWC officer maintains certification in ice rescue techniques and was provided a Coast Guard approved ice rescue suit. In addition, each of patrol areas was provided a snowmobile and an ice rescue sled to participate in interagency ice rescue operations with county sheriffs departments and local fire departments.

*Wilderness Search and Rescue Capabilities*.—Each GLIFWC officer completed Wilderness Search and Rescue training. The COPS Tribal Resources Grant Program also enabled GLIFWC to replace a number of vehicles that were purchased over a decade ago, including 10 ATV's and 16 patrol boats and the GPS navigation system on its 31 foot Lake Superior Patrol Boat. These vehicles are used for field patrol, cooperative law enforcement activities, and emergency response in the 1837 and 1842 ceded territories. GLIFWC officers also utilize these vehicles for boater, ATV, and snowmobile safety classes taught on Reservations as part of the Commission's Community Policing Strategy.

*Hire, Train and Equip Three Additional Officers*.—Funding has been contracted to provide three additional officers to ensure tribes are able to meet obligations to both enforce off-reservation conservation codes and effectively participate in the myriad of mutual assistance networks located throughout a vast region covering 60,000 square miles.

Consistent with numerous other federal court rulings on the Chippewa treaties, the United States Supreme Court re-affirmed the existence of the Chippewa's treaty-guaranteed usufructuary rights in *Minnesota* v. *Mille Lacs Band*, 526 U.S. 172 (1999). As tribes have re-affirmed rights to harvest resources in the 1837 ceded territory of Minnesota, workloads have increased. But for GLIFWC's COPS grants, this expanded workload, combined with staff shortages would have limited GLIFWC's effective participation in regional emergency services networks in Minnesota, Michigan and Wisconsin. The effectiveness of these mutual assistance networks is more critical than ever given: (1) national homeland security concerns, (2) state and local governmental fiscal shortfalls, (3) staffing shortages experienced by local police, fire, and ambulance departments due to the call up of National Guard and military reserve units, and (4) the need to cooperatively combat the spread of methamphetamine production in rural areas patrolled by GLIFWC conservation officers.

Examples of the types of assistance provided by GLIFWC officers are provided below:

—as trained first responders, GLIFWC officers routinely respond to, and often are the first to arrive at, snowmobile accidents, heart attacks, hunting accidents, and automobile accidents (throughout the ceded territories) and provide sheriffs departments valuable assistance with natural disasters (e.g. floods in Ashland County and a tornado in Siren, Wisconsin).

—search and rescue for lost hunters, fishermen, hikers, children, and the elderly (Sawyer, Ashland, Bayfield, Burnett, and Forest Counties in Wisconsin and Baraga, Chippewa, and Gogebic Counties in Michigan).

—being among the first to arrive on the scene where officers from other agencies have been shot (Bayfield, Burnett, and Polk Counties in Wisconsin) and responding to weapons incidents (Ashland, Bayfield, Burnett, Sawyer, and Vilas Counties in Wisconsin).

—use of a thermal imaging camera (purchased through the COPS program) to track an individual fleeing the scene of an accident (Sawyer County, Wisconsin).

—organize and participate in search and rescues of ice fishermen on Lake Superior (Ashland and Bayfield Counties in Wisconsin), Lake Superior boats (Baraga County in Michigan and with the U.S. Coast Guard in other parts of western Lake Superior), and kayakers (Bayfield County in Wisconsin).

GLIFWC is proposing to utilize DOJ TRGP funding for training and equipment to: (1) recognize, secure and respond appropriately to potential methamphetamine production sites, (2) identify addicts while on patrol, and (3) improve community awareness through hunter safety classes. Simply put, supporting GLIFWC's officers will not only assist GLIFWC in meeting its obligations to enforce tribal off-reservation codes, but it will enhance intergovernmental efforts to protect public safety and welfare throughout the region in the states of Wisconsin, Minnesota, and Michigan. The COPS Tribal Resources Grant Program provides essential funding for equipment and training to support GLIFWC's cooperative conservation, law enforcement, and emergency response activities. We ask Congress to support increased funding for this program.

[From Outdoor Life Magazine, December 2006]

## METH WARS IN DEER COUNTRY

As its cost in dollars and lives mounts, the fight against methamphetamine now involves sportsmen to a degree no one predicted a handful of years ago. Across the rural countryside, meth labs have invaded the lands where we fish and hunt.

One December evening in 2004, Wildlife Officer Amy Snyder heard shots after legal shooting hours in a popular duck-hunting area in Madison County, Tenn. She put on hip boots and set out into the marsh. But when she arrived at the blind where she thought the shooting had occurred, she found it unoccupied.

Then Officer Snyder noticed a chemical odor in the air. She shined her light around and in the grass saw a large glass mason jar filled with what looked like corn hominy. She kicked over the jar, saw rubber hoses coming out of the top and panicked.

"It was a meth lab, actively cooking," Snyder recalls. "What I'd done was extremely dangerous. The stuff could have exploded, not to mention what might have happened if I'd surprised the cookers at work."

Snyder had reason to be unnerved. The February before in Greene County, Ind., Conservation Officer Mike Gregg got a report of suspicious activity deep inside the Hillenbrand Fish and Wildlife Area. Gregg went in alone to investigate on a cold winter day and caught the unmistakable acrid tang of anhydrous ammonia, a liquid fertilizer and key component in the manufacture of methamphetamine. He got closer and, to his surprise, noticed a man trying to hide beneath the root ball of a fallen tree.

"He took off and I chased him through the snow," Gregg says. "When I caught up to him, he pulled a 9 mm pistol on me. I had to shoot him in the leg to subdue him. He was typical of the methers we see: paranoid, armed and violent."

The prior March, Alabama conservation officer Jimmy Hutto learned just how paranoid, armed and violent meth cookers can be. While arresting a man for fishing without a license, he found meth and soon was involved in serving a search warrant on the suspected cooker. But the man's property was wired to detect intruders. And when Hutto broke down the door to the lab, the cooker was waiting and shot the conservation officer in the abdomen. Hutto died two weeks later.

### A RURAL SCOURGE

These incidents are not isolated. Law enforcement and conservation officials we contacted across the country describe a wave of methamphetamine manufacturing activity that has crashed across the rural countryside in the last five years, causing a dramatic change in the way game wardens operate and in the way hunters, anglers and other recreationists should conduct themselves afield.

"The landscape is changing," says Keith Aller, deputy director of law enforcement for the U.S. Bureau of Land Management. "Twenty years ago meth was an outlaw biker thing, an urban thing. But in the past five years we've seen cookers take their labs to the forests and rural areas to avoid detection and to dump the toxic by-products of their work. We've also seen meth addicts exploiting public lands to pay for their habits. I don't want to sound alarmist, but people need to understand what we're up against these days and what they might encounter when they head outdoors."

### METH'S HISTORY

Methamphetamine was first synthesized in Japan in 1919 and was widely prescribed to Allied and Axis combatants to keep them awake during protracted World War II battles. Marketed as Benzedrine in the 1950s, it was the drug of choice for people who wanted to lose weight. A decade later, outlaw biker gangs in the United States learned the so-called "Birch" or "Nazi method" of manufacturing the drugs from over-the-counter cold medicines, and created the market for speed.

Congress made the drug illegal without a prescription in 1970, but by the early 1980s new recipes had made meth easier to cook and more potent, offering the user a 6- to 24-hour high that also damaged the brain.

This super-meth took off in Hawaii and Southern California first, manufactured by Mexican drug cartels. But soon the drug was being manufactured by mom-and-pop cookers, and within 20 years it spread eastward through the Rocky Mountains, into the Midwest and onto the East Coast. An urban phenomenon at first, it turned rural as the rank odors associated with its production caused cookers to set up in less populated areas to avoid detection. That practice has placed some meth labs in the same woods and waterways as hunters, anglers and other outdoorsmen.

Consider that in 2003 the greatest number of reported meth lab seizures on Department of Interior lands occurred on those managed by the Fish & Wildlife Service (38 laboratories), followed by the Bureau of Land Management (31 laboratories), National Park Service (8 laboratories) and Bureau of Indian Affairs (6 laboratories). That same year, the National Forest Service discovered 56 working labs on its land.

HUNTERS AND METH

But those numbers are believed to be only a fraction of the activity on federal land, not to mention state and private property. And anecdotal evidence of meth invading the outdoors is easy to come by.

In November 2004, for example, deer hunters on state land near Reelsville, Ind., came upon a duffel bag containing an actively cooking meth lab. They wisely backed away from the potentially explosive situation and notified the local police, who quickly dismantled and removed it.

Twelve months earlier in Ashley County, Ark., deer hunters tipped sheriff's investigators to the fact that methamphetamine manufacturers had taken over remote deer blinds and were using them as labs. Narcotics detectives ended up finding four cooking operations set up in Ashley County deer blinds. In Wright County, Minn., four years before, cookers decided to use ice-fishing shanties to manufacture meth on Waverly Lake. Game wardens notified Sheriff's Sergeant Todd Hoffman of the activity. When Hoffman arrived to investigate, he noticed a solvent smell seeping from one of the shacks.

Some of the more dangerous ingredients found in meth labs include lithium battery acid, charcoal lighter fluid and paint thinner. But the most common component—other than cold and allergy medicines that contain the drug pseudoephedrine—is anhydrous ammonia. Cookers sometimes steal this fertilizer from storage tanks on rural farms, ranches and supply stores.

Needing more evidence to justify a search, Hoffman sifted through a nearby trash pile. When he picked up a thermos, anhydrous ammonia gas erupted from the vessel.

"My face began to burn, and for five or ten seconds I couldn't breathe," Hoffman told the Minneapolis City Pages newspaper. "I thought my face was dissolving."

Hoffman was lucky not to have been seriously injured: When anhydrous ammonia contacts skin, it forms ammonium hydroxide, a highly caustic liquid that burns. Exposure to low levels of some meth ingredients like anhydrous ammonia can cause flu-like symptoms. Higher levels of exposure can cause lung and eye damage, chemical burns and even death.

Idaho Fish and Game officer Clint Rand was involved in a meth-related theft in 2000. Rand pulled over to help a disabled vehicle only to be shot at four times by the occupants, who had recently stolen anhydrous ammonia from a fertilizer supply store in Farmington, Wash., at gunpoint.

"Rand was very lucky not to have been hit," says Idaho Fish and Game law enforcement bureau chief Jon Heggen. "But they blew out his windshield. It affected him and his family greatly. He recently decided to retire. That said, we're not experiencing the level of activity seen in other parts of the country. We've found labs in abandoned mines and dumps in the forest, but it's not widespread. However, it only takes one to get your attention. Meth goes beyond the bad guys trying to harm you. The stuff they leave behind in those dumps can kill you."

TOXIC WASTE DUMPS

Indeed, as any law enforcement or conservation officer familiar with meth will tell you, one of the truly insidious aspects of the drug is that the waste associated with its manufacture is as dangerous as the drug, the labs or the users.

According to the National Drug Intelligence Center, every pound of meth creates 5 to 7 pounds of toxic waste. Of the 32 chemicals required to make meth by the Nazi method, for example, a third of them are so poisonous that cleanup workers have to wear biohazard suits and respirators.

The chemical residues of meth manufacture can include lye, phosphorous, hydrochloric acid and iodine. Dump sites can include contaminated coffee filters stained red from the dye in cold medicines, mason jars or Pyrex baking dishes, rubber and plastic hosing, plastic bottles, salt, industrial solvent tanks, discarded methanol or alcohol bottles, white gas containers and propane tanks with the brass fittings stained blue or green from contact with anhydrous ammonia.

According to congressional testimony, it can take up to eight hours and $5,000 to $20,000 to clean up a meth lab. Depending on its size, the manpower and money required to clean up a meth dump site are less. But when the lab or the dump is outdoors, there are hidden costs, such as contamination of groundwater and the po-

tential poisoning of game, hunting dogs or humans—all things that law enforcement officers who patrol the great outdoors are forced to keep in mind these days.

LAW ENFORCEMENT'S NEW BURDEN

"Before 2000, we'd be hard-pressed to find a meth dump. Now it's not uncommon to find two or three a week," says Patrol Captain Dennis Whitehead, who oversees law enforcement in Kentucky's Daniel Boone National Forest. "Drug crimes have come to the forest in a big way. We're not just squirrel cops anymore. Sometimes forty percent of our job is associated with drugs. We've had cookers use campsites. We've had them drive roads with the stuff cooking in their cars. We've even had a ring of poachers who were shooting deer and trading the meat for meth. In the last five years, being a forest ranger has changed one hundred and eighty degrees, and it's all due to that drug."

Indiana conservation officer Gregg agrees: "Meth has changed my job. It's gotten to the point where as a conservation officer these days you're better off going into a situation thinking you may be dealing with meth rather than a game violation."

The state-by-state statistics back up Gregg's grim assessment. The Drug Enforcement Administration reports that in 1999 in Indiana, there were 151 methamphetamine incidents where law enforcement officials, including conservation officers, had to deal with labs, dump sites or disposal of cooking chemicals or equipment.

The following year the incidents in Indiana more than doubled to 353. By 2004, the latest year for which numbers are available, the state reported 1,074 cases in which law enforcement officials had to confront meth labs or dumps in the course of their work.

The situation was even worse in Missouri, where the number of meth incidents jumped from 439 in 1999 to 2,885 in 2003 before falling slightly (to 2,788) in 2004. In those years nearly 70 percent of the dumps were found in the Mark Twain National Forest, one of the best places to hunt in the state.

SPORTSMEN WARNED

Iowa had the second-highest number of meth-lab incidents in 2004. Like several other states, including Montana, South Dakota and Tennessee, Iowa has taken to informing hunters and other outdoor enthusiasts about the threat.

The Iowa Division of Natural Resources, for example, now posts warnings on its Web site and at its offices around the state, alerting hunters to the potential hazards they face from meth when afield.

"It's sad to say, but many of our best hunting and fishing areas are conducive to cooking and dumping meth," says Lowell Joslin, chief of law enforcement for the Iowa DNR. "We've found as an agency that one of the best things we can do is put information out to sportsmen. We want to educate them about meth so they know for their own health what to do when they encounter a lab or a dump, and also to have them report what they find to the nearest law enforcement agency."

Like many rural states these days, Iowa provides its conservation officers with extensive training in drug enforcement and drug lab/drug dump recognition and management. The state also includes a methamphetamine awareness component in its hunter-safety courses.

"In every hunter-ed course I teach, I talk about meth," says Iowa conservation officer Kirby Bragg. "It's just a smart thing to do. For a while there out in the field I was running across active labs or the remnants of labs two to five times a week. The most memorable incident occurred opening day of deer season in 2003. I spotted a guy in a van parked with his motor running on a road adjacent to one of our more popular hunting areas. I didn't know if he was hunting or what. When I tried to approach him, he took off and we ended up in a high-speed pursuit. Turns out he had an active lab going in the back of the van. Moving meth labs are essentially moving bombs. We never had to deal with that kind of thing ten years ago."

Nor did outdoor law enforcement officials have to deal with the kind of random paranoid violence that BLM ranger Steven Martin faced in California in 2003.

"He was driving on a remote section of BLM land and happened on two guys sitting in a car," says BLM deputy director Aller. "When he approached, they immediately opened fire and then took off into the hills. These were young kids, eighteen to twenty, with no history of violence. But meth was found in the car and when they were finally apprehended, they told investigators they felt their best option was to kill the ranger when he stopped them. That's extreme, but that's what meth does to people."

Another incident Aller cites shows how far meth addicts are willing to go to support a habit, and how that can lead to the destruction of property and murder.

"The BLM administers two hundred and sixty million acres out west, and that land includes all sorts of recreational, archeological and paleontological resources that can be and have been stolen by addicts and sold to buy more meth," Aller says. "In early 2005, for example, one of our special agents in Oregon got word that a group of meth addicts were dismantling a BLM bridge and selling it as scrap aluminum. It sounds screwy, but that's what they were doing. Anyway, our bridge was disappearing, so the agent began to investigate, and he identified the people he thought were responsible and started doing interviews. It turns out that the suspects believed one of their own was cooperating, so they killed him. Because of a bridge. Again, extreme, but that's what meth does."

FIGHTING BACK

Thankfully, there is some good news on the prevention front: In the past year, many of the rural states hit hardest by the drug have passed strong laws limiting access to over-the-counter cold and allergy medicines that contain pseudoephedrine. Many are based on a law first passed in Oklahoma that resulted in an 80 percent reduction in meth lab seizures in that state since April 2004.

The laws require products containing pseudoephedrine to be sold behind the pharmacy counter. They also limit the purchase of pseudoephedrine products to 250 thirty-milligram pills a month and require buyers to present I.D. and sign for the medicine at the time of sale.

Iowa, one of the hardest-hit states, has gone several steps further, requiring a prescription for pseudoephedrine medicines. And some Iowa counties have started distributing locks that prevent anhydrous ammonia from being stolen from retailers.

"It's helped," says Iowa conservation officer Kirby Bragg. "I haven't run across as many labs or dumps this year as I did just two years ago."

Indiana conservation officer Mike Gregg has seen a similar drop but cautions all outdoor enthusiasts to be careful in the woods and on lakes.

"It has slowed a little," Gregg says. "The new laws are good and so are ideas like locking up anhydrous tanks. But meth cookers are clever. We've already seen them shifting from using anhydrous ammonia to using red phosphorous in their labs. We're also hearing about them experimenting with cold alcohol as a component. When it comes right down to it, meth is highly addictive and highly lucrative, and it isn't going away anytime soon. People who live or recreate in rural areas need to be aware of its dangers."

WHAT TO DO IF YOU ENCOUNTER A METH LAB

Okay, so you come across what looks like a high school chemistry experiment that stinks or a pile of trash dumped somewhere in your hunting woods or streamside of your favorite trout river. What do you do?

First, err on the side of caution. Meth labs and meth dumps are dangerous places. If actively cooking, meth labs are highly volatile and can explode. And meth dumps are filled with toxins. So get back. If you're hunting with dogs, get your dogs back, too. If you've got a binocular, use it to confirm what you're looking at.

With an active lab or a dump, you'll see a combination of these items: glass jars, rubber tubing, thermometers, aluminum foil, blenders, cheesecloth, coffee filters, funnels, gas cans, hot plates, paper towels, propane, Pyrex dishes, rubber gloves, strainers, duct tape and clamps.

The chemicals involved are harder to identify unless they're labeled. But expect that any lab or dump might contain the following: acetone; isopropyl or rubbing alcohol; cold pills containing ephedrine or pseudoephedrine; drain cleaner (sulfuric acid); engine starter (ether); iodine; HEET gasoline additive; lithium batteries; matches for red phosphorous; muriatic acid, anhydrous ammonia; Red Devil lye; salt; or trichloroethane, which ironically is a common gun-cleaning solvent.

If, based on what you can see from a distance, you believe you've stumbled onto a lab or a dump, back completely out of the area and contact the closest law enforcement department, including rangers and conservation officers. They'll get hazardous-materials experts to dismantle and clean up the mess.

"We don't want hunters or anglers to get hurt, but if they locate some of the meth activities and report them, it's a big help to us," says Lowell Joselin, chief of law enforcement for the Iowa Division of Natural Resources.

PREPARED STATEMENT OF THE TRUST FOR PUBLIC LAND, LAND TRUST ALLIANCE, THE NATURE CONSERVANCY, THE CONSERVATION FUND, THE OCEAN CONSERVANCY, ASSOCIATION OF NATIONAL ESTUARY PROGRAMS, AND RESTORE AMERICA'S ESTUARIES

On behalf of The Trust for Public Land, Land Trust Alliance, The Nature Conservancy, The Conservation Fund, The Ocean Conservancy, Association of National Estuary Programs, and Restore America's Estuaries, we would like to thank you for your strong support of our nation's Coastal Zone Management Program, and coastal land conservation. We are writing today in support of the Coastal and Estuarine Land Conservation Program (CELCP).

Created by Congress in 2002, CELCP protects "those coastal and estuarine areas with significant conservation, recreation, ecological, historical or aesthetic values, or that are threatened by conversion from their natural or recreational states to other uses." Thus far, this program has invested over $177 million towards 119 conservation projects in 25 of the nation's 35 coastal states, and has helped preserve some of America's greatest coastal treasures. All federal funding has been leveraged by at least an equal amount of state, local and private funds. NOAA has a proud 200-year tradition of sound management of our nation's coastal resources, and the CELCP program further builds upon that achievement. We hope to continue this federal-state partnership and encourage you to fund CELCP at $80 million for fiscal year 2008.

Our nation's coastal zone is under significant pressures from unplanned development. In fact, it is estimated that by 2025, nearly 75 percent of the nation's population will live within 50 miles of the coast, in addition to millions more who enjoy America's storied coastlines. Across the nation, beaches and waterfronts have always been the destination of choice for Americans. Billions of dollars of the country's GDP are generated by coast-based economic activities, inexorably linking our coastal zone with the economic health of the nation.

As a result of this economic boom, rapid, unplanned development has marred once-pristine viewsheds and substantially reduced public access to the coast. The resulting increase in impervious surfaces has correspondingly increased non-point source pollution and seriously degraded coastal and estuarine waters. The loss of coastal wetlands has drastically impaired estuaries, some of the most productive habitat on earth. The U.S. Commission on Ocean Policy has also stressed the importance of land conservation as part of its broader recommendations to Congress and the Nation.

Increased funding for CELCP will complete a substantial number of important coastal conservation projects around the country, many of which still hang in the balance from the yet-undecided fiscal year 2007 allocation. While we are optimistic at the first-time inclusion of CELCP in the President's fiscal year 2008 proposed budget, the proposed funding level is vastly lower than what is needed on the ground and well below what your subcommittee has historically proposed. While this signal of the Administration's growing support for the program is an important and welcome milestone in the evolution of the federal-state CELCP partnership, the strong support of Congress is paramount. Again, we urge you to sustain that partnership this year by using your discretion to fund CELCP at $80 million in fiscal year 2008. We look forward to working with you as this process moves forward.

---

PREPARED STATEMENT OF THE FOND DU LAC BAND OF LAKE SUPERIOR CHIPPEWA, NISQUALLY TRIBE OF WASHINGTON, PUYALLUP TRIBE OF WASHINGTON, AND SHOSHONE-PAIUTE TRIBES OF THE DUCK VALLEY RESERVATION

Chairwoman Mikulski, Ranking Member Shelby and members of the Subcommittee, we respectfully submit the following written testimony regarding funding for tribal law enforcement and justice programs within the Department of Justice budget. In fiscal year 2008, as in past years, the President has proposed significant cuts to several grant programs that provide critical funding to tribal law enforcement agencies and justice systems. If enacted, these cuts will cripple tribal justice systems. We respectfully request that you reject these proposed cuts. We would also like to endorse the recommendations made by the Senate Committee on Indian Affairs in its "views and estimates" letter.

INTRODUCTION

The need for law enforcement resources across Indian country is severe. Today, there are 1.3 law enforcement officers per 1,000 citizens in Indian county, compared to 2.9 law enforcement officers per 1,000 citizens in non-Indian communities. It is estimated that more than 2,000 additional officers are required across Indian coun-

try just to meet minimum safety standards. Police officers working on reservations frequently have to patrol alone because of personnel shortages. Understandably, newly-trained and veteran officers often leave to take jobs that require less of a risk to their personal safety, exacerbating officer shortages. Equipment needs are also great. Tribal law enforcement agencies need stable funding to address these core shortages. This need has become even more severe in recent years because of increased methamphetamine use, production and trafficking on reservations. It is a vicious cycle—lack of funding for even the most basic elements of a law enforcement program is part of what contributes to the perception that reservations are "lawless." This perception is what makes our communities attractive to drug dealers, which in turn increases the need for resources.

Of course, effective crime prevention takes more than just police officers. Tribes also operate court systems, detention facilities, drug treatment services and other alternatives to detention. Many tribes have also invested in preventative programs, such as youth centers, youth activity programs and drug education. As governments, we recognize our responsibility for fostering positive change and rehabilitation, even in our jails. More often than not, the inmates are people from our community who will be returning to the community when they are released, so we have a particular incentive to help them pursue positive changes. Without all of these services, though, we are stuck in a cycle of arresting and locking up our own people.

REQUESTS

*Office of Justice Programs, State and Local Law Enforcement Assistance*.—For fiscal year 2008, the Department of Justice has requested $550 million for state and local law enforcement assistance within the Office of Justice Programs. Instead of breaking the funding request down into specific grant programs—as in past years, the Administration instead requests $312 million for flexible public safety grants under the Byrne Public Safety and Protection program and $180 million for a violent crime reduction partnership initiative. However, this reorganization of the OJP budget camouflages an overall decrease of $900 million for all the programs included in this category. While such flexible funding initiatives can often be useful to tribes, the Administration's proposal would (1) significantly reduce the overall funding amount and (2) eliminate any specific set-aside for tribes. We are greatly concerned that, without this set-aside, tribal programs will lose funding because they are forced to compete with all other programs. We request that Subcommittee reject any decrease in the programs and, specifically, we ask that the following tribal justice programs be funded at least at fiscal year 2007 levels:

—Tribal courts—No less than $8 million.
—Indian Country Grant program—No less than $5 million.
—Correctional Facilities on Tribal Lands—No less than $20 million to address the facility needs documented by the Office of the Inspector General.
—Bureau of Justice Assistance, Indian Alcohol and Substance Abuse Demonstration Program—No less than $5 million.

*Tribal Youth Program*.—The Administration again proposes an overall decrease of $100 million for child safety and juvenile justice programs. As with state and local law enforcement assistance, the proposal would consolidate several programs into the new Child Safety and Juvenile Justice Initiative, a single, flexible, competitive grant program. This would encompass funding for Juvenile Justice and Delinquency Prevention, Juvenile Delinquency Block Grants, Internet Crimes Against Children, and several other grant programs. By combining these programs, however, the Administration tries to hide its overall reduction and also eliminates the set-aside for tribes typically provided by the Tribal Youth Program earmark. We ask that the Subcommittee provide at least as much funding for these programs as was provided last year. Most importantly, we ask that the Subcommittee restore the $10 million earmark for the Tribal Youth Program.

*Indian Country COPS*.—The Administration proposes to completely eliminate funding for the Indian Country COPS program. The justification provided is that tribes can apply for competitive grants under other OJP programs, but—as described above—the Administration is in fact decreasing funding for those programs. Since its establishment in fiscal year 1999, the COPS program has provided essential public safety services in Indian County and has assisted tribes in increasing the number of law enforcement officers. We simply cannot afford to lose these officers, which is what will occur if COPS funding is cut. We ask the Subcommittee to restore funding for the COPS program at $33.2 million, the fiscal year 2007 amount.

*Office of Violence Against Women*.—The Office of Violence Against Women administers the programs authorized by the Violence Against Women Act (VAWA). The most recent VAWA reauthorization provided for a range of important intervention,

support and enforcement programs. Importantly, that law also provides that 10 percent of all appropriated funds be set aside for Indian tribes. These programs are of critical importance in Indian country, where the rates of domestic violence are extremely high. As Congress found, Indian women are battered at a rate of 23.2 per 1,000 (compared with 8 per 1,000 among Caucasian women). From 1979 through 1992, homicide was the third leading cause of death of Indian females aged 15 to 34, and 75 percent were killed by family members or acquaintances. Rape is also far too common—1 out of every 3 American Indian and Alaska Native women are raped in their lifetimes. Indian women experience 7 sexual assaults per 1,000 (compared with 4 per 1,000 among Black Americans, 3 per 1,000 among Caucasians, 2 per 1,000 among Hispanic women, and 1 per 1,000 among Asian women). Unfortunately, these programs have never been funded up to authorized levels. For fiscal year 2008, the Administration proposes yet another decrease. We ask the Subcommittee to restore funding for VAWA programs to at least $387 million, the amount provided in fiscal year 2006.

*Office of the United States Attorney*.—We would like to see funding increased for local Assistant U.S. Attorneys with responsibilities for Indian country law enforcement sufficient to support at least one full-time position. Currently, the part-time hours of many Indian country AUSAs make effective law enforcement on our Reservations difficult.

CONTEXT

We would like to give the Committee a picture of the law enforcement systems in our communities and some of the specific needs we face.

*Nisqually Tribe*.—The Nisqually Reservation is located in Washington State. Our Reservation is approximately 5,000 acres. We serve approximately 6,000 Indian people in our service area, about 600 of whom are enrolled tribal members living on the Reservation, and the rest of whom live in surrounding areas. We have a land-based police force with nine officers, which is solely responsible for enforcing tribal law and also works closely with local police on other matters. Our police also have extensive marine water enforcement duties. We employ two water patrol officers to patrol over 100 square miles of Puget Sound for both the treaty salmon fishery and treaty shellfish harvesting. We also provide hunting enforcement for over 50,000 acres of land in the Tribe's usual and accustomed area within the Nisqually River watershed. Besides our police department, we have a tribal court with two full-time judges, and we employ ten detention officers at our 45-bed detention facility (built in 2002). Like many other tribes, we are struggling to cope with escalating methamphetamine use and associated increases in gang activity and property crime related to dealing and manufacturing.

*Shoshone-Paiute Tribes*.—The 463-square mile Duck Valley Reservation straddles the border of Nevada and Idaho. We have approximately 1,700 tribal members, about 900 of whom live on the Reservation. Our population is very young—nearly 70 percent of our people are under the age of 34. Much of our law enforcement is handled by the Bureau of Indian Affairs. However, the DOJ has been an important source of funding for us—for example, we have received grants in the past to construct a juvenile detention facility and to encourage enforcement of protection orders. At this time, our greatest need is more help from federal law enforcement officials, such as regional AUSA.

*Puyallup Tribe*.—The Puyallup Reservation is located in the urbanized Seattle-Tacoma area of the State of Washington. The 18,061-acre reservation and related urban service area contains 17,000 plus Indian people from over 435 Tribes and Alaska Villages. The Puyallup Nation Law Enforcement Division currently has 26 commissioned officers to cover 40 square miles of reservation in addition to the usual and accustomed areas. We currently operate with limited equipment, patrol vehicles requiring constant repair and insufficient staff levels. With the continuing increase in population, increase in gang related activities on the Puyallup Reservation and the impact of the increase in manufacturing of methamphetamines in the region, the services of the Puyallup Nation Law Enforcement Division are exceeding maximum levels.

The demand on law enforcement services will increase as tribal governments continue to enhance civil and criminal justice administration and as tribal governments play an integral role in securing America's borders, citizens and physical infrastructure. This demand is further impacted by the existing and growing "gang problem" within the boundaries of the Puyallup Reservation. These gangs are different than other reservations due to our urban setting (Puget Sound region of the State of Washington), five other city boundaries next to our exterior boundaries, six separate local jurisdictions and Interstate 5 traversing through the reservation. In an effort

to combat these gang activities, the Puyallup Tribal council created a Gang Task Force from the Tribal Police Department, representatives from various Tribal Services Divisions and community members. The Gang Task Force developed a gang policy that includes a four-prong approach to gang related activities: (1) enforcement, (2) intelligence, (3) education, and (4) and physical-mental health. We have begun to implement this strategy, but such a major law enforcement undertaking will require more officers, additional and continued training, specialized equipment, and adequate detention facilities for adults and juveniles.

A major area of concern is the status of the Tribe's Regional Detention Facility. Due to damages from the February 2001 Nisqually earthquake, we have had to relocate to modular/temporary facilities. As a regional detention facility, the relocation to the modular facility not only impacts the Tribe's ability to house detainee's but also the approximately 173 native inmates that were incarcerated at the Puyallup Incarceration facility during the period of 2001–2002. Relocation to the modular facility has also impacted the Tribes ability to house juvenile detainees. With no juvenile facilities, our youth are sent to non-Native facilities. Both the Department of the Interior and the Department of Justice have essentially stopped providing construction funding since 1998. Yet the need for new and replacement facilities is still great.

*Fond du Lac Band of Lake Superior Chippewa*.—The Fond du Lac Band's law enforcement program grew out of the Band's responsibilities for enforcing conservation laws that protect natural resources and regulate Band members who hunt, fish and gather those resources both within and outside the Reservation pursuant to rights reserved under Treaties with the United States in 1837 and 1854. The Band's rights to hunt, fish and gather on lands ceded under these treaties have been recognized and upheld by the federal courts and the United States Supreme Court. Under established Band conservation law, the Band is responsible for enforcing regulations over approximately 8,000,000 acres in northern and central Minnesota. It is also essential that the Band continue to manage its on-reservation resources in order to meet the demands of an increasing population. The on-reservation resources are vitally important to Band members as they provide the foundation for our culture, subsistence, employment and recreation.

Following a Minnesota Supreme Court decision in 1997 holding that the State did not have jurisdiction to enforce traffic laws on roads within Indian reservations, the Band needed to establish a Tribal law enforcement department to address on-reservation law enforcement needs. The Band has done this, using a combination of tribal funds and federal funds (made available through the Community Oriented Policing Services (COPS) program and the Bureau of Indian Affairs), and by entering into cooperative agreements with local law enforcement agencies. Due in large part to that decision, the Band responds to a few thousand calls every year including traffic stops, domestic assaults, disturbance, theft and drug and alcohol related incidences, to name just a few. The Band has also experienced an increase in law enforcement responsibilities as a result of the insurgence of methamphetamine and prescription drug use on our Reservation. Drug-related deaths and crime are dramatically increasing on our Reservation which in turn drastically increases our law enforcement responsibilities.

With these increased responsibilities, the Band has begun to plan and develop strategies to address our law enforcement needs, including staffing, training, equipment, and educating our youth to prevent crime and drug use. The Band currently operates its law enforcement program with ten officers but would be able to better address the growing law enforcement needs if the Band had 15–20 officers, which would require additional funding for staffing, training, recruitment and retention. Further, the current budget does not allow the Band to offer competitive salaries needed to recruit and retain officers. Additional tribal officers would also enable the Band to ensure that a School Resource Officer be permanently located at the Ojibwe School and would allow the Band to implement programs aimed at educating youth about a career in tribal law enforcement. The Band is also developing a tribal process for issuing and enforcing orders for protection, which will compliment our existing family support services programs. In regards to equipment, the Band would be more efficient if it had its own intoxilizer instead of having to transport arrestees an hour away to the St. Louis County Jail for DWI processing. Lastly, and of significant importance, the Band anticipates that additional funding will be necessary to address support costs associated with upgrading to the advanced dispatching system already in use by St. Louis and Carlton Counties.

CONCLUSION

The need for law enforcement resources in each of our communities is great. We ask that the Subcommittee recognize the important role that the Department of Justice plays in providing law enforcement resources to tribes. At a minimum, we ask you to reject the Administration's proposal to eliminate specific tribal programs under its jurisdiction. If we can provide any additional information, please do not hesitate to contact our counsel, Mary J. Pavel or Addie C. Rolnick at Sonosky, Chambers, Sachse, Endreson & Perry, LLP, 1425 K Street NW, Ste. 600, Washington D.C. 20005; 202–682–0240 (tel); 202–682–0249 (fax); mpavel@sonosky.com; arolnick@sonosky.com.

---

PREPARED STATEMENT OF THE UNH COOPERATIVE EXTENSION

Madam Chairwoman and Honorable members of the Subcommittee, I appreciate the opportunity to provide testimony in support of an appropriation of $1,300,000 from NOAA's Coastal and Estuarine Land Conservation Program to protect the 288-acre Isinglass River Conservation Corridor in New Hampshire.

In addition, I would like to urge your support for a substantial increase in overall funding for the Coastal and Estuarine Land Conservation Program in fiscal year 2008 to enable the protection of significantly more coastal resources than in previous years. While we are pleased that the program has been recommended in the President's budget for $15 million, this level, while a good first step, is inadequate when compared to the needs from across the country, and what Congress has historically provided for this program.

I work with UNH Cooperative Extension as an Educator in Land and Water Conservation in 62 communities within Rockingham County and north to the extent of the Great Bay watershed. My involvement with conservation over the past three years has resulted in the successful completion of more than 130 projects covering in excess of 6,000 acres. The Isinglass River Conservation Corridor is one of the most exciting that I have been involved with during this period. My role from the outset has been to bring the landowner, the community, a regional land trust BearPaw Regional Greenways and the Trust for Public Lands together to try to find a way to conserve the keystone property in this important river corridor.

Of New Hampshire's many waterways, only 14 rivers have the distinction of being officially recognized by the state's Rivers Management Protection Program for outstanding natural and cultural resources. The Isinglass River, which flows freely for its entire 18-mile course through the southeastern portion of the state, is one of these select few. Winding its way through one of the most rapidly developing portions of the state, the scenic and ecological conditions which make the Isinglass so unique are increasingly in jeopardy. As expanding development is frequently accompanied by habitat loss, degradation of water quality, and loss of recreational opportunities, programs such as the Coastal and Estuarine Land Conservation Program (CELCP) have been established to help protect and preserve landscapes vital to the healthy functioning of ecosystem processes.

The Isinglass River property is 288 forested acres bounded to the west, northwest, and northeast by the Isinglass River. It is surrounded by 1,500 acres of contiguous forest, and has 7,800 feet of river frontage. The Isinglass River property is the top priority for the State of New Hampshire for CELCP funding in fiscal year 2008 and is located in a section of the river that is identified as a Conservation Focus Area in the New Hampshire Coastal Management Plan. In 2005, the New Hampshire State Wildlife Action Plan categorized the river corridor as Tier I habitat, the highest quality designation in the State. The current landowner has already submitted a subdivision plan for 72 housing lots, which would forever fragment this large, undeveloped block of land along the Isinglass River.

The length of the Isinglass River provides home to a variety of wildlife, including mink, otter, raccoon, deer, moose, black bear and bobcat, all of which would be threatened if development were to proceed. A wildlife inventory of the Isinglass corridor has confirmed the presence of several species classified at the federal and state level as threatened, endangered, or of special concern, which include the American bald eagle, common loon, osprey, Cooper's hawk, wood turtle, Blanding's turtle and spotted turtle. There is also the presence of a seven-acre beaver impoundment. The Isinglass River itself is considered an important fishery. Naturally occurring warmwater game fish include small and largemouth bass in the lower portion of the river. The New Hampshire Department of Fish and Game annually stocks more than 3,000 rainbow trout and 2,500 brook trout in the headwaters. In addition, over 73,000 Atlantic salmon fry are being stocked as part of an ongoing anadromous fish restoration effort. Several species of concern also are known to live in the Isinglass

River, including the American eel, banded sunfish, bridle shiner, and the blacknose shiner, a fish located in only one other waterway in the state.

The Isinglass River property will offer recreational benefits as well as habitat protection. A trail network already exists on the property, which makes hiking a main activity. Pig Lane, the road that provides access to the Isinglass River property, is used extensively for mountain biking. Hunting and fishing have long been historic uses of the property, and access for these activities will continue. The Isinglass River itself has been used extensively for fishing, boating, and other recreational uses. The river is considered to be an important seacoast trout stream and is heavily utilized by local anglers. Due to the free-flowing nature of the Isinglass River it provides both challenging whitewater and relaxing flatwater boating opportunities for canoeists and kayakers. Because of the importance of Isinglass River, as a fishery and recreational boating destination, New Hampshire Fish and Game would be interested in constructing and maintaining a car-top boat launch with access through Pig Lane.

A fiscal year 2008 Coastal and Estuarine Land Conservation Program (CELCP) appropriation of $1.3 million, directed to the Town of Strafford, is needed to acquire and conserve this property. This appropriation will be matched with funds from the New Hampshire Land and Community Heritage Investment Program, New Hampshire Fish and Game, and private donations, and the value of match properties. The Town of Strafford has already committed up to $200,000 towards acquisition of this property.

Thank you, Madam Chairwoman, for the opportunity to provide this testimony.

---

## PREPARED STATEMENT OF THE CLEAR CREEK NATURE AND CULTURAL TOURISM COUNCIL

Madam Chairwoman and Honorable members of the Subcommittee, I appreciate the opportunity to present this testimony in support of an appropriation of $705,000 from NOAA's Coastal and Estuarine Land Conservation Program to acquire potential parkland along Clear Creek in Webster, Texas.

### NOTE ABOUT ORGANIZATION

Identified for acquisition with fiscal year 2008 funds are approximately 90 acres in several ownerships within the proposed Clear Creek Park boundaries. Once acquired, the City of Webster will own and maintain the land as a public park and conservation area. Purchase of these properties is critical to the protection of habitat and recreational open space along Clear Creek, one of the few remaining unchannelized stream and river corridors in the Houston metropolitan area. Development is currently the largest threat to habitat in the Galveston Bay estuary, and some parcels within the park area have already been sold. If additional tracts in the proposed Clear Creek Park area are developed, the creek's floodway would be degraded by loss of wetlands and increase in runoff pollutants.

The Clear Creek corridor offers the potential for significant recreational opportunities for residents and visitors. Several parks operated by local governments extend along the creek, including Harris County's Challenger Seven Memorial Park, Galveston County's Walker Hall Park, and League City's Erikson Tract and Clear Creek Nature Park. In order to enlarge and further link this important corridor of parks and reserves, the City of Webster has proposed the acquisition of approximately 200 acres along the northern banks of the creek for a new Clear Creek Park. Within the planned park area, the City of Webster envisions building a trail along Clear Creek for hiking and biking. The trail will also feature access to launch sites on the creek for canoeing and kayaking, small piers for fishing, observation points and decks for bird watching, and picnic areas for families. The multiple opportunities along the trail are expected to accommodate and contribute to outdoors and environmental education. The opening of a trail would also advance the Galveston Bay Estuary Program's goal of increasing public access to Galveston Bay and its tributaries.

Galveston Bay was recognized in 1988 as an estuary of national importance in the EPA's National Estuary Program, one of 28 such estuaries in the nation. The comprehensive management plan of the Galveston Bay Estuary Program identified wetlands habitat loss and degradation as a priority problem in the estuarine system. Webster lies at the lower end of the Clear Creek watershed and is home to diverse communities of ecologically important coastal habitats and systems. Riparian forests of willow oaks, water oaks, and cedar elms provide habitat for amphibians, owls, hawks, neotropical migrant birds, and the reddish egret, a state-listed threatened bird species. Along the creek banks are several areas of coastal prairie. Near Clear

Lake and the entrance to Galveston Bay, marshes, wetlands, and embayments support fish, waterfowl, and migrant birds.

An appropriation of $705,000 from the Coastal and Estuarine Land Conservation Program (CELCP) is needed in fiscal year 2008. Clear Creek Park will protect critical coastal land and provide multiple recreational possibilities to residents of Webster and other nearby communities.

In addition to specifically funding Clear Creek, I urge your support for a substantial increase in overall funding for the Coastal and Estuarine Land Conservation Program in fiscal year 2008 to enable the protection of significantly more coastal resources than in previous years. While I am pleased that the program has finally been recommended in the President's budget for $15 million, this level, while a good first step, is inadequate when compared to the needs from across the country, and what Congress has historically provided for this program.

Thank you, Madam Chairwoman, for the opportunity to present this testimony in support of the Clear Creek project and the CELCP program.

---

## PREPARED STATEMENT OF THE NATURE CONSERVANCY

Thank you for the opportunity to offer the recommendations of The Nature Conservancy on the fiscal year 2008 budget for the National Oceanic and Atmospheric Administration (NOAA).

In general, we are concerned that funding for oceans in general and NOAA specifically is declining. The Conservancy urges the Committee to provide appropriations for NOAA at or approaching $4.5 billion, as recommended by the Joint Oceans Commission Initiative and the Friends of NOAA Coalition. This funding level for NOAA would allow enhancements in the development of an integrated ocean and atmospheric observing system; increased research and education activities, expanded ocean conservation and management programs; and provide critical improvements in infrastructure (satellites, ships, high performance computers, facilities), and data management. Such an increase would represent significant progress toward addressing recommendations contained in the reports of the U.S. Commission on Ocean Policy and the Pew Oceans Commission.

The Conservancy works to identify priorities for coastal and marine conservation through marine ecoregional plans. We identify present and likely future threats to marine biological diversity before attempting to identify appropriate strategies for conservation. At more than one hundred marine sites around the world, the Nature Conservancy has used a variety of strategies for marine conservation including habitat restoration of important nursery and spawning areas, removal of invasive species, coastal land acquisition, private conservation of submerged lands, elimination of destructive practices, establishment of protected areas, management of extractive marine resources activities, and reduction of nutrient and toxic inputs to coastal systems. No single strategy works everywhere and at every site, multiple conservation approaches are needed. The selection of appropriate approaches depends on the biological, socioeconomic, and political circumstances at each site.

The National Oceanic and Atmospheric Administration (NOAA) is an important partner to the Conservancy in many aspects of our conservation work:

—We rely upon NOAA's data, research, and monitoring of coastal and marine systems, and have several shared priorities on which we collaborate. For example, NOAA's Coastal Services Center maintains a strong customer-service, partnership-oriented approach to providing needed information and technical assistance to states, local governments, other federal agencies, and the private sector to inform decision-making.

—We rely on NOAA's programs that support site-based conservation—those that fund conservation and restoration activities, and those that provide for management of coastal and marine systems. NOAA's ability to meet its requirements under various resource management statutes could be significantly improved by enhancing the agency's ability to fund on-the-ground conservation needs. Programs such as Coastal and Estuarine Land Conservation, Community-based Restoration, Open Rivers Initiative are excellent examples of NOAA taking a practical, community-oriented approach to conservation and management of coastal and marine resources. These programs should be expanded.

—NOAA's contributions to state and local implementation and educational programs help to ensure that the human capacity exists to address environmental management issues at the necessary scale. We are concerned that NOAA's support for human capacity to implement programs within the agency and at the state and local levels is often the first to go in tight budget environments. The Committee should provide funding for staff capacity to provide technical assist-

ance, efficiently manage grants and programs, and help to measure effectiveness.

Finally, we would like to offer the Committee our recommendations regarding funding levels and guidance regarding implementation of a number of key NOAA programs.

*NOAA Habitat Restoration*

The Nature Conservancy requests increased funding for habitat conservation and restoration to support fisheries management objectives, protected species recovery, and other coastal and marine management requirements. Through existing programs, NOAA has clearly demonstrated their capability to achieve results by advancing constructive, on-the-ground and in-the-water habitat conservation. Habitat losses have a substantial impact on the health and productivity of marine ecosystems, yet NOAA's ability to work closely with communities around the country to stem or reverse these losses is constrained by the relatively small amount of funding they receive.

We would urge you to consider increasing funding for the following programs in NMFS Office of Habitat and in the Office of Protected Resources:

*National Marine Fisheries Service—Office of Habitat, Fisheries Habitat Restoration*

*Penobscot River Restoration ($10 million in fiscal year 2008)*.—In a 2004 study, the National Research Council[1] identified removal of dams as a top priority near term action required to recover Atlantic salmon in Maine. Removal of the Veazie and Howland dams and modifications proposed at Howland dam on the mainstem of the Penobscot River—Maine's largest river system—present a remarkable opportunity to recover a species. This project will improve access to almost 1,000 miles of habitat for Atlantic salmon, thousands of miles of habitat for American eel, and hundreds of miles for alewives. Atlantic sturgeon, shortnose sturgeon (both federally listed), tomcod, and smelt will recover lost access to their historic habitat ranges. Additionally, this project will provide benefits to the Penobscot Indian nation, will provide new recreational opportunities, and will come with no net loss of power production from the river, maintaining a clean and secure energy source for Maine's residents.

*Community-based Restoration Program ($20 million in fiscal year 2008)*.—Currently this program, with its exceptional 10-year track record, is able to fund only about 15 percent of the proposals it receives. Additional funds would be well-spent.

*Open Rivers Initiative ($10 million in fiscal year 2008)*.—In addition to the large barriers on rivers like the Penobscot, there are hundreds of thousands of small degraded barriers on rivers and streams across the United States. This Initiative is part of a multi-agency commitment to address this problem. We urge you to ensure that this new program is additive to NOAA's habitat restoration capacity, and doesn't reduce funding available for existing programs.

*National Marine Fisheries Service—Office of Protected Resources*

*Cooperation with the States ($5 million in fiscal year 2008)*.—Through this program, authorized under Section 6 of the Endangered Species Act, NMFS may provide grants to support conservation actions that contribute to recovery, including management, outreach, research, and monitoring projects that have direct conservation benefits for listed species, recently de-listed species, and candidate species that reside within that State. A comparable program for cooperation with states on ESA activities exists in U.S. Fish and Wildlife Service has been very successful in catalyzing and funding activities that contribution to the recovery of listed species.

With the exception of jointly managed species (Atlantic salmon) activities related to NMFS jurisdiction species are not eligible for funding under the FWS program. NMFS has management responsibility for 56 listed marine species in the United States. While substantial federal funding is directed to Pacific salmon species under their jurisdiction, there are few resources available to support proactive conservation efforts geared toward recovery of the other 30 species for which they have sole or joint management responsibility.

With increased funding under this program, states would have a strong incentive to enter into cooperative agreements with NMFS under Section 6 and NMFS would have tools and resources to support more on the ground conservation efforts to abate threats to listed species (most grants to date have been for research or monitoring activities).

---

[1] National Research Council. *Atlantic Salmon in Maine*. National Academies Press. 275 pp. 2004.

This program has received $990,000 each year since fiscal year 2003. On average, approximately 80 percent of appropriated funds have been granted each year with a minimum 25 percent non-federal cost share. Remaining funds are used for program management.

*Coastal and Estuarine Land Conservation Program (CELCP)*

The Nature Conservancy supports funding CELCP at $80 to $100 million for fiscal year 2008 and looks forward to working with the Committee to guide selection of high priority projects. We recognize that this is a substantial increase of prior year funding levels, but feel that it is warranted given the extraordinary circumstances surrounding the fiscal year 2007 budget and the pent-up demand left over from what we expect to be comparatively low funding levels in fiscal year 2007. We believe that the list of projects developed in fiscal year 2007 by NOAA to identify important, eligible and ready projects was a significant improvement to the program and hope that a similar list will be made available soon to offer guidance for the fiscal year 2008 process. We hope that it will be useful to the Committee as you make decisions regarding the future direction of this important program.

We are concerned that NOAA continues to impose a $3 million per project cap in the guidance for the call for proposals. We are concerned that this cap may be either unnecessarily constraining or may lead to inflated project proposals. States should be encouraged to request what is needed to complete a given project within an appropriate timeframe, and should work with NOAA and the Congress to ensure adequate funding is available within budget constraints.

Finally, we are increasingly concerned about the lack of dedicated staff capacity for CELCP at NOAA. Current practice is to assess a percentage of the project appropriation to cover NOAA staff costs. The problem is that up to a point, the costs of running a program are fixed. NOAA needs a dedicated line of funding to support program administration and management, and should be prohibited from assessing a percentage of project allocations to cover administrative costs.

*Coral Reef Conservation Program and Coral Reef Watch*

The Conservancy has developed a strong partnership with NOAA's Coral Reef program, and we are delighted with their enthusiastic desire to work together on improving resilience of coral reefs, developing approaches for sustainable financing for coral conservation activities at the local level, and other creative approaches to reducing threats to corals. We would urge you provide $30.5 million for the program in fiscal year 2008, an increase over the Administration request of $25.797 million. The $30.5 million requested would include $1.5 million to support "Local Action Strategies," a unique partnership between NOAA and states and territories to address threats to coral reefs at the local level.

However, we are concerned with the decision made in the fiscal year 2006 conference to cut funding for NESDIS coral monitoring in fiscal year 2006. Funding for Coral Reef Watch was included in bills produced by both chambers and the President requested $737,000 for this modest but effective program known as "Coral Reef Watch." The program has received full funding in fiscal year 2007. In 2005, not only did NESDIS scientists in this program predict a major coral bleaching event in the Caribbean, but these scientists were able to reach out to NMFS, NOS and partners in the region to use the attention generated by the event to help local managers take action to help reefs recover from the devastating effects of bleaching.

*Gulf of Mexico Governor's Alliance*

The Administration's budget included a request for $5 million to help implement the Gulf of Mexico Governors' Action Plan. The Conservancy urges the Committee to provide at least this amount to leverage action on the commitments made by the Gulf Coast Governors. The Alliance identified five priority issues that are regionally significant and can be effectively addressed through increased collaboration at state, local, and federal levels:

—Improvement in Gulf water quality, with an emphasis on healthy beaches and shellfish beds;
—Restoration and conservation of coastal wetlands;
—Environmental education;
—Identification and characterization of Gulf habitats to inform management decisions; and
—Reductions in nutrient loading.

*Pacific Coast Salmon Recovery Fund*

The Pacific Coast Salmon Recovery Fund (PCSRF) has funded hundreds of successful on the ground salmon conservation efforts, and we are pleased that NOAA

and the states receiving these funds have greatly improved tracking the process of restoration and management under this important program.

This program is a critical complement to federal salmon recovery and management efforts. It enables the state to initiate restoration of salmon habitat and manage fisheries in areas beyond the reach of the federal government, e.g. on private lands. The PCSRF enables the states to leverage significant amounts of state funding to address the needs of private landowners in complying with the Endangered Species Act, maintaining the economic viability of these lands, while greatly contributing to economic recovery.

We are concerned about the decline in funding for the program, from $89 million in fiscal year 2004 and fiscal year 2005 to $67 million in fiscal year 2006, and $66.8 million in the President's fiscal year 2008 request. The Conservancy strongly supports $100 million for this program. We are also concerned how the funds are allocated across the five states involved in the program. We feel that the conservation activities oriented towards recovery and protection of salmon should be the primary purpose of this program, and therefore urge the committee to consider including report language in this year's appropriation that more explicitly links expenditures of PCSRF funds to recovery actions identified in federal and state salmon recovery and management plans, where applicable.

Thank you for this opportunity to share with the Committee the Conservancy's priorities in NOAA's fiscal year 2008 budget. We would be pleased to provide the Committee with additional information on any of the Conservancy's activities described here or elsewhere. You may contact Erika Feller at 703–841–5374 or via email at efeller@tnc.org, if you have questions on which we might be of assistance.

The Nature Conservancy is an international, nonprofit organization dedicated to the conservation of biological diversity. Our mission is to preserve the plants, animals and natural communities that represent the diversity of life on Earth by protecting the lands and waters they need to survive. Our on-the-ground and in-the-water conservation work is carried out in all 50 states and in 27 foreign countries and is supported by approximately one million individual members. We have helped conserve nearly 15 million acres of land in the United States and Canada and more than 102 million acres with local partner organizations globally.

The Conservancy owns and manages approximately 1,400 preserves throughout the United States—the largest private system of nature sanctuaries in the world. We recognize, however, that our mission cannot be achieved by core protected areas alone. Therefore, our projects increasingly seek to accommodate compatible human uses to address sustained human well-being.

# LIST OF WITNESSES, COMMUNICATIONS, AND PREPARED STATEMENTS


Page

Alexander, Senator Lamar, U.S. Senator From Tennessee, Questions Submitted by ..... 375
American:
  Astronomical Society, Prepared Statement of the ..... 415
  Indian Higher Education Consortium, Prepared Statement of the ..... 448
  Institute of Biological Sciences, Prepared Statement of the ..... 426
  Museum of Natural History, Prepared Statements of the..... 427, 429
  Public Power Association, Prepared Statement of the ..... 420
Association of National Estuary Programs, Prepared Statement of the ..... 465

Bement, Dr. Arden, Jr., Director, National Science Foundation ..... 131
  Prepared Statement of ..... 133
Byrd, Senator Robert C., U.S. Senator From West Virginia, Questions Submitted by ..... 105

California Industry and Government Central California Ozone Study (CCOS) Coalition, Prepared Statement of the ..... 451
Clark, John F., Director, United States Marshals Service, Department of Justice ..... 226
  Biographical Sketch of ..... 235
  Prepared Statement of ..... 228
  Questions Submitted to ..... 289
Clear Creek Nature and Cultural Tourism Council, Prepared Statement of the ..... 470

Domenici, Senator Pete V., U.S. Senator From New Mexico, Questions Submitted by ..... 287, 340
Dudas, Jon W., Director, U.S. Patent and Trademark Office, Department of Commerce ..... 40
  Prepared Statement of ..... 42

Earp, Naomi Churchill, Chair, Equal Employment Opportunity Commission .. 343
  Prepared Statement of ..... 349
  Summary Statement of ..... 346

Feinstein, Senator Dianne, U.S. Senator From California, Questions Submitted by ..... 157
Fight Crime: Invest in Kids, Prepared Statement of ..... 422
Fond du Lac Band of Lake Superior Chippewa, Prepared Statement of the ..... 465

Gaviota Coast Conservancy, Prepared Statement of the ..... 421
Great Lakes Indian Fish and Wildlife Commission, Prepared Statement of the ..... 458
Griffin, Hon. Michael D., Ph.D., Administrator, National Aeronautics and Space Administration ..... 161
  Opening Remarks ..... 166
  Prepared Statement of ..... 167
Gutierrez, the Honorable Carlos M., Secretary, Office of the Secretary, Department of Commerce ..... 1
  Prepared Statement of ..... 7

Harkin, Senator Tom, U.S. Senator From Iowa, Questions Submitted by ..... 374

Investment Company Institute, Prepared Statement of the ..... 406

Page

Jeffrey, Dr. William, Director, National Institute of Standards and Technology, Department of Commerce ..... 32
Prepared Statement of ..... 34

Kennedy, Senator Ted, U.S. Senator From Massachusetts, Questions Submitted by ..... 377
Kohl, Senator Herb, U.S. Senator From Wisconsin, Questions Submitted by ... 103

Land Trust Alliance, Prepared Statement of the ..... 465
Lautenbacher, Vice Admiral Conrad, Jr., Administrator, National Oceanic and Atmospheric Administration, Department of Commerce ..... 117
Prepared Statement of ..... 124
Questions Submitted to ..... 152
Summary Statement of ..... 121
Leahy, Senator Patrick J., U.S. Senator From Vermont:
Prepared Statement of ..... 297
Questions Submitted by..... 100, 256, 323
Statement of ..... 295

Marine Conservation Biology Institute, Prepared Statement of the ..... 453
Meuller, Hon. Robert S., III, Director, Federal Bureau of Investigation, Department of Justice ..... 295
Prepared Statement of ..... 306
Mikulski, Senator Barbara A., U.S. Senator From Maryland:
Opening Statement of ..... 1
Prepared Statement of ..... 301
Questions Submitted by..... 61, 152, 249, 369
Statements of..... 117, 161, 197, 343

National:
Association of Marine Laboratories, Prepared Statement of the ..... 439
Center for Victims of Crime, Prepared Statement of the ..... 446
Corn Growers Association, Prepared Statement of the ..... 456
Employment Lawyers Association, Prepared Statement of the ..... 381
Federation of Community Broadcasters, Prepared Statement of the ..... 419
Fish and Wildlife Foundation, Prepared Statement of the ..... 416
Marine Sanctuary Foundation, Prepared Statement of the ..... 434
Treasury Employees Union, Prepared Statement of the ..... 407
Nisqually Tribe of Washington, Prepared Statement of the ..... 465
Northwest Indian Fisheries Commission, Prepared Statement of the ..... 435

Pacific Salmon Commission, Prepared Statement of the ..... 413
Population Association of America/Association of Population Centers, Prepared Statement of the ..... 438
Puyallup Tribe of Washington, Prepared Statement of the ..... 465

Reed, Senator Jack, U.S. Senator From Rhode Island, Questions Submitted by ..... 104
Restore America's Estuaries, Prepared Statement of ..... 465

Sea Grant Association, Prepared Statement of the ..... 443
Shelby, Senator Richard C., U.S. Senator From Alabama:
Questions Submitted by..... 109, 160, 252, 272, 289
Statement of ..... 3, 119, 163, 198, 298, 345
Shoshone-Paiute Tribes of the Duck Valley Reservation, Prepared Statement of the ..... 465
Stevens, Senator Ted, U.S. Senator From Alaska, Question Submitted by ..... 288
Sullivan, Michael J., Acting Director, Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice ..... 197
Biographical Sketch of ..... 209
Prepared Statement of ..... 203
Questions Submitted to ..... 249
Summary Statement of ..... 202

Tandy, Hon. Karen P., Administrator, Drug Enforcement Administration, Department of Justice ..... 209
Prepared Statement of ..... 212
Questions Submitted to ..... 256
The Conservation Fund, Prepared Statement of ..... 465

Page

The Nature Conservancy, Prepared Statements of ..... 465, 471
The Ocean Conservancy, Prepared Statement of ..... 465
The Trust for Public Land, Prepared Statement of ..... 465

UNH Cooperative Extension, Prepared Statement of the ..... 469
University Corporation for Atmospheric Research, Prepared Statement of the ..... 430

West Creek Preservation Committee, Prepared Statement of the ..... 424

# SUBJECT INDEX

Page

## DEPARTMENT OF COMMERCE

### NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY


Additional Committee Questions ..... 61
American Competitiveness Initiative ..... 51
Center for Nano-Scale Science Technology ..... 58
Disaster Resilient Structures Studies ..... 51
Effectiveness of Manufacturing Extension Partnership ..... 59
National Institute of Standards and Technology:
    Collaboration With Industry ..... 60
    Funding Increase for American Competitiveness Initiative ..... 57
Safety of Nano-Technology ..... 58


### NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION


Additional Committee Questions ..... 151
American Competitiveness Initiative ..... 136
Aquaculture ..... 153
Coastal:
    Non-Point Pollution ..... 157
    Zone Management Grants ..... 158
"Counterfeit" Fish ..... 152
Fiscal Year:
    2006 Accomplishments ..... 125
    2008 Budget Request ..... 123
        Highlights ..... 127
Funding Increases for National Oceanic and Atmospheric Administration Satellite Program ..... 146
Funding Levels for Severe Weather Research ..... 159
GOES Satellite Construction Time ..... 156
GOES–R Program TRL Level ..... 155
International Polar Year Projects ..... 144
International Whaling Commission ..... 145
National Academy of Sciences Report on Climate Change ..... 135
National Oceanic and Atmospheric Administration:
    Center for Weather and Climate Prediction Project ..... 154
    Corps Reauthorization ..... 160
    Disaster Response Centers ..... 138
    Sea Grant Program ..... 139
    Tsunami Warning Program ..... 134
NPOESS and GOES–R Funding Request ..... 155
NRDC vs. Rodgers Settlement Implementation ..... 158
Ocean Initiative Funding ..... 160
Polar Satellites ..... 148
Probability of GOES–R Operational Gap ..... 156
Progress on the U.S. Ocean Action Plan ..... 152
Regional Fisheries Council ..... 138
Renewable Energy Research ..... 142
Susquehanna Basin Monitoring System ..... 135
Tsunami Warning System ..... 134
Weather Modification Research ..... 140

Page

OFFICE OF THE SECRETARY

Additional Committee Questions ..... 61
Addressing:
Patent Pendency and Application Backlog ..... 16
Recruitment, Training and Retention Challenges ..... 19
Augustine Report on Immigration ..... 24
BEA's R&D Budget Initiative ..... 109
CAFTA—Sock Trade ..... 109
Census Deputy Director ..... 30
Continued Dumping Subsidy Offset Act of 2000 ..... 106
Departmental Management:
Media Questions ..... 79
WCF and A&R ..... 61
Doha Dispute Settlement Negotiations ..... 107
DVD Piracy in Mexico ..... 114
Dynamics of Economic Well-Being ..... 91
Economic Development Administration Cut ..... 87
Economic Development Representative ..... 86
ESA Headquarters Staffing and Funding Levels ..... 90
Executive Summary ..... 13
Federal Consistency Standards and the CZMA for Florida and Alabama ..... 112
Funding for NOAA Education Programs ..... 92
Funding Levels for Severe Weather Forecasting ..... 113
Gross Domestic Product Revision ..... 22
Improved Measurement of Services ..... 91
Increase Examiner Retention ..... 94
ITA:
Assistant Secretary Status ..... 92
CAFTA Nations ..... 114
Chinese Subsidy Programs ..... 92
Export Fee Increase ..... 91
Trade Act 2002 ..... 105
Western Hemisphere Travel Initiative..... 100, 101
Long-term Metric/Goal for Patent Pendency ..... 94
Manufacturing Extension Partnership (MEP) ..... 28
And Economic Development Administration Funding ..... 26
And Energy Costs ..... 104
Defense Suppliers ..... 103
Funding Levels ..... 97
Program ..... 102
Meeting With Senator Reed's Staff on the Efficiency of Regional Development Accounts ..... 27
National Oceanic and Atmospheric Administration (NOAA):
Exclusion from American Competitiveness Initiative ..... 22
JOCI and the Ocean Policy Scorecard ..... 110
National Polar Orbiting Operational Environmental Satellite System ..... 23
NTIA:
Appropriation Language ..... 98
Public Safety Interoperable Communications Grant Program ..... 110
Patent and Trademark Office:
Allowance Versus Patent Rejection ..... 113
Examination Quality ..... 97
Remediation Plan ..... 12
Promoting Innovation ..... 12
Reauthorization of the NOAA Corps ..... 112
Retention Rate ..... 94
Security of Personally Identifiable Information on Laptops and Other Portable Devices ..... 111
Special Bill Language ..... 80
Staffing Breakout ..... 87
Survey of Income and Program Participation ..... 104
Technology Administration Staffing and Unobligated Balances ..... 97
Timeline for Achieving Strategic Plan Goals and Objectives ..... 95
2010 Census:
Cost Effectiveness ..... 110
Handheld Computers ..... 114
United States PTO:
Patent Backlog ..... 94

Page

United States PTO—Continued
Report "The Path to the Future, the Next Steps" ..... 13
Unobligated Balance Levels ..... 87
Work With User Community to Evaluate Quality ..... 97
WTO:
Appellate Body ..... 108
Disputes ..... 106

U.S. PATENT AND TRADEMARK OFFICE

Additional Committee Questions ..... 61
Cost of Intellectual Property Theft ..... 53
Human Capital Management Reviews ..... 54
Intellectual Property:
Law Enforcement ..... 52
Theft ..... 52
Patent and Trademark Office:
Applications and Pendency ..... 48
Examination Quality ..... 53
Retention and Training ..... 49
Relationship with Food and Drug Administration ..... 56

DEPARTMENT OF JUSTICE

BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND EXPLOSIVES

Accomplishments ..... 203
Additional Committee Questions ..... 248
ATF's Mission ..... 203
Crime Gun Traces ..... 241
Explosives ..... 254
Federal Firearms Licensees ..... 250
Firearms Trafficking ..... 205
Fiscal Year 2008 Budget Request ..... 203
Funding Shortfall ..... 252
Gangs and Gun Trafficking ..... 252
National Center for Explosives Training and Research ..... 239
Redstone ..... 253
Other Programs and Activities ..... 206
Project Safe Neighborhoods and Anti-gang Efforts ..... 204
Tiahrt Amendment ..... 249
Trace Data Disclosure ..... 243
Virginia Tech ..... 240
Situation ..... 236

DRUG ENFORCEMENT ADMINISTRATION

Additional Committee Questions ..... 248
Cocaine ..... 260
DEA:
NM Resources ..... 287
State and Local Assistance ..... 256
Despite the Accomplishments, the Challenges Remain ..... 217
Drug Use ..... 268
Enforcement Successes Over the Last 12 Months ..... 213
Financial Investigations ..... 274
Fiscal Year 2008 Budget Request ..... 217
Hiring Freeze ..... 245
International Drug Issues ..... 262
Internet ..... 278
Marijuana ..... 286
MET Program ..... 283
Methamphetamine ..... 264, 272, 288
Labs in Alaska ..... 243
Prescription Drug Abuse ..... 257
Salaries and Expenses Account ..... 217
Southwest Border and Meth Enforcement Initiative ..... 246
Surveillance ..... 282
Teenage Drug Use is Down ..... 212

Page

United States/Mexico Collaboration ..... 284

FEDERAL BUREAU OF INVESTIGATION

Additional Committee Questions ..... 323
Background Checks to Investigate Crime ..... 319
Budget Request ..... 313
Child Pornography ..... 304
Combating Terrorism ..... 303, 306
COPS Program ..... 318
Defeating Foreign Intelligence Operations ..... 308
Foreign Intelligence Operations ..... 304
Guns to Terrorists ..... 319
Indian Country Methamphetamine Problems ..... 340
Infrastructure and Information Technology ..... 305
Integrated Wireless Network ..... 326
Intellectual Property Enforcement ..... 327
Intelligence Analysts ..... 320
Internet Crime ..... 341
National Security Letters ..... 312, 328
Political Landscape "Informational Briefings" by White House for Senior Government Officials ..... 339
Preventing the Acquisition of Weapons of Mass Destruction (WMD)/Render Safe ..... 307
Privacy/DNA Sampling ..... 329
Reduce Child Exploitation and Violent Crimes ..... 308
Sentinel ..... 314, 323
    Contractors Involved in Virtual Case File ..... 316
Strengthening Infrastructure and Information Technology ..... 309
Terrorism ..... 311
Training at Quantico ..... 321
2008 Budget Request ..... 306
"Unfunded FTE" Reduction ..... 309
Violent Crime ..... 310, 316, 324
Weapons of Mass Destruction ..... 304

UNITED STATES MARSHALS SERVICE

Adam Walsh ..... 290
Adam Walsh Child Protection and Safety Act ..... 232
Additional Committee Questions ..... 248
Fiscal Year 2008 Budget Request ..... 229
Former Marshal's Daughter Heroic Efforts in Campus Shooting ..... 293
Fugitive Investigations ..... 233
Gangs ..... 292
Gulf Coast Task Force ..... 289
High-threat Trial Security ..... 231
Homeland Build Up ..... 292
Judicial Threat Intelligence and Investigations ..... 229
Marshals D.C. Superior Court ..... 291
Southwest Border Enforcement ..... 232
Summary of Fiscal Year 2006 Accomplishments ..... 228
The Mission of the United States Marshals Service ..... 228
2007 Global War on Terror Supplemental ..... 235
Witness Security Program ..... 234

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Additional Committee Questions ..... 369
Backlogs ..... 369
BRAC in Maryland ..... 374
Downsizing Baltimore Office ..... 363
EEOC:
    Oversight of EEO Offices ..... 373
    Fiscal Year 2008 Budget Request ..... 349
Funding ..... 362
Headquarters Relocation Plans ..... 367
National:
    Call Center ..... 366

Page

National—Continued
Contact Center and Repositioning ..... 352
Office Closures ..... 354
Repositioning Plan ..... 355, 360
Salvation Army Litigation ..... 357

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Aging National Aeronautics and Space Administration Infrastructure ..... 182
American Competitiveness Initiative ..... 191
Chinese ASAT Test ..... 192
Earth Observing Sensors ..... 179
Education Program ..... 183
Hubble Space Telescope ..... 179
Independent Program Analysis Organization ..... 190
Manned Flight of Orion Vehicle ..... 181
Math and Science Institutions ..... 187
National Academy of Sciences Report on Earth Science ..... 193
Orion Crew Return Vehicle/Ares Launch Vehicle ..... 189
Precursor Program for Lunar Exploration ..... 181
Propulsion Research and Development ..... 182
Ranking Member Shelby Closing Remarks ..... 195
Science, Technology, Engineering and Mathematics (STEM) ..... 184
Space Shuttle Retirement ..... 188
Status of the Exploration Activities ..... 192

NATIONAL SCIENCE FOUNDATION

Experimental Program to Stimulate Competitive Research (EPSCoR) ..... 140
Program Enhanced ..... 148
International Polar Year and the Alaska Region Research Vessel ..... 143
National Science Foundation:
Days ..... 147
Education Programs and American Competitiveness Initiative ..... 137
Facility Funding ..... 149

○