S. HRG. 106–147

DEPARTMENTS OF COMMERCE, JUSTICE, AND STATE, THE JUDICIARY, AND RELATED AGENCIES APPROPRIATIONS FOR FISCAL YEAR 2000

HEARINGS

BEFORE A

SUBCOMMITTEE OF THE

COMMITTEE ON APPROPRIATIONS

UNITED STATES SENATE

ONE HUNDRED SIXTH CONGRESS

FIRST SESSION

ON

H.R. 2670/S. 1217

AN ACT MAKING APPROPRIATIONS FOR THE DEPARTMENTS OF COMMERCE, JUSTICE, AND STATE, THE JUDICIARY, AND RELATED AGENCIES FOR THE FISCAL YEAR ENDING SEPTEMBER 30, 2000, AND FOR OTHER PURPOSES

Department of Commerce
Department of Justice
Federal Communications Commission
Nondepartmental witnesses
Securities and Exchange Commission
Small Business Administration

Printed for the use of the Committee on Appropriations

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DEPARTMENTS OF COMMERCE, JUSTICE, AND STATE, THE JUDICIARY, AND RELATED AGENCIES APPROPRIATIONS FOR FISCAL YEAR 2000

TUESDAY, MARCH 9, 1999

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

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

Present: Senators Gregg, Stevens, Domenici, Hutchison, Campbell, Hollings, Inouye, Lautenberg, and Leahy.

Also present: Senator Dorgan.

DEPARTMENT OF JUSTICE

OFFICE OF THE ATTORNEY GENERAL

STATEMENT OF HON. JANET RENO, ATTORNEY GENERAL

OPENING REMARKS

Senator GREGG. We will get started. I understand Senator Hollings is on the telephone but will be here in a few minutes.

Rather than having opening statements take up a lot of the Attorney General's time, I would hope that members could submit those for the record. We will turn directly to the Attorney General and let her make her points, and then we can ask her some questions.

ATTORNEY GENERAL RENO OPENING REMARKS

Ms. RENO. Thank you very much, Senator. I appreciate the opportunity to be before you today, and I appreciate the thoughtfulness with which you, Senator Hollings, and the entire committee have approached the issues that are of such mutual concern.

In 1994, this administration, with the full support of this subcommittee, attacked the crime problem by forming a partnership with State and local law enforcement and by making significant new resources available for State and local law enforcement assistance. From new police officers to prison construction, we have provided the resources, and I think we have seen an impact. The Nation's violent crime rate has dropped more than 20 percent over the last 6 years, and the murder rate has fallen to its lowest level in three decades.

We have a choice now, Mr. Chairman, and I think I do not have any doubts as to the direction in which you want us to go. We can become complacent, as we have when crime has gone down in the past, and sit back and let it go back up again, or we can continue to do our job in Federal law enforcement, meet the new challenges that we face, focus strategically on crime, and help communities build strong, self-sufficient communities that have a lasting capability to effectively deal with the problem of crime. I think we can go a long way toward ending the culture of violence in this country.

At the same time, I prize our federalist system of government, and as a former State prosecutor, I also respect the independence of State and local law enforcement. We must maintain the balance, and this budget does that by focusing support on community-building and inherently Federal responsibilities.

Specifically, the budget seeks nearly $1.2 billion for a 21st Century Policing Initiative to help communities build on their efforts under the successful COPS program. Six hundred million dollars of this request will allow the continued hiring of new officers, particularly in high crime areas. It will address retention of officers in the neediest communities, and the redeployment of those who are already hired.

Another $350 million will establish a Crime Fighting Technology Grant Program to address the wide array of telecommunications and forensic science needs of State and local law enforcement. The initiative also provides $200 million for a Community Prosecution Grant Program to help communities hire, redeploy, and train badly needed prosecutors who are stationed in and work within the neighborhoods they serve.

Time and again, I am told by line officers throughout this country that effective law enforcement relies heavily on community involvement with strong prevention at its core. To assist neighborhoods and communities in their efforts to develop and implement comprehensive crime prevention and reduction strategies, another $125 million is included for a Community Crime Prevention Program. Building on existing programs, such as Weed and Seed and school-based problem-solving partnerships with law enforcement, this new initiative will fill critical gaps in support for local public safety efforts.

As I told the subcommittee during my testimony last month, our growing dependence on cyber networks makes us vulnerable to the destruction or intrusion of those networks. Last year, through your leadership, we were able to establish the National Infrastructure Protection Center to deter, detect, analyze, investigate, and provide warnings of cyber threats and attacks on critical infrastructure.

Since computers are essential in our day-to-day lives, they play a larger role in the crime that is perpetrated, not only cyber terrorism, but other sorts of illegal intrusions, including fraud schemes and the dissemination of child pornography.

In order to improve our ability to deal with computer crimes, we must raise the general level of computer competence among agents, prosecutors, and investigators through aggressive training and hiring of computer experts. The fiscal year 2000 budget includes $122.6 million in cyber crime and counter-terrorism program increases for the FBI, U.S. Attorneys, and the Criminal Division.

We are also focused on preparing first responders for actions against weapons of mass destruction. The Office of Justice Programs is seeking $17 million to operate the Fort McClellan training center, $7 million for the Law Enforcement Training Program which was developed by the New Mexico Institute of Mining and Technology, and $45 million in additional equipment for first responders. In total, $173.5 million will be available through the Office of Justice Programs for First Responder Domestic Preparedness grants to State and local governments in fiscal year 2000.

We seek funding which will enable us to better coordinate investigations and evidence, hire additional criminal attorneys to prosecute complex international drug cases, and provide support for critical information technology systems that are essential in drug enforcement efforts.

On the drug prevention side, the funds will be used to expand the highly successful drug court program and increase our efforts to drug-test and mandate inmate treatment so that inmates do not go back to using drugs as soon as they are released from prison.

The Department is asking for $124 million to fund the second year of our Indian Country Law Enforcement Initiative, begun with the help of this subcommittee last year. It is critically important that we continue to enhance funding for law enforcement in Indian Country because the need is so great. A recent Bureau of Justice Statistics (BJS) study indicated that Native Americans are twice as likely to be the victims of violent crime as other Americans.

The fiscal year 2000 budget request addresses the need for additional prison space, providing $738 million to meet the demand for additional detention and prison bed space for a Federal prison population that has grown by 142 percent in the last 10 years. The resources necessary for the U.S. Marshals Service to transport and detain Federal felons on their way through the court system, and for the Bureau of Prisons to incarcerate them once convicted, are essential to ensuring that our criminal justice system works.

Beginning in 1994, the administration, with the strong backing of this subcommittee, embarked on an unprecedented effort to strengthen our ability to control the flow of illegal immigration into this country. This effort has doubled the size of the Border Patrol, added 1,890 immigration inspectors to better facilitate the flow of travelers and identify those seeking entry illegally, and established an interior enforcement strategy that works in concert with our efforts along the border.

We continue to deploy field-tested, effective technologies, and we have struck accords with other agencies, such as the U.S. Customs Service, enabling our philosophy of "enforcement through deterrence" to successfully evolve. The fiscal year 2000 budget request continues this aggressive effort, but also reflects important management considerations that can no longer be ignored.

Specifically, no funding is requested to increase the number of Border Patrol agents in fiscal year 2000. The request continues Border Patrol staffing at the fiscal year 1999 level of nearly 9,000 agents—a 122 percent increase over the fiscal year 1993 level of 3,965 agents—and allows us the time to ensure that we can sustain the professionalism and integrity of our Border Patrol.

When I testified before this subcommittee in March of 1995, I committed to having 7,281 Border Patrol agents on board by the end of fiscal year 1998. We have met and exceeded that figure today. Our initial projection for fiscal year 1999 end-of-year strength was 8,947; however, I am concerned that the difficulties we are currently experiencing in recruitment may leave us short of this level.

But still, the high proportion of new agents makes it necessary that they be allowed to integrate into the Border Patrol corps to safeguard the highest standards of law enforcement professionalism for this new work force. Law enforcement experts indicate that it is risky to allow an agency's overall ratio of inexperienced to experienced agents to exceed 30 percent. As of July 1998, the percentage of Border Patrol agents having 2 years of experience or less was almost 34 percent. It is essential that the considerably large numbers of new Border Patrol agents be given time to assimilate, gaining critical and valuable experience.

PREPARED STATEMENT

Mr. Chairman, I appreciate your thoughtful approach to the many issues that confront our Department and look forward to working with you and the entire subcommittee.

I will submit the rest of my testimony for inclusion in the record.

[The statement follows:]

PREPARED STATEMENT OF JANET RENO

Mr. Chairman and Members of the Subcommittee: It is a pleasure once again to appear before you this morning to present the President's budget request for the Department of Justice. For fiscal year 2000, the President's budget includes $21 billion for the Department of Justice—a $317 million increase over last year—to continue fighting crime, combating cyber-terrorism, curbing drug abuse, and incarcerating felons.

Since I became Attorney General in 1993, funding for the Justice Department has increased more than 88 percent—due in large part to the efforts and commitment of this Subcommittee. During this same time, we have seen crime steadily fall. The nation's violent crime rate has dropped more than 20 percent over the last six years, and our murder rate has fallen to its lowest level in three decades. Our investment is paying off, but we must not let up on our efforts now. I want this trend to continue and believe our fiscal year 2000 budget request will do just that.

FIGHTING CRIME WITHIN OUR COMMUNITIES

One of our top challenges will be to help communities keep the crime rate down. But we will need a full arsenal of innovative strategies and programs—from high tech solutions to community-based prevention programs—to reduce crime even further. We know that there is no single solution to the crime problem. Our approach must be comprehensive and multi-faceted, combining and interconnecting enforcement, punishment, prevention, and community involvement at the local level.

The budget I present to you today seeks nearly $1.3 billion for a 21st Century Policing Initiative to help communities build on their efforts under the successful COPS program. Specifically, we are requesting $600 million to hire and redeploy between 30,000 and 50,000 more law enforcement officers over five years, with an effort to target new officers to crime "hot spots". Funds will also be used to help economically-distressed communities absorb the long-term costs of their new hires, and for programs to train, educate, and recruit law enforcement officers.

For high tech solutions, $350 million is included to establish an innovative Crime-Fighting Technology program to promote telecommunications and systems compatibility among criminal justice agencies, improve the forensic science capabilities of state and local labs, and encourage the use of technologies to predict and prevent crime.

The initiative also provides $200 million for a Community Prosecution Grant Program. This includes $150 million in grants to help communities throughout the country hire, redeploy, and train badly needed prosecutors to help secure public safety in our nation's communities; and $50 million for innovative community-based public safety programs. Under the community prosecution philosophy, prosecutors are stationed in, and work within, the neighborhoods they serve. These prosecutors will make a difference, just as community policing has made a difference in fighting crime by bringing communities together.

Time and time again, I am told by line officers in communities throughout this country that effective law enforcement relies heavily on community involvement with strong prevention efforts at its core. To assist neighborhoods and communities in their efforts to develop and implement comprehensive crime prevention and reduction strategies, another $125 million is included for a Community Crime Prevention Program. Building on existing programs, such as Weed and Seed, this new initiative will fill critical gaps in support for local public safety efforts that current Department funding—both formula and discretionary—cannot fill. The program will also support direct funding for crime and delinquency prevention programs that utilize promising approaches in preventing and reducing crime and delinquency, and in strengthening partnerships between community groups, schools and criminal justice and juvenile justice agencies in their efforts to fight crime and delinquency.

And, as you are well aware, an essential building block for community safety is peaceful relations. The budget before you includes an increase of $2.13 million for the Community Relations Service (CRS) to improve the delivery of conciliation services to communities threatened with racial unrest and violence.

KEEPING GUNS OUT OF THE HANDS OF CRIMINALS

In helping communities keep the crime rate down, and reduce it even further to historic lows, we must address the issue of gun violence. Every day in this country, 93 people die from gun-related injuries.

While gun violence may not be a uniquely American problem, it is certainly one in which we stand out. To bring this issue into sharper focus, I want to share with you a statistic that I find truly stunning: In the five years from 1992 through 1996, Toronto, Canada experienced exactly 100 gun homicides. In contrast, Chicago, an American city of comparable size, had 3,063 gun homicides in that same time period. Clearly, reducing gun-related injuries and deaths should be a national priority and a central part of any strategy to reduce crime.

The Department's gun strategy involves three important components: prevention, interdiction and enforcement. To complement the additional state prosecutors requested in our fiscal year 2000 budget, and the additional Alcohol, Tobacco, and Firearms (ATF) agents included in Treasury's fiscal year 2000 request, we are seeking $5 million to conduct intensive firearms prosecution projects under the leadership of U.S. Attorneys Offices. Building on the success achieved in reducing violent crime in Boston, Massachusetts and Richmond, Virginia, these funds will be used to hire and dispatch more than 40 federal attorneys to select cities across the country to prosecute criminals who possess guns. Once there, these prosecutors will team up with their local counterparts to develop comprehensive strategies for the prosecution, prevention, and disruption of gun violence in their communities. They will work together to identify those crimes that would be better off being brought in federal court. Violent felons, armed drug traffickers, and firearms offenders will all get the message: Carry a gun and you'll do more jail time.

Another $49 million is requested for three Office of Justice (OJP) grant initiatives geared toward addressing the problem of youths and guns. Within this amount is $4 million for the National Institute of Justice to support a new Childproof Gun and Gun Detection Technology Program, whose goal is to expand development, testing, and replication of "smart gun" technologies. Once fully developed and tested, these new "smart gun" technologies will allow law enforcement officers' weapons to be more safely and reliably secured and will help prevent accidental deaths to children who have access to firearms.

Also included is $10 million, earmarked within the Title V—At Risk Children's Program, for the Prevention and Reduction of Youth Gun Violence. This program, currently being implemented and evaluated in 4 cities, seeks to reduce juveniles' illegal access to guns and address the reasons they carry and use guns in violent exchanges. Communities participating in the program are required to implement 7 program strategies which together represent a comprehensive approach to addressing the prevention, intervention, and suppression of youth gun violence. These new resources will enable the Department to expand this grant program in fiscal year 2000 to 20–25 new communities.

Our third piece addressing the problem of youths and guns is a $35 million request for the Juvenile Gun Courts Intervention Program—Certainty of Punishment. This initiative is designed to support the use of juvenile gun courts as the point of coordination for the implementation of a community-wide, comprehensive plan to address juvenile gun violence and accountability.

National Instant Check System (NICS)

What you will not find in this budget is money to operate the Brady Law's National Instant Check System (NICS)—a critical component of our gun strategy that became operational on November 30, 1998. In its first 12 weeks of operation, the NICS processed checks for more than 2 million gun transfers. Of these checks, the States that have agreed to serve as partners with the FBI in conducting background checks—we call them "Points of Contact" or "POC's", processed 990,364. While we do not yet have solid numbers for denials that the State POC's made, we do know that the FBI checks resulted in 22,290 denials of gun transfers. This means that over 22,000 persons who should not have guns did not get them as a direct result of the National Instant Check System (NICS). Clearly, operating the NICS is a very important priority and essential to our efforts to reduce gun violence.

The reason funding for the National Instant Check System (NICS) does not appear in the fiscal year 2000 budget request is because we are proposing that the operational costs of the NICS be funded through a user fee to be paid by gun purchasers. As you know, Section 621 of the Fiscal Year 1999 Department of Justice Appropriations Act prohibited the Federal Government from charging a fee. Understandably, many States have found it politically difficult to continue imposing a state user fee for background checks when the Federal Government performs the checks free of charge. The prohibition has had the effect of discouraging states from serving as points of contact for NICS checks, and has pushed more workload to the Federal level.

A federal user fee, therefore, makes sense from both a public safety and an appropriations viewpoint. Background checks by POC states are generally more thorough because criminal justice records at the State level tend to be more complete and readily available. And, from an appropriations point of view, the costs to the Federal Government rise as states discontinue their participation as POC's.

COMBATING CYBERCRIME AND TERRORISM

Another significant challenge we face will be to continue to prevent and combat cybercrime and terrorism. Modern technology has created tremendous opportunity for progress. But, it has also opened the door for cyberterrorists to wreak havoc on our nation's infrastructure. As I told the Subcommittee during my testimony last month, our growing dependence on cyber networks makes us vulnerable to the destruction or intrusion of those networks, and we must be prepared to fight this new cyber threat with new tools.

Last year, through the leadership of Chairman Gregg and this Subcommittee, we were able to establish the National Infrastructure Protection Center (NIPC) to deter, detect, analyze, investigate and provide warnings of cyber threats and attacks on critical infrastructures. But, we must also remember that as computers become essential in our day-to-day lives, they play a larger role in the crime that is perpetrated—not only cyber terrorism, but also other sorts of illegal intrusions. Computers can be used for fraud schemes and to disseminate child pornography. In order to improve our ability to deal with these sorts of computer crimes we must raise the general level of computer competence among agents, prosecutors, and investigators—aggressively training our current staff to have the requisite expertise for these types of investigations and hiring computer experts, where necessary. That is one of the things our fiscal year 2000 budget request seeks to do.

Specifically, the fiscal year 2000 budget request for the Department of Justice includes $122.6 million in counterterrorism/cybercrime program increases. For the FBI, we are seeking $45.7 million to add 60 agents and support staff to create 12 additional cybersquads to identify, investigate, and prevent threats and unlawful acts targeting the critical infrastructure of the United States, including illegal intrusions into government computer networks, protected civilian computers, and the national information infrastructure. We are also seeking 79 computer forensic analysts for the FBI's field offices and Headquarters. For the U.S. Attorneys, we are seeking $7.3 million and 87 positions to develop a global response to cyber attacks and to help prosecute the increased number of cases involving computer and high-tech crimes. Increasingly, attorneys are confronted with cases involving sophisticated computer use by terrorists and other criminals. More prosecutors with an understanding of computer technology are critically needed. Nearly $2 million is included for 9 additional Criminal Division attorneys to help resolve unique issues raised by

emerging computer and telecommunications technologies, litigate cases, provide litigation support to other prosecutors, train federal law enforcement personnel, and coordinate international efforts to combat computer crime.

The Department's fiscal year 2000 request also includes $27 million for the Counterterrorism Fund to reimburse federal departments and agencies for costs incurred in support of countering, investigating, or prosecuting domestic and/or international terrorism. And, another $38.5 million is included to expand the Office of Justice Program's domestic preparedness efforts by supporting the new domestic preparedness training center in Alabama, and by purchasing additional equipment to protect first responders and detect chemical or biological weapons. This increase is in addition to the $135 million in funding provided in fiscal year 1999, bringing the total funding available for First Responder Domestic Preparedness grants to State and local governments to $173.5 million in fiscal year 2000.

DRUG TRAFFICKING AND DRUG ABUSE

The budget I present to you today seeks to step up our efforts to control the flow of illegal drugs and cut down on the demand, with an increase of 2.5 percent over fiscal year 1999, including growth in direct federal, state and local assistance. With these increased funds, the Department of Justice will have a budget of nearly $8 billion to fight drugs next year. This increase will enable us to better coordinate investigations and hire additional criminal attorneys to prosecute complex, international drug trafficking cases. And, on the drug prevention side, the funds will be used to expand the drug court program; implement proven programs that help prevent our young people from turning to or continuing to use drugs; and step up our efforts to drug-test and mandate inmate treatment so they don't go back to using drugs as soon as they are released from prison.

Drug Law Enforcement

Specifically, resources for the Drug Enforcement Administration (DEA) will grow to $1.469 billion, including $22 million in program enhancements. Within this amount is $9 million to augment the Special Operations Division—which supports major federal drug enforcement strategies, including the Southwest Border, the Caribbean Corridor Strategy, and the Methamphetamine Strategy; and, $13 million to accelerate Phase II of its FIREBIRD office automation project. FIREBIRD provides access to DEA's investigative databases, containing intelligence information on alleged criminal activity which fosters DEA's ability to more efficiently and effectively conduct complex drug investigations. In the same way that drug traffickers use sophisticated technology to manage their drug empires, drug law enforcement must have the tools to expand its capabilities and keep pace with an ever changing world. In addition, the fiscal year 2000 request includes $1.13 million for the Criminal Division (CRM) for its support of DEA's Special Operations Division. These monies will enable CRM to increase efforts devoted to prosecuting the complex cases that result from these drug investigations and support the processing of Title III wiretaps. Because the war on drugs and international crime as a whole has expanded beyond the borders of the United States, the Division's request includes two attorneys to be placed overseas in Asia and the Middle East.

Zero Tolerance Drug Supervision Initiative

A $112 million increase is provided to fund a $215 million initiative to promote drug testing and treatment. Recent studies have confirmed that our fight against drugs must include efforts to break the cycle between drug use and criminal activity. A report released by the National Center on Addiction and Substance Abuse at Columbia University found that 80 percent of people serving time in our state and federal prisons either were high at the time they committed their crimes, stole property to buy drugs, violated drug or alcohol laws, or have a long history of drug or alcohol abuse. And, parolees who continue to use drugs are much more likely to commit crimes that will send them back to jail.

These findings are clear: we must stop the revolving door and break the cycle between drugs and criminal activity. To do this, we've included $100 million to establish a Drug Testing and Treatment Program that will provide discretionary grants to states, local governments, state and local courts, and Indian tribes. These grants will support programs to implement comprehensive drug testing policies and establish appropriate interventions to illegal drug use for criminal justice populations. I strongly believe systemic drug testing is an important tool for criminal justice agencies concerned with controlling drug abuse among offender populations. And, when compared to substance abusers who voluntarily enter treatment, those coerced into treatment through the criminal justice system are just as likely to succeed.

Reducing Juvenile Drug Abuse

Our request also includes $20 million for the Juvenile Justice Drug Prevention Demonstration Program that the Subcommittee started two years ago. Designed to develop, demonstrate and test programs to stress to young people that drug use is risky, harmful, and unattractive, in fiscal year 2000 the program will fund up to 280 new sites, reaching approximately 1,000 middle school students per site.

DETAINING AND INCARCERATING FELONS

As we investigate and prosecute more criminals, the federal felon population continues to grow. The number of federal detainees has increased annually by an average of 13 percent during the past decade, and by even more in the past few years. And, the federal prison population has increased by 142 percent during the last ten years. Even though meeting this demand for additional detention and prison bedspace is costly, it cannot be ignored. The Department's fiscal year 2000 budget seeks $738 million in increased resources to meet this mandatory requirement.

Specifically, for the Federal Prison System, our request includes $607.5 million to construct three new prisons—2 of which will add capacity for District of Columbia felons; to cover the startup costs incurred in connection with the construction of 6 more—including 3 that will add capacity for the Bureau of Prisons to house long-term, non-returnable INS detainees—a population that has been growing considerably over the last few years. Finally, the request includes resources to activate 5 other facilities to address the 28 percent overcrowding rate systemwide.

These funds will also allow us to meet the conditions of the National Capital Revitalization and Self-Government Improvement Act of 1997, which requires that at least 2,000 District of Columbia sentenced felons be housed in contract facilities by December 31, 1999. However, because the original Request for Proposal (RFP) to fulfill this requirement was modified to accommodate more stringent security requirements, there is the possibility for a small delay in the actual transfer of these sentenced felons from the D.C. Department of Corrections to BoP contract facilities. If these delays are realized, reimbursements for this population will occur between the BoP and the D.C. Corrections Trustee. This action should not, however, affect the closure date for the Lorton Correctional Complex.

For the United States Marshals Service, our request includes $119.6 million to fund the costs associated with approximately 8.87 million contract jail days, 2.1 million above the anticipated fiscal year 2000 base level. The detainee population has grown considerably over the last few years due to significant increases in apprehensions by our growing law enforcement personnel at the FBI, the DEA, and the INS Border Patrol. As a result, we are reaching a crisis situation in paying for the bedspace to house detainees awaiting trial. Indeed, for fiscal year 1999 we will be facing a shortfall in the Federal Prisoner Detention account for which I will need your assistance. I am attempting to address our shortfall from within existing Department resources and am hopeful you will concur with my reprogramming request. Furthermore, we have engaged a firm to develop a model that should enable us to better predict our future detention needs.

We are also requesting a $10 million increase for the Cooperative Agreement Program (CAP), providing a total of $35 million, to enable the USMS and the INS to obtain detention space in cities and towns where detainee populations are large and detention facilities limited.

In addition to the needs of the Federal Prisoner Detention program, the fiscal year 2000 budget request includes nearly $27 million in increased funding for the U.S. Marshals Service to handle the increased workload generated by staff increases in other federal law enforcement agencies, and to provide the personnel and equipment necessary to ensure that new courthouses and new courtrooms in existing facilities can open on schedule and with adequate security.

In many ways, the Marshals Service work is uncontrollable in that the Marshals organization must meet the needs of the Judiciary and our investigators and prosecutors. The Marshals do not control the number of threats that judges may be confronted with, or the number of prisoners coming into their custody. I have had the Department review USMS spending in 1999 and believe that the Marshals Service must be fully funded in fiscal year 2000 if it is to have a chance at fulfilling its mission.

INS CENTRAL AMERICAN DETENTION SHORTFALL EMERGENCY SUPPLEMENTAL

Exacerbating the already untenable situation we face with limited detention bedspace and funds to cover the costs of housing the alien detainee population in state and local jails, the mass destruction left in the wake of Hurricane Mitch resulted in the suspension of all alien removals to Honduras, Nicaragua, El Salvador

and Guatemala during the two months immediately following the Hurricane. While limited controlled removals have begun, the pace remains slow. In addition, limited detention bedspace means that INS is unable to accommodate large numbers of illegal border crossers, particularly those from Central America. If this situation continues, INS is concerned that many more people will attempt to illegally cross the border. As a result, it is estimated that $80 million is required in fiscal year 1999 to support these increased detention requirements.

On February 16, 1999, the President submitted the fiscal year 1999 Emergency Supplemental for Central American Disaster Relief which includes the $80 million for INS detention requirements I have just described. I appreciate the swift action you have taken to address these emergency requirements and look forward to working with you as the Supplemental proceeds to conference. Without these additional monies, our detention crisis will only become more dangerous and unmanageable.

IMMIGRATION

Beginning in 1994, the Administration, with the strong backing of this Subcommittee, embarked on an unprecedented effort to strengthen our ability to control the flow of illegal immigration into this country. This effort has included doubling the size of the Border Patrol, adding over 1,900 Immigration Inspectors to better facilitate the flow of legal travelers and identify those seeking entry illegally, and establishing an interior enforcement strategy that works in concert with our efforts along the border. We continue to deploy field-tested, effective technologies, and we have struck accords with other agencies, such as the U.S. Customs Service, enabling our philosophy of "enforcement through deterrence" to successfully evolve. The fiscal year 2000 budget request continues this aggressive effort, but also reflects important management considerations that can no longer be ignored.

Specifically, no funding is requested to increase the number of Border Patrol agents in fiscal year 2000. The request continues Border Patrol staffing at the fiscal year 1999 level of nearly 9,000 agents, a 122 percent increase from the fiscal year 1993 level of 3,965 agents, and allows us the time to ensure that we sustain the professionalism and integrity of our border patrol cadre of agents.

When I testified before this Subcommittee in March of 1995, I committed to having 7,281 Border Patrol Agents on board by the end of fiscal year 1998. We have met and exceeded this figure. The fiscal year 1999 projected number of Border Patrol Agents on board will be 8,947.

The high proportion of new agents makes it necessary that they be allowed to integrate into the Border Patrol corps to safeguard the highest standards of law enforcement professionalism for this new workforce. Law enforcement experts indicate that it is very risky to allow an agency's overall ratio of inexperienced to experienced agents to exceed 30 percent. When it does, the agency will find it difficult to maintain performance, professionalism and integrity. Some municipal police departments have struggled with significant corruption and performance problems when they have greatly expanded their uniformed force in a short amount of time. INS cannot guarantee that it will not have the same problems. In a recent study, it was determined that the percentage of Border Patrol Agents having two years or less service as of July 18, 1998, was almost 39 percent compared with October 2, 1993, when only 15 percent of Border Patrol Agent's had less than two years of service. It is essential that the considerably large numbers of new Border Patrol agents be given time to assimilate, gaining critical and valuable experience.

The fiscal year 2000 budget maintains the Administration's commitment to border control with its request for $50 million to increase force-multiplying surveillance technology which, through the Integrated Surveillance Intelligence System (ISIS), provides the capability to monitor the border from remote sites. ISIS will relieve Border Patrol Agents from having to go to sites needlessly, thus increasing their effectiveness, while giving the Border Patrol time to raise experience factors to acceptable levels.

In addition, the fiscal year 2000 request includes $6 million for new border inspectors in Texas; $20 million in increased funding to transport and remove aliens in INS custody and to increase detention space; and, $70.6 million to plan and construct new detention facilities, new Border Patrol Stations, and Sector Headquarters space.

TARGETING CRIME IN INDIAN COUNTRY

The fiscal year 2000 budget includes $124 million to fund the second year of our Indian Country Law Enforcement Initiative, begun with the help of this Subcommittee last year. Using funds appropriated in fiscal year 1999, the Department has been working closely with the Department of Interior to address the critical

need for better law enforcement in Indian Country and to find new ways to deliver resources to tribal communities in the most efficient manner. To that end, the Department, through its grant programs, is encouraging tribal communities to work together through inter-tribal or regional cooperation so that we can make the most impact with current resources. The Department is also developing a model project on three reservations—the CIRCLE Project—to assist tribal leaders in developing a comprehensive plan to address their community's problems. I hope that this project will serve as a model for future, comprehensive efforts to improve public safety in Indian Country.

To build on the efforts we have begun with fiscal year 1999 resources, the fiscal year 2000 request includes $45 million for the hiring, equipping, and training of Indian Country law enforcement officers through the 21st Century Policing Program; $34 million for the construction of badly needed corrections facilities; $10 million for alcohol and substance abuse treatment in Indian Country as part of the new Drug Testing and Treatment Program; $20 million in At-Risk Youth Initiative funds to assist Indian tribes to prevent and control delinquency, improve their juvenile justice systems, and improve coordination and cooperation between tribal governments, federal agencies, and other organizations serving Indian youth; $5 million to continue the Tribal Courts Program; $5 million from the Police Corps Program to increase the number of police in Indian country with advanced education and training; $2 million to conduct a national census of tribal criminal justice agencies and related statistical activities to improve the Nation's understanding of crime and the administration of justice among Native Americans; and, $3.2 million and 26 assistant United States attorneys to investigate and prosecute crimes in Indian Country where Federal law enforcement is the only avenue of protection for victims of such crimes.

DEPARTMENT LITIGATION

The Department's fiscal year 2000 budget request includes $59.5 million in program increases for the litigating divisions of the Department of Justice. As responsibilities and caseloads continue to increase, these additional resources are critical to the Department's ability to prevent, investigate and prosecute unlawful activities.

Within these increased resources, $21.7 million is included to provide payments of claims expected to be approved under the Administration's proposed amendments to the Radiation Exposure Compensation Act; and, $9.55 million from pre-merger filing fees is requested for the Antitrust Division to maintain its criminal enforcement program and to meet its statutory requirements related to reviewing and investigating the increasing number of mergers. For the Civil Rights Division, $8.23 million is included to expand efforts to prosecute hate crimes, step up the enforcement of fair housing and fair lending laws, and protect the rights of Americans with disabilities.

Another $20 million is included for the Civil Division: $5 million to investigate and prosecute the Columbia/HCA matters, where fraud has been alleged in virtually every aspect of the largest health care conglomerate in the United States; and, $15 million for tobacco litigation. Like the States, the federal government has expended considerable resources to combat tobacco-related illnesses, incurring significant expenses through Medicare, CHAMPUS, the Veteran's Administration, the Department of Defense, and the Indian Health Service. With these new resources, the Civil Division will aggressively pursue claims against responsible third parties to recover such expenses. In addition, $5 million is requested to cover the cost of anticipated expert witnesses in the tobacco litigation.

For the U.S. Attorneys, we are seeking $5 million to handle an expanding defensive civil caseload for tort litigation, employment discrimination, Social Security disability, and prisoner litigation. Also, another $5 million is requested to implement the provisions of the Child Support Recovery Act of 1996 and the Deadbeat Parents Punishment Act of 1998.

OTHER JUSTICE DEPARTMENT INITIATIVES

In addition to the special initiatives I have outlined thus far, the Department's fiscal year 2000 budget includes $171.25 million for other important program enhancements. These include funding to improve communications, to respond to this Subcommittee's concern regarding the timeliness of Office of Inspector General investigations, and to improve FBI intelligence collections and management capabilities.

Information Resources Management

Specifically, $80 million in additional funding is requested to improve the information sharing abilities of the Department and to upgrade much needed legal and management tools. Within this amount, we are seeking an additional $38.8 million to continue to move forward with the FBI's Information Sharing Initiative (ISI), which supports the FBI's overall information technology, specifically its Information Collection and Analysis Strategy critical to the success of FBI operations; and, $37 million for Legal Activities Office Automation (LAOA) to upgrade critical legal and management tools within the Department.

Narrowband Communications

Another $56.6 million is requested to accelerate the conversion of the Department's wireless radio communications to narrowband operations, and to support the Wireless Management Office within the Justice Management Division as directed by this Subcommittee.

Federal Bureau of Investigation

And, $14.5 million in additional funding is included for FBI law enforcement services, including the federal offender DNA database, improved connectivity between state and local crime labs and the FBI, and to begin outfitting the new FBI laboratory. Also, $5.8 million is requested to improve FBI intelligence collections and management capabilities.

Office of Justice Programs

In addition, within total funding for the Office of Justice Programs, $7.75 million will be used for new civil rights and hate crimes initiatives—including $5 million to create Civil Rights Enforcement Partnerships that will provide competitive grants to help build the capacity of states to address specific enforcement issues within their jurisdictions by hiring additional staff, primarily prosecutors.

Office of the Inspector General

The fiscal year 2000 budget request includes $7.5 million in increased funding for the Office of Inspector General (OIG), $5 million of which would replace with direct appropriations a reimbursement agreement with the INS for audit, inspection, and investigative oversight that has been in place since fiscal year 1992. This will provide a more streamlined and efficient means of providing funding for the OIG and will eliminate the need for future reimbursements between the OIG and INS for fee-related work. The $2.5 million in requested program enhancements would fund 31 new positions in the OIG's Investigations Division and six positions in its Special Investigations and Review Unit. These enhancements are essential to enable the OIG to effectively address record numbers of misconduct allegations while reducing its average case closure rate to 180 days.

U.S. Trustees

The fiscal year 2000 request also includes an increase of $4.9 million to meet the ever-increasing number of bankruptcy filings, as well as to provide the U.S. Trustees with new capability for word processing, database management, communications, file-transfer, and security.

CONCLUSION

Mr. Chairman, I have attempted to outline for you today, the principal focus of the fiscal year 2000 budget request for the Department of Justice.

I appreciate the support you have given to me, and to the Department of Justice during the past six years. We have made tremendous progress in fighting crime, and with your continued support, I am certain we can continue to build on our progress made to date.

Thank you. I look forward to answering any questions you might have.

Senator GREGG. Thank you very much, Madam Attorney General, and as is the tradition of this committee, at least, when we are fortunate enough to have the chairman of the committee with us, we give him the first shot at asking questions if he has any.

PARENTING EDUCATION

Senator STEVENS. Well, thank you very much. I am only going to stay for a minute, but I do hope, Madam Attorney General, that

you can renew your plans to come to my State [Alaska]. We had a very nice trip planned, and I look forward to your coming.

I just have one very short statement and then a comment. I have been sort of mesmerized by the "Decade of the Brain," and one of the things I have been looking into is the effect of brain stimulation on babies. I am the father of six, and it is very interesting for me to see these new things that are being developed. With the new statistics of the number of women of childbearing age who work out of the home and the lack of caregivers, such as grandparents, these days, one of the interesting things we find is that the lack of stimulation for a baby between the ages of 1 and 3 years means the brain just does not set up the kinds of connections and develop the functions that will permit the child to have good learning capability.

I think a Baylor University study showed that negative stimulation, or not having stimulation, sets a child up for a lifetime of disabilities, social dysfunction, and violence. A friend of mine at UCLA has done some studies that show that kids exposed to drugs later in life really lose all function and have a hole in their brains—an interesting thing.

What I am getting at is that when we had Secretary Riley and Secretary Shalala before our subcommittees, I asked whether they could work with this committee in developing an integrated approach to parenting education. It is really cost-effective. One study showed that every dollar we might invest in parenting education would save the Government $4 to $5 later in life for that same child.

I would like to see a coordinated, Government-wide program on parenting that would try to take advantage of these studies. The studies absolutely show that a baby's brain is literally wired, and they develop the capacity for learning and social functions between the time they are born and 3 years of age, and we are neglecting that entirely in all Federal programs today.

My question to you is: Would you be willing to give us some assistance from your Department to see if we could work out a Government-wide program on parenting and how to develop the real capability to stimulate the brains of the children in this country?

Ms. RENO. Mr. Chairman, those are some of the most wonderful words I have heard since I got here. It was 6 years ago today that I came up to this building for the beginning of my confirmation hearing. I came as a former prosecutor from Miami who had tried to figure out what to do about crack-involved infants and their mothers. The doctors took me to the public hospital to figure out whether we should prosecute them or what we should do with them.

I saw babies lying in the nursery who could not be sent home because there was no one to care for them. They were not held or talked to except when they were changed or fed, and they had been there for 6 months. They were not reacting with human emotions, whereas the child with severe birth defects, with both parents around her to the extent humanly possible around-the-clock, was beginning to react through her pain and misery with human emotions.

The doctors told me that 50 percent of all learned human response is learned in the first year of life; that the concept of reward and punishment and conscience is developed in the first 3 years. I asked myself what good are all the prisons, 18 years from now, going to be if the person does not understand what punishment means or does not have a conscience.

Since that time, I have tried to do everything I could to focus community-building on ages zero to 3. One of the most heartening experiences I have had was 2 weeks ago to go to the National Association of Counties' meeting on public safety and criminal justice. They were focusing on zero to 3 as the most critical time.

I would love to work with you. I will meet with your staff. I will do anything I can to assist in this effort because I think it is absolutely vital. I do not think we can neglect any point along the way, because after we do a good job with zero to 3, we have got to make sure that those same children have appropriate supervision after school when both parents are working and that they are prepared for the work force.

I would love to work with you, and I commit to doing so, and I am looking forward to going to Alaska.

Senator STEVENS. Good. Thank you very much.

Thank you for your courtesy, Mr. Chairman and members of the committee.

Senator GREGG. Thank you, Mr. Chairman.

We will use the 5-minute rule from here on out, and with the exception of Senator Hollings and myself, we will go by order of arrival.

INDEPENDENT COUNSEL STATUTE

Madam Attorney General, could you give me some thoughts on the Independent Counsel statute? I serve on the authorizing committee as well as on this committee, of course, and I notice the Department has changed its position basically 180 degrees from being at one point in favor of the reauthorization to now being opposed to the reauthorization.

My question—and I am suspect of the legislation myself—but my concern is this, and it is a concern that has been expressed to me by senior people in the law enforcement community, especially the Federal law enforcement community. How do we handle a corrupt Attorney General if we do not have an Independent Counsel? Shouldn't the statute at least exist for the purposes of addressing the President, the Vice President, and the Attorney General?

Ms. RENO. I think one of the ways that you address the issue of a corrupt Attorney General is by impeaching the corrupt Attorney General or taking other appropriate action. But let me just give you my background, because I testified before committees in support of the legislation when it was reauthorized.

I came from the point of view of a person who was elected within a jurisdiction where there were 19 other State Attorneys in Florida; there was another executive. So that when any question arose, I simply recused myself. There was no question about it, but there was another executive who was independent who could pursue it, an executive who had the same limitations with respect to budget,

who had the same requirements, and the Governor could supervise the matter.

I did not have what I have had these last 6 years, which has been people saying you did this wrong, you did not do this right—I was damned if I did and damned if I did not. Under the Independent Counsel Act, to sustain its constitutionality, the court relied on the fact that I had—the Attorney General had—the authority or the requirement that they make the initial triggering decision and that they also have the power to remove the Independent Counsel for cause.

As long as the Attorney General has that authority and responsibility under the Act, you are not going to get away from the issue of, "Is the Independent Counsel independent?" There are going to be questions raised, as there are constantly, over the decisions that I make. I reached a conclusion, after having functioned under both since I had been responsible for the regulatory appointment of a Special Counsel, Mr. Fisk, that if I were going to be responsible, I had best be responsible in a way that made me truly accountable to the people.

There is nothing perfect, but my sense is that this country did well for 200 years without an Independent Counsel Act, dealt with the issue of, as I recall, one Attorney General—and I will have to go back and refresh my recollection on that Attorney General—and I think that law enforcement can continue to work.

INVESTIGATING ATTORNEY GENERAL POSITION

Senator GREGG. So if you have an Attorney General who is acting inappropriately and potentially in a corrupt manner, you are thinking that—who would initiate the investigative activity and be in at least a quasi-independent status? I mean, clearly, anybody within the Attorney General's Office would not have the quasi-independent status that at least an Independent Counsel has.

Ms. RENO. Well, clearly, the FBI has the authority and the——

Senator GREGG. But they are a line agency for you.

Ms. RENO. But the Director of the FBI is an independent person in the sense that he has a term. Granted, I can recommend removal for cause, but I think the same situation is going to exist. If you have, under the present Act, a corrupt Attorney General, that corrupt Attorney General is going to refuse to trigger the Act.

Senator GREGG. Well, I presume we could adjust the Act so that when the issue was the Attorney General, there would be some other triggering mechanism.

Ms. RENO. Well, in certain situations—and the Deputy Attorney General and I will get the law on this for you so that you can address it—I think the Deputy Attorney General could take action as well.

The bottom line is that in a State system, you have a Governor, elected officials and the like, who have different responsibilities. Here, in the federal system, it comes right down to the ultimate responsibility lying in the executive branch of Government. I think there is no way around coming up to the fact that you cannot design a system that provides for true independence without disrupting the concept that is so vital to this Nation, which provides

the checks and balances of three branches of Government that are ultimately accountable.

Senator GREGG. Well, I guess I would like to pursue this further, but rather than tie up this committee, which is going to be involved in a lot of other substantive money issues, I will not. I will come back to those money issues and now turn to Senator Hollings.

REAUTHORIZATION OF INDEPENDENT COUNSEL ACT

Senator HOLLINGS. Thank you very much, Mr. Chairman.

On the Independent Counsel, talking about the reauthorization and the position taken by the Department of Justice, it strikes me, really—and I am trying to get rid of him—do not misunderstand me; I think that he and all other previous independent prosecutors have been used politically. We have to learn something from our harsh experience here, and after 4½ years and $44 million—you and I both know that we could find something against almost anybody in 4½ years and $44 million. And therein is where the people of the country save the Congress.

I remember in 1941, the Congress saved the people by one vote passing the Selective Service, but you had the reverse situation. People did not like President Clinton being less than forthright, there was no question, but they did not like even more the Independent Counsel, who never saw a witness, never saw Monica Lewinsky and used tricks of the trade, including wiring and taping, to develop a case.

Go back down to Dade County where you were the prosecutor. Go to the domestic court where A sues B for sexual misconduct, adultery; A and B both, under oath and in open court before the judge, swear to their pleadings. Either A or B loses, and the loser is never taken from the domestic court, saying, we are going to take you to criminal court because you lied under oath, and that is obstruction of justice. The process threw the whole country into turmoil.

So I am looking at the statute, and it is not the reauthorization. You have to go back, General—and correct me if I am wrong—to 1987, Public Law 100–202. There was an omnibus bill passed in December of that year that created a permanent, indefinite appropriation for the activities of the Independent Counsel, and therein is how Fisk, the predecessor to Mr. Starr, was actually financed. He did not get financed under the authorization because the authorization bill that you now oppose reauthorizing is not at issue.

What is really at issue is not only that, but this permanent statute—am I correct? Wasn't that the way you financed Mr. Fisk?

Ms. RENO. That is correct.

Senator HOLLINGS. So in other words, Mr. Chairman, in addition to getting rid of that reauthorization bill, you have to address the permanent and indefinite appropriation. I believe that as an executive, you would never have Linda Tripp around, but under the rules of the game you have to keep them. And similarly, you have a lot of Republican people over there in the Department of Justice leaking information all over the place. The Attorney General is not in charge. We need not worry about a corrupt Attorney General. You are the most uncorrupt individual to ever hit the Attorney

General's Office, I can tell you that. You are going to do right regardless of what Clinton wants.

Let me go to Joel Klein now, Attorney General, and let us put in some strong statements, because you have a movement now, and he is doing well. I like to see the Government lawyers outsmart all these private lawyers, and he is doing a good job. I say that advisedly, because I opposed his nomination because he was playing politics at the time. But he does not play politics now. He is very, very competent and doing a lot of work, and in this era of mergers and so on, he has more work, and rather than cut $1 million, as the Senator from Washington, Senator Gorton, intends to say on the floor, I hope we can increase the funding.

MEXICO DRUG TRAFFICKING

Jumping quickly under this limited time to drugs, I know our distinguished chairman has found some funding unaccounted for, and I am going to join the chairman with a separate order for DEA, but let me go to Mexico, because it is the same act, the same scene. Let us go back to 1989 when President Bush proclaimed a new era of unprecedented cooperation, and agreed to intensify joint efforts to combat drug trafficking. This was an agreement between President Bush and President Carlos Salinas.

Well, Salinas is a fugitive from justice right now, down in Havana, Cuba. Call him up. That was the prototype of free trade for the emerging countries with Carlos Salinas and NAFTA. But besides that, go right to the next Attorney General, and under General Thornburgh in 1990, "The record of Mexican law enforcement is extremely impressive." Under President Clinton they claimed to be "fully cooperating" down there. Yet Tom Constantine, the Drug Enforcement Administrator, the Director of that administration, said, and I quote: "The power of the Mexican criminal organizations has grown virtually geometrically over the past 5 years, resulting in corruption unparalleled to anything I have seen in 39 years of law enforcement." That was on February 27, less than a month ago.

Would you like to comment? Do you want to make a statement about how wonderful it is?

Ms. RENO. No. I will tell you what my statement was.

Senator HOLLINGS. Yes, ma'am, please do.

Ms. RENO. I wrote to Chairmen Grassley and Biden at the time that Tom Constantine testified, and I said: "Corruption has had in past years a terribly corrosive impact in Mexico. We have had concerns and frustrations with this situation. Indeed, President Zedillo has been probably the person most frustrated by it. He inherited a very difficult situation that you have described, and he has taken steps to address it." I describe the steps; I describe other things that need to be done; and there is no doubt that corruption in Mexico is a significant problem.

Senator HOLLINGS. I will come back.

Thank you, Mr. Chairman.

Senator GREGG. Senator Campbell.

DRUG PREVENTION

Senator CAMPBELL. Thank you, Mr. Chairman.

I would like to associate myself with at least part of Senator Hollings' comments. I think you are doing a very fine job, Madam Attorney General, and I will not ask you a single question about the Independent Counsel or Monica Lewinsky or anybody else in that unfortunate circumstance.

But I wanted to ask you a few questions about the use of drugs, and Senator Hollings touched on it. I would like to start out by asking you to look at a bill that I introduced last year that I am going to be reintroducing that gives conditional certification to Mexico. I know there is some disagreement between some Members of Congress and the administration, with the administration saying, with the exception of Mr. Constantine's comments, that they in fact have come up to a certain threshold of performance. Many of the people in Congress do not believe so, and they want to hold up certification.

It seems to me we could find some area where we could give certification on condition, conditional certification with a time frame in which we could monitor their performance, and I am going to reintroduce that bill if you would look at that.

We had testimony in our Subcommittee on Treasury the other day in fact from General McCaffrey, and he talked about the West, particularly Colorado and some of the Western States, which are at the forefront of methamphetamine use in the United States. I know that as you mentioned, there are certainly areas where crime is going down, and I think that is great, but I am a little bit concerned about what I see as a duplication of effort.

He asked in his testimony if we would provide roughly $200 million per year for the next few years for a campaign—that has been going on for 3 years now, by the way; I think we have put, if I am not mistaken, well over $500 million of money into it, a preventive national campaign to convince youth that they do not need drugs. I worry a little bit about the duplication of effort, since we do not have unlimited money.

The ONDCP has its own drug prevention program called the Drug-Free Communities Act, which I am sure you are aware of. This was funded at $20 million last year. The Department of Justice has asked for $20 million for what is called the Drug Prevention Demonstration Program this year.

Could you tell me how those programs are different or where they are going to overlap, so we are not just duplicating our efforts?

Ms. RENO. This is how we are trying to design it within the Department of Justice. Prevention programs are better operated, in terms of drug prevention specifically, through HHS and through ONDCP, but it is vital that we coordinate together so that as we observe people on drugs, we can take steps to intervene before another crime is committed, aside from the drug possession; that we take steps through the drug courts, which are clearly in the law enforcement realm and for which we have asked for increases. They have proven to be very successful; and for those that continue to abuse and continue to forfeit the opportunities that have been provided to them, that we provide increased penalties and increased sanctions at each step of the way.

At the same time, for people who have substance abuse problems, we are working with the ONDCP and with the Department

of Health and Human Services to develop the best means of testing and treatment and after-care and follow-up. In that connection, I think we are working closely with the two other principal agencies involved, and I will continue to address that.

TRIBAL COURTS

Senator CAMPBELL. Thank you. So you do use ONDCP's clearinghouse for materials that you might pass over for your grant program.

You also mentioned Indian crime rates in your statement, and I know as you do that they are just skyrocketing on many Indian reservations. I am interested in the capacity-building for tribal courts. Could you give me an overview of the resources that are now available to increase that capacity? Let me ask one other question, too. I know that cases of domestic violence are on the rise in reservations, too. We have a problem, obviously, if one member of a marriage is an enrolled member of a tribe, and the other one is not, because tribal courts have no jurisdiction against the non-Indian in the marriage. How do you address that issue as well, if you could touch on both of them?

Ms. RENO. First, with respect to the tribal courts, with so many different tribes, it is very difficult to properly fund and create a sufficient number that we can effectively use the dollars for. So there are some tribes that have come together—the Sioux Nation is an example—and have formed a court structure that is developing and, I think, serving some significant purposes.

We are asking for $5 million to assist tribal governments in the development, enhancement, and continuing operation of tribal justice systems. That does not begin to scratch the surface, but I think——

Senator CAMPBELL. That seems like a very low request to me.

Ms. RENO [continuing]. It is a beginning.

With respect to domestic violence and with respect to youth issues and so many others, what I have learned, Senator, is that given a chance, given the opportunity to build a strong tribal justice system, tribes throughout the United States are taking significant steps in addressing the issue of domestic violence in a culturally sensitive way and in a way that is thoughtful.

What we are trying to do is to learn from each other and support programs that are working and that can be identified and can be replicated. It is a very challenging effort, but I think it is one of the most important efforts that we can undertake in the Department of Justice, because I think that for too long, we have neglected that whole area.

Senator CAMPBELL. I thank you for your response and your sensitivity to it. It is a very complicated and difficult question I know, and I thank you.

I am out of time. Thank you.

Ms. RENO. Somebody just gave me a figure, and I will clarify it for you, Senator, of $10 million for tribal courts. I have two different figures here, so we will clarify it for you and let you know exactly what it is.

[The information follows:]

TRIBAL COURT PROGRAM

The 2000 President's Budget includes $5 million for the continuation of the Office of Justice Programs' Tribal Court Program, which was first appropriated in 1999.

The purpose of this program is to assist tribal governments in the development, enhancement and continuing operation of tribal judicial systems by providing resources for the necessary tools to sustain safer and more peaceful communities, by focusing on juvenile and family issues as well as non-traditional approaches to justice, to enhance the administration of civil and criminal justice on Indian lands, and to encourage the implementation of the Indian Civil Rights Act by tribal governments.

While promoting greater cooperation among tribal, State, and Federal justice systems, this program will assist tribal justice systems to coordinate programs and services within its tribal structure with law enforcement, victims services, treatment providers and others. The Tribal Court Program will also assist with technology development to ensure that tribal justice systems can communicate within the tribal and non-tribal justice community.

Senator CAMPBELL. Thank you.

Thank you, Mr. Chairman.

Senator GREGG. Senator Leahy.

INDEPENDENT COUNSEL INVESTIGATION COSTS

Senator LEAHY. Thank you, Mr. Chairman.

Madam Attorney General, I was interested in being here as a new member of this subcommittee but also in my role as ranking member of the authorizing committee.

I note the Department filed court papers on March 8th defending your oversight authority to investigate allegations of misconduct by Special Prosecutor Kenneth Starr. You note in those papers that inherent in your removal power is the authority to investigate and assure that the Independent Counsel is competently performing his or her duties in a manner that comports with the law.

The Department also states that "The ability to determine the pertinent facts is a prerequisite to responsible and effective exercise of that authority."

I would assume in determining those pertinent facts, you could also determine how he or she may have spent their money. We also have that oversight responsibility, and I wrote you last week requesting information about the cost of Mr. Starr's investigation, and Mr. Chairman, I would ask that my letter be made a part of the record, which goes into a number of questions.

Senator GREGG. Without objection.

[The information follows:]

LETTER FROM SENATOR PATRICK J. LEAHY

UNITED STATES SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC, March 4, 1999.

The Honorable JANET RENO,
Attorney General, U.S. Department of Justice,
Washington, D.C.

DEAR JANET, In anticipation of the hearings on the Department's budget next week before the Appropriations Subcommittee on Commerce, Justice, State, and the Judiciary and the Committee on the Judiciary Committee, I would like to alert you to two areas of particular concern: funding for Independent Counsels and for the Communications Assistance for Law Enforcement Act (CALEA).

Independent Counsels.—At the Judiciary Committee's Department of Justice Oversight hearing in July 1998, you may recall that I asked you about spending by independent counsels (ICs) and you referred me to information compiled by the General Accounting Office. While the Comptroller General is responsible for auditing

independent counsels, under 18 U.S.C. § 596(c), and the Administrative Office of the United States Courts (AO) is responsible for providing administrative support and guidance to independent counsels, under 18 U.S.C. § 594(1)(2), the law gives the Department and the Attorney General overall responsibility for spending by Independent Counsels.

Specifically, under 18 U.S.C. § 594(e), the Department of Justice is directed to "pay all costs relating to the establishment and operation of any office of independent counsel" and the Attorney General is directed to report to Congress "on amounts paid during that fiscal year for expenses of investigations and prosecutions by independent counsels." In addition, under 18 U.S.C. § 594(d), the Department of Justice may grant requests by independent counsels for assistance in carrying out their functions, including access to records and files, the use of resources and personnel, and the detailing of prosecutors, administrative personnel, and other employees of the Department to the staff of the independent counsel.

In my view, these statutory responsibilities make the Department the primary repository of relevant and material information relating to the costs of independent counsels, particularly since the AO is expressly prohibited from providing information without the independent counsel's authorization (see 18 U.S.C. § 594(1)(2)).

Given the Department's responsibilities for spending by independent counsels, I expect fully responsive answers by the Department to the attached questions regarding the costs of Kenneth Starr's Office of Independent Counsel (OIC), unless there is a legal prohibition of which I am unaware barring your providing this information to Congress.

CALEA.—As I indicated in a floor statement at the close of the last Congress, I have been disturbed by the pace of implementation of CALEA and the potential costs associated with the so-called "punch list" items being urged by the Department and the Federal Bureau of Investigation. I have enclosed a copy of my statement on this matter for your convenience.

CALEA authorizes $500 million of government funds to pay telecommunications carriers for the reasonable costs of retrofitting equipment deployed before 1995 to comply with the new capability requirements under the law. This amount was authorized based on representations at the time by the Department and the FBI, and was set at a level intended to apply pressure on law enforcement to contain costs and limit the surveillance capability they would seek.

Now, carriers are concerned that the "punch-list" items will drive the costs up to as much as ten times the amount Congress authorized. Their concerns appear to be well-founded since you indicated in a letter last October that "[i]n excess of $2 billion would likely be needed" to cover the costs of modifying equipment to comply with the surveillance capability sought by the Department. These ongoing disputes over the specific surveillance capabilities and the costs of compliance are delaying implementation of this important law.

In 1994, I specifically questioned Director Freeh about whether he would use the legislation to build the perfect surveillance system, or what I referred to as "the bomb-proof fax machine." He responded that he was not "proposing rewiring America on the bomb-proof fax machine theory" and promised that "We will never * * * require that type of ridiculous cost and preparation." Nevertheless, the Department has pursued a surveillance system that has delayed achievement of law enforcement goals, while driving up costs. I authored this law and worked for its passage because I thought there was a sense of urgency and need on the part of law enforcement.

Is it time to scale back the Department's demands and speed up CALEA implementation at the same time? What steps are you taking to prioritize law enforcement needs and ensure that CALEA is implemented in a cost-effective manner for both the government and the taxpayer or ratepayer? To avoid further delays in CALEA compliance, should Congress resolve the ongoing dispute between the Department and the telecommunications industry and make the determination whether certain punch-list items being requested by the Department are simply too expensive?

I look forward to speaking with you about these matters.

Sincerely,

PATRICK LEAHY,
United States Senator.

ATTACHMENT

Personnel:

How many attorneys are employed by the OIC?

How many attorneys have been detailed to the OIC?

What is the salary for each attorney (without naming the attorney)?
How many paralegals are employed by the OIC?
How many paralegals have been detailed to the OIC?
What is the salary for each paralegal (without naming the paralegal)?
How many secretaries or other assistants are employed by the OIC?
How many secretaries or other assistants have been detailed to the OIC?
What is the salary for each secretary or assistant (without naming the secretary or assistant)?
How many employees of the OIC have received or are eligible for raises or bonuses?
What is the amount of each raise or bonus that has been granted?

Personnel Salaries/Bonuses:

How many employees in the OIC are eligible for overtime pay?
What is the amount of overtime pay that has been paid to OIC employees?
How many consultants or other advisers (such as press or public relations or ethics consultants) are or have been employed by the OIC?
Please identify each of them.
What is the amount that has been paid to each of the consultants or other advisors employed by the OIC?

Federal Agent Detailees:

How many federal agents are detailed to the OIC?
From which agencies are these agents or employees detailed?
How many agents or other persons are detailed from the Federal Bureau of Investigation?
How many agents or other persons are detailed from the Internal Revenue Service?
How much of the cost of each detailed federal employee is charged to the OIC and how much to a federal agency?
Please identify the unit from which each detailed agent was diverted to work on the OIC?

Travel Costs:

Air Transportation:

What is the total number of airplane trips made by OIC staff at government expense and the total cost of these trips?
How much money has been spent on airline tickets for:
a. Kenneth Starr?
b. Other OIC staff?
How many first class tickets have been purchased and at what cost?
How many business class tickets have been purchased and at what cost?

Surface Transportation:

What is the total number of automobiles used by OIC staff at government expense?
Please identify the make, model and year of each automobile, and the cost and of the lease and length of the lease for each vehicle?
What is the total number of official drivers employed by the OIC and the salary for each driver?

Witness Transportation:

What is the total number of times Starr's OIC has paid for witness travel at government expense?
What is the total cost of such travel to the government?
How many witness' have traveled at government expense in connection with the OIC?
What is the total cost to the government of witness travel and lodging in connection with the OIC?

Offices:

What are the locations of the offices used by the OIC?
What is the cost of rent for each office used by the OIC?
How much square footage has the OIC rented in each location?
What is the cost of telephone system used for each office?
What is the cost of court reporting services incurred by the OIC?

Computer Services:

What is the total cost of computers and computer systems incurred by the OIC?

Does the OIC lease computers and computer systems?
If so, what systems are leased and at what cost per month?
Does the OIC employ a systems administrator?
If so, what is that cost of the systems administrator?

Witness' Attorney Costs:

What is the amount of witness' attorney's fees in connection with OIC that the government has reimbursed or anticipates reimbursing?

Lewinsky Matter:

What is the best estimate of the total cost to the government of the OIC investigation of the Lewinsky matter, including OIC staff salary, travel, and detailee salaries?

Foster Suicide Matter:

What is the best estimate of the total cost to the government of the OIC investigation of the Vince Foster suicide, including OIC staff salary, travel, and detailee salaries?

[EXCERPT FROM THE CONGRESSIONAL RECORD, OCTOBER 21, 1998]

STATEMENT OF SENATOR PATRICK LEAHY ON PASSAGE OF CERTAIN ANTI-CRIME LEGISLATION

MR. LEAHY. Mr. President, as this Congress draws to a close, much has been and will be said about what has and has not been accomplished. There is no getting away from the fact that Congress has dropped the ball on too many issues of vital importance to the American people. I need only mention campaign finance reform, a patients' bill of rights, and the failure to pass tough legislation on youth smoking. I have spoken often about the failure of this Congress to live up to its constitutional advice and consent responsibilities with respect to nominations. In addition, this is the first year since enactment of the Congressional Budget Act that Congress has failed to pass a budget. There is much about the record of the 105th Congress with which I have been disappointed and with which the American people should find fault.

In the area of criminal justice, I particularly regret Congress' failure to pass balanced juvenile crime legislation, the Democratic crime bills, S. 15 and S. 2484, or comprehensive legislation on behalf of crime victims. At the same time, I would like to highlight those important measures that we have been able to pass.

* * * * * * *

AUTHORIZATION OF THE DEPARTMENT OF JUSTICE AND IMPLEMENTATION OF THE COMMUNICATIONS ASSISTANCE FOR LAW ENFORCEMENT ACT

I was pleased to work with Senator Hatch on the Hatch-Leahy substitute amendment to H.R. 3303, the Department of Justice Appropriation Authorization Act for fiscal years 1999, 2000, and 2001, that the Senate Judiciary Committee reported favorably and that I had hoped would be enacted before the end of this Congress.

The last time Congress properly authorized spending for the entire Department of Justice was in 1979. This 19-year failure to properly reauthorize the Department has forced the appropriations committees in both houses to do both jobs of reauthorizing and appropriating money for the Department. This bill reaffirms the authorizing jurisdiction and responsibility of the Senate and House Judiciary Committees. I commend Senator Hatch and Congressman Hyde for working in a bipartisan manner to bring the important business of re-authorizing the Department back before the Judiciary Committees. Regular reauthorization of the Department should be part and parcel of the Committees' traditional role in overseeing the Department's activities.

One of the provisions that the Hatch-Leahy substitute removed from the House-passed version of the bill relates to the compliance date and so-called "grandfather date" in the Communications Assistance For Law Enforcement Act (CALEA), commonly called the "digital telephony law." As part of H.R. 3303, the House extended the compliance date for two years and the "grandfather date" for almost six years, until October 2000.

I have long resisted the efforts and urging of many to tamper with the provisions of CALEA. This law was carefully crafted, after months of negotiation, to balance privacy rights and interests, law enforcement needs, and the desire of business and consumers for innovation in the telecommunications industry. I have so far resisted legislative modifications not because implementation of this law has been problem-

free. Far from it. Implementation of this important law has certainly been slower than any of us anticipated. For example, the Department of Justice issued its final notice of capacity in March 1998, over two years late. Capacity requirements are integrally involved with setting appropriate capability standards and building CALEA-compliant equipment. Thus, the delay in release of the final capacity notice has also delayed the ability of telecommunications carriers to achieve compliance with the capability assistance requirements.

In addition to significant delays, implementation of CALEA has been fraught with controversy and debate. Currently pending before the FCC, for example, are proceedings to determine the sufficiency of an interim standard adopted in December 1997 by industry for wireline, cellular and broadband PCS carriers to comply with the four general capability assistance requirements of the law. This interim standard was developed in accordance with CALEA's direction that the telecommunications industry take the lead on figuring out technical solutions for implementing the law. Such industry standards provide "safe harbors" under the law.

While the FBI criticizes the interim standard for failing to include certain surveillance functions (referred to as the "punch list" items), civil liberties groups criticize the interim standard for failing to protect privacy by including surveillance functions for location information and packet-mode call content information. We recognized in CALEA that these are complicated issues, which require intensive time and technical expertise to resolve. The law consequently authorizes the FCC to review alleged deficiencies in, or establish under certain circumstances, technical requirements or standards for compliance with the CALEA capability assistance requirements.

Uncertainty over the outcome of the disputed interim standard has resulted in further delays in developing technical solutions. Indeed, because of the delays in implementation of CALEA, neither the House or the Senate provided any new direct appropriations into the Telecommunications Carrier Compliance Fund. The Explanation of Managers for the Omnibus Appropriations bill makes clear that should funding be necessary in the upcoming fiscal year, the Attorney General is expected to spend the unobligated funds currently available in the fund.

Even if the FCC were to issue its decision and settle the disputes today, compliance with the interim standard would not be achievable for some time because of the development cycle for standardized products and services after promulgation of standards. Therefore, the conferees for the Omnibus Appropriations bill urged the FCC "to act quickly to resolve this issue." I join in this direction and also urge the FCC to resolve the pending petitions regarding the interim standard promptly.

Should the FCC determine that the FBI is correct and that all, or substantially all, the punch list items are required to be incorporated into the compliance standard, the FBI may have won a battle but in the long run—given the potential costs associated with the punch list items—lost the proverbial war. Carriers would bear the costs of complying with those punch list items for equipment, facilities, and services deployed or installed after January 1995, unless the cost is so high, compliance is not reasonably achievable. Then the Government would have to pay for retrofitting, subject to available appropriations and prioritization by law enforcement. Absent such Government payment, which would make compliance "reasonably achievable," CALEA directs that the equipment, facilities, and services at issue will be "deemed to be in compliance with such capability requirements." 47 U.S.C. § 1008(b)(2)(B).

I therefore strongly urge carriers to provide the FCC with all necessary cost information associated with the punch list items so that the agency is able to make determinations on whether compliance is reasonably achievable.

We anticipated when we passed CALEA that debates and delays over implementation issues would occur. Congress therefore established processes at the FCC and in the courts to hear all sides, resolve differences, and grant extensions where necessary and warranted.

CALEA expressly authorizes the FCC to extend the compliance date of October 1998, one of the dates extended by the House in its version of H.R. 3303. On September 11, 1998, the FCC released a decision exercising its authority and extending the CALEA compliance date until June 30, 2000. This is a few months shy of the extension approved by the House. This action shows that the FCC process we set up in CALEA to resolve problems that may arise with the law's implementation works. The agency's decision on extension of the compliance date has given me renewed confidence in its ability to carry out the responsibilities we gave the agency under CALEA.

The House-passed version of H.R. 3303 also extended the "grandfather date." Let me explain the significance of this date. CALEA authorizes $500 million for the Federal Government to pay telecommunications carriers for the reasonable costs of ret-

rofitting equipment, facilities or services deployed by January 1, 1995 to comply with the capability requirements. Any such equipment not retrofitted at Government expense is deemed to be compliant, or "grandfathered," until the equipment is replaced or undergoes significant upgrade in the ordinary course of business.

Carriers have raised concerns that due to significant changes in the telecommunications infrastructure as well as the deployment of new equipment and services since 1995, they may be ineligible for any reimbursement under this "grandfather" clause. Carriers have sought an extension of the "grandfather date" until 2000. Before we take such a step and extend the grandfather date, we should fully consider the possible unintended consequences.

The "grandfather date" was set at a time earlier than the compliance date in order to give telecommunications carriers every incentive to find and implement the most efficient and cost-effective solutions to ensure the requisite law enforcement access. In addition, Congress fully contemplated that at some point carriers—not the Government—would bear the costs of CALEA compliance. Setting the grandfather date at January 1995 was intended to be a privacy-enhancing mechanism by giving carriers the additional incentive to interpret the capability assistance requirements narrowly since compliance with non-grandfathered equipment or services was on their "dime." Extending the grandfather date by almost six years to the year 200 may have the unintended consequence of undercutting these important policy considerations.

While CALEA requires that equipment, facilities or services deployed after January 1995 comply with capability assistance standards at the carriers' expense, to ensure fairness and promote innovation, the law provides a "relief valve." Specifically, carriers are authorized to petition the FCC to determine whether compliance for such non-grandfathered equipment, facilities or services is "reasonably achievable" or whether compliance would impose significant difficulty or expense on the carrier or users of the carrier's systems. As I noted above, if the FCC decides compliance is not reasonably achievable, under 47 U.S.C. § 1008(b)(2)B), the carrier is "deemed to be in compliance" unless the Attorney General prioritizes its needs, evaluates the importance of the surveillance feature to laws enforcement's mission, and determines that reimbursement is justified.

I appreciate the circumstances under which telecommunications carriers are seeking extension of the grandfather date and their concern over the costs of CALEA compliance for individual companies and ratepayers. As I have already noted, the cost implications of the punch list are significant in evaluating whether compliance is "reasonably achievable," regardless of the specific grandfather date. Should the cost of CALEA compliance and of the punch list become excessive, I urge the industry not to assume that extension of the grandfather date is the only means to achieve a fair resolution of the costs of CALEA compliance.

I look forward to a continued dialogue with the telecommunications industry and the Department of Justice to ensure that the implementation of CALEA is fair and maintains the careful balance of privacy, innovation and law enforcement interests that we intended.

Senator LEAHY. I will not go into the question of reauthorizations—others will do that—but when I look at some of these fundamental costs, the General Accounting Office gives us only the most general reports on total expenditures. For example, the latest GAO report—and I have been unable to get straight answers from them—from September 1998 tells us that Kenneth Starr spent close to half a million dollars over a 6-month period for investigators and other specialists. These investigators were in addition to the agents you used from the FBI and the IRS.

Now, who these special investigators and specialists are and how many are paid for out of Government funds are questions that remain unanswered.

The Administrative Office of the Courts is responsible for disbursement to the Independent Counsel, but he is legally barred from telling us about how much was spent and on what. As I read the law, only your Department has overall responsibility for spending by the Independent Counsel.

So, with all that, you have a series of questions from me about his expenditures. Do we know how many attorneys are employed by the OIC?

Ms. RENO. In order to ensure the independence and the public confidence that the Independent Counsel envisions, I am told that the Department's policy has existed since the late 1980's. The policy has been to keep records only as to the categories of expenditures by Independent Counsel.

We have a copy of the most recent quarterly report, which we have brought——

Senator LEAHY. But that does not tell us diddly-squat; it really does not. What I am trying to get at is that GAO will not tell us, you will not tell us, the Administrative Office of the Courts will not tell us, but we are expected to come up with $40 or $50 million for what is appearing to be more and more of an ego trip or a vendetta on the part of Mr. Starr—but even if it were justified, it is still $40 or $50 million of taxpayers' money. I do not know of any prosecutors' offices that have budgets like that. Nobody will tell us what it is spent on. Why bother to even have an oversight hearing?

And I assume you will not tell us in the Judiciary Committee. We cannot find out how many Federal agents are detailed to him. We cannot find out how much money he is spending on airplane travel. We cannot find out whether he gives bonuses or does not; what he is paying for personnel; how many cars are leased which I am told just sit there month after month without being used; how many square feet of high-priced office space is leased and never used; how many people are flown around even when not needed.

Do you understand my frustration?

Ms. RENO. I do.

Senator LEAHY. Well, do we have any answers?

ACCOUNTABILITY OF THE INDEPENDENT COUNSEL

Ms. RENO. As I have come to understand the practice of the Department of Justice, as I have looked at the language of the Act, I have concluded, and I have said on previous occasions, that one of the steps I think should be taken if the Act were to continue, is that the person who is the Independent Counsel ought to have a budget—everybody else in Government exists with a budget—and must live within that budget and be accountable for it, and that there be a mechanism for that accountability. I do not think that that exists now.

Senator LEAHY. Well, everybody in the world with the exception of Kenneth Starr would agree with you on that, but is there nobody today who can tell us how much he is spending? I mean, if I want to find out how much you are spending, how many lawyers you have in your Department, how much they pay you, whether they get bonuses, what their expense accounts are, I can find that out. Anybody can find out how much we are paid, how much we spend, and how much we put in on our expense accounts, our telephone bills, and everything else. Is there nobody who can tell us what this man is spending in detail?

Ms. RENO. I will be happy to review all the factors with you. I do not know of a way that the Justice Department can provide that

information under the Act and ensure the independence of the Independent Counsel.

Senator LEAHY. Is there anybody who can supply it?

Ms. RENO. Yes, the Independent Counsel.

Senator LEAHY. Oh, good. You know, maybe it is because I see the snow falling outside that I think of the expression of "hell freezing over," as far as ever getting that from him.

So in effect, there is no—I can ask the questions, and I will not get the answers, so there is really no reason for me to go to the oversight hearing on Friday, either, is there?

Ms. RENO. Well, I know from your past comments to me and your past actions that there are other issues that you care deeply about.

Senator LEAHY. Yes. CALEA, yes—there is one that is a mess.

Senator GREGG. The Senator's time has expired.

Senator LEAHY. OK. I will have some questions on CALEA, and I will wait to see if we can get ourselves through that mess.

Senator GREGG. Senator Lautenberg.

RACIAL PROFILING

Senator LAUTENBERG. Thank you, Mr. Chairman.

Madam Attorney General, I commend you for the leadership that you have provided. The crime rate drop is significant—over 20 percent since 1993. And I also commend you for your effort to reduce gun violence in our country and solicit your assistance with some legislation I have to reduce those shocking figures that we hear so regularly, that we lose over 30,000 people a year to gun violence.

But for the moment, I want to address a particular problem that pervades our society and has been an egregious problem in the State of New Jersey. It is referred to under the description of "racial profiling." As a matter of fact, there is even an acronym "DWB," or "driving while black." It is a dangerous issue for many innocent people.

I want to thank you for permitting Mr. Holder to join us at a meeting later today that we are having on racial profiling. We have several members of the African American clergy here from New Jersey as well as State legislators. I call attention to a letter that I sent you some days ago, asking for a task force to be created to investigate this problem because it is not unique to New Jersey. It is particularly acute up and down the Northeast corridor from Washington to New York along highway I–95. I asked for a task force to help us expedite a review of this and come up with either civil enforcement, prosecution or a change in law if necessary.

It is totally unacceptable that a part of our society is deprived of their civil rights while others enjoy the full protection of the law. The first time the Justice Department looked at this, Madam Attorney General, was in December 1996 when a State judge in New Jersey ruled that racial profiling was an obvious occurrence in some 19 cases. So I would ask if you can help, and we are going to discuss that with Mr. Holder when we see him in a short while.

PREPARED STATEMENT

And Mr. Chairman, I would ask also that the full text of my statement be included in the record as if read.

Senator GREGG. Without objection.

[The statement follows:]

PREPARED STATEMENT OF SENATOR FRANK R. LAUTENBERG

Thank you Mr. Chairman.

Let me first commend you, Attorney General Reno, for all of your hard work.

You can't argue with results, and you've made substantial progress in the battle against crime. The violent crime rate has now fallen more than 21 percent since 1993. In fact, violent crime rates are the lowest since 1973, when the Bureau of Justice Statistics first began its National Crime Victimization survey. And it's not just violent crimes that are down. The property crime rate is also at a historic low.

Certainly, this progress could not have been made without the dedication of our police officers and community groups, but your leadership has made a critical difference in protecting people and making our neighborhoods safer.

Of course, as you have said, there is much work yet to be done. Your record shows that you are always looking for the next challenge, and I look forward to working with you as our nation looks to build safer communities for the twenty-first century.

Let me briefly outline some of the issues that I am most concerned about, and I hope we can discuss them further during the question period.

First, we must find better ways to protect the civil rights of all Americans.

We have all been horrified by the brutal attacks against minorities in recent months. There was the savage beating of Matthew Shepard, a gay student at the University of Wyoming. We were also horrified when James Byrd Jr., a black man, was chained to a pickup truck and dragged to his death in east Texas. In my home state of New Jersey, a retarded man was recently beaten and tortured.

It is hard to believe that people in a civilized society can brutalize others like this. We cannot tolerate this violence. We may never be able to prevent the ignorant few from teaching hate, but we can crack down on anyone who threatens the well-being of his fellow man.

It is particularly disturbing when we see law enforcement officers violating the civil rights of others. No one is safe when those who must uphold the law treat it with contempt.

This has become a very important issue in my home state of New Jersey. With us today are a number of leaders from New Jersey—members of the Black Ministers Council and representatives from the Black and Latino Legislative Caucus. They are in town for a meeting later today with Deputy Attorney General Holder on the problem of racial profiling.

For many years there have been serious and credible allegations that the New Jersey State Police have pulled people over for "D.W.B." or "Driving While Black." The fact that this term has become a part of the common vocabulary shows how pervasive the problem is.

Last year, I tried to help with this issue by securing federal funds so that trooper cars could be equipped with video cameras. While that may be a part of the solution, more needs to be done.

I would like you to consider creating a Task Force, of Justice Department personnel and other outside experts, to take a careful look at the racial profiling issue—not just in New Jersey but along the Interstate-95 corridor.

I know that the Civil Rights Division at Justice is currently conducting a review of certain allegations and I recently sent you a letter urging you to expedite this effort. But I think more needs to be done in a prompt and comprehensive manner. After all, we are talking about our citizens' constitutional rights. No one should fear that they will be pulled over because of the color of their skin.

We must also do more to stop gun violence. For too long we have let the gun extremists define the debate at the expense of reasonable and common sense gun regulations. They spend a lot of time misrepresenting the 2nd Amendment, but they denigrate many other important rights.

What about the right of children to be free from violence and terror? What about the right of all Americans to sit in their living rooms without bullets flying through their windows? And what about the right of taxpayers who pay billions of dollars in health care costs to take care of victims?

I have introduced legislation that will help taxpayers recover these costs—it's called the Gun Industry Accountability Act. Many Mayors across the country—the

local officials who face the everyday problems—are fighting back against the gun lobbyists. They are saying that gun manufacturers and dealers must take responsibility for their product, just like other industries whether it's cars, aspirin, or toasters.

These communities are saying that if you do not take reasonable steps to make your product safe, or if you market and distribute guns in an irresponsible way, you have to bear the costs of your actions. Not only is this a basic principle in our legal system, it's something all parents teach their kids.

I hope that the Administration will support this effort, as it has supported a similar approach to tobacco.

Of course, litigation is not the best way to solve problems. Courts can be slow, and lawyers are expensive. But we should not be surprised if people turn to the courts when their voices are drowned in a sea of special interest money.

I have proposed a number of other common sense measures that will help prevent gun violence. With these measures in place, there would be little need for litigation.

We should close the loophole in federal gun laws which allows criminals to buy firearms at gun shows without background checks. I appreciate the Administration's help and support with this measure.

I also have a proposal to limit handgun purchases to one per month. Anyone who needs more than 12 guns a year should probably not be allowed to buy guns.

Finally, I have introduced The Childproof Handgun Act which would help prevent those tragedies that occur when children find guns. It would require that handguns be engineered, with a device such as a combination lock, or a magnetic ring, so that they cannot be fired by an unauthorized user.

Whether it is protecting civil rights, preventing gun violence, or taking other steps to make our communities safer; we should always remember what is at stake—a better America for future generations.

I hope that we will all rededicate ourselves to renewing the most troubled neighborhoods where gangs and drug dealers have destroyed the foundation that children need to build better lives. Every young child has great hope and spirit, and we cannot let the worst elements of society destroy their dreams.

Recently, we were both at the White House for the First Lady's announcement of new resources for mentoring programs. As you know, I authored the Juvenile Mentoring Program—what we call JUMP—which helps keep young people in school and off the streets by matching responsible adults with children who need additional discipline and guidance to help them stay on the path to success.

I know that prevention efforts have always been a key part of your agenda, and I want to thank you for your support of the JUMP initiative.

Again, let me thank you for your leadership of the Department of Justice. I have always enjoyed working with you, and I look forward to working with you to fight crime, protect civil rights, and build stronger neighborhoods for our children.

Senator LAUTENBERG. About 3 years ago, a New Jersey Superior Court judge found that 19 minority motorists who were arrested from 1991 to 1998 had been stopped because of their race. In that case, two former State troopers testified that they were trained to stop minority drivers even if they had not broken any motor vehicle law.

The issue became more heated after an incident just last April when two State troopers fired a number of shots into a van holding four minority men, and thus far, there is nothing that suggests these men were engaged in anything criminal.

This problem is not limited to New Jersey. Lawsuits have been filed in Maryland and in other States along the Interstate 95 corridor. This is unacceptable. No one should fear being pulled over because of the color of his or her skin.

I have a friend who is an outstanding attorney in New Jersey, an African American, who says one of the worst things he has to do is get on the highway and drive. It sounds like such a simple task, but he is aware of the fact that at any moment, without provocation, he could be pulled over.

I know that you share my concern about this issue, and I want to ask you a few questions about the Department's efforts in this

area. First, could you just briefly discuss the role of the Department of Justice when there are allegations that law enforcement officials are violating the constitutional rights of minorities?

Ms. RENO. Senator, with respect to the particular issue that you have raised in New Jersey, the Civil Rights Division is actively pursuing a review of the New Jersey State police and this issue. We are examining State police policies and practices to determine if State troopers are engaged in the pattern or practice of discriminatory traffic stops. We want to do a thorough review and complete it as soon as possible.

In the 1994 Crime Act, Congress gave us the authority to determine if there were patterns and practices, and we are pursuing that, and in a number of other jurisdictions as well.

The whole issue, not just with respect to traffic stops, but with respect to stopping a young man on the streets of Washington or some other jurisdiction in this country is of grave concern. If you talk to young people, they sometimes feel like they have been put down or harassed. What we are trying to do is to develop an attitude about policing in this country where people look to the police officer as their friend, as their mentor, as the person who can provide guidance.

Through our community policing initiative, I think we have made some substantial progress. This past December, we held a conference on racial profiling issues that brought together civil rights advocates, police organizations, chiefs of several major departments and of State highway patrols, and Federal officials that focused on training for local law enforcement agencies. So both from the point of view of the pattern and practice jurisdiction and the training, we are pursuing the issue of profiling.

With respect to the issue of what happens when a law enforcement official violates someone's constitutional rights, we are working closely with State and local law enforcement to make sure these cases are pursued, and that the Federal interest in the protection of civil rights is vindicated. This is one of our highest priorities.

Senator LAUTENBERG. Well, we could very well need your help—and I will finish, Mr. Chairman—because in the State of New Jersey, an appeal was filed to overturn the judge's conclusion that racial profiling was taking place. They have since held up on it, and it is a matter of great urgency.

Thank you, Mr. Chairman.

Senator GREGG. Thank you, Senator Lautenberg.

Senator Inouye.

HAWAII DETENTION CENTER

Senator INOUYE. Thank you very much, Mr. Chairman.

I would like to shift gears, Madam Attorney General. I would like to thank you for your leadership in the construction of a Federal detention center in Hawaii, and I would like to report to you that it is on schedule, and I think it is going to be a major cost-saver. As you know, at this moment, several prisoners will have to be shipped to some prison on the mainland, then returned to Honolulu for trial; this way, it is going to be done efficiently.

Senator GREGG. Are you telling me we can get a vacation in Hawaii now, where we have a Federal prison? Sounds like a good deal.

Senator INOUYE. I was also pleased to learn that the Bureau of Prisons officials are coming to Hawaii to conduct career fairs to help in the employment of people in Hawaii for this center. I was also very pleased to learn that your Department has offered to fund certain drug initiative programs on one of our forgotten islands, Lanai, and also the teen prostitution prevention program of our First Lady.

So I thank you very much in behalf of the people of Hawaii.

IMMIGRATION INVESTOR VISA PROGRAM

Madam Attorney General, I was planning to raise a question on the immigrant investor visa program, but I have been told that 5 days ago, your Department issued a report on this matter, so I will study this report, and if I may, I would like to call upon your office for discussion.

Ms. RENO. By all means, sir.

Senator INOUYE. Thank you very much.

Ms. RENO. Thank you.

Senator INOUYE. Thank you, Mr. Chairman.

Senator GREGG. Thank you, Senator Inouye.

Senator Hutchison.

INS BORDER PATROL AGENTS

Senator HUTCHISON. Thank you, Mr. Chairman.

I am putting up a chart behind me to show the four major drug cartels operating out of Mexico and where they are coming into the United States. Two of the four operate through Texas, chiefly the McAllen-Laredo-Del Rio border sectors, and one through Juarez.

I am very concerned, Madam Attorney General, that your budget does not call for the required 1,000 Border Patrol agents that has been put in the law over a 5-year period starting in 1997. Texas still has the smallest number of agents per mile, and only this year did Texas surpass California with its 140 miles of border, although Texas has 1,254 miles of border. Texas, New Mexico and Arizona have approximately 2.4 to 3 agents per mile, while California has 19 agents per mile.

I am very concerned that we seem not to have the willingness from INS or the Justice Department to continue on the pursuit of 5,000 new Border Patrol agents. When I heard about the budget request, I called the head of each of the sectors of the Border Patrol to see if perhaps there was a reason why we would not need any further Border Patrol agents, and they assured me that technology does not surpass the number of people and that we are still woefully short of the number of Border Patrol agents.

The only time that we have had the real infusion is thanks to this subcommittee, especially the chairman and the ranking member, who held firm in the last 2 years; but as you know, in the last year the 500 that were allocated for Texas have not come through, so the only year we had a real infusion was the year before last. The training is not occurring. I understand there are problems with getting personnel in the training center.

I just want to ask you why is it not a priority for your Department to continue the commitment which was beginning to work, which was having a good effect of adding the thousand new Border Patrol agents per year to try to get some control over the illegal immigration and illegal drugs coming into our country.

Ms. RENO. First of all, it has been an extraordinarily high priority for me since the beginning. I have probably spent as much time on the Border Patrol as almost any other single agency, and it is a significant priority.

With respect to this year's funding, I am as concerned as you are about the fact that it is not the training that has been canceled because we could not provide training; rather, it is that we have not had the classes because of difficulty in recruiting. The military has seen the same issue. We are reviewing everything that we are doing to make sure we try to address this shortfall, and I will try to keep you posted on day-to-day developments because I know of your concern.

But I have told you before, and I know there is some dispute, but I have checked with law enforcement officials, and they suggest to me that there reaches a point where you can absorb just so many new agents if you do not have an experience level in the field to match it.

Law enforcement experts have indicated that it is very risky to allow an agency's overall ratio of inexperienced to experienced agents to exceed 30 to 1. As of February 13, 1999, 47.9 percent of the Border Patrol will have 3 years of experience or less, and it was my considered judgment, still maintaining this as a priority, that we needed to allow time for the Border Patrol to learn; to become assimilated in the ranks, and to develop the expertise that they need to address the critical issues along the border.

SUPERVISORY TRAINING OF BORDER PATROL AGENTS

Senator HUTCHISON. Madam Attorney General, if you realize that recruiting is the problem, and you are saying that because the force is inexperienced, then why is there not a priority in the budget for supervisory training—something that would deal with this—rather than just saying no more new Border Patrol agents? We are just beginning to see—well, $1 billion worth of drugs was kept out, confiscated on the border in Texas, but it is estimated by the Office of National Drug Control Policy that $10 billion tried to cross. So $1 billion was taken out, and $9 billion got through to all of these places in the country that are the destinations.

I just cannot understand why we do not address the concern. If it is that we do not have enough maturity, then let us get supervisory training personnel. If it is recruiting, let us step up recruiting. But we cannot have 1,000 one year and supposedly 1,000 the next year, but only a few have come on, and ever have a stability and an anticipation that we are going to follow through with the strategy that you have laid out from the beginning.

The strategy, if you remember, because you and I have talked about this, was to start with California and work your way toward Texas. Well, California has 19 agents per mile, and then you go to Arizona, with three, New Mexico, with two, and Texas, with two, and you are stopping before you have finished the strategy.

So I just ask you how are you going to show an improvement if you do not follow through on the strategy, and especially if you stop with the State that has 1,200 out of the 2,000 miles of border with Mexico?

Ms. RENO. As I indicated, we are reviewing our entire recruiting process to see if there are sources of recruiting that we can follow through on. We are trying to streamline it in every way; we are giving it every attention that we can, and I will be happy to keep you posted.

With respect to supervisory training, we are trying to provide that. One of the problems when you have that ratio is the difficulty in taking people off the line to provide the training, because they are the only experienced people on the line.

I will be happy to meet with you and go over any suggestions you might have from your experience in talking to various law enforcement officials, but it has been my experience that those departments that take on such a significant number of new personnel, all within a limited period of time, suffer, and the responsibilities of the Border Patrol are so mixed and so varied that I think it requires that we do this in the way that will develop a permanent professional cadre.

I do not intend to slack off one bit. It is the best judgment that I can make, but I will be happy to continue to explore it with you because I know how strongly you feel about it.

Senator HUTCHISON. I believe my time is up, and I just want to say that I appreciate the chairman continuing to pursue the strategy. I want to work with you, but we are going to continue to pursue the strategy of adding to the Border Patrol if I have any say in it.

Thank you.

Ms. RENO. Thank you.

Senator GREGG. Senator Dorgan.

ANTITRUST DIVISION BUDGET REQUEST

Senator DORGAN. Mr. Chairman, I am not a member of this subcommittee, and I thank you for the courtesy of allowing me to ask a question.

I wanted to ask a question of the Attorney General on antitrust issues. Normally, downsizing would be something that we would all look at with favor in the Federal Government, and the downsizing of the Antitrust Division from 456 attorneys in 1980 to 363 attorneys in 1998 comes at a time when last year, the announced number of mergers in this country tallied $1.6 trillion. That exceeds all the mergers all over the world just a year and a half ago.

So that while we see this orgy of mergers in our country, $1.6 trillion, I welcome the request in the budget submission for more funding for the Antitrust Division, but I must say I am one of those who believes that we may well still be far short of what we need, with 4,700 filings last year, three times as many as in 1992. With your requirement to administer and enforce the Clayton Act and to be the protector of the free market, we may well have to add resources.

I simply wanted to ask the question: Do you feel, even with the proposed increase, that you have sufficient resources given the re-

duced number of employees in the last 18 years to effectively administer the antitrust laws?

Ms. RENO. Well, that is the reason for our feeling that the present funding needs to keep pace with the burgeoning work load that you have so aptly described.

Up until now, the resources have not kept up with the work load, and that is the reason the President requested a 16 percent increase in the Division's budget for fiscal year 2000. I think that that will keep the Division on course.

Senator DORGAN. Well, I might say some will oppose that increase. I will not only support it, but I think we may have to do more. You will still have fewer employees—fewer lawyers—dealing with the antitrust issue than nearly 20 years ago, when the amount of merger activity just skyrocketed.

I say this not because I think big is bad, or not because I would oppose all mergers—I do not—but I do think that one of our most important jobs is to keep the free market free, to foster competition. Section 7 of the Clayton Act dating way back to the start of this century is an admonition to us to do our job to protect the free market, and I worry very much that at least some of the merger activity in our economy has been terribly unhealthy, decreases competition—concentration is the antithesis of competition—and I just want you to know that as we have this debate, some of us feel very strongly that we ought to add resources sufficient so that we do our job to keep the free market free. And I would encourage you to be very aggressive in seeking sufficient resources from Congress to do that.

Ms. RENO. Well, it makes sense, because I am very proud of the work of the Division. They have done so much with limited resources, and I think they can do more. And all the dollars for antitrust cases come from merger filing fees.

Senator DORGAN. That is true. In fact, about 15 years ago, I had threatened to put the pictures of lawyers in the Justice Department and the Federal Trade Commission on half-gallon cartons of milk, feeling that we had 1,000 people at that point designed to protect the free market in both Justice and Trade, and fearing that they had disappeared, because I could sense no evidence that they existed. Now, that was in the early 1980's, and things have changed a bit, but one thing that has changed is this rapid movement toward more concentration and massive quantities of mergers of a very, very large nature.

So let me again offer you encouragement and thank the chairman again for this opportunity. I know that Senator Hollings has made similar expressions. We just need to pay very close attention to the enforcement of the Clayton Act, the Sherman Act, and other things that we are required to do to make sure the free market remains free.

Thank you very much.

Senator GREGG. Thank you, Senator Dorgan.

Senator Domenici.

Senator DOMENICI. Thank you, Mr. Chairman. I apologize for coming in so late. I am chairing another one of these subcommittees upstairs.

Senator GREGG. You picked a perfect time.

SEVERAL ISSUES

Senator DOMENICI. Madam Attorney General, I have a whole series of questions, but I am going to submit most of them to you. I have one for you on the expansion of the Federal Prison Industries which I will not bother you with today, but sometimes increasing the industry $30 or $40 million does not have much effect nationally, but it has a very big effect on certain industries and businesses in our State, and I will ask you about that.

The First Responder Training Program—it would be good to have a report on how well it is succeeding and what is really happening, and I will submit a series of questions to you on that.

There is a move abreast in the Congress to expand the Radiation Exposure Compensation Act (RECA) Program—and I know that you know about everything going on in your Department, but I am sure you do not know the details of this very large program. RECA is compensating mostly Navajo Indian people who worked in uranium mines when we did not have the right safety requirements, and there is proof of cancer relationships vis-a-vis their illnesses and deaths. I think it is imperative before we go further, since there is a new bill being offered, that we get a complete summary of what that law has done and what the claims were, and if you could submit those to the subcommittee, it would be helpful.

Senator GREGG. Absolutely.

Senator DOMENICI. Also, believe it or not, it does not seem like 9 years ago, but the Violent Crime Reduction Trust Fund is about to expire in a year. That means its 10th year. My budgeteers indicate we have spent $30.2 billion out of that trust fund. I think it would be good for us to know what these funds did. Maybe you could give us a summary of the kinds of things we have accomplished and the successes and/or failures, and I have asked you some questions about that.

Ms. RENO. That is an excellent suggestion. I would appreciate that.

Senator DOMENICI. There are two things that apply very much to my State about which I want to inquire. One is law enforcement in Indian country. I think you are fully aware now that the statistics are showing some very, very dismal conditions on our Indian reservations with reference to drugs, gangs, and crime being more rampant there than it is even in the worst parts of the United States. I would like to ask you a series of questions about what you are doing about it, but I first want to thank the administration for increasing the funding for law enforcement on Indian country. I think you have requested $124 million for your Department and $23 million for the Department of the Interior to address this issue. I have some specific questions that I would like you to respond to regarding that initiative.

BLACK TAR HEROIN

My last observation and concern has to do with black tar heroin coming from Mexico to my State. We are a poor State, and we have many, many Hispanics; our population is perhaps 38 to 40 percent Hispanic. I look over and smile at my friend Senator Hollings, because he once came to my State when he was chairman of the Sen-

ate Committee to Elect Democratic Senators, and he had to appear before a large gathering in New Mexico. I spoke Spanish and he spoke Southern, and things did not work out very well for his candidate. We have had a great time ever since. [Laughter.]

But essentially what is happening is that it looks like maybe the Mexican nationals who bring this heroin across the border have found that we are a weak link. Black tar heroin is coming across in absolutely inordinate amounts, and Mexican nationals are actually residing in some of our small, principally Hispanic communities. We have one county in our State that is a poor county. It is now the most significant heroin-burdened county in all of the United States. One city within that county had 44 deaths from heroin overdoses last year, which exceeds the city in Texas that was reported nationally as being so festered with it; we exceed them by eight times in terms of the use of heroin in this community.

I think we very much need your help to attempt to coordinate what resources could be made available for a county like this in a State like ours through all of your DOJ programs. So I want to ask you today if you would agree, yourself or someone in your behalf, to meet with some of our New Mexico leaders and myself and others and see what you could put together that would encourage us a bit in this regard.

Ms. RENO. I would be happy to. Some steps have been taken since December of 1998, but I think this shows you again the value of oversight, because it may be a specific problem. We can illuminate it and use it as an example for other initiatives around the country. I would be delighted to meet with those that you think appropriate, and I will, even before that meeting, take steps to see what can be done to enhance the effort.

EXTRADITION OF MEXICAN DRUG DEALERS

Senator DOMENICI. And in that regard, could I just ask you what is the DOJ policy regarding Mexican nationals arrested on drug crimes in the United States? If Mexico makes an extradition request, do we typically send these drug dealers back to Mexico?

Ms. RENO. It would again depend on the circumstance and what the drug crime is. If the crime is committed here, it would generally be our desire to try them here. If there is a significant crime in Mexico and a relatively minor crime here, and the person was wanted in Mexico, and there was an extradition request, we would probably balance it in that regard. You would have to take each situation on a case-by-case basis.

Senator DOMENICI. I want to pose the question in a slightly different way. What if there is no extradition request? Does the United States deport them on its own? I would like very much for you to take a look at this because I believe we are doing that. It is pretty frustrating to those people who see the same Mexican nationals get deported and come right back and camp out in the same town, meet with the same people and sell heroin again. You know, heroin is now the new drug. They have made it cheap. Ten dollars is all you need to get started, and they have increased its punch from 45 percent to 70 percent. So it is a really serious drug, and it kills people much more easily than some of the others.

Ms. RENO. We will address that as part of the overall focus on that particular county.

Senator DOMENICI. In doing that, I hope you will look at the U.S. Attorney's offices in those plagued areas and see how they could be more helpful. I think it really is important that we show something to these people.

Ms. RENO. I will do so.

Senator DOMENICI. Thank you very much, Mr. Chairman.

BORDER PATROL BUDGET REQUEST

Senator GREGG. Thank you, Senator Domenici.

I think one of the tones of this hearing so far has been the border, and almost everybody, or certainly a number of members, have asked questions about the border and the border problems that we are having. This goes to the budget that you have sent up, because I think there are some serious problems here in the enforcement and investigative activities of this budget relative to the border.

Take, for example, the fact that you have underfunded the detention areas of INS by about $185 million. Now, we have just gone through this detention issue with the INS, and we know it is a serious concern, and it looks like it is going to be aggravated by this budget.

The budget dramatically underfunds the materials that the Border Patrol needs. The Border Patrol has only 4 percent of the pocket scopes it needs, 22 percent of the goggles, 28 percent of the fiberoptics, 4 percent of the hand-held search lights, 12 percent of the infrared scopes, 2 percent of the global positioning systems, and 4 percent of the vehicle infrared cameras that it needs, and that account is not funded.

You have in this budget, or recently, proposed to certify Mexico again. It is hard to understand how Mexico can be certified. There has been no significant progress in drug trafficking, and many of the categories, in fact most of the categories, are poor. Seizures of cocaine and heroin have fallen significantly; drug arrests have declined by 14 percent; the number of poppy fields destroyed and drug laboratories dismantled has dropped—this is all in 1998—confiscation of drug-carrying cars, trucks, and boats has declined; seizure of opium gum has dropped by just over half since 1997; corruption continues to pervade the law enforcement community to the point where the DEA has serious reservations about even dealing with the law enforcement community in Mexico, and the main drug cartels are actually expanding instead of contracting.

So we are confronted with some fairly significant border problems. You have not funded the 1,000 additional Border Patrol agents who were supposed to be coming on this year; you put zero in. And there does not appear to be the funding necessary, as the Senator from New Mexico stated, in the area of prosecutorial activity in the U.S. Attorney's Office for the borders.

LOCAL LAW ENFORCEMENT

I know that you have a commitment to fighting the issue on the borders, but this budget does not have a commitment to fighting the issue on the borders. My question is, where do we find the money to do that? And it is coupled with the fact that this budget

cuts by $1.3 billion—$1.3 billion—the money flowing into law enforcement, community law enforcement specifically. There is a $522 million cut in the Community Law Enforcement Block Grant, a $250 million cut in juvenile funding, and a $720 million cut in State prison grants. I know you are committed to law enforcement, especially to making sure that our local communities have support from the Federal Government, but this budget again does not support that.

CERTIFICATION OF MEXICO

My question to you is threefold. One, why even bother to certify Mexico? Why go through this dance any longer? We decertified Belize because it is a small country, but we refuse to decertify Mexico because it is a big country. It is that simple. It is like that old saying when you deal with a bank—if you have a loan that is $100, and it is in default, you are in trouble, but if you have a loan of $1 million that is in default, the bank is in trouble. In this situation, if you are dealing with a big country, and they are not doing the job on drugs, we do not decertify them. If they are a small country, and they are not doing the job on drugs, we do decertify them. So why even have this facade anymore?

Second, this budget does not support the necessary efforts that we have to make along the borders. Where are we going to get the money to do that?

Third, the budget does not support local police activity and local law enforcement and local prison activity, so where are we going to get the money to do that? That is a three-pronged question, and I ask them all because I only have 5 minutes, and I do not want to run out of time.

Ms. RENO. As I indicated to Senator Hollings, the picture you paint of corruption and the problems in Mexico is one that we have all shared and have expressed frustration on. As I pointed out, President Zedillo inherited a very difficult situation. The fact that it is being uncovered after all these years, I think, is a tribute to his openness in government and his leadership. They have enacted a comprehensive organized crime law, and anti-money-laundering and chemical control legislation. Our extradition relationship has improved significantly, and for the first time, we have seen the extradition of Nationals. I have an excellent working relationship with Attorney General Madrazo; a relationship that has permitted both countries to share information and develop strong cases against major trafficking organizations. We have developed joint training programs that have proven effective, and President Zedillo has recently pledged $400 million for technological advances to assist in the detection of drug smuggling in Mexico.

Director Freeh recently returned from Mexico impressed with the steps being taken in the formation of the Federal Prevention Police, and I believe he is committed to trying to support that initiative.

As other countries have observed—if you take, for example, Italy, as it dealt with issues of organized crime—it will not happen overnight. It is a slow process. I firmly believe that if Mexico is to succeed in its fight against drug trafficking and corruption, it will only happen with a sustained, long-term effort by the Government of Mexico. Success, moreover, will also require a continuing relation-

ship of cooperation and mutual respect between our two countries. And I have, for these reasons, supported certification, while at the same time recognizing the facts as people have described them.

With respect to law enforcement and the funding of local law enforcement initiatives, as a number of members of this committee have pointed out, one of the most successful programs has been the COPS program; a program that has helped experienced detectives find evidence that produces conviction in serious cases, while at the same time helping communities come together to prevent crime in the first place.

Crime is down significantly in this country, and as I said at the outset, I value the balance between State and local law enforcement and Federal law enforcement. I do not think State and local law enforcement should become too dependent on Federal law enforcement, and there is a point where we draw the line. I think——

CUTS TO STATE AND LOCAL PROGRAMS

Senator GREGG. Well, if we could stop right there, you are talking about expanding the COPS program by 30,000 people over the original initiative, which was 100,000. We are at 92,000 now, and we are going to get to 100,000 under the present budget. But you put in an additional 20,000 new cops on top of the 100,000. Now, that is getting involved in local law enforcement. But at the same time, you zeroed out the LLEBG, which is basically the $522 million cut; you zeroed out the Juvenile Accountability Incentive Block Grant, which is a $250 million cut, and you reduced dramatically the State Prison Grant Program.

Those are all programs that worked. So you are basically taking, in this case, $1.3 billion out of those programs, and you are taking $600,000 of it and putting it into increasing the COPS program over what the original proposal was. I guess because it has also worked, but in a balancing effort, it does seem unusual to zero out these other programs. I do not know what you did with the other $600,000 that you took out of these programs. My point is those programs have been zeroed out, and it appears to me that it was done in order to put this committee in the untenable position of having to go out and find the money to put back into those programs because you know we have supported those programs. We are certainly going to hear from our States when we eliminate $720 million for prison grants, I can tell you that.

You have made politically attractive choices at the expense of this committee, which is going to have to put the money back into those programs.

Ms. RENO. I think these are judgments——

Senator GREGG. Well, let me ask you—let me put it very simply—if we produce a budget out of this committee that leaves zero money in the State prison grants program, is this administration going to sign that budget, which is what you sent up here?

Ms. RENO. I do not know what you are going to present, so I cannot say that the administration——

Senator GREGG. No, but if we do—if we stay with your numbers—if we take your number here, which is zero for LLEBG, zero for juvenile justice, and zero for the State prison programs, all of which have been long-term programs that have been strongly sup-

ported up until now jointly by this committee and the administration, are you going to tell us that that is going to be an acceptable position?

Ms. RENO. The Violent Crime Initiative was never meant to fund State correction systems forever. What we have done, Senator, is—you say cut juvenile justice funds—there are juvenile justice funds there, carefully fashioned to address issues of both punishment and prevention. There are law enforcement funds and community prosecution funds that can be significant.

We have got to make a judgment as to how we use precious Federal resources, and if you approve the President's budget, he will sign it.

Senator GREGG. Well, that is good news. I guess we are going to save $1.3 billion, and I will refer the local communities to you.

Senator Hollings.

Ms. RENO. Mr. Chairman, I would be happy to take all of your local law enforcement and your State law enforcement personnel and talk with them on a regular basis, because to make this system work in a long range effort, it is going to require the development of a capacity in communities across this Nation that both prevent crime and intervene forcefully and regularly.

We have spent a great deal on prisons through the Violent Crime Trust Fund. It was never anticipated that it would last forever. The COPS program has been one of the most successful. I think that this budget is a responsible reflection of how we start with what the chairman suggested—zero to 3—through initiatives focused on children who are victims early on of crime, or of what society has done to them; of intervention programs that can make a significant difference, such as drug courts; of punishment programs that mean what they say and that also provide for after-care, returning the person to the community with a chance of success.

As I talk to law enforcement around this country, I think we are all committed to a balanced, thoughtful approach that balances the independence of State and local law enforcement with the partnership that is necessary to get the job done. I will be happy to speak to the leaders as they come to your door. You can send them to me, or I will go and talk to them.

Senator GREGG. Well, you are going to have to, because this committee may take up on these numbers, I can tell you that right now. I have been thinking, if the administration wants to zero out all these accounts, maybe we will zero them out. But I will tell you at the same time, we are not going to extend the COPS program, which was designed to be a 3-year program with 100,000 cops, just add another 30,000 cops when that program was not designed to do that. We are going to take that money, and we are going to apply it to the priorities that this committee may have on the border, for example, where we do have a commitment of adding 1,000 border agents. So there is going to be a difference of opinion here, but at least on these numbers, maybe we will have the same agreement.

Ms. RENO. Well, again, as you know, I admire you, and I admire the thoughtfulness with which you approach these issues. I also know the competing interests, and I look forward to working with

you in every way that I can in terms of taking the slings and arrows and having further discussion.

Senator GREGG. The respect is mutual, I assure you, and that is why I was surprised at these numbers.

Go ahead, Senator Hollings.

SOLUTIONS OF DRUG PROBLEM WITH MEXICO

Senator HOLLINGS. Thank you very much, Mr. Chairman.

With respect to the Border Patrol and the Mexico problem, our colleague Senator Hutchison had a very thoughtful article in the Post this morning. It is a mutual problem of consumption here within the United States.

Thirty years ago when we met, Senator Domenici, we had nothing but ashtrays around here, and the smoke-filled rooms. We even stopped you from smoking. So we are making progress.

In light of the experience, I can tell you here and now, with all the Border Patrol and everything else that has been suggested, it is not going to be solved. I have been through the poppy fields, not in Flanders Fields, but in Turkey, to the factories in Marseilles, to the Golden Triangle in upper Laos and Thailand, Burma. I have been down to Bolivia, on into Paraguay, up into Colombia, down to Peru, back over to Colombia, and of course, into Mexico.

I have been down to Tijuana, where they have a large number of the Border Patrol—everybody likes to live in San Diego. They do not like to live out there in a dirt field in New Mexico where there is a camera, and you hope you can get to it. I have heard all of the suggestions—such as cameras—and 20 years ago we had a General Chapman from the Marines who was going to take all of the latticework landing strips that we used in World War II, and erect them in a 90-degree fashion, and we were going to build a 2,000-mile fence.

The problem is real, and Mexico is our responsibility. We have totally open borders, particularly with respect to trade. I have even talked to people who transport cars. They seal them in boxcars down in Laredo before they even get in, and when those boxcars arrive at their destination it looks like they are still sealed, but along the line, people jump into the cars, play the radio, and eat food. When they get up to Ohio, these brand new cars are ruined. So the transport companies have had to put in their own guards. It is not just our Border Patrol, but also private industry. Transportation companies are doing it.

The solution—a Marshall Plan. You have to get in there and clean up the drug culture, and as long as you have the tremendous poverty down in Mexico, it is not going to happen. Do not go to the Yucatan with the dog-and-pony show, do not go to either Salinas or to Zedillo with $12 billion. The money goes right back out—they refinance with Deutschebank—and the money goes right back out to Wall Street. Use the $12 billion to advance workers' rights, the ownership of property, free elections, and of course, some progress on the drug culture. We ought to put the money in the right place.

If you are starting with children—and incidentally, it is not 3 years, but 5 years—I have written the book on that subject—if you are going to start with the children, that is fine, that is excellent, but what you have got to do is start with that down in Mexico.

Don't spend a little bit of money here and a little bit of money there.

In our country, we have a sign that says "Deer Crossing," and it shows a deer running across the highway; down in Tijuana, they have a poor mother with a child running across—"Refugee Crossing"—100 yards from where the Border Patrol is supposed to be checking it. But at nighttime, people are coming right across the border unchecked.

BORDER PATROL RECRUITMENT

So you have got to be realistic, and we need an overall solution to try to bolster the standard of living down there in Mexico so that it does not pay to get into drugs. That should be the method of attack on that side, because there just are not enough policemen here, even with the new additional policemen on the beat, to control the drug problem. We have drug courts, and we have many drug enforcement activities but a question: With respect to the Border Patrol—I just got the figures—we have trained 2,704 border patrolmen down in the Charleston Navy Yard. We have a wonderful facility down there. When they closed that Navy Yard, we put in a school. It is a 3-month course, where the trainees learn to speak Spanish; they have a driving range and other amenities and they are quite professional. We have had a couple of those 2,700 patrolmen killed already—but the point is that you do not pay them well. What is the average pay, Attorney General, for a border patrolman?

Ms. RENO. I do not know what the average pay is, sir.

Senator HOLLINGS. It is around $25,000, $26,000. By the time they get to their duty station and develop a performance record, New Mexico or Houston will hire them as a local law enforcement officer. What is the attrition rate in the Border Patrol?

Ms. RENO. It is a significant rate.

Senator HOLLINGS. A very significant rate. We must pay these officers. In my home town now, we have wonderful college graduates, the majority by far, on the city police force. Law enforcement has obtained more expertly trained and skilled officers, but we are not going to get them to seek employment in the Border Patrol if we don't establish competitive pay rates. If I had a son-in-law who said he was going to get into that profession, I would ask, Why? You will go to work on the border for a couple thousand dollars a month, where they are supposed to have cameras to assist you in apprehending individuals crossing the border illegally? How can you get to the cameras in time to apprehend anyone? Just as there is not enough of a fence, as General Chapman wanted, you cannot get enough cameras to the remote areas to be effective. If people can come through at Tijuana, I can tell you people can get past these cameras. You have to go down to Tijuana or San Diego and look at it to understand.

Ms. RENO. The starting pay, by the way, Senator, is $22,208.

Senator HOLLINGS. Well, there you go; it is less than what I had recorded here. They are just not going to want to get into the profession. That is our problem in education; we are not paying schoolteachers enough. I go to graduations and I hear: "Senator, I would like to teach, but I cannot send my kids to college making $22,000

a year"—it is about the same in South Carolina—"so I went into international studies, and I went to business school." The best and the brightest who want to teach are not attracted to teaching.

And we sit up here with a few more Border Patrol, a few more cameras, and for 30 years, we have been going through the same thing. So we have got to have a coordinated education program. Can you tell us about the coordination of your particular moneys in here for education?

Ms. RENO. For the Border Patrol?

Senator HOLLINGS. You have education programs in some of the prisons; you have got some in the Office of Juvenile Justice. What I am saying is that education programs are scattered. Could you coordinate it somehow and let us get a real program?

Ms. RENO. You are talking about education of youth now?

Senator HOLLINGS. Yes, ma'am, and prisoners. We have education programs in the prison system, so that when people get out they can pursue a legitimate lifestyle. Eighty percent of prisoners in the prison system in the United States are in for drug-related offenses so we need to start drug related education early.

BORDER PATROL TECHNOLOGY

Ms. RENO. Let me go back first to the issue you raised with respect to the Border Patrol. To address just those issues, because there are some pay inequities, we are reviewing the whole issue of pay reform and will be making recommendations.

With respect to what you refer to as the cameras, I can tell you from my own experience that I have seen a significant difference. When I went to the border in August of 1993, I saw a border that had no technology whatsoever with which to enhance the efforts of Border Patrol agents. I now see not just cameras, but sensors and lights and connections through an automated system that gives the Border Patrol far greater ability to focus its resources where the problem is, and make them far more effective. And when I talk to Border Patrol agents, they say this technology has been absolutely critical in enhancing the effectiveness of their job.

EDUCATING PRISONERS

With respect to education, I think you have got to start early. As I pointed out, if 50 percent of all learned human response is learned in the first year of life, a lot of schools are not going to be worth much unless we have a good foundation; but to do that, I defer to the early childhood educators and to people like Dick Riley, who know far more about education than I do.

What I think is important is that, as we bring people into the system, as they are in custody either through probation or through prison, that we make sure we return them to the community with an education that can give them a chance of succeeding in the real world, with the labor market and with the demands being made today.

I think that if you do not have a job, you are going to get back in trouble; if you do not have a job, if you do not have skills that can fill jobs that maintain companies as first-rate companies, we are going to have problems. So I am all for investing in education

that can prepare people for the skilled jobs that too often go unfilled.

Senator HOLLINGS. Thank you.

Thank you, Mr. Chairman.

Senator GREGG. Senator Leahy.

INDEPENDENT COUNSEL'S BUDGET

Senator LEAHY. Thank you, Mr. Chairman.

Madam Attorney General, I am pleased to see how well the Bulletproof Vest Partnership Program—I wanted to say something nice to you while you are here—has done. I was quite pleased to see the program and that you now have a web site where people can go. Law enforcement in my State of Vermont is very much in favor of having a place where they can go. I also understand you are going to open up the program's application process later this month.

I still remain concerned that you are unable to answer—I do not agree with your reasons—unable to answer my questions about what is being spent by Mr. Starr or—what was the name of the man who prosecuted Espy—Schmaltz—this thing is so out of control, this special prosecutor, Schmaltz, who was probably as humiliated as any prosector I have ever seen anywhere by the D.C. jury—they brought 30-some-odd counts, and the jury had absolutely no difficulty, as they should not have, in voting not guilty on every, single one of those, and then, in one of the most arrogant, outrageous, unprofessional and totally disgusting performances by a special prosecutor, he went out and said, well, it does not make any difference whether we get convictions; we can just bring charges, and that will set the example.

Any prosecutor in the country who took an attitude like that, if they were elected, would be unelected at the next election. You know that, and I know that.

This man was so out of control that he was even buying wristwatches referring to his prosecution of former Secretary Espy and handing them out as trophies as though it was some kind of a big game hunt.

Mr. Starr has not been a heck of a lot better, rushing agents and investigators down to Florida to tear through somebody's television station, having them hire lawyers, intimidating them, because he wanted to have copies of the tape they had of Monica Lewinsky visiting Greg Norman and President Clinton in Florida. He made them spend all kinds of money, he made the taxpayers spend all kinds of money, and of course found out afterward that Ms. Lewinsky had not even been in Florida that day—in fact, she had been at work at the Pentagon, something they could have checked with a local telephone call—and ignored the obvious, that if the TV station had such films, they would have had it on every newscast in the world. But when you have an unlimited budget, and you want to spend $10,000, $20,000, $30,000, or $40,000 and make them spend an equivalent amount for lawyers and staff work and everything else—just do it.

So I am concerned that you will not answer. I certainly will not vote for any increase in budget for the Department of Justice or

anybody who may, directly or indirectly, spend money on this until I can get such answers.

CALEA

Now, on the CALEA law. The capacity requirements were finalized 2 years late by the Department. I think the law has turned out to be a mess—and I was involved with it. The technical standards for compliance should have been in place over 2 years ago, but the FCC had to extend the compliance date from last year until next year. The Department is litigating at the FCC over the standards adopted by the industry. The litigation has turned into a serious battle over costs and over privacy, and is a major distraction from proceeding with the implementation of the law. In fact, the Department's most recent annual report to Congress on CALEA on January 4th of this year states that no payments have been made to carriers in the last year to comply with the law; there is no clear end in sight. I do not think that that is good for law enforcement, and it is not good for the telecommunications industry.

I have serious concerns about these continuing delays in the cost estimates that I have seen associated with the surveillance capability the Department is seeking before the FCC. My question is this: Is it time to scale back the Department's demands and speed up CALEA implementation at the same time?

Ms. RENO. I do not believe that scaling back the requirements is appropriate at any time. As I have said, the capabilities currently in dispute are consistent with existing electronic surveillance law and vital for effective electronic surveillance.

I think the FCC is in its rightful role as arbiter of the disputes, and it will soon determine the appropriateness of the punchlist. Again——

Senator LEAHY. Don't you think Congress will step in and do it for them if they do not?

Ms. RENO. I think they will. It is already tentatively concluded that five of the nine capabilities in dispute are indeed required by CALEA, and I think they will act.

Senator LEAHY. Well, in the meantime, if they are not acting, and with this kind of off-track, are you prioritizing law enforcement needs? I mean, you could do parts of this.

Ms. RENO. We are trying to do it in two ways, sir—first, consisting of reimbursement options, the FBI is holding discussions with major manufacturers of telecommunications equipment regarding the reimbursement of their development efforts. Under a right-to-use license, the Government would obtain CALEA software by purchasing the results of the developmental effort from a manufacturer through a carrier-partner. The manufacturer would then provide its software at no charge to any carrier using its platforms now and in the future.

The second category is carrier deployment. The FBI is holding discussions with carriers to identify the equipment of highest priority to law enforcement. This process includes assessing recent electronic surveillance activity on carriers' equipment. The FBI will then focus on deploying solutions in areas of highest law enforcement priority, in time to meet the June 30, 2000 deadline.

Deployment of CALEA compliance solutions in other areas will be deferred to coincide with the normal deployment cycles of carriers. The details of this deferred deployment are currently a subject of discussion between the Department and the FBI.

Senator LEAHY. I see my time is up, but I would suggest that perhaps your staff, the FBI staff and mine spend a little time on this, because if this thing winds up really off-track, instead of accomplishing the goals that both you and I totally agree on on having it work, we could almost end up in worse condition than we were before. You do not want that, and I do not want that, and you know that notwithstanding some of my comments here this morning on another area, you do not have any stronger supporter on this committee or the authorizing committee in the Senate than myself. So I would hope that on this one—let us work together on this one even if we cannot get anywhere on the other one.

Ms. RENO. We will call and arrange a meeting. With respect to the other issue, it is not that I will not—at this point, I cannot. So let us look at the law. I will be happy to come and meet with you and get your version of the law, because I have——

Senator LEAHY. I have sent it down. I sent down a letter.

Ms. RENO. As you know, I have great respect for you.

Senator LEAHY. Thank you. I do appreciate that.

Mr. Chairman, I appreciate it, and I do want to make it very clear that I am a strong supporter of the Attorney General, and I think highly of her and Ms. Hawkins and everybody else in the Department, but I am frustrated at not being able to find out. When I was a prosecutor, if I spent money on postage that the public could not find out about, I would have been in trouble.

Thank you.

Senator GREGG. Thank you, and your concerns about CALEA are also very legitimate. Of course, this is a huge contingent liability for this committee once we do resolve it, but it needs to be resolved. I appreciate the fact that the Attorney General is standing firm in her belief that it has to be resolved on terms that are effective for law enforcement.

Senator LEAHY. Well, we will work together on that. You have been supportive, and we worked very hard to get the law through in the first place, and I do worry about the unfunded liability aspect.

COUNTERTERRORISM TURF ISSUES

Senator GREGG. Madam Attorney General, I am interested in a number of other issues that I want to touch base on. The first is the terrorism issue. As you know, we have spent a lot of time talking about this, and I am concerned about the National Security Council role, Mr. Clark's role. I am just wondering if we are seeing a reawakening; and now I see that Mr. Tenet has suggested an intelligence-gathering center for the country for Federal activities. My concern is are we seeing an erosion of what was a very cooperative spirit, and are we finding that as this issue matures, turf is reestablishing itself?

Ms. RENO. With respect to Mr. Tenet, the cooperative relationship and the appropriate allocation of responsibility and adherence to the law, I think, is taking place between the FBI and the CIA.

With respect to the NSC, you have raised these issues, and I am very sensitive to them, and so far, nobody has been pushing the turf issue.

Where I think there are issues that we have got to work out, they come more in the language, and I would suggest the need to develop an understanding of what everybody's roles are. We know how to deal with it when it happens, sometimes not in the clearest way possible, when we see a situation like Oklahoma City. But as we plan for it, we can think of so many different problems that can arise that we wonder how we can get them solved.

I have had the chance to speak with you, and I would like to follow up on that, to tell you what we are doing with the issue of weapons of mass destruction and preparing first responders and recognizing that first responders are going to be there when we are not there at the outset, and that they have got to be prepared in training, in equipment, and in exercising to know just what to expect. But it is vitally important with the FBI as the lead agency, that the FBI be involved from the beginning, plan with the State and local officials from the beginning, so that in every part of the country, we have some idea of what is going to be involved should, God forbid, it happen.

Senator GREGG. I understand that, and I understand the concerns about the NDPO and the question of the State Governors' involvement as the referral agency or the centralizing agency. But my concern goes to just the interagency activities here within the Federal Government. You know, it is a natural state of governance that at the beginning of an issue, when it is a crisis situation, and people recognize the crisis, there is always tremendous cooperation, which I think there has been. Your Department produced an excellent report—the Interagency Task Force Report was superb—but as this issue matures, as we go down the road and try to develop it, I want to make sure we stay on top of the concerns of turf and people trying to create fiefdoms. I sense the NSC is trying to do that now. I have not met with them. We have no jurisdiction over them.

Ms. RENO. I can tell you that we are entirely satisfied with our jurisdiction.

Senator GREGG. Well, if you need more language, tell us.

Ms. RENO. Thank you, sir.

REPROGRAMMING DEA FUNDS

Senator GREGG. I am concerned also about this transfer that we have discovered within the DEA which was outside of the terms and conditions of our traditional way of doing things on this committee. It is a huge number, and it appears to have occurred in a manner that violates this committee's traditional approach to reprogramming. I would like to know what your sensitivity is to it.

Ms. RENO. I am very sensitive to the problem. As you have seen, Mr. Colgate rarely gets exercised. When he came to my office one day exercised on this situation months ago, that was my first exposure to it. It is something that we have both followed since then. I think Mr. Constantine has taken corrective action; the review is ongoing, and we will follow it as closely as we can.

Senator GREGG. Well, it will not happen again; right?

Ms. RENO. One of the things I have learned is never say it will not happen again, but I am going to do everything I can in the 24 hours a day that I have to see that it does not.

INFORMATION SHARING INITIATIVE

Senator GREGG. In this or any other agencies which come under this committee, hopefully, that are in your jurisdiction.

We also have this initiative which the FBI is talking about, that is, the information sharing initiative, which is going to be just a huge undertaking, involving a tremendous amount of technology and a tremendous amount of staff. My concern is that we are stepping into a brand new area here which may have viability. It may not have viability, but I do believe that the proper approach to something this big, is to do it on a demonstration pilot program approach and pick a narrow area—I would suggest Russian mafia activity as a possible opportunity—but in any event, pick a narrow area and do a pilot program. Let us see what happens before we step into a major—and I mean these are some big numbers—initiative. I am interested in what the Department's view is on this. I know the FBI wants to get going, but I think there may be some need to have a few test runs.

Ms. RENO. What I would like to do is come and talk to you at your convenience, and perhaps bring Director Freeh with me, so that you can get the full picture. I am absolutely committed to not spending the money until I have it well-thought-out, until I show that it can work and that the FBI has the capacity to make it work. I do not have all the details, but I think it might be very helpful for us to share what we are doing with you and make sure that you are comfortable with it.

Senator GREGG. Well, I think it is safe to say there will be some language restrictions put in the bill on this issue, so I would like to have the restrictions which the FBI is comfortable with, recognizing that they will not be happy with them, but I would like to have them at least be comfortable with them.

Ms. RENO. As Mr. Colgate points out, we support the notion of a prototype, but I would like to work with you and with staff if it is OK to try to fashion language that addresses your concerns——

Senator GREGG. Yes, that is what I want to do.

There are a couple of other issues, but they are not of that high visibility, and I would like to give you the opportunity to get back to work and do something useful.

Ms. RENO. Well, quite frankly—and my staff think I am nuts when I say this—but I think the oversight function can be very useful. I kind of hold my breath as I go into these sessions, but it is very useful, and it is very useful to see a wide range of thoughts. We have not figured out a better form of Government.

Senator GREGG. No. It does work, but it is messy.

Thank you very much for your time.

Ms. RENO. thank you.

ADDITIONAL COMMITTEE QUESTIONS

Senator GREGG. Before we close, questions submitted by Senator McConnell will be included.

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

QUESTIONS SUBMITTED BY SENATOR PETE V. DOMENICI

LAW ENFORCEMENT IN INDIAN COUNTRY

Question. Attorney General Reno, the Administration continues to focus on the law enforcement situation in Indian Country, and promotes cooperation between the Bureau of Indian Affairs (BIA) and the Department of Justice agencies. Last year, this Subcommittee provided $88.7 million through various Department of Justice programs to enhance law enforcement in Indian Country. This year, the budget includes $124.2 million as part of this joint initiative with the Department of Interior and BIA to address the public safety situation on Indian lands.

First, I'd like to turn to the fiscal year 1999 funding and its implementation. The tribal courts will receive $5 million in 1999 funding. What are the Department's current plans to award these funds to tribal courts. Could you please tell the Subcommittee the current plans to provide these funds to tribal courts?

Answer. In the context of the President's Law Enforcement Initiative, the Department recognizes that increases in the number of police officers and investigators in Indian Country is certain to increase the burden on tribal courts to process and adjudicate defendants. Accordingly, awards through this discretionary grant program will be based upon the extent and urgency of the justice needs of each tribe. The program will provide tribes the opportunity to apply for competitive grants for the development of tribal courts or the enhancement and continuing operation of tribal courts. We recognize that tribal justice systems vary significantly in terms of form and relative sophistication and have designed the program to accommodate both tribes that are developing a tribal court for the first time and tribes that have established, well-developed justice systems. In addition, the program will include a training and technical assistance (TA) program to support the efforts of tribal court grantees. The Office of Justice Programs, Bureau of Justice Assistance (BJA) has developed the following plan to implement the Tribal Court Assistance Program (TCAP), which is a $5 million initiative for the development, enhancement, and continuing operation of tribal courts. The plan responds to the stated needs of tribal court judges and administrators, and was developed with input from the Department's Office of Tribal Justice and other interested components.

In administering this program, BJA will encourage the development and enhancement of inter-tribal court systems. Emphasis, where appropriate, will be placed on the economic efficiency of inter-tribal court systems, especially for smaller tribes in Alaska and throughout the Nation. However, the administration of this program will not exclude single tribe applicants with competitive proposals.

This program will also emphasize technical training and assistance for tribal justice systems, which have historically adjudicated a wide range of criminal and civil issues with minimal funding and support. Technical assistance will include the development of resources such as bench books, model protection or support orders, and will be driven by consultation with tribal court representatives themselves or others engaged in the enhancement and operation of courts.

Solicitation for the Development of Tribal Courts.—Approximately $600,000 will be available for development of tribal courts. Up to $30,000 will be awarded to federally-recognized Indian tribes without formalized judicial systems. Past experience with grant programs addressing such issues as drug courts and violence against women has demonstrated that giving tribes the option to apply for planning grants, in the first instance, leads to more effective grant implementation in the long term. Acknowledging the complexities facing grantees who are working to develop their justice systems, BJA plans to administer an intensive training and technical assistance program to support this initiative. The BJA aims to disseminate solicitations for the development and enhancement of tribal courts within 30 days of Congressional approval of this plan, which was granted the first week of June.

All recipients of development grants will participate in the BJA Tribal Court Training Program (TCTP), which will be designed to provide comprehensive assistance for tribes that are in the process of establishing or formalizing their court systems. As one aspect of the grant program, tribes will be requested to convene a tribal court development team from within their community to participate in periodic training through the BJA Tribal Court Training Program. Upon completion of the training program, grantees will access funds to purchase needed information management hardware and software that will ultimately enable the tribes to link elec-

tronically. All tribes will receive compatible hardware and software, as well as the training necessary to assure effective use of these systems.

Solicitation for the Enhancement and Continuing Operation of Tribal Courts.—Approximately $2.25 million is available for small and large enhancement projects: up to $50,000 per grant for small enhancement projects, and up to $100,000 for large enhancement projects. All federally-recognized tribes with existing judicial systems are eligible to apply, including inter-tribal judicial systems. Tribes will have considerable latitude in designing their enhancement projects to best serve their communities' justice needs. Once they have begun implementation, the tribes that receive grants for enhancement or continuing operations will be invited to participate in a Program Development Workshop, which will allow grantees to share information about the progress and challenges of their projects.

Tribal Court Assistance Program Technical Assistance Support.—Approximately $750,000 will be available for technical assistance support for the Tribal Court Assistance Program. Any organizations that have demonstrated capacity to work with and provide training and technical assistance to tribal governments and tribal judicial systems are eligible to apply. BJA aims to disseminate the solicitation for the technical assistance support program within 30 days of Congressional approval of this plan. The designated TA provider will provide comprehensive training and technical assistance to tribal governments for the development, enhancement, and continued operation of tribal courts. BJA has also contributed to the costs of Departmental regional outreach sessions, held in Minneapolis, Seattle, and Albuquerque (April 19–23), to inform tribes about the tribal courts and other law enforcement grants available through the Department in fiscal year 1999.

Congressional Earmarks.—At the direction of Congress, BJA will set aside $500,000 of available funding for two projects, which include the Winnebago Tribe of Nebraska and the Sioux Tribes of South Dakota, working in cooperation with the Wakpa Sica Historical Society.

The Attorney's General CIRCLE Project.—BJA will set aside $400,000 to support the Attorney General's CIRCLE Project. These funds will be used in conjunction with other funding sources through COPS and OJP to assist the three designated tribes. Enhancing the tribal justice systems of the CIRCLE tribes through BJA is consistent with the objectives of the overall Law Enforcement Initiative and will assist in the development of viable models for federal-tribal cooperation.

Management and Administration.—Finally, $100,000 will be available for related program costs and administration.

Question. Congress also approved $34 million through the State Prison Grants Program to help with the addition of detention facilities in Indian Country. How is the Department expending these funds in 1999?

Answer. The Department's Corrections Program Office will administer $34 million in 1999 for the construction of detention facilities on tribal lands for the incarceration of offenders subject to tribal jurisdiction. The 1999 Conference Report directs that, "OJP is expected the follow the same priority for funding that exists under the BIA priority list when determining the order in which grantees are allocated funding that exists under the BIA priority list projects in Indian Country, if appropriate." In light of the narrow statutory authority for allowable funding purposes under the Violent Offender Incarceration/Truth in Sentencing language, coupled with the limited available funds, the Department has assessed the relative strengths and weaknesses of funding the tribes that appear on the BIA Priority, seriatim. Currently, in cooperation with the BIA Facility Management and Construction branch, we are re-evaluating the need, cost, size, and tribal investment in these proposed projects to ensure appropriate and responsible allocation of grant funds. Given the amount of funding in the context of overwhelming aggregate need, it has been important to consider regional capacity in developing a grant program. The Conference Report also requests that the needs of the Three Affiliated Tribes of Ft. Berthold and Barrow Alaska be considered. The former is on the BIA Priority list.

To respond to the congressional guidance as well as the expressed needs of tribes themselves, we have proposed the following funding allocation:

Tier 1, Congressional Earmarks.—As an initial matter, program guidance and application information for new construction of correctional facilities will be distributed to the Three Affiliated Tribes of Ft. Berthold and the North Slope Borough of Barrow, Alaska. The amount allocated under this Tier is not likely to exceed $8 million.

Tier 2, BIA Priority List.—The Department is currently working with the House and Senate Appropriations Subcommittee staffs to develop a plan for these funds, likely to total about $10 million. Once the plan is congressionally approved, we will coordinate with BIA to distribute solicitations as soon as practicable.

Tier 3, the CIRCLE Project.—Up to $7 million will be dedicated to the Attorney General's CIRCLE Project for the benefit of participating tribes. Increased detention capacity will be an essential component of comprehensive law enforcement reforms, as a greater number of arrests and prosecutions will result in heightened need for secure facilities.

Tier 4, Inter-Tribal/Regional Approaches.—All tribes who do not fall in the category of congressional earmarks (Tier 1), BIA Priority List (Tier 2), or CIRCLE (Tier 3) will be eligible to compete for $8 million for the construction of tribal detention facilities. Proposals that incorporate an inter-tribal, cooperative approach will receive preference. We expect to allocate about $8 million for projects that meet this description.

Question. What is the analysis of need for these facilities across the nation?

Answer. The Bureau of Indian Affairs informs us that there are only approximately 70 detention facilities in Indian Country, most of which fall far short of basic professional and BIA detention standards. This critical situation is the direct result of a historic, chronic shortage of funds for operation, repairs, and maintenance, as well as training or technical assistance. The Department of Interior has not obtained funds for Indian Country jail construction since 1995. The most recent assessment of tribal detention need, performed by a private contractor for the BIA in 1995, concluded that most existing BIA facilities had fallen into such disrepair, that outright replacement of the facilities was the only viable option. Accordingly, tribes are confronted with outmoded and antiquated facility designs, many of which were federally constructed in the 1970's, that result in hazardous conditions for the inmates and detention staff. The outmoded design of many of these old jails, combined with their generally poor condition, create a variety of health and safety problems, including staff and inmate injury risks, fire hazards, sanitation and pest control, and hazardous substance control, such as asbestos. The majority of existing facilities are overcrowded with inmates and many tribes are forced to contend without access to any facility at all, or to dedicate scarce resources to the transportation and detention of inmates to local county or contract facilities, which are frequently several hours away.

Recognizing the need to augment the resources available through the BIA for jail construction, the Department of Justice has worked to support tribes as they develop a range of sentencing options for tribal offenders, including secure detention. Since 1996, the Department, through the Corrections Program Office, has targeted a small portion of funds from its Correctional Facilities Grant Program to build jails in Indian Country. The Department's Bureau of Justice Statistics conducted a Survey of Jails in Indian Country 1998 to gather information on each of the roughly 70 jail facilities presently used by tribes. The results affirm the urgent need for more detention capacity, qualified and trained staff, as well facility modification to assure appropriate treatment of adults and juveniles, and male and female inmates. Most of the facilities responding also cited a need for alcohol and substance abuse testing and treatment for both adult and juvenile inmates. The Department intends to fund construction of facilities for offenders in tribal custody, and the Bureau of Indian Affairs has committed to fund operations and staffing for the newly constructed tribal facilities. By expanding the range of sentencing options to allow early, effective intervention with tribal offenders, we hope that tribes will be able to deter and prevent offenders from progressing to more serious federal crimes and ultimately becoming wards of the federal prison system.

Question. The initiative also included $35 million through the Community Oriented Policing (COPS) program to assist Indian tribes and pueblos with the hiring of additional law enforcement officers, to purchase equipment, and to train new and existing officers. What is the status of obligating these funds?

Answer. The COPS office distributed applications for the Tribal Resources Grant Program to all federally-recognized tribes in April 1999. In addition, the COPS office participated in Departmental regional outreach sessions to educate tribes about the new program offerings, and instruct on effective application and implementation strategies, April 19–23. Applications were required to have been postmarked by May 28, and the COPS office is currently in the process of reviewing applications. Once the office has finalized the review process and made the attendant decisions, tribes should be notified of their awards in July, 1999.

The COPS Tribal Resources Grant Program will offer a menu of options to tribal agencies that will include grants to hire more officers, as well as funding for training and standard issue equipment, such as uniforms, firearms, and portable radios. The grants are designed to assist the recipients in addressing their most serious law enforcement needs and must be linked to the enhancement of community policing.

Question. How did the Department decide to implement this portion of the initiative?

Answer. The COPS Tribal Resources Grant Program reflects information gathered through consultation with Indian tribal police and law enforcement; the BIA, Office of Law Enforcement Services; COPS; FBI; Office of Tribal Justice; U.S. Attorneys; and, the Office of Justice Programs. Throughout, the aim of the COPS program in Indian Country has been to assist community policing efforts by increasing the number of police officers per capita. The Uniform Crime Reports for 1997 indicated that communities in Indian Country receive a level of law enforcement service that is far below minimum standards for similarly situated non-Indian communities. Tribes who had received hiring grants previously shared concern with the Department about their inability to train, equip, outfit, and provide transportation for new officers, given their limited resources. As a result, the potential benefits represented by the hiring grants were often hindered by a lack of basic training and equipment. Of the more than 200 law enforcement departments in Indian Country, more than 90 percent are either administered by the BIA or solely reliant on the BIA for contract funding—funding which hadn't previously been budgeted for the training and equipping of DOJ funded officers. Also underscoring the need to adapt COPS programs to the particular needs of Indian Country, were persistent reports of increasing rates of violence in many parts of Indian Country. In February 1999, the Bureau of Justice Statistics published a study on American Indians and Crime, which found that American Indians were more than 2.5 times as likely to be victims of violence than any other segment of the U.S. population.

After careful consideration of the law enforcement needs and expressed concerns of tribal law enforcement professionals, in conjunction with their counter-parts at BIA, the COPS office devised the Tribal Resources Grant Program to address the needs beyond just salaries and training. Accordingly, through the Tribal Resources Grant Program, the Department aims to help tribes professionalize their police forces through equipment and funding, while addressing the general shortage of full-time police officers available to serve citizens in Indian Country.

Question. $10 million was approved for the Office of Juvenile Justice and Delinquency Prevention programs for programs to combat tribal youth crime. What is the status of this program?

Answer. The Office of Juvenile Justice and Delinquency Prevention (OJJDP) has distributed program guidance and solicitation material to all federally-recognized tribes, with a due date of June 30, 1999, for proposals. Prior to the solicitation distribution, OJJDP participated in the regional outreach sessions sponsored by the Department to inform interested tribes about the newly developed Tribal Youth Program and its objectives. To aid the development of the Tribal Youth Program, OJJDP sponsored a focus group with members of the Indian community which generated the following consensus recommendations:

—Recognize that each tribe is distinct and has its own history, traditions, economic and political relations, and pattern of inter-relation with state and federal governments.

—Enhance communication among grantees through national and regional meetings, electronic communications, teleconferences, or newsletters.

—Ensure that any evaluation effort acknowledge and respect Indian nations' history and cultural differences, as well as be useful and constructive to the community.

—Provide training and technical assistance on program strategy, staff development, management information systems, designing evaluations, and developing and using cultural assessment tools.

Incorporating the findings of the focus group, of the $10 million appropriated to OJJDP for this purpose, $1 million will fund research, evaluation, and statistics gathering on the effectiveness of tribal intervention and prevention programs, and $200,000 will support training and technical assistance to tribal grantees. The remainder of the funds will support other programs through individual grants to tribes, including mentoring projects, in a number of tribal communities. OJJDP will make awards that range from $75,000 to $500,000, according to the tribal service population statistics as well as other indices of need and interest. OJJDP will encourage inter-tribal cooperation through its application and award process because the available funding will not permit grants to every federally recognized tribe.

Question. What types of programs does the Department plan to fund with these dollars?

Answer. While we have encouraged tribes to submit proposals that incorporate their individual tribal customs and norms in relation to juveniles, the Department plans to fund a wide variety of programs that demonstrate the capacity to address the following objectives:

Category I—Reduction, control and prevention of crime by and against Indian youth.—Programs funded under this category might include those which emphasize

community risk assessments, parenting and family strengthening classes, truancy reduction, drop-out prevention, anti-gang education, conflict resolution and peer mediation, child abuse prevention, or anti-youth gun violence initiatives.

Category II—Interventions for court-involved tribal youth.—Programs funded under this category might include those that emphasize community supervision, restitution and community service, teen courts or peer sentencing boards, pre-trial diversion programs, home detention, shelter or foster care, sex offender monitoring and treatment, or mentoring or big brother/big sister programs.

Category III—Strengthening the tribal juvenile justice system.—Programs funded under this category might include those that emphasize training for tribal court judges and personnel, intake assessments, tribal juvenile code development, juvenile advocacy programs, probation and aftercare services, or detention programming and treatment.

Category IV—Prevention programs that focus on alcohol and drugs.—Programs funded under this category might include those that emphasize drug and alcohol education, drug testing and monitoring, substance abuse counseling, responsible driving incentives and sanctions, or prevention of underage alcohol/tobacco sales.

Question. What indication is the Department getting as to the nature of this problem in Indian Country and the need for resources?

Answer. The evidence available to the Justice Department, from the FBI, BIA, state, and tribal law enforcement agencies, indicates that juvenile crime and delinquency has become a significant problem in Indian Country. While the lack of uniform reporting and data collection in Indian Country exacerbates our ability to compile precise statistics, law enforcement reports and anecdotal information do suggest several trends in youth violence and criminal activity in Indian Country: juveniles account for an increasing percentage of all serious crimes committed in Indian Country; Indian juveniles are offending at younger ages; and, gang members in Indian Country are more frequently committing violent offenses and engaging in crimes for profit. A recent BIA survey estimates that more than 375 gangs may exist in Indian Country, with approximately 4,650 gang members on or near Indian Country. Another indicator of the increase in violent crime, the number of Indian youth in Bureau of Prisons (BOP) custody has risen 50 percent since 1994. Reflecting the unique nature of jurisdiction in Indian Country as well as the increase in youth crime, roughly 70 percent of the youth presently in federal BOP custody are from Indian Country.

Demographics may also contribute to the problem of juvenile delinquency and youth violence in tribal communities. The median age of American Indians as of the 1990 census was 24.2 years compared with 32.9 years for other Americans. On many reservations, it is increasingly common to have more than 50 percent of the total population under 18 years of age—a fact which reaffirms the need to provide increased attention to our treatment of delinquent juveniles.

Question. Finally, the 1999 Omnibus Appropriations Act included $4.7 million for additional FBI personnel and Safe Trails Task Forces. How is this program being implemented? Will these funds be allocated this year?

Answer. The fiscal year 1999 appropriation provided the FBI an additional 30 agent and 20 support positions for law enforcement in Indian Country (IC). To implement this appropriation, the funded staffing levels for the offices with IC investigative responsibilities were increased. FBI headquarters coordinated the allocation of these positions for IC with field office managers. The placement of these positions was based upon the need for personnel to begin or supplement a Safe Trails Task Force, and to address increases in the reported incidence of crimes. The positions were allocated to the following field offices: Albuquerque, Charlotte, Denver, Detroit, Las Vegas, Milwaukee, Minneapolis, Oklahoma City, Omaha, Phoenix, Salt Lake City, and Seattle.

It is anticipated the appropriated funds will be expended this year. Several agents have already been selected for assignment to the offices listed above, and it is expected that the remaining agents will be selected and in place before the end of the year. Also, the support positions are being posted, and it is anticipated they will be filled this year.

Question. For fiscal year 2000, the Administration's proposed $124.2 million continues the tribal courts, detention facilities, and COPS initiatives and expands to additional activities including the U.S. Attorneys, alcohol and substance abuse, a Police Corps and a number of new initiatives. Is it realistic for the Department of Justice to continue funding this initiative largely through newly proposed programs, such as the Police Corps and Drug Testing and Treatment programs? Would you give the Subcommittee your rationale for the targeting of resources under the proposed program for fiscal year 2000?

Answer. Given the severity of the violent crime problem in Indian Country, Justice and Interior Department efforts to improve Indian Country law enforcement must be active and ongoing. With respect to the rationale for the fiscal year 2000 funding request, the resource allocations in the President's Budget reflect the information gathered from consultation and dialogue with tribal leaders, tribal police and investigators, FBI, BIA Office of Law Enforcement Services, as well as statistical analyses through the Bureau of Justice Statistics, such as American Indians and Crime (1999). For the second year of the initiative, the Department is seeking $124,208,000 for the Indian Country Law Enforcement Initiative, and BIA is also seeking an increase of more than $40 million. The new requests, Drug Testing and Treatment and Police Corps, are part of a comprehensive strategy to improve and sustain public safety in Indian Country.

First, drug and alcohol testing and treatment is essential to fight crime in Indian Country because of the strong correlation between alcohol abuse and violent crime in Indian Country, which is reflected in the BJS survey. In 55 percent of violent crimes against American Indians, the victims report that the offender was influence of alcohol or drugs. In addition, the 1996 arrest rate for alcohol related offenses among American Indians and Alaska Natives was more than double that of the general population. At times, law enforcement agencies can become overwhelmed by the sheer volume of alcohol-related offenses, which impedes their ability to address other types of crime within the community. Many habitual alcohol and substance abuse offenders can be more efficiently and effectively adjudicated through alternative sentencing that specifically targets their substance abuse problem than through incarceration alone. The drug and alcohol testing and treatment allocation of $10 million would allow some tribes to divert chronic substance abusers to treatment programs, while reserving sanctions and resources within the justice system for more violent or serious offenders.

The Department of Justice also requests $5 million for the Office of Police Corps and Law Enforcement Education (OPCLEE) to implement a Police Corps program in Indian Country. This new initiative offers federal scholarships on a competitive basis to college students who agree to serve as police officers for at least four years with a law enforcement agency. We hope that the ultimate effect of the Police Corps program in Indian Country will be to address violent crime by helping Indian law enforcement agencies increase the number of highly qualified officers assigned to community patrol in areas with less than adequate service. Over time, this program has the potential to increase the number of college-educated tribal police officers while providing education assistance to students with a demonstrated interest in law enforcement.

With attendant increases in the number of investigators, FBI agents, and tribal police officers in Indian Country, the number of federal prosecutions that result will almost certainly increase. To bring more cases and thereby fully implement the Major Crimes Act, Indian Country Crimes Act, Indian Child Protection Act, and the Anti-Gang and Youth Violence Act, additional federal prosecutors are needed. The request for $3.2 million to hire 26 additional Assistant U.S. Attorneys, originally sought for fiscal year 1999, will augment current federal prosecutorial efforts in Indian Country. Assistant U.S. Attorneys also play an important role in assisting tribal governments to address violent and juvenile crime at the tribal level while implementing Child Protection Teams and Multi-Disciplinary Teams to assure that tribal and federal interventions are coordinated for the best interest of the victims involved.

BORDER PATROL DEPLOYMENT PLAN

Question. Ms. Reno, you state that since you became the Attorney General in 1993, Department of Justice budgets have increased 88 percent as Congress and the White House have waged the war against crime, illegal drugs, illegal immigration, youth crime and violence, and most recently, terrorism. Congress has funded dramatic increases in the number of Border Patrol agents within the Immigration and Naturalization Service (INS) over the past several years, and has worked with the Administration to ensure that they are deployed most effectively, even in the less heavily populated states such as New Mexico. INS employment has increased from 18,400 positions in fiscal year 1993 to an estimated 30,800 in fiscal year 1999. How many of the INS positions are Border Patrol positions, and would you provide the Subcommittee with a breakdown of the number of Border Patrol agents funded, the number trained and deployed, and where those deployments took place by region and state (fiscal year 1997 through fiscal year 1999)?

Answer. The following table provides information on total INS positions and Border Patrol positions for the period from 1993 through 1999:

TOTAL INS POSITIONS AND BORDER PATROL POSITIONS (INCLUDING SUPPORT)—FISCAL YEARS 1993–99

	1993	1994	1995	1996	1997	1998	1999
Total INS	18,417	18,622	21,048	24,704	26,123	28,903	30,832
Border Patrol	4,863	5,434	6,233	7,193	8,193	9,351	10,491

The number of funded Border Patrol agent positions (including pilots) in 1993 was 4,288. In 1999 the number is 8,947, including the 1,000 new agents contained in the fiscal year 1999 INS appropriation. The following table provides details regarding the training and deployment of Border Patrol agent increases:

NEW AGENTS TRAINED AND DEPLOYED BY REGION AND STATE

[Fiscal year 1994–99 (planned)]

	1994	1995	1996	1997	1998	1999
Eastern Region:						
Puerto Rico	.....	.....	.....	8	.....	.....
Michigan	.....	.....	.....	.....	.....	7
New York	.....	.....	.....	.....	.....	8
Central Region:						
Texas	.....	328	100	360	625	485
New Mexico	50	15	31	76	45	15
Western Region:						
Arizona	.....	128	241	228	196	395
California	300	229	428	328	134	83
Washington	.....	.....	.....	.....	.....	7

Note: There were no new deployments in fiscal year 1993 by the Border Patrol. The data for fiscal year 1999 is from the INS deployment plan and shows the locations receiving 1,000 new agent positions. Based on current projections, not all of the positions will be filled by the end of the fiscal year. Efforts to fill them have been intensified and will continue into fiscal year 2000.

Question. I thank you for the work you have done to be sure that the El Paso sector, which covers New Mexico, receives adequate personnel, and I hope the Department of Justice, and especially INS, will continue to focus on an overall border strategy, considering the needs of New Mexico and Arizona, as well as the larger states of Texas and California.

The Committee has recently reviewed the proposed INS deployment plan for fiscal year 1999. I thank the Subcommittee for approving the deployment of another 25 positions to the El Paso sector. What is the major thrust of the proposed plan, and how do you envision it as a component of an overall Southwest border strategy over the next several years?

Do you think the plan is balanced in its approach to the problems along the border and to providing Southwest border states, including New Mexico, the resources they need to address the situations?

Answer. The major thrust of the fiscal year 1999 deployments is to target resources to counter the current high levels of illegal entry attempts as well as anticipating shifts in the flow of illegal traffic into previously little-used stretches of the border including eastern California, New Mexico and the south Texas border. The overall Southwest border strategy for the Border Patrol continues to be gaining control of the southern land border by concentrating resources in the busiest illegal entry corridors first. The challenge for the INS over the next several years will be to gain and maintain control of the major corridors as neighboring areas experience significant growth in illegal alien traffic, and as smuggling organizations seek new entry routes.

The National Border Control Strategic Plan was developed to ensure that all of the nation's border is provided with the resources necessary to gain and maintain control of illegal entries into the United States. The systematic and phased approach in the deployment of significant resources is sound and has proven that significant improvements can be implemented, and will continue to be implemented, to control illegal immigration at the border.

The New Mexico border has been targeted within the INS plan for additional resources over the last two years due to the increase in illegal alien traffic coming

from west Texas and eastern Arizona. Operation Rio Grande is also currently enhancing border enforcement throughout Texas and New Mexico and will continue to do so as permanent staffing is deployed to these areas in 1999.

Question. Ms. Reno, this year the Administration proposes no new Border Patrol agents in its budget request. What is the Department's rationale for the suspension of the Border Patrol recruitment of new agents? A detailed response to this question would be welcome by the Subcommittee and especially those of us representing Southwest border states.

Answer. The fiscal year 2000 budget continues Border Patrol staffing at the fiscal year 1999 level of nearly 9,000 agents, including Border Patrol pilots, a 126-percent increase from the fiscal year 1993 level of 3,965 agents. The fiscal year 2000 budget request allows recently-hired Border Patrol agents the time to assimilate into the workforce after six years of rapid growth. The following table illustrates the increases in Border Patrol agents that have occurred from fiscal year 1993 through fiscal year 1999:

Length of Service	As of 10/2/93 (Cumulative percent)	As of 2/13/99 (Cumulative percent)
Less than 1 year	2.32	16.15
Less than 2 years	14.53	33.55
Less than 3 years	17.35	47.90
Less than 4 years	18.94	56.67
Less than 5 years	24.01	60.65

The high proportion of new agents makes it necessary to allow that they be integrated into the Border Patrol corps to safeguard and maintain the highest standards of law enforcement professionalism. Law enforcement experts indicate that it may be risky to allow an agency's overall ratio of inexperienced to experienced agents to exceed 30 percent. When it does, the agency may find it difficult to maintain performance, professionalism and integrity.

Some municipal police departments have struggled with significant corruption and performance problems when they have greatly expanded their uniformed forces in a short period of time. While INS has not experienced those problems, this approach will help to safeguard against them. Current records show that the percentage of Border Patrol agents having three years or less service, as of mid-February, 1999, was nearly 48 percent. Compare this with October 2, 1993, when only 17 percent of Border Patrol agents had less than three years of service.

We believe it is important that the considerably large numbers of new Border Patrol agents be given time to assimilate, and gain critical field experience. The fiscal year 2000 budget does, however, maintain the Administration's commitment to border control. In doing so, the fiscal year 2000 budget request includes $50 million and 14 positions for "force-multiplying" technology, namely the Integrated Surveillance Intelligence System (ISIS), which provides the capability to monitor the border from remote sites. ISIS will relieve Border Patrol agents from having to go to sites needlessly, thus increasing their effectiveness, while giving the Border Patrol time to raise experience factors.

The fiscal year 2000 budget request also includes $48.1 million for Border Patrol construction projects and other border improvements. Of the total amount, $34 million is requested for full construction projects for Border Patrol stations, Sector headquarters buildings, and for agent housing. Planning, site acquisition and design requirements for future facilities account for $8.1 million of the request. Finally, the request includes $6 million for a variety of border improvement projects, some of which will involve Department of Defense assistance through its Joint Task Force Six (JTF–6). These projects include, among others, border barriers and roads.

VIOLENT CRIME REDUCTION TRUST FUND

Question. With the Violent Crime Reduction Trust Fund (VCRTF) scheduled to expire at the end of fiscal 2000, a review of Trust Fund expenditures would be helpful. Could you please provide the Committee with a comprehensive overview of Trust Fund activity since its inception? Specifically, could you provide us with a list of every program (or account) funded from the Trust Fund by year and amount of appropriation?

Answer.

VIOLENT CRIME REDUCTION TRUST FUND (INCLUDES TERRORISM BILL 1996) AUTHORIZATIONS VS. APPROPRIATIONS

(In thousands of dollars)

	DOJ Agency	Total Auth (1995–2020)	Total Approp (1995–99)	1995 Approp Total	1996 Approp Total	1997 Approp Total	1998 Approp Total	1999 Approp Total	2000 President's Request
PREVENTION									
Violence Against Women:									
Department of Justice:									
Grants To Combat Violence Against Women	OJP	800,000	672,750	26,000	130,000	144,000	172,000	200,750	200,750
Grants To Encourage Arrest Policies	OJP	120,000	150,000		28,000	33,000	59,000	30,000	30,000
Rural Domestic Violence Enforcement	OJP	30,000	65,000		7,000	8,000	25,000	25,000	25,000
Victims of Child Abuse Grants:									
Court-Appointed Special Advocate Program	OJP	38,000	26,000		6,000	6,000	7,000	7,000	7,000
Training for Judicial Personnel & Practitioners	OJP	8,050	5,750		750	1,000	2,000	2,000	2,000
Grants for Televised Testimony	OJP	4,250	2,600		50	550	1,000	1,000	1,000
National Stalker & Domestic Violence Reduction	OJP	6,000	6,000		1,500	1,750	2,750		
Victims Counselors	USA	1,500	1,500		500	1,000			
Training Programs	OJP	2,000	9,000		1,000	1,000	2,000	5,000	5,000
State Data Base Study	OJP	200	200		200				
National Study/Campus Assault	OJP	200	200			200			
Subtotal, DOJ		1,010,200	939,000	26,000	175,000	196,500	270,750	270,750	270,750
Department of Health & Human Services:									
Number & Cost of Injury Study		100	100			100			
Rape Prevention Grants		205,000	165,542		31,642	31,900	51,000	51,000	51,000
Community Programs On Domestic Violence		10,000	9,000			9,000			
Grants for Battered Women's Shelters		325,000	223,800		21,358	4,442	93,000	105,000	101,000
Grants To Reduce Sexual Abuse of Runaway,		30,000	13,558			13,558			
Youth Education and Domestic Violence		400	400			400			
National Domestic Violence Hotline		3,000	2,600	1,000	400	1,200			
Subtotal, HHS		573,500	415,000	1,000	53,400	60,600	144,000	156,000	152,000
Department of Interior:									
Capital Improvements—National Parks		10,000							
Capital Improvements—Public Parks		15,000							

Subtotal, DOI		25,000							
Judiciary: Education & Training for Federal Judges		700							
Department of Transportation: Capital Improvements—Public Transportation.		10,000							
State Justice Institute: Equal Justice For Women In Court		600							
Total, Violence Against Women		1,620,000	1,354,000	27,000	228,400	257,100	414,750	426,750	422,750
Other:									
Department of Justice:									
Local Crime Prevention Block Grant	OJP	377,000							
Model Intensive Prevention Grants	OJP	625,500							
Res. Substance Abuse Treatment For State Prisoners	OJP	270,000	183,000		27,000	30,000	63,000	63,000	65,100
Drug Courts	OJP	1,000,000	111,900	11,900		30,000	30,000	40,000	50,000
Assist for Delinquent & At-Risk Youth	OJP	36,000							
Family Unity Demo Projects	OJP	19,800							
Missing Children/Alzheimers Grants	OJP	2,700	3,600		900	900	900	900	900
Boys and Girls Clubs 10/(NON-CRIME BILL TBD)	OJP	80,000							
Subtotal, OJP Other		2,331,000	298,500	11,900	27,900	60,900	93,900	103,900	116,000
Federal Prison Drug Treatment	BOP	112,500	91,342		13,484	25,224	26,135	26,499	26,499
Subtotal, DOJ Other		2,443,500	389,842	11,900	41,384	86,124	120,035	130,399	142,499
Ounce of Prevention: Ounce of Prevention Council		90,000	1,500	1,500					
Department of Education: Family & Community Endeavor Schools Program		243,000							
Department of Health & Human Services:									
Comm. Schools Youth Services & Supervision Grants		567,000	37,000	37,000					
Community Economic Partnership Fund		270,000							
Subtotal, HHS		837,000	37,000	37,000					
Department of Housing and Urban Development: Local Partnership Act		1,620,000							
Department of Interior: Urban Recreation & At-Risk Youth Grants		4,500							
Department of Treasury: Gang Resistance Education & Training Projects		45,000	24,200	9,000	7,200	8,000			
Total, Other		5,283,000	452,542	59,400	48,584	94,124	120,035	130,399	142,499

VIOLENT CRIME REDUCTION TRUST FUND (INCLUDES TERRORISM BILL 1996) AUTHORIZATIONS VS. APPROPRIATIONS—Continued

(In thousands of dollars)

	DOJ Agency	Total Auth (1995–2020)	Total Approp (1995–99)	1995 Approp Total	1996 Approp Total	1997 Approp Total	1998 Approp Total	1999 Approp Total	2000 President's Request
TOTAL, PREVENTION		6,903,000	1,806,542	86,400	276,984	351,224	534,785	557,149	565,249
STATE AND LOCAL LAW ENFORCEMENT									
Department of Justice:									
Community Policing	COPS	8,800,000	6,889,786	1,299,806	1,399,980	1,390,000	1,400,000	1,400,000	1,175,000
Police Corps	COPS	100,000	90,000			30,000	30,000	30,000	
Police Scholarship Program	COPS	100,000							
Police Recruitment	COPS	24,000							
Rural Drug Enforcement Assistance	OJP	240,000							
Local Law Enforcement Block Grant	OJP	na	2,072,000		503,000	523,000	523,000	523,000	
Juvenile Incentive Block Grants	OJP	na	500,000				250,000	250,000	
Drug Prevention Demonstration Program	OJP	na							
Drug Testing and Intervention Program	OJP	na							100,000
Brady Handgun Violence Prevention	OJP	150,000	265,000	100,000	25,000	50,000	45,000	45,000	
Byrne Grant Program	OJP	1,000,000	838,500	450,000	147,000	199,000	42,500		400,000
Byrne Grant Program (TERRORISM BILL 1996)	OJP	100,000							59,950
Incarceration of Undocumented Criminal Aliens	OJP	1,800,000	1,600,000	130,000	300,000	330,000	420,000	420,000	500,000
State Courts Assistance (Youth Violence Courts)	OJP	150,000	12,000					12,000	45,500
Certain Punishment for Young Offenders	OJP	150,000							35,000
Violent Offender Incarceration Grants (Corrections Grant Prog.)	OJP	10,442,600	2,753,000	24,500	617,500	670,000	720,500	720,500	75,000
Community Based Grants for Prosecutors (Prosecutor Grants)	OJP	50,000							
Grants to Prosecutors to Target Gang Crime/Juvenile	OJP	na							
Law Enforcement Family Support	OJP	25,000	4,500		1,000	1,000	1,000	1,500	1,500
DNA Identification State Grants	OJP	40,000	31,500		1,000	3,000	12,500	15,000	
Tuberculosis in Prison	OJP	5,000	200		200				
Improved Training & Technical Automation	FBI	100,000	18,500		9,000	9,500			
S&L Training at Quantico/Intelligence Gathering	FBI	20,000	8,000		4,000	4,000			
Improved Technical Automation at Quantico	FBI	10,000							
Local Firefighter Trng State Grants (TERRORISM BILL 1996)	OJP	5,000							
Indian Tribal Courts	OJP	na	5,000					5,000	5,000
Subtotal, DOJ		23,311,600	15,087,986	2,004,306	3,007,680	3,209,500	3,444,500	3,422,000	2,396,950

Department of Treasury: Rural Drug Enforcement Training: FLETC		5,000							
TOTAL, STATE AND LOCAL ASSISTANCE		23,316,600	15,087,986	2,004,306	3,007,680	3,209,500	3,444,500	3,422,000	2,396,950
FEDERAL LAW ENFORCEMENT									
Department of Justice:									
USA General Crime Support	USA	50,000	192,363		20,235	28,602	62,828	80,698	57,000
FBI General Crime Support	FBI	245,000	654,689		208,715	43,497	179,121	223,356	280,501
FBI General Crime Support (TERRORISM BILL—1996)	FBI	468,000	30,080			30,080			
Narrowband Communications	DOJ								
DOJ General Crime Support		199,000	199,254		72,921	126,333			
INS	INS								
USMS	USMS		51,106		[24,980]	[25,000]	25,553	25,553	26,210
USA	USA	[50,000]				[15,274]			
FBI	FBI					[86,059]			
DEA	DEA				[47,941]				
DOJ General Crime Support (TERRORISM BILL—1996)	DOJ	41,000							
Additional DEA Agents	DEA	150,000	958,537		12,000	138,000	403,537	405,000	405,000
DEA General Crime Support (TERRORISM BILL—1996)	DEA	172,000	82,000			82,000			
Asylum Reform		338,000	269,504	49,000	94,289	126,215			
INS	INS			[28,600]	[44,089]	[19,585]			
EOIR	EOIR		118,502	[9,000]	[33,378]	[35,000]	59,251	59,251	59,251
USA	USA			[6,800]	[9,231]				
CIVIL DIVISION	CIV		16,129	[4,600]	[7,591]	[7,750]	7,969	8,160	8,555
Border Control System Modernization	INS	675,000	2,161,006	181,000	231,323	297,987	608,206	842,490	500,000
Expanded Special Deportation (IHP)		160,000	230,798	54,000	54,886	121,912			
INS	INS			[45,800]	[40,539]	[108,912]			
EOIR	EOIR			[8,400]	[14,347]	[13,000]			
INS General Crime Support (TERRORISM BILL—1996)	INS	20,000							
Criminal Alien Tracking Center	INS	18,400							
DNA Analysis	FBI	25,000	11,000		5,500	5,500			
Gang Investigation Info. Collection	OJP	1,000	1,000		1,000				
Motor Vehicle Theft Protection	OJP	5,000	3,300		500	750	750	1,300	1,300
Presidential Summit on Crime	OJP	1,000							
Sr. Citizens Against Marketing Scams:									
FBI Agents	FBI	7,500							
U.S. Attorneys	USA	2,500							
Public Awareness & Prevention Initiatives	OJP	10,000	6,500			2,000	2,500	2,000	2,000
NIJ, Office of Science & Technology (TERRORISM BILL—1996):									
Foreign Assistance in Counterterrorism Technology	OJP	20,000							

VIOLENT CRIME REDUCTION TRUST FUND (INCLUDES TERRORISM BILL 1996) AUTHORIZATIONS VS. APPROPRIATIONS—Continued

(In thousands of dollars)

	DOJ Agency	Total Auth (1995–2020)	Total Approp (1995–99)	1995 Approp Total	1996 Approp Total	1997 Approp Total	1998 Approp Total	1999 Approp Total	2000 President's Request
R&D in Counterterrorism Technology	OJP	10,000							
Subtotal, DOJ		2,618,400	4,985,768	284,000	701,369	1,002,876	1,349,715	1,647,808	1,339,817
Executive Office of the President: ONDCP—HIDTA			25,700				[1] 23,200	2,500	
Interior: U.S. Park Police (TERRORISM BILL 1996)		2,000							
Judiciary:									
General Crime Support (Crime Bill 1994)		200,000	141,043		30,000	30,000	40,000	41,043	66,000
General Crime Support (TERRORISM BILL 1996)		41,000							
Department of Treasury:									
General Crime Support (Crime Bill 1994)		550,000	204,135	30,000	69,304	70,410	33,021	1,400	11,000
General Crime Support (TERRORISM BILL 1996)		40,000	58,300			18,300		40,000	45,000
U.S. Customs Service (TERRORISM BILL 1996)		31,000	126,120				60,648	65,472	64,000
U.S. Secret Service (TERRORISM BILL 1996)		50,000	38,359				15,731	22,628	12,000
TOTAL, FEDERAL LAW ENFORCEMENT		3,532,400	5,579,425	314,000	800,673	1,121,586	1,522,315	1,820,851	1,537,817
TOTAL, DEPARTMENT OF JUSTICE		29,383,700	15,931,639	2,326,206	3,925,433	4,495,000	5,185,000	5,470,957	4,150,016
TOTAL, VCRTF		33,752,000	22,473,953	2,404,706	4,085,337	4,682,310	5,501,600	5,800,000	4,500,016

[1] Includes $1,600,000 appropriated for Department of the Treasury, Departmental Offices, from balances available in the Violent Crime Reduction Trust Fund.

Background.—The VCRTF was established by Public Law 103–322, Title 31, and, as created, provided $30.2 billion over six years (fiscal 1995 through 2000) for anti-crime programs. Since appropriations from the Fund could be spent on a wide variety of anti-crime measures and the appropriations committees themselves were given a limited 10 percent transfer authority among anti-crime programs, a large number of accounts or programs—well over 50 at the Fund's mid-point two years ago—have received VCRTF funding. In accessing the Fund's use and the effectiveness of the programs it has funded, a summation of those accounts or programs, the amount spent, actual or estimated by fiscal year, and the amount proposed for expenditure in the final year of the Fund would be helpful.

RIO ARRIBA COUNTY BLACK TAR HEROIN PROBLEM

Question. Attorney General Reno, Rio Arriba County in northern New Mexico is facing a drug crisis of epidemic proportions. Mexican nationals have begun to flood poor, rural communities with cheap and potent black tar heroin. New Mexico now leads the nation in per capita heroin overdose deaths, and Rio Arriba County leads New Mexico. Last year, 44 people died heroin-related deaths in Rio Arriba County.

I am working to develop an overall strategy to assist Rio Arriba County, including providing the necessary federal funds for prevention, rehabilitation and law enforcement to address this problem from every conceivable angle.

Will you agree to work with me to help identify DOJ drug prevention programs available to assist these communities in their anti-drug efforts?

Answer. Yes. As you know, the Office of Justice Programs (OJP) has a long standing relationship with state and local governments and has for many years been the source of both programmatic and training/technical assistance resources. As you develop your strategy to assist Rio Arriba, OJP can offer assistance by pulling together a technical assistance team to help Rio Arriba in developing a strategic plan to identify, understand, and manage the black tar heroin problem.

Additionally, OJP has several drug prevention programs that may provide additional resources:

—Drug Prevention Demonstration Program—directly addresses juvenile substance abuse. This discretionary grant program is administered by OJP's Office of Juvenile Justice and Delinquency Prevention (OJJDP) and targets 6th, 7th, and 8th grade students in urban, rural and tribal jurisdictions. It is a school-based program that is designed to increase the perception among juveniles that substance abuse is risky, harmful, and unattractive. In studies involving more than 180 suburban and urban schools, grades 7 to 12, this program has generally documented initial reductions of fifty percent in youth alcohol, tobacco, and marijuana use, along with a sustained impact.

—Drug Abuse Resistance Education (D.A.R.E.)—is the nation's most predominant school-based drug abuse and violence prevention program. It has been implemented by more than 8,000 law enforcement agencies in school systems across the country. Approximately 33,000 law enforcement officers have received D.A.R.E. training and more than 75 percent of schools nationwide participate in this program—over 25 million students in the U.S. have benefitted from D.A.R.E. Boys and Girls Clubs of America (B&GCA)—with funding from OJP's Bureau of Justice Assistance, B&GCA have implemented the SMART Moves (Skills Mastery and Resistance Training) program in more than 2,260 clubs nationwide. SMART Moves is a dynamic, nationally acclaimed prevention program designed to help young people resist alcohol, tobacco, and other drug use, as well as premature sexual activity. This national prevention program provides resistance training to young people and helps them develop social skills to increase their ability to protect themselves. SMART Moves has been recognized as one of 10 exemplary prevention programs by both the U.S. Center for Substance Abuse Prevention and the National Association of State Alcohol and Drug Abuse Directors. It has also been lauded as a premier national prevention program by the White House Conference for a Drug-Free America and the Children's Defense Fund.

—Weed and Seed Program—represents the Department's premier, neighborhood-based comprehensive crime control initiative. The Weed and Seed program continues to pioneer the nationwide adoption of community-based strategies designed to "weed out" violent crime, illegal drug and gun trafficking, and illegal gang activity and to "seed" their communities with crime prevention programs. To achieve this mission, the Executive Office for Weed and Seed (EOWS) provides assistance to sites in designing comprehensive strategies to prevent and control crime, coordinates federal participation in cooperation with the U.S. At-

torneys Offices and federal law enforcement agencies and other federal departments, and provides grant funding to communities to further their strategies.

Question. What is the current DOJ policy regarding Mexican nationals arrested on drug crimes in the United States? If Mexico makes an extradition request, do we typically send these drug dealers back to Mexico? If there is no extradition request, does the U.S. deport them, or hold them for prosecution?

Answer. There is no general DOJ policy regarding Mexican nationals arrested on drug charges in the United States, each case instead being assessed and addressed on its specific merits and circumstances. If Mexico has charges pending against the arrested and submits an extradition request, we have the option of dropping our own case and surrendering him to Mexican authorities through extradition or of pursuing our own case and delaying extradition until the proceedings and sentence against him are completed in this country. Depending on the arrested's immigration status when initially detained, immediate voluntary departure may be pursued, or, if the arrested is here legally, the prosecution may proceed, with deportation following service of sentence in the United States or a transfer to Mexico for service of sentence pursuant to the U.S.-Mexico Prisoner Transfer Treaty. As noted, however, each case must be addressed individually to ensure that its disposition, whether here or in Mexico, best serves the interests of justice and most effectively protects our communities from criminal activity.

Question. Would the United States Attorneys in New Mexico benefit from additional resources to prosecute Mexican nationals accused of trafficking in heroin and other illegal drugs in northern New Mexico?

Answer. New Mexico could benefit from more resources, as could any of our districts. However, since the resources of the Federal Government and the Department of Justice are finite, the U.S. Attorneys' goal is to deploy available resources in the most effective manner possible. The U.S. Attorneys have continued to respond to shifting crime problems, whether those problems are emerging crime in particular geographic areas, or new types of crime. In both cases, the U.S. Attorneys' policies and procedures have, and will, continue to enable us to be responsive and timely in addressing new threats.

The U.S. Attorneys have an elaborate allocation process to place resources where they are most needed. Specifically, the allocation process begins with a working group of U.S. Attorneys who are chosen for their expertise in the narcotics area. In addition to written justifications submitted from the districts, the attorneys use certain data to make an accurate assessment of each district's needs. The data includes narcotics-related case activity, district size, average attorney work week, local/regional involvement, previous narcotics allocations, and law enforcement resources. After an objective review of this information, the group allocates the resources to ensure a continued enforcement effort in the narcotics area.

In the past three years, New Mexico has received a total of 11 new Assistant U.S. Attorney (AUSAs) positions and eight support positions for narcotics prosecutions. In fiscal year 1997, six AUSAs and three support positions were allocated to the New Mexico U.S. Attorney's office specifically for narcotics prosecutions. In fiscal year 1998, four AUSAs and five support positions were allocated to strengthen the U.S. Attorney's narcotics and immigration prosecution activities in New Mexico along the Southwest Border. In fiscal year 1999, the U.S. Attorney was allocated one additional AUSA position for drug prosecutions in New Mexico.

MEXICO DRUG CERTIFICATION

Question. Attorney General Reno, earlier this month, the President announced that he again would certify to Congress that Mexico is a "fully cooperating" partner in the drug war. DEA Administrator Tom Constantine left the impression recently that Mexico had not achieved much in the way of significant progress in the past year. Specifically, he notes that not a single major Mexican national wanted here on drug charges was extradited from Mexico during the past year.

Do you believe that Mexico deserved to be certified as fully cooperating in the drug war?

Answer. Despite the many challenges that remain, Mexico has become a real partner in our battle against drugs. The law enforcement relationship that exists between the United States and Mexico is strong and growing stronger every day.

Question. What evidence of progress have you seen in the past year?

Answer. Mexico's current situation has developed over many years/generations, and success in overcoming the drug threat in Mexico will not occur overnight. Progress will need to be measured over time. Over the past years corruption has had a terribly corrosive impact on Mexico and has led to concern and frustration, both here and in the government of President Zedillo. President Zedillo inherited

a difficult situation but he is taking appropriate steps to address it. Under his leadership Mexico has passed a new Organized Crime Law and enacted anti-money laundering and chemical control legislation. I have worked closely with Attorney General Madrazo, and we have an excellent working relationship. This relationship has enabled both countries to share investigative information, develop strong cases against major drug trafficking organizations, and inaugurate a program of joint training of prosecutors and investigators of both countries. Both President Zedillo and Attorney General Madrazo are committed to establishing a professional law enforcement capacity in Mexico, and we are already seeing progress from their commitment. If Mexico is to succeed in its fight against drug trafficking and corruption, it will only happen with sustained, long-term efforts by the Government of Mexico. Moreover, success will require a continuing relationship of cooperation and mutual respect between our two countries.

Question. How many Mexican nationals wanted on drug charges have been extradited to the United States in the past 3 years?

Answer. The pace of extraditions from Mexico during 1998 held to 1997 levels, with an increase in the number of Mexican nationals extradited, and deportations have increased significantly. Although we were discouraged by occasional adverse court decisions and weak follow-through on some cases in Mexico, Mexico's arrest and detention of the Amezcua brothers (methamphetamine kingpins) for extradition to the U.S. is important. In addition, there were several notable successful domestic prosecutions, under Article 4 of the Mexican Penal Code. Finally, Mexican authorities have cooperated with the U.S. Marshals Service fugitive project in Embassy-Mexico City, resulting in the arrest of eight U.S. fugitives. The following table summarizes Mexico's extradition performance over the past three calendar years.

Categories	1998	1997	1996
Total Extradition/Mexico to U.S	12	13	13
Number Mexican Nationals	3	.....	2
Number on Narcotics Charges	4	7	6
Number Mexican Nationals on Drug Charges	[1] 1	.....	.....
Found Extraditable by Mexico (whether actually surrendered or not)	19	21	11
Number Mexican Nationals	5	9	2
Number Facing Narcotics Charges	10	11	2

[1] Also wanted for murder.

Question. Would you provide me with a list of all of the Mexican nationals currently under indictment in the United States on drug charges?

Answer. Information regarding the nationality of persons currently under indictment in the United States on drug charges is not available.

Question. I have been looking for a way to get federal law enforcement officials more involved in the certifications process, because I believe law enforcement has the best perspective on whether a country deserves certification. Do you have any thoughts on how we might improve the certification law, with particular emphasis on giving the Department of Justice, DEA, INS, and FBI a greater role in the process?

Answer. The law requires that the President identify annually those countries which he determines are major source or transit countries for illicit drugs—the so-called "majors list"—and to certify to Congress the level of cooperation with the United States in the area of narcotics control of countries included on the "majors list." To assist the President in making these determinations and certifications, the Department of State coordinates with all interested departments and agencies, including the Department of Justice, the Drug Enforcement Administration and the Federal Bureau of Investigation, regarding the composition of the "majors list" and the determinations and certifications pertaining to each country on the list. I believe that this process affords appropriate consideration to the views and recommendations of the primary federal drug law enforcement departments and agencies.

FIRST RESPONDER TRAINING

Question. Attorney General Reno, the Administration has touted its commitment to fighting terrorism, both domestically and internationally. Last year, the Department established the National Domestic Preparedness Consortium to coordinate the Department's efforts in training first responders to a terrorist act. I was at the ceremony and supported funding for the Consortium at $20 million in fiscal year 1999—$8 million for Fort McClellan Headquarters, and $3 million each for the four con-

sortia members doing the actual training of state and local law enforcement personnel.

With all the Administration's focus on counterterrorism and the push to adequately train state and local first responders, the Administration appears to propose eliminating support approved by the Congress for the Consortia members in 1999 and redirect this $12 million to other expanded or new programs in 2000. In response to an earlier question, the Department responded that it will follow through with the directives in the 1999 conference report and provide these funds to the Consortia members. Is that the case?

Answer. Yes. In fiscal year 1999, Congress appropriated a total of $20 million to be distributed among five members of the National Domestic Preparedness Consortium. Of this amount, $16 million is available under the First Responder Training Program and $4 million is available under the First Responder Equipment Acquisition Program.

As provided in the Fiscal Year 1999 Department of Justice Appropriations Act, a total of $3 million will be provided to each of the following four Consortium members: New Mexico Institute of Mining and Technology, the National Center for Bio-Medical Research and Training, Louisiana State University, the National Emergency Response and Rescue Training Center, Texas A&M University, and the National Exercise, Test, and Training Center, Nevada Test Site. A total of $8 million will be provided to the Center for Domestic Preparedness, Ft. McClellan.

Question. Congress has provided two years of funding for the four members of the National Consortium, and they are actively involved in hands-on training of these personnel. New Mexico Tech has done classes for Seattle, St. Louis, Chicago, Phoenix, and Fairfax County, Virginia, for example. Each of these four institutions have existing expertise and facilities to bring to the first responder training program and are doing the job. Does the Administration propose to directly support the members of the Consortia that it established just this past summer in the fiscal year 2000 budget?

Answer. In 1998 and 1999, funding for the consortium members' activities occurred outside the traditional budget process. In 1998, in addition to appropriating funds for OJP's three existing counterterrorism programs (Local Firefighter and EMS Training: $5,000,000; State and Local Anti-terrorism Training: $2,000,000; and Counterterrorism Technology Development $12,000,000), Congress provided an additional $16,000,000 targeted to three new counterterrorism program activities: $12,000,000 for the First Responder Equipment Acquisition Program and $2,000,000 each for Ft. McClellan and New Mexico Institute of Mining and Technology.

The funding requested for counterterrorism programs under the Office of Justice Programs includes an overall increase of $38,500,000. This increase, along with $6,500,000 from OJP's counterterrorism base resources, are proposed to be used to fund the FBI bomb tech equipment program at a total level of $45,000,000, $20,000,000 more than is available in 1999. As you are aware, Congress allowed the Department to use $25,000,000 from the Working Capital Fund to pay for this program in 1999. The bomb tech equipment program was supposed to be multi-year, and the Department cannot assume that funding will be available from the Working Capital Fund in 2000 to continue this program. We believe that we can work with congressional appropriators within the total level of counterterrorism program funding proposed in the fiscal year 2000 budget to continue the training programs begun in 1999 by the consortium members while providing some permanent base of funding for the bomb tech equipment program.

Also, within the limited base resources that were available in 2000, $17,000,000 was included for the Center for Domestic Preparedness at Fort McClellan, which is a member of the National Domestic Preparedness Consortium; this is an increase of $9,000,000 from 1999. OJP will assume full responsibility for the live agent training infrastructure at the base in fiscal year 2000, and this increase is necessary to fund first responder training at Fort McClellan as well as the additional overhead costs that will be incurred once the transition is complete.

Question. How does the Administration propose to continue its first responder training program and what role with the four major training partners of the National Domestic Preparedness Consortium play?

Answer. As mentioned above, in fiscal year 1999, Congress appropriated a total of $20,000,000 to be distributed among the five members of the National Domestic Preparedness Consortium. Of this amount, the Center for Domestic Preparedness, Ft. McClellan will receive $8,000,000 and the balance of $12,000,000 will be equally divided among the remaining four members. In fiscal year 2000, $17,000,000 is requested to continue training activities at the Center for Domestic Preparedness, Ft. McClellan.

The fiscal year 2000 budget request for counterterrorism programs within the Office of Justice Programs is $173,500,000, which is a $38,500,000 increase above the amount appropriated in 1999. This request contains $17,000,000 for the Center for Domestic Preparedness (CDP) at Fort McClellan. During 1998, the CDP operated as a tenant of the U.S. Army and shared training facilities (including the "live agent" training facility), lodging, and dining facilities. Through 1999, all operations, maintenance, and facilities' support will be provided by Army personnel, based on an agreement between OJP and the Army. This agreement terminates with the Army's departure from Fort McClellan at the end of fiscal year 1999. As a result, in fiscal year 2000, CDP plans to occupy and maintain buildings and other structures at Ft. McClellan necessary for administration, classes, lodging, dining, maintenance, storage, and support. Transition of operation, support, and maintenance of the facility to OJP is estimated to cost around $11,500,000 in 2000. Some of these costs include providing a 24-hour security guard force for the training facility, physical security plans of all the CDP property including the live agent facility, and physical security systems, such as fencing and intruder detection.

The remainder of the $173,500,000 for counterterrorism programs under the Office of Justice Programs will be used as follows:

—$17,000,000 for continued base funding for three OJP counterterrorism programs that have been in existence since 1997: $5,000,000 for the Firefighter and Emergency Services Training Program, $2,000,000 for the State and Local Antiterrorism Training Program, and $10,000,000 for the Development of Counterterrorism Technologies Program.

—$81,500,000 for the Equipment Acquisition Program, which is the second of a proposed multi-year effort to provide equipment for first responders.

—$6,000,000 to provide technical assistance for each of the jurisdictions receiving equipment grants. Technical assistance is an integral part of OJP grant programs. In fiscal year 2000, OJP anticipates providing resources to more than 200 state and local jurisdictions; this is significantly higher than the 41 grantees we provided funding to in 1998.

—$7,000,000 in new funding for the Law Enforcement Training Program. This program was developed by the New Mexico Institute of Mining and Technology (with $2,000,000 in funding provided by OJP in 1998). Of this amount, $5,000,000 will be used to deliver basic first responder training to 47,000 law enforcement officers and 750 qualified trainers from the targeted jurisdictions. The remaining $2,000,000 will be used to (1) modify the command level and tactical training programs, which are currently being developed for fire and emergency medical services, to address the similar unmet needs of the first responder law enforcement community and (2) initiate the process of integrating OJP's curricula into states' law enforcement certification processes—ensuring that state-mandated basic and advanced training requirements for all law enforcement personnel are maintained.

—$45,000,000 in new money for the State and Local Detection Equipment Program, a program run in coordination with the FBI to provide specialized equipment and training to state and local bomb tech squads. This represents the second year of a multi-year effort to support and protect state and local bomb squads by outfitting them with equipment to enhance their capabilities to render safe improvised or conventional explosive devices and to detect and render safe chemical, biological, radioactive, or nuclear (CBRN) explosive devices. The goal of this program is to provide equipment to the existing 229 accredited state and local bomb technician squads throughout the United States with a baseline of render safe equipment and also to another 200 state and local bomb technician squads receiving accreditation through the FBI's Hazardous Devices School (HDS) at the Redstone Arsenal. In 1998, the FBI's HDS created a one-week specialized Weapons of Mass Destruction (WMD) Bomb Technician Emergency Action Course, based on the realization that even though bomb technicians may be among the first emergency responders to encounter a terrorist explosive device, they are relatively unprepared to address incidents involving the combined use of explosives with CBRN enhancements. In 1999, the FBI has begun the first year of a multi-year equipment and training program for accredited state and local bomb technician squads with $25,000,000 from the Working Capital Fund, consistent with language contained in the 1999 Justice Department's appropriations act. The Department had proposed in our amendment last year that we receive a direct appropriation of $49,000,000 for this program in 1999, so that we would have base funding available to continue this multi-year program in 2000 and beyond. The funding provided from the Working Capital Fund is one-time in nature, and we cannot assume that we will have this funding available in future years.

Question. On page 142 of the Department of Justice "2000 Budget Summary," the Department of Justice indicates that the Center for Domestic Preparedness at Fort McClellan is the only "live-agent" training facility in the U.S. that provides the hands-on training to respond to domestic terrorism involving various weapons of mass destruction. The other four members of the Consortia include the Nevada Test Site; the National Center for Bio-Medical Research and Training at Louisiana State University; the National Emergency and Response and Rescue Training Center at Texas A&M University; and the New Mexico Tech, a leading expert in conventional explosives. How can the Department make such a sweeping statement when there are these existing assets to train first responders?

Answer. The Chemical Defense Testing Facility—housed at Ft. McClellan—is the only facility of its kind, where live chemical agents are used in actual training. This statement did not, in any way, detract from the fact that the other Consortium member facilities are indeed excellent assets in our training architecture.

Question. I believe the most important outcome of the first responder program is training real people. Congress tapped existing facilities with the expertise to do the job to carry out the first responder training program. Will you please provide for the Subcommittee an accounting of the number of state and local personnel trained by each member of the National Consortia in fiscal year 1998 and the projected training program in fiscal year 1999?

Answer. In 1998, $2 million each was appropriated for the New Mexico Institute of Mining and Technology (NMIMT) and Ft. McClellan to provide first responder training. As a result, in 1998, 540 first responders were trained at NMIMT and an additional 500 first responders were trained at the Center for Domestic Preparedness, Ft. McClellan. In 1999, it is estimated that the Center for Domestic Preparedness will train approximately 1,300 first responders and that each of the four other Consortium members will train approximately 331 first responders, for a total of 1,324.

Question. I have learned that the Office of Justice Programs, in implementing the first responder training program, originally committed to fund the $1,000 per student stipend and other miscellaneous costs for state and local personnel who are trained through the first responder program. After the fiscal year 1998 funding was committed to the Consortia members, OJP changed its mind and now requires that the Consortia members pay those stipends out of their $2 million training budget. OJP has received healthy funding increases and should pay the stipend costs so that more personnel can be trained. How can the Department justify this policy when it means that for every four classes held, the Consortia member loses one class simply to pay the stipend costs?

Answer. In order to make training available to our nation's state and local first responder community, it has always been and continues to be OJP's intention that the training resources provided to Consortium members would be used to fund the full cost of training—which includes the costs associated with the development and delivery of training, as well as the costs necessary to transport, house, and feed first responders.

Question. Last year, Congress added an equipment component to the First Responder Training program, and as one of the sponsors of that funding, I can tell you that it was our intent to allow the additional $1 million in equipment funding to be used for both equipment purchase and training in the use of that equipment. I believe this will ensure that the proper use of the equipment is well understood and that the federal dollars spent on equipment and at the state and local levels are well spent. Why does the Administration refuse to allow the Consortia members to use these funds in a flexible manner to maximize the first responder training program?

Answer. The Department is following direction from the 1999 Conferees in requiring that the additional funds be used for equipment. The Conference Report on 1999 appropriations includes language, on page 998, directing that of the $75.5 million provided for equipment purchases, "* * * $4 million is for equipment for the National Domestic Preparedness Consortium to be distributed as described below under Training." Under Training, the Conference Report states that each of the four members of the consortium, besides Ft. McClellan, is to receive an additional $1 million from the equipment grant program.

RADIATION EXPOSURE COMPENSATION PROGRAM

Question. Ms. Reno, you are aware of my longstanding interest in implementation of the Radiation Exposure Compensation Program, which I authored and for which I have sought sufficient funding to fulfill its purpose of compensating those who

have sustained injury as a result of the United States open-air nuclear testing and uranium mining activities in the 1950s through 1970s.

The President's fiscal year 2000 budget includes $2 million to administer the Radiation Exposure Compensation Program, and $21.7 million for the Radiation Exposure Trust Fund from which payments are made. I am pleased to see the Administration continue its support of this program.

Congress has appropriated approximately $200 million to the Trust Fund established under the Radiation Exposure Compensation Act.

How many claims has the Department approved and how much has been spent out of the Trust Fund to pay these claims?

Answer. From the inception of the Radiation Exposure Compensation Act (RECA) Program in April 1992 through April 1999, the Department has approved a total of 3,135 claims valued at nearly $232 million.

Question. What is the current balance in the Trust Fund with which to pay claims during fiscal year 1999? How many claims are currently pending for compensation from the Radiation Exposure Compensation Trust Fund? Is the amount currently available in the Trust Fund sufficient to pay claims for the remainder of this fiscal year?

Answer. At the end of April, the Radiation Exposure Compensation Trust Fund had a balance of $13.6 million and there were 291 claims and appeals pending. The amount in the Trust Fund is sufficient to pay claims for the remainder of the year.

Question. Congress provided an advance appropriation of just under $16.3 million for fiscal year 1997 for the payment of these claims, and another $4.4 million was approved in the 1998 bill. No new funding was needed for this fiscal year—1999. Would you please provide the Subcommittee with updated information on the number of claims approved for payment from the Trust Fund, the average amount of the claims approved, the number of claims denied, and the general reason for denial of these claims?

Answer. Through April 1999, a total of 3,135 claims were approved—with an average value of $73,870—and 3,359 claims were denied. Claims are denied if one or more of the following eligibility criteria are not met: disease, exposure and identification of the proper party to file a claim. Downwinder and onsite participant claims are most frequently denied for failure to establish a compensable disease. Most uranium miner claims are denied because documentation does not establish exposure to the requisite amount of radiation during the course of underground uranium mining employment.

Question. For the record, would you please provide the Subcommittee with a breakdown of the types of claims approved or disapproved (childhood leukemia, other downwinder, onsite participants or uranium miners), the number of claims currently pending, and the amounts disbursed by type of claim paid?

For my use, would you please provide this same information specifically for claims from New Mexico, including the total claims received, the total claims approved, the total claims denied, and the total claims pending?

Answer. The following table lists, by category, the total value of the awards approved by the Radiation Exposure Compensation Program, as well as the number of claims and appeals received, approved, disapproved and pending at the end of April 1999.

RADIATION EXPOSURE COMPENSATION PROGRAM APRIL 1992–APRIL 1999

	Value of Awards	Claims Received	Initially Approved	Initially Dis-approved	Appeals Received	Appeals Approved	Appeals Dis-approved	Ending/Pending	
								Claims	Appeals
Childhood Leukemia ...	$1,100,000	41	22	19	9	.....	8	.....	1
Other Downwinder	74,320,000	2,753	1,465	1,217	208	22	182	71	4
Onsite Participant	12,681,106	912	170	716	149	15	130	26	4
Uranium Miner	143,491,500	3,061	1,341	1,544	324	100	215	176	9
Total	231,592,606	6,767	2,998	3,496	690	137	535	273	18

With respect to claims for which the primary claimant resides in New Mexico, the Department has approved 371 claims, with a total value of nearly $37 million. The following table lists, by category, the value of the awards and the number of claims and appeals received, approved, disapproved, and pending at the end of April 1999.

RADIATION EXPOSURE COMPENSATION PROGRAM—NEW MEXICO APRIL 1992–APRIL 1999

	Value of Awards	Claims Received	Initially Approved	Initially Dis-approved	Appeals Received	Appeals Approved	Appeals Dis-approved	Ending/Pending	
								Claims	Appeals
Childhood Leukemia	$50,000	1	1	.....	.....	.....	.....	.....	.....
Other Downwinder	250,000	17	5	10	2	.....	2	2	.....
Onsite Participant	600,000	31	7	23	6	1	5	1	.....
Uranium Miner	35,634,500	994	323	597	113	34	75	74	4
Total	36,534,500	1,043	336	630	121	35	82	77	4

Question. The request for payment of claims for fiscal year 2000 totals $21.7 million. This assumes that the Administration may submit or will support, and the Congress will enact, legislation expanding the eligible illnesses qualifying for payment. How much would be needed in fiscal year 2000 to pay claims under current law?

How many claims are projected to be filed and processed under current law in the upcoming year?

Answer. We have taken a second look at our 2000 needs and project that more funding will be required under current law than was anticipated when the fiscal year 2000 budget was developed several months ago. This revision is based on two factors: 1999 awards to-date, which have exceeded projections, and the expected impact of new regulations, described below. Based on our review, we have raised both the 1999 and 2000 award and payment projections, resulting in a lower carry forward from 1999 and higher funding requirements in 2000.

The Department of Justice adopted new program regulations, effective April 21, 1999. A key change amends the definition of a "non-smoker" to include any uranium miner who ceased smoking at least 15 years prior to the diagnosis of a compensable disease. When the fiscal year 2000 budget was developed, this proposed regulation was expected to apply to miners who developed lung cancer. Based on formal comments received and the advice of experts, the final regulation was expanded to also include miners who developed non-malignant respiratory diseases. A review of previously denied miner claims indicates that more may qualify for compensation under the expanded "non-smoker" regulation. As a result, 1999 and 2000 miner award projections have increased since the 2000 budget was developed.

In fiscal year 1999, we expect that 259 awards will be approved, with associated payments totaling $18.2 million. These 1999 estimates are higher than the projections in the pending request—199 awards and $13.7 million in payments. As a result, about $4.1 million is expected to be carried forward to 2000, rather than the $8.3 million projected in the pending budget.

In fiscal year 2000, when the new regulations will be in effect for a full year, we expect that 464 claims will be filed and about 506 will be processed. About 299 awards are expected to be approved, with associated payments totaling $24.1 million. Even absent statutory changes, we expect to require funding comparable to the pending $21.7 million request.

As displayed in the chart which follows, a $21.7 million Radiation Exposure Compensation Trust Fund appropriation, together with the $4.1 million expected to be carried forward from 1999, will provide the funding needed to make projected payments under current law and the new regulations.

Radiation Exposure Compensation Trust Fund Current Statute 2000 Estimates

(Dollars in millions)

Carry Forward	$4.1
Plus Appropriation	21.7
Plus Interest	.3
Minus Payments	24.1
Ending Balance	2.0

Question. What are the expansions of the RECA program supported by the Administration? Would you please provide the Subcommittee with the estimated annual cost of the program expansions you support?

Answer. The Administration supports including male breast cancer as a compensable condition. The pathology of male and female breast cancer is nearly identical and there is no reason for excluding the male condition. The Administration recommends the addition of childhood leukemia as a compensable disease for "onsite participant" claimants as well as expanding compensation for pneumoconiosis and

silicosis to individuals who mined uranium ore in underground mines outside an Indian Reservation. More technical suggestions include: eliminating the extent of coffee consumption as a factor for pancreatic cancer; limiting the mandatory offset for other federal payments to only those payments received from the Department of Veterans Affairs; and permitting claimants to apply for compensation three times. Finally, although there is not a formal Administration proposal before this Congress, the Department believes that the system for providing full compensation to underground uranium miners as described in the Administration's bill from the 105th Congress still represents the best method for determining eligibility.

Notwithstanding the difficulty of accurately projecting claim receipts and approvals associated with programmatic changes, we believe that, beyond the pending request for $21.7 million, an additional $10 million should be adequate to cover payments in 2000 associated with the potential statutory changes described above. This estimate takes into account the additional awards expected under the expanded regulations and assumes that the statutory changes will be implemented in the second half of 2000.

Question. Will the Administration submit its own proposed legislation to revamp programs under the Radiation Exposure Compensation Act?

Answer. At this time, the Administration is not anticipating introducing legislation to amend the RECA Program. In the 105th Congress, the Administration forwarded through the Speaker of the House a proposed bill to amend the RECA Program. However, that draft legislation did not find sponsorship in either the House or Senate. In this Congress, legislation amending RECA has been introduced in both the House and Senate by Senator Jeff Bingaman (D-NM), Representative Tom Udall (D-NM) and Representative Joe Skeen (R-NM). Both proposals expand and extend the Act well beyond the provisions of the current statute. Representative Patsy Mink (D-HI) has introduced legislation as well. With respect to each of these proposals, the Administration is committed to working with Congress to ensure that any change is consistent with the spirit and intent of the original Act, and supported by sound science. Should one of the more expansive proposals be enacted, the budget estimates will have to be revisited in order to fully fund the program.

Question. Does the Administration have any long-range estimates as to the number of claims that might be filed under the Radiation Exposure Compensation Act under current law? Under the proposed program expansions?

Answer. It is difficult to estimate with certainty the number of claims that might be filed under the existing Radiation Exposure Compensation Act or under the proposed program expansions. The Department continues to work to identify potential claimants, and to make information about the existence of the RECA Program readily available to larger numbers of Americans through outreach efforts. For example, the Program sent notification of the Department of Justice's revised regulations to over 3,200 individuals, including formerly denied claimants, advocacy groups and attorneys. Additionally, several staff members will be traveling to many of the affected communities this summer to provide information about the Program and the regulatory changes. Finally, the Program is in the process of developing its own webpage in order to reach greater numbers of individuals through Internet access, ultimately making electronic claim filing possible.

EXPANSION OF FEDERAL PRISON INDUSTRIES

Question. Earlier this year, two New Mexico constituents who own small businesses contacted me about a proposed expansion of the services provided by Federal Prison Industries (FPI). I have been told that FPI intends to significantly expand its production of signs, to the detriment of small businesses which currently produce these signs for the Federal Government. I also understand that FPI also may begin to convert commercial vehicles for use by federal law enforcement agencies.

While I believe that it is important for inmates in the Federal Prison System to learn job skills during their period of incarceration, I believed that this sort of expansion, which has a significant impact on small businesses, is inappropriate.

Are you aware of whether FPI intends to expand into the police vehicle conversion market?

Answer. FPI has recently started providing a variety of vehicle retro-fitting services for border patrol and detention vehicles for the Immigration and Naturalization Service (INS). FPI does not manufacture these vehicles. Rather, FPI performs various modification services that prepare the vehicle for the specialized needs of INS personnel.

FPI does not provide any type of retrofitting services to any state or local law enforcement agency.

Question. With respect to the expansion into sign-making, are you aware that FPI intends to expand its business from $9 million last year to over $32 million by fiscal year 2004? That might seem like a small amount given the overall size of the domestic sign market ($3.9 billion), but for a small state like New Mexico, that expansion will have a significant impact.

Answer. FPI's Board of Directors approved expanding its production of signs, decals and related items to $32 million by fiscal year 2004.

An increase in FPI's sign sales, however, does not translate into a significant impact on private sign manufacturers. FPI's expansion would affect private sign vendors only by slightly limiting the amount of additional federal business they may obtain.

The projected growth in the sign market dwarfs the increase approved by FPI's Board. The total domestic market for the types of signs made by FPI is projected to increase by almost $1.6 billion from 1999 to 2004. During the same time, FPI may increase its sign sales by only $23 million. All the additional sign business beyond which FPI supplies will be available to private vendors. This expansion is necessary to provide employment for inmates. It is FPI's mission to employ and train inmates. If the corporation can meet its inmate employment goals without increasing its sales, it does so.

FPI generally makes every effort to minimize its impact on the private sector. FPI also works to avoid jeopardizing existing contracts that a private vendor may have. Prior to approving this expansion, FPI's Board examined extensive materials dealing with the potential impact that would result from the proposal. Also, as part of the public involvement process FPI follows for each of its expansion proposals, FPI completed a detailed impact study examining the impact on private industry and free labor.

Included with the impact study were comments submitted to FPI from private sign vendors, including P&M Signs of Mountainair, New Mexico. FPI's Board was provided with copies of all comments, in their entirety. The Board reviewed this information prior to making its decision approving FPI's expansion.

P&M Signs primary federal customer is the U.S. Forest Service (USFS). Signs bought by the USFS are exterior signs for lands under that agency's control. FPI's sign production is focused primarily on interior architectural signs. P&M's comments also suggested an interest in producing road and highway signs. The legislation that provides funding for most federal roads and road signs includes stringent restrictions on the use of inmate labor. In essence, this prohibits FPI from providing more than a fraction of all federal road signs. While there is some overlap between the types of signs offered by P&M Signs and by FPI, the primary focus of each is different.

Question. What portion of the federal sign market is impacted by this expansion?

Answer. During fiscal year 1998, FPI's sign sales accounted for approximately 13.2 percent of all federal sign purchases. The decision by FPI's Board limits the annual dollar amount of FPI's annual sign sales through fiscal year 2004. If FPI were to increase its sign sales up to the limit set by its Board, FPI's share of the federal sign market is estimated to increase to $32 million or 39.7 percent.

Question. Does the Department of Justice keep records to determine whether inmates who are taught job skills by FPI actually utilize these skills once they are released from prison.

Answer. The Department of Justice does not maintain records on whether inmates, once they have been released from custody, utilize the specific job skills they were taught by FPI. However, more than specific job skills, a primary benefit inmates gain from experience with FPI is a general work ethic. For many inmates, a job with FPI is the first time they have been employed. The experience of regularly reporting to work on time, performing assigned tasks, and following a supervisor's instructions help instill a general work ethic that exhibits its benefits through the type of results found in the Post-Release Employment Project (PREP) (Attachment A).

The Federal Bureau of Prisons conducted the PREP, collecting data on more than 7,000 inmates. The PREP concluded that inmates with experience working in FPI are more likely to obtain and maintain employment after they are released from incarceration. The PREP also concluded that inmates with experience working in FPI were less likely to be recommitted than inmates without prison industries experience. Further, the PREP found that inmates working for FPI were less likely to be written up for disciplinary offenses while still incarcerated than inmates not working for FPI.

ATTACHMENT A

Training Inmates through Industrial Work Participation and Vocational and Apprenticeship Instruction

William G. Saylor and Gerald G. Gaes

Data on more than 7,000 offenders were collected to evaluate the impact of industrial work experience and vocational and apprenticeship training on in-prison and post-release outcomes. Because the training effects may be subtle, a large sample was developed to evaluate the prison training programs. Furthermore, because inmates could not be randomly assigned to the training condition, selection bias was controlled for by a statistical matching procedure that modeled the training program selection process. The results demonstrate significant and substantive training effects both on in-prison and post-prison outcome measures.

Key words: *prison industries, prison infractions, recidivism, rehabilitation, survival, vocational training*

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THE POST-RELEASE Employment Project (PREP) was designed to evaluate the impact of prison work experience and vocational and apprenticeship training on an offender's behavior following release to the community. The evaluation began in 1983, and data were collected through October 1987 on more than 7,000 offenders. Although there are many perspectives on the purposes and goals of operating prison industries and employing inmate labor, an interesting historical perspective comes from the U.S. Congress. In support of the 1930 authorizing legislation for prison industries within the federal government, the Senate Judiciary Committee gave the following rationale:

> It is unanimously conceded that idleness in prisons breeds disorder and aggravates criminal tendencies. If there is any hope for reformation and rehabilitation of those convicted of crimes, it will be founded upon the acquisition by the prisoner of the requisite skill and knowledge to pursue a useful occupation and the development of the habits of industry.[1]

Thus, even at its inception, the concept of prison industries was contemplated to serve two masters. It was designed to minimize prison disorder and to prepare inmates for a successful life after release from prison.

Theoretical Background: The Link Between Unemployment and Crime

There is theoretical and empirical support for the proposition that unemployment is a predictor of

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criminal activity.[2-10] Furthermore, recent evidence by Nagin and Waldfogel shows that a prison term can reduce the lifetime earnings of the ex-offender.[11,12] An unfortunate consequence of these findings may be that, faced with lowered expectations of gainful employment in the licit economy, the ex-offender may return to illicit economic activities. All of this research converges on the proposition that it may be very difficult to break the reciprocal relationship between crime and unemployment, especially if the individual also has received a term of imprisonment.[13]

Prison systems have a very difficult agenda if they are to affect the cycle of criminality. Data from this project indicate that in the 5 years prior to their current incarceration, half of these offenders worked less than 50 percent of the time; 42 percent worked less than 2 years in that 5-year period.

In addition to the Nagin and Waldfogel studies, there have been two major studies investigating the conditions of employment for ex-offenders. The Transitional Aid Research Project (TARP), which took place in Texas and Georgia, examined the influence of providing ex-offenders with monetary compensation during the first year after release from prison. Rossi and associates[14] concluded that this kind of unemployment insurance had two competing influences on the ex-offender's motivation to find a job. The money allowed ex-offenders an opportunity to find employment without resorting to crime and without having to settle for a low-wage job. Unfortunately, the unemployment compensation was also a disincentive to find work, because ex-offenders could afford to live without seeking employment. Rossi and coworkers suggest that transitional aid for ex-offenders could work if it were coupled with an incentive to find a job.

Schmidt and Witte[15] reviewed the evidence regarding post-release employment among ex-offenders and reached the following conclusions:

- Job terminations are typically the ex-offender's choice rather than the employer's choice.
- Post-release supervision has competing influences on employment productivity—supervision results in maintaining a job, but at lower wages than unsupervised releasees.
- When work programs allow offenders to accumulate money, inmates are more successful following release because they have more freedom to find a better paying job—this finding is consistent with the TARP findings.
- Unlike most subpopulations of the labor force, an inmate's age and education have little impact on labor market success; jobs obtained by releasees are typically low wage and low skilled.
- Offenders exhibit instability in their post-release employment. Offenders who remain employed typically have jobs in the lowest skill categories, working mainly in large manufacturing industries.
- In Michigan, halfway house participation has contributed to higher post-release wage earnings.
- Relatively stable background characteristics of the offender population contribute to higher post-release wages—white, able-bodied, married men with dependents earn higher wages.
- The most compelling factors that determine post-release wages are those associated with the economic structure of the local labor market. These factors include the ex-offender's occupation and skills, the industry of employment, and the economic climate of the local labor market.
- Citing Borus and associates, Schmidt and Witte conclude that prison programs designed to improve basic or vocational skills have failed to affect post-release employment.[15]

Similar to the findings of Borus and colleagues, Maguire and coworkers found that there were no statistically significant differences in the hazard rates of post-release arrest between a prison industry study group and a comparison group of inmates chosen from the same New York State prisons.[16] Maguire and associates controlled for time served, age at admission, prior felony arrests, grade completed, military service, marital status, occupation, race, commitment crime, employment status, prior drug use, and institution misconduct rate. By choosing comparison subjects from the same prisons as the study participants, they controlled for prison environment effects, but it is likely that the approach also exaggerated the program effects (this phenomenon is referred to as selection bias and is discussed in more detail later). Their method potentially introduced bias in program effects because inmates working in prison industries are likely to be more "motivated," and this fact would have left a less motivated pool of inmates to be used as comparison subjects. Despite this potential bias toward favorable findings, Maguire and colleagues found no effect of prison industries.

In related research on the hard-core unemployed (HCU), Goldstein reviewed training literature on the problem of assisting the HCU into the labor market.[17] Goldstein argues that skill training alone does not solve the problems of the HCU. These individuals have developed expectations of job failure that are difficult to overcome. Although no published data on the overlap in the ex-offender and HCU populations could be found, there are theoretical reasons to believe these populations do overlap, especially in light of Nagin and Waldfogel's evaluation of expected lifetime earnings of ex-offenders.

In yet another related area of research, some economists (see especially Piore[18]) argue for a segmented labor market to explain differences in the unemployment patterns of the poor and the more advantaged. The primary sector of the labor market is characterized by jobs that form a progression from lower to higher pay. One's human capital (skills, experience, education) contributes to promotional opportunities. In the secondary labor market, skill levels are relatively low, and human labor is more fungible. Thus, one's limited human capital is not strongly related to promotional opportunities. The secondary labor market is characterized by high instability, low expectations for advancement, and lower wages. If one's entry level is an occupation in the secondary labor market, then one's long-term opportunities are severely limited.

Although there is no specific occupational definition of the secondary labor market, data on the broad occupational groupings of industries in which ex-offenders find jobs will be examined and compared to the occupational groupings in which these individuals were employed prior to their most recent incarceration. This approach will yield insight into the extent to which ex-offenders enter the secondary labor market.

Thus, the evidence to date on the employment patterns of ex-offenders reveals that these individuals are faced with lowered expectations and extremely precarious labor market conditions. Many do not have skills or education and carry the additional burden of the stigma associated with a term of imprisonment. Under these conditions, it is questionable whether skills training in prison can be used to penetrate the difficult labor market barriers that these ex-offenders face upon their release.

Some economists argue that a segmented labor market explains the differences in the unemployment patterns of the poor and the more advantaged.

The current study was undertaken with a different approach in mind. First, it explicitly tries to control for selection bias in prison training evaluations. Second, recognizing that the effects of training may be subtle and the size of the effect may be relatively small, it employs a larger sample than previous studies. Last, this study examines the impact of work and skills training on institutional adjustment, licit wages after release, and post-release recidivism.

Study Design and Methodology

Unlike most studies of prison vocational training or work experience, PREP was designed as a prospective longitudinal evaluation. Inmates were selected as study group members if they had participated in industrial work within prison for at least 6 months prior to their release or had received in-prison vocational instruction or apprenticeship training. Based on these criteria, 57 percent of the study group participants worked exclusively in prison industries; 19 percent had a combination of work experience and vocational training; and the remaining 24 percent had received vocational training, apprenticeship training, or a combination of the two.

A quasi-experimental design was used in which comparison subjects were chosen from the "reservoir" of all other inmates released in the same calendar quarter as study group members. When either a study or comparison group member was selected, a data collection form was initiated and prison staff filled out the instrument. If an inmate went to a halfway house, staff at these contract facilities completed a section of the data collection form. This information was then mailed to the Bureau's Office of Research. Post-release information for the first year of release was collected by calling supervisory probation officers whose job was to meet with the ex-offender and monitor his or her behavior, including verified employment.

It is difficult to measure the effectiveness of programs without representing a biased picture of the results due to two key methodological issues. These issues—selection bias and "strong" inference designs—are related to the measurement of program effectiveness and are often ignored in the research design of many program evaluations. PREP was designed to address both problems.

Selection Bias

Selection bias refers to unintended influences that control the selection of research observations and results from an inadequate research design. Such designs introduce a nonrandom process into the selection of study and comparison group members. Selection bias can produce a study group composed of members that show a more favorable outcome than "control" individuals, although the actual difference between these groups is attributable to observed and unobserved factors that predispose the study group to a more favorable outcome even in the absence of some program intervention.

The simplest way to control for selection bias is to assign inmates to programs randomly. There are instances when random assignment has been employed; however, there are practical and ethical reasons why it is rare that random assignment is used in selecting inmates for programs. It is often impractical to assign inmates to programs randomly because: (1) researchers are not allowed to control the selection process, and (2) inmates will contaminate the random assignment process by dropping out of a program, by disrupting the program, or by transferring into a group other than the one to which they were assigned.

In addition to formidable practical problems, there are also important ethical considerations why inmates should not be randomly assigned to prison programs. Inmates who express an interest in a specific program show a motivation to learn or to change. If an inmate who is motivated is assigned to a control (no program) condition, then that motivation may be subverted in an irreparable way. Moreover, one must question what is achieved by randomly assigning an inmate to a program when he or she is not motivated and may even be hostile to program participation. Is that program being contaminated for other inmates? Could random assignment preclude an inmate's future interest in a program by assigning him or her at a time before he or she is willing to participate?

One final statement regarding the comparability of experimental and observational designs is in order. Heckman and Hotz[19] found that observational studies can yield the same estimates as experimental studies when there is a theoretical reason to decide among the various observational estimators.

Strong Inference Designs

There are technical statistical solutions to selection bias. However, program evaluation designs would be more compelling if researchers always adopted a strong inference design. A strong inference design is one in which the researchers explicitly state the theoretical mechanism through which they assume the program intervention will be effective. Within the context of the research design, the mechanism is measured, preferably before and after the intervention, and then the change in the mechanism is analyzed in relation to the outcome variable.

In the current study, it was assumed that prison work would be related to the supervisor's ratings of work abilities, work habits, and the motivation to work. An attempt was made to measure these mechanisms through the supervisor's ratings. Theoretically, the probability of recidivism for inmates who received prison work experience should be related to their supervisor's ratings. Strong inference designs enhance confidence in observed treatment effects; that is, effects are real and not an artifact of selection bias or some other contamination.

Estimating the Propensity Score

To overcome the problem of selection bias, the study employed a statistical matching procedure developed by Cochran and Rubin[20] and further refined by Rosenbaum and Rubin.[21–23] The procedure uses a two-step approach. In the first step, the researcher models the selection process, contrasting program participants and nonparticipants on variables related to their participation. As a result of the modeling, a propensity score is generated, indicating the likelihood that an offender would be selected for participation in prison

industry or vocational training, irrespective of whether he or she was in the study group or the comparison reservoir. Thus, individuals in the comparison reservoir who have high propensity scores should be similar to study group members who actually participate in work and training programs.

In the second step, the propensity score is used in conjunction with other variables to select matched comparison subjects. Theoretically, the matched comparison subjects are equivalent to the study group participants in every respect except for their participation in the work or vocational training program. (Although the results are not displayed here, it is empirically demonstrated that the two groups are statistically indistinguishable on the set of measures used to model the employment/training selection process.)

The authors had reason to believe that there were many individuals in the comparison reservoir who had an interest in working in prison industries and would have, had the opportunity been available. Throughout the duration of the PREP, about 35 percent of the inmates housed in Bureau facilities were employed by prison industries; however, the waiting list to become employed by prison industries was always lengthy. There were always far more inmates who desired a prison industries job than prison industries could accommodate.

The ultimate purpose of the propensity score is to select appropriate comparison subjects. Nevertheless, the results of the logistic regression that generates the propensity score yield insight into the selection process itself. The results of this analysis demonstrated that study group members were more likely to be released to a halfway house, were younger at the time of their current commitment, had more prior commitments, were more likely to have committed an instant violent offense, were more likely to have been incarcerated for longer periods of time, were more likely to have little or no violence in their past, were more likely to be non-Hispanic and white, and were more likely to have had a higher security level.

The propensity score (estimated log odds), along with the other variables used in the propensity score estimation, was used in the procedure that matched each study observation with a comparison observation selected from the comparison reservoir of all other offenders released in the same calendar quarter. It was required that the matching algorithm first establish an exact match based on sex and race. Then, for each study group member, a matched comparison observation was selected based on his or her geometric similarity to the study group member. Following procedures outlined by Rubin and Rosenbaum, potential comparisons of the same sex and race were first culled from the reservoir by using a proportion of the standard deviation of the estimated logit, selecting from the reservoir of comparison subjects those whose propensity scores were within 0.20 standard deviations of the study group member's propensity score. From that smaller pool, the comparison subject was chosen who had the smallest geometric distance from the study group member on the propensity score and all the other variables. Once a comparison observation was chosen, all data that were to be prospectively gathered on study group members were also gathered on comparison offenders.

The ultimate purpose of the propensity score is to select appropriate comparison subjects.

Results

Occupational changes in the study and comparison groups

Table 1 shows the relationship among the distributions of a sample of study and comparison group participants in the major occupational groupings. Because every job was categorized using the U.S. Department of Labor's *Dictionary of Occupational Titles*,[24] occupations could be grouped into nine major groups: professional/technical, clerical/sales, service, agricultural/fishing, processing (e.g., processing metal, ore, coal, gas, rubber, wood), machine trade (e.g., metal working, printing), bench work (e.g., fabrication, assembly, repair of metal products, electrical products), structural work (welding, painting, plastering, cementing, construction), and miscellaneous (e.g., transportation, amusement, recreation).

Compared with the distribution of the entire U.S. labor force in 1983, offenders in the study group were less likely to work in professional and clerical occupations and more likely to work in machine trades, structural work, and miscellaneous occupations. Comparison group offenders had very similar pat-

terns, although they also were more likely to work in service jobs as well, relative to the entire U.S. labor force.

Table 1 also represents the occupational categories of study group participants while they were employed or trained in prison. As Table 1 shows, individuals who were receiving vocational or apprenticeship training were primarily instructed in machine trades and structural work. Industries employees were working primarily in bench work activities and secondarily in clerical and machine trades.

After release from prison, both study group and comparison group offenders were working in similar occupations. They were primarily doing structural

Table 1

OCCUPATIONAL CHANGES IN THE STUDY AND COMPARISON GROUPS

	Occupational changes in the study group							
Occupational classification	**U.S. labor force, 1983**	**Pre-incarceration**	**Vocational training**	**Apprentice-ship training**	**Prison industries**	**Halfway house**	**Six-month follow-up**	**Twelve-month follow-up**
Professional/ technical	26.4	13.5	12.7	17.5	2.3	8.1	11.9	11.9
Clerical/sales	28.0	16.7	15.0	3.5	19.0	20.5	18.0	19.3
Service	13.7	15.4	5.3	16.7	3.0	13.6	13.8	11.9
Agricultural/ fishing	3.7	4.4	1.6	2.6	0	1.9	2.9	3.3
Processing	3.3	2.0	5.5	4.4	1.4	2.0	1.5	1.0
Machine trade	6.9	9.1	25.4	14.9	12.4	10.5	10.4	10.4
Bench work	3.6	4.3	4.2	7.9	47.9	3.9	3.3	3.8
Structural work	7.7	23.5	23.8	29.8	3.9	30.5	26.0	26.0
Miscellaneous	6.7	11.1	6.4	2.6	10.1	9.1	12.2	12.3
	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0
Number of cases	100,922,000	2,837	1,357	114	2,024	2,538	2,312	1,624

	Occupational changes in the comparison group				
Occupational classification	**U.S. labor force, 1983**	**Pre-incarceration**	**Halfway house**	**Six-month follow-up**	**Twelve-month follow-up**
Professional/ technical	26.4	12.5	11.8	12.9	12.5
Clerical/sales	28.0	15.9	17.6	19.8	20.0
Service	13.7	20.6	11.2	12.4	11.1
Agricultural/ fishing	3.7	4.0	5.9	4.5	5.2
Processing	3.3	3.5	1.8	1.9	2.0
Machine trade	6.9	7.5	10.0	8.0	7.7
Bench work	3.6	4.1	3.5	3.8	3.1
Structural work	7.7	20.3	30.6	26.9	26.2
Miscellaneous	6.7	11.6	7.6	9.8	12.1
	100.0	100.0	100.0	100.0	100.0
Number of cases	100,922,000	2,132	170	792	610

work, followed by clerical/sales, service jobs, and professional. Relative to the U.S. labor force, after getting out of prison, offenders were more likely to do structural work or miscellaneous jobs and less likely to work in clerical or professional jobs.

In the aggregate, relative to their occupation groupings prior to prison, following prison, offenders were more likely to pursue clerical/sales jobs, somewhat more likely to pursue structural jobs, and more likely to pursue miscellaneous jobs. They were slightly less likely to pursue professional jobs.

Table 1 depicts job changes in the aggregate. Table 2 is a mobility table that depicts the transitions that occur for individuals prior to their incarceration and 12 months after their release from prison. This table, which collapses data across study and comparison groups, provides insight in the mobility patterns. Some of the cells in this table were sparse and a statistical test of the patterns was not done; however, Table 2 does present some interesting descriptive patterns of pre- and post-imprisonment mobility.

Table 2 is designed to be read row by row. For example, the first row shows individuals who held a professional job prior to prison and the percentage of pre-incarceration professionals who subsequently held a professional, clerical/sales, service, or other job. Thus, 28 percent of professionals held a professional job after prison, 25 percent held clerical/sales jobs, and so forth. Each cell of the table first indicates the number of individuals who had a particular set of pre-incarceration and post-incarceration jobs, and then, for each pre-incarceration occupational group, the percentage of individuals from that group who held a specific post-incarceration job. Thus, the percentages in Table 2 are row percentages that sum to 100 percent for each row.

The diagonal of Table 2 indicates the number and percentage of individuals who were employed in the same occupational categories prior to and after prison. The structural trades (51 percent) and clerical/sales (39 percent) occupations were the most stable. One of the largest transitions out of an occupation group into a particular group was for profes-

Table 2

OCCUPATIONAL MOBILITY FROM PRE-INCARCERATION TO POST-INCARCERATION JOB*

Frequency Row PCT	Professional/ technical	Clerical/ sales	Service	Agricultural/ fishing	Processing	Machine trade	Bench work	Structural work	Miscellaneous	Row totals
Professional/ technical	61 28.11	55 25.35	20 9.22	6 2.76	3 1.38	13 5.99	10 4.61	27 12.44	22 10.14	217 100%
Clerical/sales	43 16.04	105 39.18	32 11.94	9 3.36	1 0.37	14 5.22	12 4.48	32 11.94	20 7.46	268 100%
Service	19 7.79	43 17.62	69 28.28	6 2.46	4 1.64	22 9.02	9 3.69	51 20.9	21 8.61	244 100%
Agricultural/ fishing	8 10.81	6 8.11	2 2.7	22 29.73	3 4.05	3 4.05	2 2.7	20 27.03	8 10.81	74 100%
Processing	4 11.76	5 14.71	2 5.88	2 5.88	0 0	5 14.71	0 0	13 38.24	3 8.82	34 100%
Machine trade	7 4.76	21 14.29	11 7.48	4 2.72	2 1.36	43 29.25	5 3.4	37 25.17	17 11.56	147 100%
Bench work	6 8.7	8 11.59	7 10.14	1 1.45	2 2.9	8 11.59	9 13.04	26 37.68	2 2.9	69 100%
Structural work	24 6.94	27 7.8	31 8.96	10 2.89	4 1.16	28 8.09	13 3.76	175 50.58	34 9.83	346 100%
Miscellaneous	21 11.41	34 18.48	10 5.43	6 3.26	1 0.54	19 10.33	6 3.26	29 15.76	58 31.52	184 100%

*Rows indicate pre-incarceration job; columns reflect 12-month follow-up job.

sional/technical occupations. Among these individuals who held these types of jobs prior to prison, 25 percent held a clerical/sales position after prison.

The data in Tables 1 and 2 seem to support the thesis that prior to incarceration offenders are more likely than the general labor force to be employed in secondary labor market occupations, although there is insufficient detail to be precise about this conclusion. The primary post-incarceration jobs 12 months after release were clerical/sales, structural work, and miscellaneous occupations. The job emphasis in prison was bench work, machine trades, and clerical/sales. With all of the resources devoted to bench work trades within prison industries, very few offenders find such jobs within 12 months of release. One of the reasons bench work is emphasized in prison is that such trades teach a skill and these types of occupations lend themselves to featherbedding, allowing industries to employ as many inmates as possible.

Type and frequency of disciplinary reports within the last year of prison

The data in this section were statistically analyzed using a chi-square statistic with degrees of freedom equivalent to the number of observations in the cross-classification. The analysis compared misconduct between the study and comparison groups. The data reported here reached conventional statistical significance ($p < .05$).

An analysis of the frequency of disciplinary reports showed that 22.2 percent of study group participants and 26.2 percent of comparison group inmates received an incident report within the last year of commitment. This finding reflects a difference of 4 percent in the rate of incident reports, but in a relative context study group members were 15 percent less likely to receive an incident report than comparison group inmates.

The Bureau of Prisons uses four levels of misconduct seriousness that determines levels of sanctions commensurate to the misconduct. Comparison group members who received an incident report for the most serious types of institutional misconduct were 63 percent more likely to be convicted of that charge—2.6 percent (comparison) versus 1.6 percent (study)—and were 46 percent more likely to be punished for the second more serious level of institutional misconduct within the last 2 years of their incarceration—3.5 percent (comparison) versus 2.4 percent (study).

Although the percentage differences reported here may appear small, because the quasi-experimental design controlled for background differences between the study and comparison groups, the differences are statistically and substantively meaningful. Furthermore, the larger relative percentages more accurately convey the differences in the rates of reported misconduct between the two groups. Misconduct is a serious problem faced by all prison administrators. It threatens the orderly management of the institution and can threaten the lives of staff and inmates. Consequently, even an absolute difference of 4 percent in misconduct that can be attributed to prison work and vocational and apprenticeship training is a very significant finding.

Halfway house outcomes

For those offenders who were released to a halfway house prior to their release to the community, outcome data on their criminal recidivism and employment were collected. The data in this section were also analyzed using a chi-square statistic. The relevant variable was cross-classified by study versus comparison group membership. Only significant results are reported in this section using conventional statistical significance levels ($p < .05$).

For comparison group members, 6.8 percent escaped from the halfway house during their stay, and 9.1 percent were returned to Bureau of Prisons custody for a new arrest or a technical violation. The percentages for study group members were 5.2 percent and 8.4 percent, respectively. Because other dispositions were possible, 83.3 percent and 83.9 percent of the comparison and study groups successfully completed their halfway house stay. Thus, there was little difference in recidivism between the two groups while in a halfway house.

Study group members were more likely to obtain a full-time (86.5 percent) or day labor (9.0 percent) job while in the halfway house than were comparison subjects. Only 62.1 percent of comparison subjects obtained a full-time job and 1.3 percent obtained a day labor job.

Twelve-month post-release outcome—Recidivism

Twelve months after release from prison, 6.6 percent of study group members and 10.1 percent of comparison group members had their supervision

revoked either because of a technical violation of supervision or because they had been rearrested for a new offense. Thus, study group members at the end of 1 year were 35 percent less likely to recidivate than comparison group members. Although the absolute difference may not appear large, 6.6 percent versus 10.1 percent, the relative difference was statistically significant and quite large—35 percent.

Previous recidivism studies conducted by the Office of Research within the Bureau of Prisons have consistently demonstrated that within the first year of release, about 20 percent of offenders are returned to prison for a new arrest or technical violation of their supervision. If a random sample of releasees had been taken and no adjustment made for the background differences between the study group and comparison reservoir members, the group differences would have been greatly exaggerated (6.6% study versus 20% comparison). Although there is no independent confirmation of the propensity score adjustment, theoretically both potential differences in the background characteristics between study and comparison group offenders as well as their "propensity" or motivation to select themselves into work, vocational, and apprenticeship programs were controlled for.

Twelve-month post-release outcome—Employment

In each of the 12 months following release, study group members were more likely to be employed than comparison group members. By the 12th month, study group members were 14 percent more likely (71.7% versus 63.1%) to be employed. These differences reached conventional levels of statistical significance using a chi-square test of the difference ($p < .05$).

There were no statistical differences in the average wages earned between these two groups. For individuals employed throughout the 12-month period, the average wages were about $9,700. According to the U.S. Bureau of the Census, the poverty level for a family of two persons ranged from $6,483 to $7,704 from 1983 to 1988, the years in which most of the PREP follow-up data were collected. For a family of four, the poverty level ranged from $10,178 to $12,092 in that same time frame. Thus, the average wages of ex-offenders for the first year after release from prison were very close to the poverty thresholds.

In each of the 12 months following release, study group members were more likely to be employed than comparison group members.

Long-term recidivism

In 1995, the automated Bureau of Prisons records were reviewed to determine whether the study or comparison group members had been recommitted to a federal facility for a new offense or had been returned for a technical violation of their supervision. The observations in this follow-up had been released for as long as 12 years or as few as 8 years. It was possible for offenders to be arrested, convicted, or confined in jurisdictions other than the federal criminal justice system. Although the federal recommitment data certainly underestimate total recommitment activity, there is no theoretical reason to believe that study or comparison subjects would be more or less likely to be recommitted in non-federal jurisdictions. Thus, the study versus comparison group contrast should be unbiased.

The analysis examined the amount of time an offender was in the community prior to his or her commitment for a new federal offense. The data were analyzed using the Cox proportional hazards model. The Cox proportional hazards model is a partially parametric technique that allows estimation of the effects of independent variables on the hazard of recidivating without estimating the precise base hazard rate. Separate models were estimated for males and females, because it is well known that women are less likely to recidivate than men. Women who did fail in the study, however, failed much earlier, on average, than men. The average survival time for men who failed was 811 days; for women this figure was 647 days.

The study group participants were divided into three subgroups for the purpose of this analysis. There was a prison industries (Ind) group (57 percent), a vocational training (VT)/apprenticeship training (App) group (24 percent), and a combination prison industries/training (Ind/VT/App) group (19 percent). Dummy variables were created that contrasted these groups to comparison group members.

There were no significant effects for the model of females. This finding was probably due to the fact that so few women recidivated in the time period. Only 52 of the 904 women were recommitted for a new offense over the entire period.

The model for the men yielded significant results and is represented in Table 3. Aside from the program participation variables, the decile of the individual's propensity score (decile of propensity score), the natural log of time served for the commit-

Table 3

COX PROPORTIONAL HAZARDS MODEL FOR THE ANALYSIS OF DURATION TO RECOMMITMENT FOR A NEW OFFENSE FOR MALE OFFENDERS

Variable	Coefficient	Standard error	WALD TEST	DF	SIG	EXP(COEF)
Program participation						
Industrials (Ind)	–.2799	.1125	6.1878	1	.0129	.76**
Vocational training (VT) or apprenticeship training (App)	–.3952	.1623	5.9271	1	.0149	.67**
Ind/VT/App	–.2575	.1627	2.5028	1	.1136	.77
Deciles of propensity score						
1st	–.2101	.1709	1.5114	1	.2189	.81
2nd	–.3659	.1642	4.9664	1	.0258	.69**
3rd	.2276	.1282	3.1526	1	.0758	1.26*
4th	.0012	.1361	.0001	1	.9930	1.00
5th	.1065	.1322	.6484	1	.4207	1.11
6th	.1390	.1308	1.1285	1	.2881	1.15
7th	.2546	.1294	3.8713	1	.0491	1.29**
8th	–.2655	.1643	2.6106	1	.1062	.77
9th	–.1483	.1626	.8309	1	.3620	.86
10th	.1293	.1554	.6918	1	.4055	1.14
Log time served	.8123	.0652	155.3531	1	.0000	2.25**
Release cohort						
1985	.2395	.0804	8.8826	1	.0029	1.27**
1986	.0507	.0882	.3306	1	.5653	1.05
1987	.0233	.1379	.0285	1	.8661	1.02
African American	.1825	.0467	5.2893	1	.0001	1.20**
Hispanic	.2816	.0631	19.9345	1	.0000	1.33**
Release age group						
18–24 years	.2700	.1427	3.5797	1	.0585	1.31*
25–34 years	.1163	.0883	1.7365	1	.1876	1.12
35–44 years	.0809	.0934	.7503	1	.3864	1.08
45–54 years	–.1381	.1345	1.0534	1	.3047	.87
66+ years	–.3630	.2319	2.4505	1	.1175	.70
Education group						
Elementary school or less	.1877	.1326	2.0017	1	.1571	1.21
9th–11th grade	–.0272	.1184	.0528	1	.8183	.97
12th grade	.0465	.1043	.1992	1	.6554	1.05
13th–15th	.1440	.1665	.7476	1	.3872	1.16
16th grade or beyond	–.5596	.3471	2.5993	1	.1069	.57

–2 log likelihood, 9262.706; covariates (–2LL), 262.491; df = 29; $p < .0001$.
*Significant, $p < .10$.
**Significant, $p < .05$.

ment during which these inmates were identified for this study (log time served), the year the inmate was released to the community (release cohort), race (African American), ethnicity (Hispanic), age at release (release age group), and education level (education group) were included. For propensity score, release cohort, release age group, and education group, missing data were treated as categorical values. For every grouping variable other than program participation, the variables were coded as effects vectors. Thus, the coefficients should be interpreted relative to the adjusted grand mean of the outcome measure.

Table 3 shows that the model with the covariates is statistically significant. The propensity score was used in this analysis as a proxy for all of the background characteristics that were used to produce the estimated logit for the selection process. Thus, inmates with high propensity scores were the most likely to select into these programs given their background characteristics. There does not appear to be any coherent pattern of significant propensity score coefficients. This finding demonstrates that the two-stage selection method for identifying comparison observations yielded two groups that were balanced with respect to this proxy measure.

The coefficients for Hispanics, African Americans, younger inmates (ages 18 to 24), inmates with longer periods of time served, and inmates released in 1985 were statistically significant. These findings indicate these groups were more likely to recidivate throughout the observation period. These measures were included in the model to provide statistical adjustments for any imbalance between the program and comparison groups not accounted for by modeling the selection process (represented in the model by the propensity score) and the matching algorithm.

Two of the program participation variables were statistically significant and the third approached significance. Inmates who worked in prison industries were 24 percent less likely to recidivate throughout the observation period while those who participated in either vocational or apprenticeship training were 33 percent less likely to recidivate throughout the observation period. Inmates who participated in all three programs were 23 percent less likely to recidivate, although the effect for that group was not as significant. (For the Cox proportional hazards model these percentages are obtained by subtracting the value 1 from the estimates in the column labeled Exp[Coef]. For example, for the industries estimate in the first row of Table 3, .76 minus 1 yields –.24, which, when multiplied by 100, produces –24 percent.)

It appears that there was a long-term impact of prison industries and vocational or apprenticeship training on post-release recommitment rates.

Summary

Despite the stigma of imprisonment and the lowered expectations of an ex-offender, it appears that prison programs can have an effect on post-release employment and post-release arrest in the short run and recommitment in the long run. The failure to find these effects in the past may have been due to either the ineffectiveness of the particular programs that were evaluated or to an inadequate research design that, among other things, provided insufficient sample sizes or failed to control for selection bias. While the data reconfirm the notion of a secondary labor market for ex-offenders, as well as extremely low wages in the first year after release, inmates who participated in work and job skills programs were less likely to be recommitted to federal prisons as much as 8 to 12 years after their release.

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QUESTIONS SUBMITTED BY SENATOR MITCH MCCONNELL

INTRODUCTORY STATEMENT BY THE DEPARTMENT OF JUSTICE

We are happy to respond to the extent possible to the questions from the Committee, but are constrained by the fact that litigation planning is on-going.

Since December 1998, when the Attorney General decided that there were viable bases to pursue recovery of the Federal Government's tobacco-related health care costs through litigation, the Department has been working to establish a tobacco litigation team within the Civil Division. The litigation team, currently composed solely of Department personnel, is studying all aspects of potential litigation against tobacco companies and working to devise a litigation plan for the United States. Department attorneys are reviewing past litigation against tobacco companies by private litigants and by the state attorneys general. We have heard from members of the public, including law professors and attorneys, who have their own views concerning plausible federal lawsuits against the tobacco companies. We are considering a large body of factual material concerning the conduct of the tobacco companies, the potential bases for tobacco industry liability to the United States, and the nature and scope of damages that may be recovered. In order to ensure accountability by the tobacco industry, the Department is committed to assembling the strongest team and preparing the most effective litigation effort possible. We have agreed to retain outside expert legal consultants and may hire experienced attorneys as Justice Department employees, where their prior experience will economically fill litigation requirements. We intend to build a litigation team to present the strongest possible case or cases on behalf of the United States.

The importance of this initiative cannot be overstated. Tobacco-related health care costs exceed $50 billion per year, and the Federal Government pays a substantial portion of these costs. The states settled their litigation against the tobacco industry for more than two-hundred billion dollars. It is important to keep in mind that the United States' tobacco-related health care costs substantially exceed those of the states. The Department's efforts to recover money properly owed to the Treasury in litigation brought on behalf of the American people is a matter of singular importance.

We next address the specific questions submitted.

FARMERS' CONCERNS

Question. On February 2, 1999, seven Members of the Kentucky Congressional delegation, including myself, wrote to President Clinton expressing our concern that the planned litigation by the Justice Department would "further harm tobacco farmers who are already feeling the devastating effects of the proposed settlement between the states and these manufacturers." How does the Administration reconcile its expressed concern for tobacco farmers with the fact that any successful federal litigation against the tobacco manufacturers would necessarily be an additional devastating blow to the tobacco farmers. When responding to this question, please provide any documents related to this topic, both electronic and written, that the Justice Department has drafted or considered.

Answer. The Administration is fully committed to working with all parties, as needed, to ensure the financial well-being of tobacco farmers, their families, and their communities.

First, the Administration supports the $5 billion agreement recently produced by the states, and by farmers and industry representatives, to provide financial assistance to tobacco farmers and their communities.

Second, the Administration would support legislation to settle the federal claims to the state tobacco settlement funds in exchange for a commitment by the states to use the federal share on shared national and state priorities, which include protecting tobacco farmers, as well as preventing youth smoking, improving public health, and assisting children.

Third, the Administration believes that in connection with any judgment or settlement of other (non-Medicaid) federal claims there should be established a fund to protect farmers from the unintended consequences of that lawsuit, as was done in the settlement with the state attorneys general. This Administration is committed, as any federal litigation proceeds to judgment or settlement, to making sure that adequate funds are set aside by legislation or other appropriate means, developed in consultation with Congress and representatives of tobacco farmers, their families, and communities, to ensure the financial security of tobacco farmers and their communities.

LEGAL ACTION PLANNED BY THE JUSTICE DEPARTMENT

Question. You have asked the Congress to appropriate $20 million for fiscal year 2000 to pursue a case that the Wall Street Journal reported—on the basis of comments by Justice Department officials—as containing "several weaknesses in the Federal Government's legal position." Cloud, David S., "Congress May Have to Play Key Role in Justice Department's Tobacco Suit," The Wall Street Journal, Jan. 27, 1999; see also, e.g., Adelman, David J. "Tobacco: Review of Federal Reimbursement Claim Conference Call," Morgan Stanley Dean Witter, Feb. 4, 1999.

In the past, the Justice Department has consistently taken the position that it does not have the authority to sue tobacco manufacturers to recover Medicare and other costs incurred by the Federal Government in connection with tobacco related illness. In evaluating the Department's request for funding, it is important for the Subcommittee to know the Department's assessment of its authority to bring such a suit.

On April 30, 1997, at a hearing before the Senate Judiciary Committee, you testified that the Department did not have authority to bring a direct action against tobacco manufacturers to recover Medicare and other costs incurred by the Federal Government in connection with tobacco-related illnesses. What has happened since that time to change your mind concerning the Department's authority to sue the tobacco industry?

Answer. The Justice Department has never concluded nor taken the position that the United States has no authority to sue tobacco manufacturers to recover Medicare and other costs, apart from Medicaid. To the contrary, we have concluded that viable grounds for suit do exist. When the Attorney General testified in April 1997, before the Senate Judiciary Committee, she addressed her comments to the issue of the actions filed against the tobacco industry by the states. Accordingly, her comments about the lack of authority for a direct cause of action related solely to Medicaid costs, not to Medicare or other costs. While the Attorney General has acknowledged that her testimony was not as clear as she would have liked, her answer was limited to whether the United States had authority to join in the states' lawsuit relating to Medicaid outlays; and it appears from Senator Kennedy's follow-up question that he understood that the testimony was so limited.

Question. Please provide any memoranda or other documents prepared by or for the Justice Department since January 1, 1994, addressing in any respect whatsoever a potential lawsuit against the tobacco industry, including, but not limited to, the grounds, or lack thereof, for suing the tobacco manufacturers.

Answer. We have provided the Subcommittee with the following documents, which were prepared by persons outside the Department of Justice. These documents are quite voluminous, therefore are not printed in this hearing record:

—two July 28, 1998 memoranda, "Common Law Claims for Tobacco Related Federal Health Care Costs" and "Public Nuisance as Independent Injury, Basic Principles;"

—an August 12, 1998 memorandum, "The Argument for a Federal Lawsuit to Recover Tobacco-related Health Care Costs;"

—an August 13, 1998 memorandum on antitrust issues from Einer Elhauge;

—a letter that Professor Laurence Tribe sent to Senator Kennedy on MCRA (dated July 15, 1998);
—a memorandum by G. Robert Blakey, Einer Elhauge, Richard Scruggs, and Laurence Tribe, "The Case for a Federal Tobacco Lawsuit;"
—a memorandum by the authors of the previous memorandum and by Kim Tucker and Jonathan Massey, "Follow-Up Comments on Federal Tobacco Lawsuit;"
—an undated draft complaint from the law firm of Scruggs, Millette, Bozeman & Dent, P.A.;
—a document entitled "Methodologies for Calculating Tobacco-Related Health Care Expenditures and Preliminary Estimates," dated July 24, 1998, from the law firm of Scruggs, Millette, Bozeman & Dent, P.A.;
—a memorandum entitled "Why the Federal Government Should Sue the Tobacco Industry," prepared by Action on Smoking and Health for Senator Richard Durbin; and
—an analysis written by David Vladeck, Todd Heyman and Allison Zieve, concerning bases for a suit to recover federal health care expenditures caused by tobacco products.

As a matter of longstanding practice, internal Department analyses prepared in anticipation of litigation are not being provided because to do so could be damaging to the interests of the United States in any litigation that the Department may initiate. Such internal deliberative materials are privileged in litigation and would not be available to the other parties in the litigation.

Question. Why did Department of Justice officials previously think there was no direct cause of action under the Medical Cost Recovery Act? What did Department officials previously see as the flaws in the case and how are you going to overcome such flaws.

Answer. At no time has the Department believed that there was no direct cause of action under the Medical Care Recovery Act (MCRA). To the contrary, the Department has brought successful lawsuits to recover the costs of medical care directly under MCRA.

Question. The Administration directly connects its proposed 55-cent increase in the cigarette excise tax to health care expenditures in various federal programs. See Fiscal Year 2000 Budget of the United States Government, Table S–8 (listing Veterans, Federal Employees Health Benefits Program, Department of Defense, and Indian Health Service). Doesn't this suggest that the amount of previously collected federal tobacco excise tax revenues should offset any claims for past federal health care expenditures?

Similarly, doesn't this indicate that future projected revenues from the current federal excise tax on tobacco products should offset any claims based on alleged future health care costs?

Answer. No. The Department believes that liability for federal tobacco-related health care costs properly may be assessed against the parties responsible for those costs. The Department does not agree that excise taxes relieve or reduce the accountability of the tobacco companies for these costs.

Question. Please describe and cite the specific statutes and liability theories on which you intend to rely for this lawsuit.

What relief does the Department intend to seek? What types of damages?

Answer. As stated above, the Department is evaluating a number of bases upon which parties may be held liable to the United States for its costs incurred as a result of the use of tobacco products. The legal theories are still under development, and we have not made any final decisions on those that we will rely upon in litigation.

Question. It has been reported that the Administration will be seeking or supporting new tobacco-liability legislation because of the legal impediments with its case. Will such proposed legislation contain provisions that take away the traditional defenses available to a defendant (i.e., barring defenses, such as assumption of risk, that would apply to individual smoker claims; allowing proof of causation by statistics; and authorizing apportionment of liability based on market share)? Please provide a copy of any such draft legislation prepared by, or provided to Justice Department employees, and any related memoranda or analyses.

Answer. The Administration has not sought new legislation. We believe that we possess authority under current law to pursue tobacco-related health claims. Upon request of members of Congress or their staff, the Department has provided technical drafting assistance on legislation, regardless of whether we will ultimately support or advocate for the adoption of the underlying bill. On the subject of tobacco, the Department provided such assistance to a number of members of Congress on a variety of issues that arose during the debate on comprehensive tobacco legislation and beyond.

PRECEDENT

Question. The Chamber of Commerce sent congressional leaders a letter in response to the President's announcement of this lawsuit. The letter states, in part: "The action contemplated by the President represents an unprecedented intrusion of government into the private sector and a dangerous undermining of the legislative process." What precedent will the Justice Department's actions in this case set for other industries involved in the sale of products which could be associated with adverse health effects, such as high-fat foods, alcohol, firearms, automobiles or motorcycles to name just a few?

Answer. While all controversies are analyzed on a case-by-case basis, tobacco is a unique product with a unique history. That unique history, the nature of the risks presented by tobacco products, the unprecedented financial costs such products have imposed on the American taxpayers, our legal analysis of these factors, and the example set by the state attorneys general have led us to conclude that litigation against the tobacco industry is in the national interest. We are not aware of any other industry or product with those characteristics.

OUTSIDE COUNSEL CONSULTANTS AND EXPERTS

Question. Members of Congress have expressed great concern about the level of compensation obtained by private counsel as a result of the state litigation against the tobacco manufacturers. You stated during a press briefing on January 21, 1999, that you "would not foreclose [the] possibility" of hiring outside counsel for this matter. I am concerned by reports that a number of these very attorneys sought to persuade the Justice Department to bring a federal lawsuit, even though career officials of the Department reportedly had cast strong doubts about the viability of such a lawsuit. For example, the New York Times reported: "Justice Department officials met with several plaintiffs' lawyers and law professors who had been involved in the state lawsuits * * *. At the meeting the lawyers and professors gave the Justice Department a 100-page document outlining the legal strategies that the government could use to sue the industry * * *." Meier, Barry, Many Are Caught Off Guard By Clinton's Tobacco Plan, " New York Times Jan. 21, 1999.

According to the Wall Street Journal: "[A] group of antitobacco lawyers led by Pascagoula, Miss., lawyer Richard Scruggs have been urging the White House and Justice to file a suit for several months and have offered their services free, said Mississippi Attorney General Mike Moore." Geyelin, Milo, Justice Department Considers Hiring Outside Trial Lawyer for Tobacco Suit, Wall Street Journal. Jan. 22, 1999. Have Justice Department employees met, or otherwise communicated with any persons who are not employees of the Federal Government about the possibility of pursuing litigation against the tobacco manufacturers?

Answer. Yes. Such meetings are not unusual. Indeed, the Department routinely meets with members of the public and with counsel who request the opportunity to discuss potential litigation in matters of common interest. Over the past several months, in an effort to make the most informed decisions relating to this potential litigation of historical proportions, we have received the views and heard the ideas of private citizens. In addition, the Department has had discussions with legal experts who have agreed to serve as paid consultants or employees of the Department in connection with these matters. See below.

Question. Please provide the following: (A) the dates of any such meeting or communication; (B) the participants in any such meeting or communication; (C) a description of the purpose of any such meeting or communication; and (D) a brief summary of any such meeting or communication.

Answer. Since August 1998, we have had a number of telephone conversations and meetings to discuss existing litigation by the states and by private litigants and have heard the views of citizens on the potential for legal action by the United States. The Department has had discussions with a number of representatives of the state attorneys general and the lawyers who represented the states, as well as discussions, at their request, with attorneys who represented the states and private litigants in tobacco litigation. For instance, in early August 1998, we met with attorney Richard Scruggs and other attorneys from his firm; in late August, we spoke by telephone with Professor Einer Elhauge of Harvard; on October 1, we held a conference call with Professor Laurence Tribe of Harvard; on January 14, 1999, we held a meeting with Professors Tribe and Elhauge, and G. Robert Blakey of Notre Dame, and Jonathan Massey, Richard Scruggs, and Kim Tucker; and in February 1999, we met with those same individuals (with the exception of Professor Tribe), and with attorneys Ronald Motley, Joseph Rice, and Ann Ritter. We also have met with attorneys representing private parties in ongoing cases concerning the pending litigation. Numerous routine conversations with the state attorneys general and their rep-

resentatives may also have included discussions concerning a possible legal action by the United States.

In addition to these meetings and conversations, the Department has received countless telephone calls and letters supporting litigation by the United States against the tobacco industry. As mentioned above, among those supporting legal action by the government are law professors, public interest groups, and private litigators, who have represented the state attorneys general and private parties in litigation against tobacco companies, including some attorneys identified in the preface to this question. We have listened to their views. The proposals made to the United States by the citizen participants are generally reflected in the documents they have submitted and which are being made available to the committee.

Question. As of the date of your response to these questions, has the Justice Department hired any outside counsel to assist the Department in this litigation?

If so, please provide (A) the names of such counsel; (B) the dates an which they were retained; and (C) the terms of their retention, including any caps on the compensation that such counsel may receive either in total or on an hourly basis.

If not, do you plan to hire outside counsel to assist in the litigation?

(A) When do you plan to hire outside counsel?

(B) On what terms do you plan to hire such counsel?

Answer. On April 5, 1999, the Justice Department entered into an agreement with the Minneapolis law firm, Robins, Kaplan, Miller & Ciresi L.L.P., to retain the firm's services as litigative consultants on tobacco litigation. Under the agreement, Robins, Kaplan, Miller & Ciresi will provide assistance to the Justice Department's tobacco litigation team on a reduced-rate hourly billing basis through June 30, 1999. Under the contract, the Department of Justice will pay the firm $75 per hour and will reimburse the firm for travel costs and expenses. This represents a substantial reduction in the firm's customary billing rate. The total contract, which runs through June 30, 1999, is for a maximum of $81,670, although the contract could be extended with the agreement of both the government and the firm.

Question. Is the Justice Department authorized to retain outside counsel on a contingency fee basis?

Answer. We are not contemplating retaining outside counsel on a contingency fee basis. There are statutes providing specific authority to enter into contingency fee arrangements with respect to debt collection (Debt Collection Improvement Act, 31 U.S.C. § 3701) and bank fraud recovery (12 U.S.C. § 4241), but we are not aware of any general grant of such authority.

Question. Is there any Justice Department precedent for such an arrangement?

Answer. No, other than under the statutes cited above.

Question. Has the Department hired outside counsel on a contingency-fee basis to work on the federal litigation against the tobacco manufacturers?

Answer. No, the Department has not hired outside counsel on a contingency-fee basis to work on the federal litigation against the tobacco manufacturers.

Question. If not, is it possible that the Department might do so in the future?

Answer. The Department has no intention of hiring any attorneys on a contingency fee basis.

Question. Would the hiring of such outside counsel or consultants be subject to federal procurement law?

Answer. Any retention of outside counsel, whether or not under a contingency arrangement, would be subject to federal procurement law. The Federal Acquisition Streamlining Act of 1994, Pub. L. 103–355, codified at 41 U.S.C. § 251 et seq., would be applicable to such a procurement. 41 U.S.C. § 253 exempts such procurements from competitive procedures.

Question. Do you plan to seek competitive bids for such outside services?

Answer. We do not plan to seek formal competitive bids for such services.

Question. You have indicated that the Justice Department has formed a task force for this litigation. Press Availability, Jan. 21, 1999. Please explain whether this "task force" is an "advisory committee" under the Federal Advisory Committee Act ("FACA")? If members have been appointed, please provide a list of membership and the affiliation of each member.

What steps has the Justice Department taken to comply with §§ 9–12 of FACA?

Have task force meetings been, or will they be, held in public as required by § 10 of FACA?

Answer. The FACA applies only to committees that are established or utilized "in the interest of obtaining advice or recommendations." 5 U.S.C. App. § 3(2). Teams assembled to conduct government litigation do not fall within this definition.

FUNDING ISSUES

Question. The Justice Department has indicated that its litigation against the tobacco manufacturers is going to be a very expensive endeavor. For example, you have requested $20 million in additional funding in fiscal year 2000 in order to fund this lawsuit. To put this amount in context, the Justice Department's Antitrust Division was funded with $94 million in salaries and expenses in fiscal year 1998. In short, I am concerned about the size of your request, and that such an enormous expenditure by the Department would take resources away from other critical programs and Department functions.

If the Antitrust Division can be funded with approximately $100 million per year, why do you need $20 million for a year just to fund one lawsuit?

Answer. Tobacco litigation will be a massive and complex undertaking. The evidentiary collection is immense, and the potential damages are unprecedented. The tobacco companies will spend far in excess of this amount defending the matter. In light of the billions of federal dollars spent each year on tobacco-related diseases, we believe the taxpayers will recoup their investment in this litigation many times over.

To put the $20 million in context, we list below a few examples of the tobacco litigation costs being paid by other litigants:

The California legislature appropriated $11.4 million for fiscal year 1998 and $14 million for fiscal year 1999 to fund 34 attorneys, 40 paralegals, and 47 secretaries to press its case relating to a single state. We expect that the scope of the litigation involving nationwide evidence and damages will be far greater than California's.

An article in the March 19, 1999, Washington Times quotes unnamed tobacco lawyers as saying that the tobacco industry is paying its defense attorneys $600 million annually, thirty times the pending budget request.

In the Minnesota litigation a single defendant, R.J. Reynolds, stated in a court filing that it had spent more than $90 million to create, maintain, operate, and use its litigation database, alone.

In the same litigation, a lawyer for defendant Philip Morris declared that it was spending $1.25 million per week on document production. The same attorney later stated that the major defendants spent roughly $125 million on document production alone in that one case involving a single state.

Question. The Justice Department has requested $15 million in fiscal year 2000 to fund 50 employees, including 40 attorneys, to staff the litigation against the tobacco manufacturers. This sum amounts to $300,000 per employee. Please break down your anticipated expenses on a per employee basis, e.g. average salary per employee; average benefits per employee; average expenses per employee, etc., and break down, in detail, any remainder of the $15 million according to its designated use(s).

Answer. Only $3.8 million of the $15 million is for employee salary, benefits, and overhead expenses for the 50 employees (30 FTE in fiscal year 2000)—an average of $126,000 per employee ($64,500—salary, $17,400—benefits, $44,100 overhead expenses). Of the remainder, an estimated $5.7 million will be needed for litigative consultants, including epidemiologists, expert legal consultants, statisticians, economists, and auditors, to analyze the government's damages and potential claims, and provide assistance concerning litigative strategies. We project that $5.5 million will be needed for contractor-provided automated litigation support, which will be used to acquire, organize, and automate the massive collection of potential evidentiary documents. Automated litigation support will also be an indispensable tool in enabling the government to respond timely to the opponents' discovery requests.

Question. Does the request for $15 million include plans to compensate outside counsel or consultants? If so, how have the fees for such outside counsel or consultants been estimated, e.g. were they estimated based on a projected charge per hour?

Answer. As stated in the previous answer, $5.7 million is our estimate of the cost for consultants. These cost projections are based upon our experience with such other large-scale litigation as the Winstar litigation, the A–12 stealth fighter case, and the Columbia/HCA health care fraud litigation.

Question. You have stated your intention to pursue this matter whether or not Congress approves your request for an additional $20 million in fiscal year 2000 to fund this lawsuit. Please indicate, specifically, where you will obtain the funds to proceed if Congress does not provide the additional appropriation, including what specific cuts you would make to other programs or functions in order to finance this litigation.

Answer. We are committed to pursuing the recovery of these costs that the taxpayers have borne. Congressional denial of the requested resources would have at least two effects. First, the Department will be forced to draw resources away from

other matters. As a consequence, numerous cases, such as bankruptcy and fraud cases, will be declined or placed on hold. Second, we will not be able to pursue the tobacco litigation as effectively, absent the appropriate level of resources. The tobacco industry can be expected to spend enormous resources in defending these actions. Without adequate resources to research, analyze, and prove the nationwide damages inflicted upon them, we may be forced to limit the scope of the litigation we bring; and we will likely lose the opportunity to recoup the full extent of the taxpayers' loss.

Question. Please provide estimates of your funding needs for this litigation for fiscal year 2001, fiscal year 2002, fiscal year 2003 and fiscal year 2004. Please break down these estimates in the manner requested above.

Answer. At this time, we project the funding needs will remain essentially constant through fiscal year 2004. We will need a mandatory increase of about $2.5 million to fund all 50 positions for a full year starting in fiscal year 2001. No other increases are projected at this time.

Question. Have any Justice Department employees assisted in any way, or does the Justice Department plan to assist in any way, foreign governments that have initiated or are considering initiating, litigation against tobacco manufacturers?

Answer. We have not provided such assistance and have no current plans to assist foreign governments in connection with their tobacco litigation. We may consult with counsel in any litigation against tobacco manufacturers, when doing so will advance the interests of the United States.

QUESTIONS SUBMITTED BY SENATOR BEN NIGHTHORSE CAMPBELL

DRUGS IN COLORADO

Question. At a hearing before the Treasury Appropriation Subcommittee last week, General McCaffrey of ONDCP stated, "Colorado is on the forefront of the methamphetamine problem in the United States." In fact, just two days before that statement, there was a large meth lab bust south of Denver. Does the Department of Justice agree with General McCaffrey's assessment, and if so, how specifically is the Department meeting this growing problem in the west?

Answer. Over the past five years, the State of Colorado has experienced a growing methamphetamine crisis, with the quantity of methamphetamine abuse, production, and distribution similar to the increases experienced by many other states throughout the Western and Midwestern U.S. In fiscal year 1997, DEA participated in the seizure of 22 clandestine laboratories (labs) in Colorado; in fiscal year 1998 this total increased to 45 clandestine labs. This twofold increase from previous years may be contrasted with DEA's national lab seizure increase from 1,321 in fiscal year 1997 to 1,627 in fiscal year 1998; about a 20 percent increase. One of the labs seized in Colorado in 1998 was capable of producing at least 20 pounds of methamphetamine per "cook", while there were none of this size the previous year.

Another indication of the growing methamphetamine problem in Colorado is found through information provided by the Drug Abuse Warning Network (DAWN). DAWN statistics show that from 1992 to 1996, emergency room treatments in Colorado jumped from 31 to 106—a 300 percent increase. For 1997, preliminary data indicate that over 18 percent of methamphetamine accounted for only about nine percent of all arrests in fiscal year 1995. This figure has grown every year, and during the first two quarters of fiscal year 1998 (the latest data available), methamphetamine accounted for 21 percent of all arrests by DEA in the Denver area.

DEA clandestine lab seizures in Colorado ranked seventh in the nation in fiscal year 1998. Having no central repository for these records, Colorado was unable to provide any statistics relative to state/local clandestine lab seizures. As of January 1, 1999, the National Clandestine Laboratory Database will collect this data for all federal, state, and local agencies nationwide.

In summary, although there are other states in the U.S. that have undertaken more clandestine methamphetamine lab seizures, the number of these labs operating in Colorado is continuing to grow at a significant pace. This view is supported by the increase in statewide methamphetamine arrests and DAWN methamphetamine emergency room admissions.

COORDINATION WITH ONDCP

Question. As one of the only members of the Senate that has been directly involved in law enforcement, I am delighted to see increased resources devoted to crime-prevention programs, especially drug prevention programs.

However, I am concerned about the possible duplication of effort and lack of coordination of effort among agencies, undermining the effectiveness of both enforcement and prevention programs.

As you know, Congress is funding ONDCP's media campaign to the tune of about $200 million per year. Is DOJ incorporating that media campaign into any of its OJJDP grant programs?

Answer. The Office of National Drug Control Policy (ONDCP), with support from Congress, has initiated a $195 million anti-drug advertising campaign to educate and enable America's youth to reject illegal drugs. The Department of Justice (DOJ) works very closely with ONDCP in addressing youth substance abuse issues, and has been actively engaged in supporting the development and dissemination of the media campaign. The Office of Justice Programs (OJP) Assistant Attorney General serves as a principal on the Interagency Demand Reduction Working Group (IDWRG). In addition, OJP's Office of Juvenile Justice and Delinquency Prevention (OJJDP) serves as the DOJ representative on the IDRWG Substance Abuse Media Committee, which is assisting ONDCP in formulating and implementing the campaign strategy. OJJDP also served on the Partnership Development Panel, which put forth suggestions for localizing the campaign, and has published an article on the media campaign in the Juvenile Justice Journal devoted to substance abuse prevention that was distributed to over 70,000 juvenile justice and delinquency prevention practitioners.

An important component of the campaign is the public service advertising match. In order for the campaign to achieve maximum impact, and to help offset the trend of declining broadcast time contributions for many types of public service announcements, ONDCP is working with a Media Match Committee. The Media Match Committee includes OJJDP, the Department of Health and Human Services (DHHS) and the Ad Council and works to determine the public service announcements (PSAs) that will serve as the match to the paid advertisements. With each media purchase made by the government, media outlets are being asked to donate in-kind public service time or space with identified PSAs, increasing the real value of the campaign. Currently the campaign has generated more than $175.4 million in matching contributions, 102 percent of what was spent on paid ads. Thirty-three non-profit organizations and agencies with drug-related issues such as crime, underage drinking and tobacco use, after school activities, drug treatment, mentoring, etc. have benefitted by their own messages being played in regular viewing/listening hours given to ONDCP by media outlets. This has amounted to more than 47,000 messages played on television and radio. One campaign that has benefitted is the Investing in Youth for a Safer Future public education campaign funded by OJJDP ($510,000) and the Bureau of Justice Assistance. This campaign seeks to educate the public (both adults and youth) on effective solutions to juvenile crime, and ways to support these solutions.

An equally significant aspect of the campaign, and what may ultimately be the measure of its success, is the engagement of community coalitions in supporting the media messages with real, person-to-person interactions with young people. It is the personal, civic, and financial involvement of the public—and private sectors—in promoting pro-social environments for young people, that will ultimately make the difference. OJJDP participates in the substance abuse Communications Directors Working Group, jointly convened by Community Anti-Drug Coalitions of America and ONDCP, to think through how media messages can be incorporated into local programs, including ONDCP's Drug Free Communities Program, which OJJDP administers.

Also, in cooperation with ONDCP, as part of the media campaign's effort to reach youth, OJJDP prepared The Coaches Playbook Against Drugs. This document was released during National Coach-A-Thon Week in October, 1998 to coaches of youth athletes across the nation. The document has been highlighted twice in the Washington Post and promoted by John Madden during a recent sporting event. Over 70,000 copies of the Playbook have been mailed to date.

Early results indicate that the advertisements are making an impact. According to ONDCP, anti-drug coalitions in the twelve-city test markets reported three times their average number of phone calls from kids and parents who have been exposed to the ads and are seeking guidance and help for drug-related problems. Community anti-drug coalitions in those same cities also experienced increases in requests from local business, schools, and organizations for presentations about anti-drug programs and increased volunteerism from people who want to help with the campaign. Businesses also volunteered to fund continued anti-drug advertising, and local news coverage of drug issues has increased.

Additional outcomes of the national campaign effort include:

—32 network TV episodes have incorporated issues, scenes, or themes supportive of important drug prevention concepts.
—The campaign's new web-site for parents and teens (www.projectknow) has received over 4.5 million "hits".
—More than 200 percent increase, as compared to this time last year, in requests for material from the National Clearinghouse for Drug and Alcohol Information. Most of calls are from print PSAs (most television PSAs do not identify the 800#).
—While an early goal of the media campaign has been to reach 90 percent of the general teen target audience with four strategic anti-drug messages a week, the paid and matching advertising effort has generated an exposure rate of almost seven messages a week seen by 95 percent of that audience.
—For African American audiences, the exposure rate is almost eight exposures a week reaching 95 percent of the teen audience. For the Hispanic target audience, the exposure rate is 5.6 times per week seen by 94 percent of the Hispanic teen audience.

Question. Similarly, ONDCP has its own drug prevention grant program, the Drug Free Communities Act. This was funded at $20 million last year. Yet DOJ asks for $20 million for the "Drug Prevention Demonstration Program," this year. How are these different, and how do you coordinate with ONDCP? Do you use the ONDCP clearinghouse for any materials for your grant programs?

Answer. The Drug Free Communities Program, which is administered by the Office of Juvenile Justice and Delinquency Prevention (OJJDP), under an interagency agreement with ONDCP, is designed to support the development of drug prevention coalitions to enable them to prevent substance abuse more effectively.

The Drug Prevention Demonstration Program was initially funded in 1998 through a direct appropriation to OJJDP, and is designed to support the replication of the Life Skills Training (LST) program and is a complement to the Drug Free Communities Program. The LST program is a school-based drug prevention strategy that could be adopted by the Drug Free Coalition grantees to help them reduce drug abuse in their communities. All materials used in the Life-Skills Training program are part of an all inclusive package that has been through extensive process and outcome evaluation, shown sustained successful outcomes over time, and been successfully replicated. The program targets middle/junior high school (6th, 7th, and 8th grade) adolescents in urban, rural, and tribal jurisdictions. In studies involving more than 180 suburban and urban schools, grades 7 to 12, diverse populations of youth, various substance abuse issues—and with long-term follow-up for up to six years—the Life Skills program has generally documented initial reductions of 50 percent in youth alcohol, tobacco, and marijuana use, along with a sustained impact.

ILLEGAL IMMIGRATION IN COLORADO

Question. Last year, this Committee called the Department's attention to increasing illegal immigration in several areas, including Colorado, Utah and Nebraska. The conference report asked the Department to address the problem in these areas in its deployment plan for the Quick Response Teams and other interior state enforcement plans.

Has the Department completed its deployment plan for the QRTs, and how does the plan address growing problem areas in the interior like Colorado and Utah?

Answer. The INS has completed its deployment plan for the QRTs. The plan was approved by the Appropriations Committees on March 25, 1999. It includes the deployment of 45 QRTs to 12 states. The plan includes the deployment of 7 QRTs to Colorado and 4 QRTs to Utah.

This deployment of resources to Colorado and Utah addresses growing problems with illegal immigration in these states. The primary responsibility of the QRTs is to work with state and local law enforcement agencies (LEAs) to apprehend and remove illegal aliens detected by state and local law enforcement officers as a result of the regular performance of their duties. The QRTs will be deployed in areas with a high concentration of illegal aliens, in drug smuggling corridors, and in areas that have recently experienced a substantial increase in illegal migration. In addition to Colorado and Utah, QRTs will be deployed to Arkansas, Georgia, Iowa, Kentucky, Missouri, North Carolina, Nebraska, South Carolina and Tennessee.

Question. This committee noted that the Denver District Office proposed expanding the duty station in Grand Junction and opening new stations in several other Colorado towns. What has happened with that proposal?

Answer. The INS deployment plan includes 7 QRTs for locations in Colorado. They will be deployed to Grand Junction, Alamosa, Craig, Durango, Greeley, Glen-

wood Springs and Ft. Morgan. These deployments provide resources to all of the locations contained in the Denver District Office's proposal.

INDIAN CRIME RATES

Question. What impact has the joint DOJ-Interior Law Enforcement Initiative begun in 1997 had on the skyrocketing crime rates in Indian Country?

Answer. Implementation of the President's Initiative on Indian Country Law Enforcement has proceeded on several fronts since congressional appropriation of fiscal year 1999 funding to the Departments of Justice and Interior. As an administrative matter, the Department of Interior has reorganized and consolidated law enforcement programs under the Office of Law Enforcement Services (OLES), and developed a plan to allocate uniformed police vehicles among BIA and tribal law enforcement programs.

In order to avoid duplication of resources and assure maximum coverage in Indian Country, coordination with the Department of Interior has been an essential aspect of the Department of Justice planning and implementation process. In the allocation of investigatory resources, the FBI and Bureau of Indian Affairs OLES coordinated information regarding the placement of BIA criminal investigators and FBI agents. Since Congress provided $4.6 million in 1999 to enable the FBI to place 30 agents and 20 support staff in 11 field offices and training divisions that serve tribal communities, the FBI has allocated these positions to regions that report the greatest increases and highest volume of violent crimes under federal Indian Country jurisdiction.

To make informed decisions regarding the implementation of more than $80 million in grant programs under Department of Justice 1999 funding, the Department also made efforts to improve the available information regarding the scope and extent of tribal law enforcement needs. The results of these efforts include the Bureau of Justice Statistics forthcoming report, "Survey of the Jails in Indian Country, 1998." While the findings regarding the prevalence of the crime and the poor condition of jail facilities are valuable because they affirm trends suggested by information through the U.S. Attorneys' offices and the FBI reports, they also supplement tribe-specific information about staffing levels and law enforcement coverage gathered by the FBI, BIA, and the Community Oriented Policing Services (COPS) Office. Aided by this composite, the Department is developing grant programs through COPS and OJP.

While solicitations for grant applications have not yet been published and distributed, program plans are in process of being finalized for these targeted law enforcement funds and details will be provided as they become available to your Indian Affairs Committee staff. We have, however, transmitted the 1999 tribal courts implementation plan to Congress and continue to work with Appropriations staff on the plans for the tribal detention construction. A summary of the Law Enforcement Initiative programs follows.

Tribal Court Assistance.—The Bureau of Justice Assistance will provide $5 million through the Tribal Court Assistance Program (TCAP) for the enhancement, development, and continuing operation of tribal courts. In administering this competitive discretionary grant program, BJA will also encourage the development of inter-tribal court systems.

Police Officer Hiring, Training, and Equipment.—The COPS Office will distribute $35 million in funding to tribal law enforcement departments for salary and benefits for new officers, as well as training and equipment for new and existing officers to promote community policing in Indian communities. The Department has coordinated training opportunities with BIA-OLES to assure that tribal police officers, once hired, can obtain the needed training with a minimum of delay.

Detention.—The Corrections Program Office will distribute $34 million in competitive discretionary grants for the construction of detention facilities to incarcerate offenders subject to tribal jurisdiction. To facilitate efficiency, inter-tribal and regional proposals will be encouraged.

Juvenile Delinquency and Crime.—The Office of Juvenile Justice and Delinquency Prevention (OJJDP) will make grants to Indian tribes to fund tribal delinquency prevention, control, and juvenile justice system improvement for tribal youth. This $10 million allocation will emphasize programs to reduce, control, and prevent-crime both by and against tribal youth; to intervene with court-involved and detained youth; and to address alcohol and substance abuse by juveniles.

CAPACITY BUILDING IN TRIBAL COURTS

Question. I am most interested in capacity building in tribal courts: making sure there is infrastructure (physical, electronic, and human) so that tribes can handle

their own civil and criminal caseloads. What resources are now available to build that capacity?

Answer. The Office of Justice Programs (OJP) is committed to furthering DOJ's priority to assist tribal governments in building comprehensive and effective law enforcement and public safety systems in order to provide the foundation for healthy communities. In fiscal year 1999, OJP was appropriated $5 million for the Tribal Court Program, which will be administered by OJP's Bureau of Justice Assistance (BJA). Through this program BJA will provide resources to tribal governments to assist them in developing, enhancing and continuing operations of tribal justice systems.

OJP's commitment to helping tribes build capacity is reinforced by our continuing to provide a mix of direct and indirect assistance. This assistance will be provided in the form of grant resources and training and technical assistance, which address a variety of issues ranging from violence against women, drug courts, victims assistance, juvenile justice, law enforcement, technology enhancement and research efforts.

This year, in addition to the $5 million Tribal Court Program, OJP will allocate at least $54.6 million in discretionary grant resources, which are available for capacity building purposes, to Indian tribes:

—$34 million under the VOI/TIS Discretionary Grants to Indian Country program, which is administered by the Corrections Program Office (CPO), will be available to tribes to build jails on tribal lands for the incarceration of offenders subject to tribal jurisdiction.

—$10 million under the Tribal Youth Program, which is administered by the Office of Juvenile Justice and Delinquency Prevention (OJJDP), will provide funds for comprehensive delinquency prevention, control and system improvements for tribal youth who have, or are likely to, come in contact with the juvenile justice system. Tribes are also eligible to apply for assistance under OJJDP's Mentoring, Gang and Special Emphasis programs, as well as Combating Underage Drinking Program.

—$8.27 million under the STOP Violence Against Women Grant program, which is administered by the Violence Against Women Office (VAWO), will be provided to develop and strengthen tribal justice systems to combat violent crimes against Indian women and to improve services in cases involving violent crimes against Indian women. In addition to this funding, tribes may apply for assistance under VAWO's Grants to Encourage Arrest Policies Program, Rural Domestic Violence and Child Abuse Enforcement Assistance Program, and Training Program.

—$1.272 million under the Children's Justice Act Partnerships for Indian Communities, which is administered by Office for Victims of Crime (OVC), will provide resources to assist Indian tribes to address shortcomings in the tribal criminal justice systems and to make system improvements in the overall response to serious child abuse and child sexual abuse cases.

—$1.028 million under the Victim Assistance in Indian Country discretionary grant program, which is also administered by OVC, will provide permanent, accessible and responsive victim assistance services in Indian country. This program provides direct funding to Indian tribes to support the establishment of reservation-based victim assistance programs such as: crisis intervention, emergency shelters, mental health counseling, and court advocacy.

OJP administers several other discretionary grant programs that provide resources to Indian tribes such as:

—The Drug Courts Program, administered by the Drug Court Program Office (DCPO), provides funds on a competitive basis to Indian Tribal governments for the establishment of drug courts. These program resources help tribes respond to the increasing number of nonviolent, substance abusing adult and juvenile offenders who contribute to the problems of prison and jail overcrowding and the high recidivism rate of those offenders.

—The Weed and Seed Program, administered by the Executive Office for Weed and Seed (EOWS), provides grant resources, on a competitive basis, to Indian tribes. These resources assist tribes in establishing comprehensive strategies to "weed out" violent crime, illegal drug and gun trafficking, and illegal gang activity and to "seed" their community with crime prevention programs.

—The Byrne Discretionary Grant Program, administered by BJA, which provides resources to assist Indian tribes to control and prevent drugs and violent crime and improve the functioning of the criminal justice system. Funds under this program may be targeted to any of 26 purpose areas including: (1) multi-jurisdictional task forces that integrate all levels of law enforcement and prosecution

agencies and (2) criminal justice information systems to assist law enforcement, prosecution, courts and corrections organizations.

Additionally, OJP plans to direct a minimum of $2 million in discretionary funding to provide training and technical assistance to Indian tribes. Training and technical assistance are a mainstay of the resources OJP provides all grantees—including Indian tribes. There are a variety of training and technical assistance opportunities that will be provided by OJP bureaus and offices that will enhance tribal efforts to build capacity. Examples of the training and technical assistance available include:

—STOP Violence Against Indian Women Technical Assistance—VAWO will target $1.2 million to help Indian tribes build the capacity of grantees to serve as regional experts as well as to provide advanced experience in program implementation to their peers, demonstrating exemplary approaches tribal grantees are developing to combat violence against Indian women.

—Juvenile Justice Training and Technical Assistance—OJJDP, in conjunction with the American Indian Development Associates, Inc., will provide training and technical assistance for Native American and Native Alaskan jurisdictions on improved management information systems and planning.

—Tribal and Federal Judges Training—OVC, in partnership with the University of North Dakota, will provide legal education to tribal and federal judges on the adjudication of child sexual abuse cases occurring in Indian country.

Finally, OJP was appropriated over $1.7 billion in formula grant program funding in fiscal year 1999. These formula grant resources are awarded to states, who in turn can sub-grant funds to eligible Indian tribes. OJP's formula grant resources are available for a variety of uses including:

—*Byrne Formula Grant Program—$505 million*.—Provides assistance to states and units of local government in controlling and preventing drug abuse, crime and violence, and in improving of the functioning of the criminal justice system. This program has 26 purpose areas including: law enforcement, adjudication, and community crime prevention.

—*Juvenile Accountability Incentive Block Grant (JAIBG) Program—$250 million*.—Supports state and local efforts to address juvenile crime by encouraging reforms that hold all juvenile offenders accountable for their crimes. This program has 11 purpose areas including: building juvenile detention facilities, juvenile drug and gun courts, and accountability-based programs for juvenile offenders.

—*Juvenile Justice Formula Grant Programs—$159 million*.—This funding includes $89 million available under Juvenile Justice Formula Grant Program, $25 million under the Combating Underage Drinking Program; and $45 million under Title V Incentive Grants for Local Delinquency Prevention Programs. These programs support state and local efforts to improve the juvenile justice system and prevent delinquency.

—*Residential Substance Abuse Treatment (RSAT) Program—$63 million*.—Provides for individual and group substance abuse treatment activities for offenders in residential facilities operated by state and local correctional agencies.

—*Violence Against Women Act STOP Formula Grants Program—$206.8 million*.—Supports improvements in the abilities of law enforcement to respond to violence against women, development of more effective strategies and programs to prevent violence against women and improvements in data collection and tracking systems.

—*Local Law Enforcement Block Grant (LLEBG) Program—$523 million*.—Indian tribes that perform law enforcement activities—as defined by the Bureau of Indians Affairs (BIA)—may apply for direct funding under LLEBG. LLEBG resources are available for a variety of purposes including: law enforcement personnel hiring, drug courts, purchasing of law enforcement equipment, enhancing school security, adjudicating violent offenders, multi jurisdictional task forces, and crime prevention programs.

JURISDICTION ISSUES ON TRIBAL LANDS

Question. In domestic violence cases involving a non-Indian spouse, the perpetrators often go unprosecuted because tribal courts don't have jurisdiction. How is the DOJ addressing this issue?

Answer. As with all violent crimes, jurisdiction over domestic violence is particularly challenging in Indian country, where tribal and federal jurisdiction may be concurrent or exclusive depending on the severity of the crime and the identity of the parties. The history of federal criminal jurisdiction over crimes committed by non-Indians, including domestic violence, informs Department policy with respects

to federal prosecution. Under the federal trust responsibility, in 1790, Congress enacted measures to punish crimes by non-Indians against Indians. In 1817, Congress extended its authority by establishing general federal enclave jurisdiction over crimes between Indians and non-Indians, while criminal jurisdiction over crimes between Indians remained under tribal jurisdiction, in deference to tribal self-government. Today, this statute is carried forward as 18 U.S.C. § 1152, the General Crimes Act. As you note, the Supreme Court has held that because Indian tribes are dependent sovereigns, the United States has divested tribes of their original authority to punish non-Indian offenders in Indian Country. *Oliphant* v. *Suquamish Indian Tribe*, 435 U.S. 191 (1978). Accordingly, the United States retains exclusive authority over offenses by non-Indians against Indians under the General Crimes Act, 18 U.S.C. § 1152, unless Congress has otherwise provided by law.

The Department of Justice, through the U.S. Attorneys' offices, does prosecute violent offenses by non-Indians against Indian victims, with cooperation from tribal authorities. There are limitations in the scope of federal jurisdiction, however, that may impede effective prosecution of domestic violence offenses by non-Indians. For example, the federal law that governs assault, 18 U.S.C. § 113 (6), makes it a felony to commit assault resulting in "serious bodily injury." Serious bodily injury, as defined in 18 U.S.C. § 1365, means "bodily injury which involves—(A) a substantial risk of death; (B) extreme physical pain; (C) protracted and obvious disfigurement; or (D) protracted loss or impairment of the function of a bodily member, organ, or mental faculty." U.S. Attorneys in Indian country report that proof of serious bodily injury, as defined by the statute, can be difficult in the context of a criminal prosecution for domestic abuse. To address this concern, the Department's proposed crime bill includes a statutory amendment that would broaden the scope of "serious bodily injury" to include injuries that are serious but may not meet the heightened definition of "serious bodily injury" in 18 U.S.C. § 1365. Simple assaults by non-Indians against Indian victims are prosecutable under 18 U.S.C. §(a)(5) as petty offenses, punishable by a fine or imprisonment of up to six months.[1]

Another way to address crimes by non-Indians against Indian women may be through prosecutions under the Violence Against Women Act (VAWA), 18 U.S.C. § 2261 et seq.. The VAWA criminalizes crossing state lines or "entering or leaving Indian Country" in the commission of crimes of domestic violence or violations of domestic violence protection orders, tribal court orders included. Where the facts support a prosecution under the VAWA, the Department of Justice may pursue crimes by Indians or non-Indians against Indian women in cases where violence results in bodily injury to a spouse or intimate partner. See 18 U.S.C. §§ 2261, 2262 (a)(2).

Clearly, however, the elements of the VAWA may not be met in every case of domestic violence. Where the VAWA does not apply, perhaps where there is no interstate travel or crossing of an Indian country boundary, and where the nature of a victim's injuries would not satisfy the statutory definition of serious bodily injury as defined in reference to assault statute of section 113 of Title 18, the Department of Justice has sought additional mechanisms to hold non-Indian offenders accountable despite the lack of tribal jurisdiction. One approach has been to convene federal court on Indian reservations through the use of magistrate judges. After consultations between the Department, the U.S. Attorney, federal magistrate judge, and Confederated Tribes of the Warm Springs Reservation, the Department of Justice initiated a "Magistrate Court Project" on the Warm Springs Reservation in Oregon. The basic concept is to have a magistrate judge periodically convene federal court on a reservation to adjudicate misdemeanor cases committed by non-Indians over which tribal courts had no jurisdiction.[2] These cases would include incidences of domestic violence by non-Indians against Indian women. Ideally, a tribal prosecutor could be appointed as a Special Assistant U.S. Attorney and prosecute the cases on behalf of the Federal Government. The Department remains open to developing variations of the Magistrate Court Project where tribes, like the Confederated Tribes of the Warm Springs Reservation, express interest.

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[1] Sentencing options for petty offenses are limited because they are not governed by the U.S. Sentencing Guidelines and supervised release is not an option for perpetrators of petty offenses.

[2] With the written consent of the defendant, and the appropriate designation of the district court, magistrate judges have the power to conduct trials of Class A and non-vehicular Class B misdemeanor cases. With consent, they may sentence a defendant to a maximum term of one year imprisonment, impose a term of supervised release, and conduct hearings to modify, revoke, or terminate such supervised release. In October 1996, Congress authorized magistrate judges, even without the consent of the defendant, to also conduct trials of petty offenses, including vehicular Class B misdemeanors, Class C misdemeanors, and infractions, the maximum terms of imprisonment for which are six months, 30 days and 5 days, respectively.

In addition, in some jurisdictions, like the Western District of Oklahoma, the Department of Justice, through the U.S. Attorney's Office, has utilized the Central Violations Bureau (CVB) of the Administrative Office of the U.S. Courts to adjudicate non-Indian misdemeanors such as domestic violence assaults. With appropriate cooperation from the federal magistrate judge, CVB, Bureau of Indian Affairs law enforcement, and the U.S. Attorney's office, non-Indian offenders can be issued citations by BIA officers or tribal law enforcement officers who have been commissioned by the Bureau of Indian Affairs as Deputy Special Officers. As federal officers, the BIA-commissioned law enforcement can cite non-Indians for certain misdemeanors and process citations through the CVB. The CVB then schedules a mandatory appearance date before the federal magistrate for the offender. The results in the Western District of Oklahoma have been encouraging and a number of other districts are in the process of examining the use of the Central Violations Bureau as an aid to prosecution of non-Indian misdemeanors such as domestic violence assaults.

Effective prosecution of non-Indians for domestic violence offenses results from close coordination between tribal law enforcement and prosecution and the U.S. Attorneys offices. Wherever possible, the Department has encouraged the appointment of Special Assistant U.S. Attorneys within tribal communities to aid in the investigation and prosecution of offenses by non-Indians. In Arizona, the U.S. Attorney's office has tried to appoint Special Assistants on each of the major reservations in the District. It is through these types of innovative approaches, using Special Assistants, federal magistrate judges, and the Central Violations Bureau, that the Department has been able to work to close some of the gaps in jurisdiction over non-major crimes on reservations. Absent a modification to existing law regarding tribal criminal jurisdiction over non-Indians, effective prosecution of non-Indians for crimes of domestic violence committed on reservation will continue to be a challenge, requiring cooperative approaches and tribal-federal coordination.

VAIL TERRORISM

Question. In October 1998, an arson attack ravaged property in Vail, Colorado. The damage was estimated at $12 million. On October 22nd, I sent you a letter requesting that the Department of Justice devote all necessary resources to apprehend those individuals responsible.

In response to this letter, I received a very general reply. Could you provide me with a more detailed status report about the progress of the investigation. What can you provide for us now?

Answer. Vail Associates, of Vail, Colorado, is currently in the process of conducting an expansion of their ski area. Several environmentally-oriented groups have been opposed to this expansion, and as a result, filed an injunction to stop the expansion. On October 14, 1998, the District Court of Colorado dismissed a lawsuit against the proposed expansion of the Vail Ski Resort. The dismissal of the lawsuit ended a seven-year legal battle by the environmental community, which had sued Vail Associates on behalf of the lynx, private use of public land issues and other environmental concerns associated with the proposed expansion. After the judge ruled in favor of Vail Associates, there was a public announcement that October 19, 1998 was the proposed starting date to initiate construction for expansion.

On October 19, 1998, multiple fires were set on several structures located on Vail Mountain, resulting in approximately $12 million of property damage. The Federal Bureau of Investigation (FBI) Denver field office initiated a joint investigation with the Bureau of Alcohol, Tobacco and Firearms (BATF), the United States Forest Service, the Colorado Bureau of Investigation, the Vail Police Department and the Eagle County Sheriff's Department. As part of the investigation, BATF deployed two National Response Teams to process the crime scene. Upon completion of a crime scene investigation, and subsequent examinations conducted by the BATF, it has been determined that an accelerant was used in the fires.

Shortly after the fires, local colleges, newspapers and public radio stations received several electronic mail messages which had been sent by a group, known as the Earth Liberation Front, claiming responsibility for the arson. At this time, identification of the sender of the electronic mail cannot be determined due to the fact that the message was sent through an anonymous re-mailer, disguising its origin. The message reads as follows: "On behalf of the lynx, five buildings and four ski lifts at Vail were reduced to ashes on the night of Sunday, October 18th. Vail, Inc. is already the largest ski operation in North America and now wants to expand even further. The 12 miles of roads and 885 acres of clearcuts will ruin the last, best lynx habitat in the state. Putting profits ahead of Colorado's wildlife will not be tolerated. This action is just a warning. We will be back if this greedy corporation con-

tinues to trespass into wild and unroaded areas. For your safety and convenience, we strongly advise skiers to choose other destinations until Vail cancels its inexcusable plans for expansion."

FBI and BATF investigators are focusing on the following actions: Identifying those who were present on Vail mountain at the time of the arson; Reviewing of records and documents to identify any possible individual or groups who are opposed to the expansion by Vail Associates; and Interviewing individuals who may have knowledge of the arson or those responsible.

This investigation has generated over 350 leads. A Grand Jury has been convened to assist in the investigation of the Vail fires.

RADIATION EXPOSURE COMPENSATION ACT

Question. I am concerned about the Department's irresponsibility regarding the Radiation Exposure Compensation Act. This year, the Department is requesting $21.7 million to provide payments of expected approved claims under the anticipated changes to RECA. You asked for a similar amount last year for the same reason and proposed amendments have still not been acted upon.

It is my understanding that these changes are to make important and necessary changes to the original law, so that the legislation reflected new scientific advances and more claimants could file and be approved for compensation. Where is the Administration's legislation?

Answer. On March 26, 1997, the Administration forwarded a proposed bill to the 105th Congress through the Speaker of the House. The Administration's proposal responded to the report issued by the Radiation Exposure Compensation Act Committee (chartered by the President's Advisory Committee on Human Radiation Experiments) that recommended a review of RECA uranium miner provisions. The draft bill, which included the recommendations contained in the RECA Committee's final report, did not find sponsorship in either the House or Senate. At this time, although the Administration is not anticipating introducing legislation to this Congress, it still supports in principle much of that earlier proposal. In our view, the system for providing full compensation to underground uranium miners as described in the Administration's bill from last Congress still represents the best method for determining eligibility. Accordingly, our cost estimates continue to reflect a statutory change consistent with that proposal.

Legislation seeking to amend RECA, however, has been introduced in both the House and the Senate. Senator Jeff Bingaman (D-NM) and Representative Tom Udall (D-NM) have each introduced legislation that would double the compensation amount for eligible uranium miners, permit multiple awards to a claimant, significantly lower the exposure requirements, expand the uranium miner claimant population, include additional compensable diseases under the "downwinder" provisions, and provide for partial payment awards based on liberalized eligibility criteria. Representative Patsy Mink (D-HI) has also introduced legislation this session, but with a more narrow focus. With respect to each of these proposals, the Administration is committed to working with Congress to ensure that any change is consistent with the spirit and intent of the original Act, and supported by sound science. Should one of the more expansive proposals be enacted, the budget estimates will have to be revisited in order to fully fund the program.

Question. I understand the Department proposed changes to the RECA regulations in 1997 but has had trouble finalizing those changes. Have those changes yet been made final? Why not?

Answer. On March 11, 1999, the Attorney General approved changes to the regulations implementing RECA. Under the revised regulations, the definition of "nonsmoker" has been modified to include individuals who formerly smoked, but who stopped smoking at least 15 years prior to the diagnosis of a compensable disease. Also, individuals who file a claim for compensation will be allowed to submit affidavits to establish smoking and alcohol use histories where no other records exist. Other changes, more technical in nature, will assist claimants in establishing entitlement. The regulations were made available for public inspection in the Office of the Federal Register on March 19, 1999, and published in the Federal Register on March 22, 1999. A copy of the new regulations is shown in Attachment B.

Question. How much is there currently in the RECA compensation fund?

Answer. Currently, the Radiation Exposure Compensation Trust Fund has a balance of $13.6 million. At this time, 282 claims and appeals are pending.

ATTACHMENT B

[FROM THE FEDERAL REGISTER, VOL. 64, NO. 54, MARCH 22, 1999]

DEPARTMENT OF JUSTICE

28 CFR Part 79

[A.G. Order No. 2213–99]

RIN 1105–AA49

Radiation Exposure Compensation Act: Evidentiary Requirements; Definitions; and Number of Times Claims May Be Filed

AGENCY: Civil Division, Department of Justice.

ACTION: Final rule.

SUMMARY: The Department of Justice ("the Department") amends its existing regulations implementing the Radiation Exposure Compensation Act to: allow claimants to submit affidavits or declarations in support of a claim to establish smoking and alcohol consumption histories where no other records exist; allow the use of pathology reports of tissue biopsies as additional means by which claimants can present evidence of a compensable non-malignant respiratory disease; amend the definitions of "smoker" and "non-smoker"; include *in situ* lung cancers under the definition of primary cancers of the lung; and allow claimants who have filed claims prior to the implementation of these regulations and have been denied compensation to file another three times.

DATES: Effective date: April 21, 1999. This final rule will apply to all claims pending with the Radiation Exposure Compensation Act Program ("RECA Program") as of this date.

FOR FURTHER INFORMATION CONTACT: Gerard W. Fischer (Assistant Director), (202) 616–4090, and Lori Beg (Attorney), (202) 616–4377, U.S. Department of Justice, Civil Division, P.O. Box 146, Ben Franklin Station, Washington, D.C. 20044–0146.

SUPPLEMENTARY INFORMATION:

Background

On May 23, 1997, the Attorney General published a notice of proposed rulemaking in the FEDERAL REGISTER, 62 FR 28393 (1997), setting forth proposed amendments to the regulations implementing the Radiation Exposure Compensation Act, Pub. L. 101–426, 104 Stat. 920 (1990) (codified as amended at 42 U.S.C. 2210 note) ("RECA" or "Act"). Comments were received over a period of 30 days ending on July 22, 1997. In response to several requests from the public for additional time, the comment period was reopened on August 29, 1997, for an additional 30-day period ending on September 29, 1997. The Department of Justice received 31 letters, each containing one or more comments regarding the proposed amendments. Commenters included both interested individuals and organizations. Most of the comments were positive, applauding the proposed changes and encouraging their swift implementation.

The Department carefully reviewed all of the comments, several of which resulted in changes to the proposed rule. Specifically, the final rule will not introduce standards for the use of high resolution computed tomography ("HRCT") reports, which were included in § 79.36(a)(ii)(A)(2) of the proposed rule. The Department received many substantive comments on the proposed use of HRCT reports as a means by which claimants can present evidence of a compensable non-malignant respiratory disease. In order to respond to those comments, the Department engaged in extensive research and consultation. Presently, there is no consensus in the medical community for standardized criteria for the use of HRCT reports in the diagnosis of non-malignant respiratory diseases. Accordingly, as soon as the Department, in consultation with its designated medical and scientific experts, is able to identify recognized standards for the use of HRCT reports, the Department will implement appropriate regulations.

Furthermore, the final rule amends the definitions of "heavy smoker" and "smoker" to exclude, and the definition of "non-smoker" to include, claimants who stopped smoking at least fifteen years prior to the date of diagnosis of disease. These definitions apply to claimants diagnosed with a compensable non-malignant respiratory disease as well as those diagnosed with lung cancer, as originally proposed. The Department is convinced that the evidence supports this approach.

Discussion of Changes and Comments

Following are summaries and discussions of the comments, which have been grouped together according to their similarity. Minor or technical issues are not discussed.

In some cases, commenters suggested that the Department incorporate certain regulatory provisions that would modify statutory requirements relating to the criteria for compensation. Section 5 of the RECA authorizes claims only by individuals employed in uranium mines in particular states. Accordingly, the implementing regulations limit compensation to individuals employed in uranium mines in those states and exclude those individuals employed in uranium mines elsewhere as well as those individuals employed in uranium milling or processing, involved in mining other types of ore, and simply residing in a community where uranium mining was conducted. *See* 28 CFR 79.30–32. In addition, section 5 of the RECA sets forth specified compensable diseases and ties compensation to the level of radiation exposure, age at incidence of disease onset, and smoker status. The implementing regulations reflect the statutory limitations. *See* 28 CFR 79.32(c)(1)–(2). Stated simply, the Department cannot modify a statute by regulation. Rather, the legislative process must react to these concerns.

One commenter suggested that the Department hold public meetings to discuss the proposed regulatory changes, which the Assistant Director for the Radiation Exposure Compensation Program, Gerard W. Fischer, and others from the Department have done. The Program held meetings in several locations in New Mexico and Utah, including the Navajo Reservation, in order to present the proposed regulatory changes and discuss their implementation with individuals in the affected communities.

Several commenters asked the Department to render an opinion on whether certain records or references in records would satisfy the eligibility criteria in a hypothetical or individual case. The Department, however, is unable to render any opinion without reviewing an actual claim and evaluating the documentation provided in support of that claim.

Subpart A—General

Section 79.2 General Definitions

Section 79.2(e) Contemporaneous Record. One commenter requested clarification of the term "contemporaneous records." Existing regulations define the term to include those records that were created when the described events occurred. In some instances, the dates of records may not coincide precisely with the dates when actions took place. For example, a claimant's employment summary contained in a mining company archive may be used to clarify periods of employment prior to the date of the summary. In such instances, we will determine whether the records were created within a sufficient time of the relevant period to be considered contemporaneous. The Department relies on contemporaneous records because of their inherent reliability and trustworthiness.

Section 79.4 Burden of proof, production of documents, presumptions, and affidavits

Section 79.4(a) Production of documents. Several commenters suggested that contemporaneous records do not exist to establish complete employment histories for underground uranium miners, particularly for those miners who worked in small mining operations. This issue was addressed in connection with the original regulations, and that discussion still applies. *See* 57 FR 12430 (1992). That is, we have seen no evidence to support the assertion that contemporaneous records do not exist. Our experience reveals that available social security records are accurate and comprehensive. Thus, where records from employers are not available from company archives, social security records will sufficiently document an individual's employment history. In the very few cases where claimants worked for companies that failed to report earnings, claimants can provide federal or state income tax records. Moreover, numerous sources, such as the National Institute for Occupational Safety and Health ("NIOSH"), the University of New Mexico School of Medicine, the Colorado Bureau of Mines, and numerous mining companies have contemporaneous records to establish individual mining histories. In cases where claimants independently operated small mines and failed to earn a sufficient income to report to federal or state agencies, Atomic Energy Commission shipping records will reflect the name of the mine operators, which may often be used to establish exposure.

One commenter noted that various contemporaneous records, including mine operator records and old medical records from country doctors, have been stored in remote areas and that the Department should collect and maintain such records. The Department currently maintains extensive records from various mining resources, including the Public Health Service Study of Uranium Miners, NIOSH, the Atomic

Energy Commission, the Colorado Bureau of Mines, and Utah Mine Inspection Reports. The Department also has access to records from St. Mary's Hospital, the University of New Mexico School of Medicine, and the Colorado Tumor Registry, all of which maintain radon exposure information. The Department also has accessed records from various private entities. Although it cannot collect and store records from private companies, the Department will do all that it can to urge still-existing private companies to make their records available to the public. The Department attempts to identify records held by various public and private organizations and makes such information known to claimants. Additionally, if it is known to the Department that specific records are likely to be destroyed, we attempt to locate organizations that may be interested in maintaining those records and making them available to claimants. However, the RECA Program was not designed, nor is it equipped, to gather and maintain large quantities of records.

Section 79.4(c) Affidavits. One commenter inquired as to the form an affidavit must take and the level of specificity required. Because the information contained in an affidavit will depend on the specific facts of each case, it is impossible to precisely define the amount of detail necessary to establish any element of compensation.

Other commenters suggested that affidavits should be accepted on any and all relevant issues, and one commenter added that affidavits should be accepted to establish eligibility criteria without records to support the assertions contained therein. The Department, however, has purposefully limited the use of affidavits. In the experience of the RECA Program to date, affidavits are unnecessary in most cases. Determinations of eligibility based on documentation increase the integrity of the process, limit transactional costs, and minimize the potential for fraud. Despite complaints to the contrary, we have found that there is an enormous body of reliable contemporaneous records that can be used to establish eligibility requirements. Contemporaneous records are inherently more reliable than affidavits.

Several commenters suggested that the Department should accept affidavits from individuals other than claimants, i.e., co-workers, friends, neighbors, and extended family members, to establish eligibility criteria for downwind presence or uranium mining employment. One commenter recommended that "non-claimant" affidavits should be allowed to establish all eligibility criteria. The Department, however, must limit the submission of affidavits to those individuals who are best situated to supply the information. Because of the risk that such affidavits may not provide information that is based on personal knowledge, the Department has placed reasonable restrictions on the submission of affidavits in an effort to ensure their reliability. Accordingly, affidavits may be submitted only by the claimant or the eligible surviving beneficiary.

The final rule provides that affidavits will be accepted for the following purposes: (1) to prove eligibility of family members as set forth in the regulations at § 79.51(e), (f), (g), (h), or (i); (2) to acknowledge other compensation received as set forth in § 79.55(c) or (d); (3) to prove smoking and/or drinking history and/or age at diagnosis as set forth in § 79.27(d) and § 79.37(d); (4) to prove the amount of coffee consumed as set forth in § 79.27(e); or (5) to establish mining information as set forth in § 79.33(b)(2).

One commenter proposed that affidavits be permitted to establish an individual's physical presence in a designated affected downwind area where former employers are no longer in existence or records have been destroyed, and where such employment is not documented in Social Security earnings records. The commenter urged that such declarations would be admissible in a court of law. Our experience has shown that a multitude of records are available to establish presence in downwind areas. The absence of records from one particular source will not necessarily preclude a claimant from establishing such presence. The RECA Program accepts records created by government entities, educational institutions, utility services, libraries, historical societies, religious organizations, businesses, associations, and medical institutions to establish the physical presence criteria under 28 CFR 79.13. Additionally, in response to related comments to the initial regulations, the Department added contemporaneous postcards and certain postal stamped envelopes to the expansive list of acceptable records. See 57 FR 12430 (1992). Affidavits submitted in lieu of contemporaneous records, on the other hand, do not contain the same level of trustworthiness and cannot be relied upon to prove physical presence, a basic criterion for compensation under the downwinder program. The RECA Program represents Congress's attempt to create an inexpensive, expeditious, easy-to-administer, and non-adversarial scheme to compensate qualifying claimants. Expanding the role of affidavits in the compensation process would necessarily require staffing increases, alter the nature of the Program, and frustrate the purposes that Congress sought to achieve.

Subpart B—Eligibility Criteria for Claims Relating to Childhood Leukemia

Section 79.12 Criteria for Eligibility

One commenter suggested that the downwinder provisions of the regulations be amended to provide compensation for individuals who were "in utero" during the designated time periods and later developed leukemia. The Act as well as the current regulations are silent on the issue of whether a fetus constitutes an "individual" for purposes of eligibility. Accordingly, the Department will rely on judicial interpretation in addition to legislative intent in making its determination should it be faced with such a situation.

Subpart C—Eligibility Criteria for Claims Relating to Certain Specified Diseases

Section 79.22 Criteria for Eligibility

One commenter suggested that the downwinder provisions of the regulations be amended to provide compensation for individuals who were "in utero" during the designated time periods and later contracted any of the specified compensable diseases. The discussion of this comment at § 79.12 applies to this section of the regulations.

Subpart D—Uranium Miners

Section 79.31 Definitions

Section 79.31(e) Non-smoker. One commenter suggested that the Department revise the definition of non-smoker to include Native American Indians who smoked only for ceremonial purposes, even if they did so within 15 years of diagnosis of lung cancer. The Department evaluates each case independently in order to determine whether an individual has shown by a preponderance of the evidence that the eligibility criteria are established. In cases where an individual presents documentation referencing his or her prior smoking history, the Department will carefully evaluate such references on a case-by-case basis. In addition, most medical histories that describe smoking status reference the extent of smoking in relation to "pack" of cigarettes and "portions" used. Finally, the only type of smoking that is relevant under the regulations is cigarette smoking. Pipe smoking, or any other type of smoking, is not relevant to the RECA Program. The existing regulations specify that "smoking" "does not include the use of cigars or pipe tobacco, or any tobacco products that are used without being lighted." 28 CFR 79.21(d).

Several commenters proposed revising the definition of non-smoker to include former smokers who developed a compensable non-malignant respiratory disease. The Department's designated experts at NIOSH have advised that former smokers who develop one of the compensable non-malignant respiratory diseases could be considered non-smokers for purposes of establishing the eligibility criteria. The NIOSH experts advise that this is especially true if the individual stopped smoking many years prior to the diagnosis of a restrictive non-malignant respiratory disease. Further, it is the opinion of the NIOSH experts that, based on available existing medical data, it is reasonable to treat an individual diagnosed with a compensable non-malignant respiratory disease as a non-smoker where the individual stopped smoking at least 15 years prior to diagnosis. We have decided to accept the recommendation of commenters to extend the applicability of the definition of "non-smoker" to individuals who stopped smoking at least 15 years prior to being diagnosed with a compensable non-malignant respiratory disease.

Section 79.31 (f) Smoker. The Department currently defines a smoker as an individual who smoked at least "one (1) pack year" of cigarette products. Several commenters suggested that the Department should increase the number of pack years required for an individual to be treated as a smoker. Existing regulations define a pack year as "an average of 20 cigarettes per day for one year." 28 CFR 79.21(d). A more detailed discussion of this definition was offered in connection with Department's current implementing regulations. See 57 FR 12431 (1992). However, in light of the suggested change, we reviewed the relevant literature and consulted with numerous experts from the National Cancer Institute. We were advised that most epidemiological studies define a "smoker" as one who smoked one cigarette per day for one year, far less than the one pack year of cigarette smoking presently used in the RECA Program and set forth in the regulations. Many of the experts we consulted consider our current working definition very lenient and recommend against liberalizing it further.

Section 79.31 (g) Onset or Incidence. One commentator noted that the "date of diagnosis" or "initial diagnosis" is not always clear from the medical records. With respect to uranium miners, the date of diagnosis is relevant only in relation to the issue of smoking status. A claimant's smoking status must be established by providing all medical records, as specified in 28 CFR 79.37(a), that were created six

months prior to, and six months after, the initial date of diagnosis of a compensable disease. When the date of diagnosis is relevant, the RECA Program reviews the medical records to establish the initial date of diagnosis of a compensable disease. If any records suggest an earlier date of diagnosis, we will request medical records from the time of the earlier date of diagnosis to resolve the question. In all cases, the RECA Program will assist claimants in obtaining these additional records.

Section 79.31(h) Primary Lung Cancer. One commenter requested that the Department provide a definition for "*in situ*" lung cancer. *"In situ"* lung cancer means that the cancerous cells have not left the tissue compartment of origin. It is a term of medical art that sometimes appears in claimants' medical records. In order to make it clear that such a term does not disqualify a claimant, the final rule includes it in the general definition of lung cancer.

Section 79.31(j) Fibrosis of the Lung or Pulmonary Fibrosis. One commenter requested that the Department provide more detailed descriptions of the types of medical evidence that would be considered a diagnosis of pulmonary fibrosis for deceased miners. Because of the many types of evidence that can satisfy this condition, providing a list of all conditions that describe the existence of pulmonary fibrosis is impossible. The regulations presently identify specific records and results required for living miners. However, cases involving deceased miners, where recent x-rays are not available, often require a thorough analysis by a medical expert who is qualified to evaluate a multitude of findings and determine by a preponderance of the evidence whether a claimant contracted a compensable disease. Since the evidence is different in each case, identifying every qualifying condition is not feasible.

Section 79.33 Proof of Employment in a uranium mine. Several commenters suggested that contemporaneous records do not exist to establish complete employment histories for underground uranium miners, particularly for those who worked in small mining operations. This issue was addressed in the original regulations, and the discussion offered in connection with those regulations still applies. That is, we have seen no evidence to support the assertion that contemporaneous records do not exist. Our experience reveals that social security records are accurate and comprehensive. In the very few cases where claimants worked for companies that failed to report earnings, claimants can provide federal or state income tax records. Moreover, numerous sources, such as NIOSH, the University of New Mexico School of Medicine, the Colorado Bureau of Mines, and numerous mining companies, have contemporaneous records to establish individual mining histories. In cases where claimants independently operated small mines and failed to earn a sufficient income to report to federal or state agencies, Atomic Energy Commission shipping records will reflect the name of the operators, which may often be used to establish exposure.

Section 79.34 Proof of working level month exposure to radiation. One commenter noted concern that it is not possible to determine accurate radiation exposure levels in small mines because of the lack of readings taken from those mines. The commenter asserted that readings were taken only in the larger mines, where better ventilation systems were presumably employed. The NIOSH records used by the Department, however, do include exposure readings from many small mines. Moreover, the readings taken from the larger mines do not necessarily reflect lower exposure readings. In instances where exposure levels are unavailable for a particular mine, the regulations allow the RECA Program to use readings from other mines in the same geographical area, which typically include readings from mines of various sizes.

Another commenter expressed concern that radiation exposure measurements were taken from areas of the mine where the working levels were lower and, therefore, the readings do not accurately reflect exposure for purposes of calculating working level months. This issue was discussed in connection with the original regulations and that discussion still applies. See 57 FR 12432 (1992). Principally, Congress was aware that there were variations in the measurement of working levels in the mines but chose to set defined minimum levels based on the measurement data that existed. We must presume that those minimum levels set by Congress take into account the problems associated with the collection of the data. Moreover, there is simply no method of calculation that would result in total accuracy. Working level measurements varied widely within each mine in terms of time and location. We have found no evidence, however, that suggests that readings were taken only in areas where working levels were low. To the contrary, the numerous higher-level exposure readings included in the NIOSH database indicate that this was not the practice.

One commenter noted that there is limited exposure data from small mining operations because NIOSH did not conduct radiation measurements until the mid-1960s, although uranium mining began twenty years earlier. The Department has access

to Public Health Service records, which provide radiation exposure measurements that were recorded as early as 1950. To determine the exposure levels for 1947 through 1949, the Department applies the methodology outlined in the current regulations at 28 CFR 79.34(g)(2).

Section 79.36 Proof of non-malignant respiratory disease

Section 79.36(d)(1)(ii)(2) High resolution computed tomography scans and interpretation. There were several substantive comments regarding medical standards for the use of HRCT reports in diagnosing non-malignant respiratory diseases. Commenters included leading thoracic practitioners from major medical teaching facilities around the country. Their concerns specifically addressed such issues as scanner setting technique, use of non-conforming nomenclature, the lack of training in interpreting HRCT reports that is provided by most accredited radiology residency programs, and the absence of standardized testing protocols. While the Department sought out scientists in the medical community who had experience and expertise in the area to initially develop the proposed HRCT evaluation criteria, "recognized" standards by which to use HRCT reports to diagnose pulmonary fibrosis and the other compensable non-malignant respiratory diseases are still not available. The Department has determined, therefore, that it would be premature at this time to implement the use of HRCT reports as a diagnostic tool. As soon as recognized standards for evaluating HRCT reports develop, the Department will introduce appropriate regulations.

79.36(d)(1)(ii)(B)(1) Pulmonary function tests. One commenter stated that the pulmonary function test ("PFT") requirements are arbitrary and too stringent. The existing regulations defined pulmonary impairment as either a forced expiratory volume in one second ("FEV1") or forced vital capacity ("FVC") result less than or equal to 75% of the predicted value. In the amending regulations, the Department proposed to liberalize this definition in accordance with the recommendations of the American Thoracic Society. In the final rule, pulmonary impairment is defined as FEV1 or FVC less than or equal to 80% of the predicted value.

Another commenter suggested that the Department adopt ethnic-specific PFT standards for Native Americans. The Department has declined to adopt this recommendation for several reasons. First, there is insufficient statistical confidence in the data obtained in the limited studies on this issue. To incorporate such a distinction at this time into a legal compensation scheme would be premature. Second, the Department will not adopt standards that might adversely discriminate against any one particular community. Third, acceptable PFT standards do not exist for each ethnic group within the subject population. Finally, the current regulations provide an alternative means by which to establish functional impairment, namely, arterial blood-gas ("ABG") studies. Any inadequacies that may exist in the PFT standards can be avoided entirely with an ABG study, which is unaffected by physiological differences among ethnic groups.

79.36(d)(1)(ii)(B)(2) Arterial blood-gas studies. Another commenter sought clarification on the interpretation of arterial blood gas ("ABG") studies when results fall between the values set forth in the tables in appendix B of the implementing regulations. When reported pCO_2 results fall between values listed in those tables, the Department will interpolate the corresponding qualifying pO_2 value.

One commenter indicated that the Department should create new tables reflecting lower pO_2 values as altitude increases and including separate pO_2 values for every 1,000 feet above sea level. The Department consulted with its designated experts at NIOSH and requested that they study the existing ABG tables, specifically focusing their inquiry on the effects of revising the ABG tables to reflect impairment values broken down by 1,000 feet increments. The NIOSH experts advised that specifying impairment levels (reflected by pO_2 and pCO_2 values) for every 1,000 feet change in elevation would actually disqualify many claimants from compensation. The ABG tables as they now exist, providing impairment values broken down into only two altitude categories, are quite generous. Narrowing the altitude intervals would decrease, rather than increase, a claimant's chance of satisfying the impairment requirements.

Section 79.36(e) Medical review. One commenter asserted that medical review of HRCT reports and "B" reader interpretations of chest x-rays by medical consultants is burdensome and not in accordance with the spirit of the Act. Section 6(b)(2) of the Act, however, specifically designates the NIOSH as a source for consultation when deemed necessary in making medical determinations. Given the highly technical nature of many of the eligibility criteria, expert opinions and guidance are necessary to resolve many claims. As the Department administers a compensation program for eligible individuals, it is in the public interest to subject claims to appropriate scrutiny.

Section 79.37 Proof of smoking, nonsmoking, and age. Several commenters argued that affidavits should be accepted to establish smoking status when medical records are silent, incomplete, or reflect unclear or conflicting information regarding an individual's smoking history. In order to prove a history of non-smoking, the Department requires certain medical documentation created within the period six months before and six months after the date of diagnosis of a compensable disease. The final rule, however, seeks to liberalize the proof requirement by allowing claimants to submit affidavits regarding smoking history in the event that the required medical records no longer exist, or fail to contain information pertaining to the claimant's smoking history.

Subpart F—Procedures

Section 79.51 Filing of Claims

One commenter requested clarification of the number of times a claim may be filed, and how the revised regulations would affect the limitations on filing. A related comment suggested that we apply the revised regulations to pending claims rather than requiring claimants to re-file for consideration under those regulations. We concur with this suggestion. The final rule allows claimants who filed claims prior to the rule's implementation and were denied compensation to file another three times. Moreover, the revised regulations will apply to all claims pending as of April 21, 1999, the date the final rule becomes effective, regardless of when those claims were filed.

Certifications and Determinations

In accordance with 5 U.S.C. 605(b), the Attorney General certifies that this rule affects only individuals filing claims under the RECA. Therefore, this rule does not have a significant economic impact on a substantial number of small entities, as that term is defined in 5 U.S.C. 601(6). This rule, however, is a significant regulatory action under Executive Order 12866 and, accordingly, has been reviewed by the Office of Management and Budget. The rule is not a major rule as defined by 5 U.S.C. 804(2) nor is it a rule having federalism implications warranting assessment in accordance with section 6 of Executive Order 12612. In addition, this rule is in full compliance with the Paperwork Reduction Act.

List of Subjects in 28 CFR Part 79

Administrative practice and procedure, Authority delegations (Government agencies), Cancer, Claims, Radiation Exposure Compensation Act, Radioactive materials, Reporting and recordkeeping requirements, Underground mining, Uranium.

Accordingly, part 79 of chapter I of title 28 of the Code of Federal Regulations is amended as follows:

PART 79—CLAIMS UNDER THE RADIATION EXPOSURE COMPENSATION ACT

1. The authority citation for part 79 continues to read as follows:

AUTHORITY: Sec. 6(b) and (j), Pub.L. 101–426, 104 Stat. 920 (42 U.S.C. § 2210 note).

2. Section 79.4(c) is amended by redesignating paragraphs (c)(3) and (c)(4) as paragraphs (c)(4) and (c)(5), adding a new paragraph (c)(3) and revising paragraphs (c)(1) and (c)(2) and new paragraphs (c)(4) and (c)(5) as follows:

§ 79.4 Burden of proof, production of documents, presumptions, and affidavits.

* * * * * * *

(c) * * *

(1) Eligibility of family members as set forth in § 79.51(e), (f), (g), (h), or (i);

(2) Other compensation received as set forth in § 79.55(c) or (d);

(3) Smoking and/or drinking history and/or age at diagnosis as set forth in § 79.27(d) and § 79.37(d);

(4) The amount of coffee consumed as set forth in § 79.27(e); or

(5) Mining information as set forth in § 79.33(b)(2).

3. Section 79.5 is amended by adding paragraph (c) to read as follows:

§ 79.5 Requirements for written medical documentation, contemporaneous records, and other records or documents.

* * * * * * *

(c) To establish eligibility the claimant or eligible surviving beneficiary may be required to provide, where appropriate, additional contemporaneous records to the extent they exist or an authorization to release additional contemporaneous records or a statement by the custodian(s) of the records certifying that the requested record(s) no longer exist. Nothing in the regulations in this section shall be construed to limit the Assistant Director's ability to require additional documentation.

4. In § 79.21, paragraph (d) is amended by adding one new sentence after the second sentence to read as follows:

§ 79.21 Definitions.

* * * * * * *

(d) * * * The term excludes an individual who smoked more than 20 pack years, but who can establish in accordance with § 79.27 that he or she stopped smoking at least fifteen (15) years prior to the diagnosis of primary cancer of the esophagus, pharynx, or pancreas, and did not resume smoking at any time thereafter.

* * * * * * *

5. Section 79.27 is amended by revising the heading, re-designating paragraph (c) as new paragraph (e), adding new paragraphs (c) and (d), and revising paragraphs (a) and (b), to read as follows:

§ 79.27 Proof of no heavy smoking, no heavy drinking, no heavy coffee drinking and no indication of the presence of hepatitis B and cirrhosis.

(a)(1) If the claimant or eligible surviving beneficiary is claiming eligibility under this subpart for primary cancer of the esophagus, pharynx, pancreas, or liver, the claimant or eligible surviving beneficiary must submit, in addition to proof of the disease, all medical records listed below from any hospital, medical facility, or health care provider that were created within the period six (6) months before and six (6) months after the date of diagnosis of primary cancer of the esophagus, pharynx, pancreas, or liver:

(i) All history and physical examination reports;

(ii) All operative and consultation reports;

(iii) All pathology reports; and

(iv) All physician, hospital, and health care facility admission and discharge summaries.

(2) In the event that any of the records in paragraph (a)(1) of this section no longer exist, the claimant or eligible surviving beneficiary must submit a certified statement by the custodian(s) of those records to that effect.

(b) If the medical records listed in paragraph (a) of this section, or information possessed by the state cancer or tumor registries, reflects that the claimant was a heavy smoker or a heavy drinker or indicates the presence of hepatitis B and/or cirrhosis, the Radiation Exposure Compensation Unit will notify the claimant or eligible surviving beneficiary and afford that individual the opportunity to submit other written medical documentation or contemporaneous records in accordance with § 79.52(b) to establish that the claimant was not a heavy smoker or heavy drinker or that there was no indication of hepatitis B and/or cirrhosis.

(c) The Program may also require that the claimant or eligible surviving beneficiary provide additional medical records or other contemporaneous records and/or an authorization to release such additional medical and contemporaneous records as may be needed to make a determination regarding the indication of the presence of hepatitis B and/or cirrhosis and the claimant's history of smoking and alcohol consumption.

(d) If the custodian(s) of the records listed in paragraph (a) of this section and the records requested in accordance with paragraph (c) of this section certifies that a claimant's records no longer exist, and if the state cancer or tumor registries do not contain information concerning the claimant's history of smoking or alcohol-consumption, the Assistant Director may require that the claimant or eligible surviving beneficiary submit an affidavit (or declaration) made under penalty of perjury detailing the histories or lack thereof and, if the affiant (or declarant) is the eligible surviving beneficiary, the basis for such knowledge. This affidavit (or declaration) will be considered by the Assistant Director in making a determination concerning the claimant's history of smoking and alcohol consumption.

(e) * * *

6. Section 79.31 is amended by revising paragraphs (e) and (f) and the second sentence of paragraph (h), to read as follows:

§ 79.31 Definitions.

* * * * * * *

(e) *Non-smoker* means an individual who never smoked tobacco cigarette products or who smoked less than the amount defined in paragraph (f) of this section and includes an individual who smoked at least one (1) pack year but whose acceptable documentation as set forth in § 79.37 establishes that he or she stopped smoking at least fifteen (15) years prior to the diagnosis of primary cancer of the lung, pulmonary fibrosis, fibrosis of the lung, cor pulmonale related to fibrosis of the lung, or moderate or severe silicosis or pneumoconiosis, and that he or she did not resume smoking at any time thereafter.

(f) *Smoker* means an individual who has smoked at least one (1) pack year of cigarette products, and who is not deemed a non-smoker by virtue of paragraph (e) of this section.

* * * * * * *

(h) * * * The term includes cancers *in situ.*

* * * * * * *

8. Section 79.36 is amended by revising the first sentence of paragraph (a), revising paragraph (d)(1)(ii), and adding new paragraph (e) to read as follows:

§ 79.36 Proof of non-malignant respiratory disease.

(a) Written medical documentation is required in all cases to prove that the claimant developed a non-malignant respiratory disease. * * *

* * * * * * *

(d) * * *

(1) * * *

(i) * * *

(ii) If the claimant is alive, (A) One of the following:

(*1*) *Chest x-rays and two "B" reader interpretations.* A chest x-ray administered in accordance with standard techniques on full size film at quality 1 or 2, and interpretative reports of the x-ray by two certified "B" readers classifying the existence of fibrosis of category 1/0 or higher according to the ILO 1980, or subsequent revisions; or

(*2*) *Pathology reports of tissue biopsies.* A pathology report of a tissue biopsy, but only if performed for medically justified reasons; and

(B) One or more of the following:

(*1*) *Pulmonary function tests.* Pulmonary function tests consisting of three tracings recording the results of the forced expiratory volume in one second (FEV1) and the forced vital capacity (FVC) administered and reported in accordance with the Standardization of Spirometry—1987 Update by the American Thoracic Society, and reflecting values for FEV1 or FVC that are less than or equal to 80% of the predicted value for an individual of the claimant's age, sex, and height, as set forth in the Tables in Appendix A; or

(*2*) *Arterial blood-gas studies.* An arterial blood-gas study administered at rest in a sitting position, or an exercise arterial blood-gas test, reflecting values equal to or less than the values set forth in the Tables in Appendix B of this part.

* * * * * * *

(e) The Radiation Exposure Compensation Unit may seek qualified medical review of "B" reader interpretations or pathology reports of tissue biopsies submitted by a claimant or eligible surviving beneficiary or obtain additional "B" reader interpretations or pathology reports of tissue biopsies at any time to ensure that appropriate weight is given to this evidence and to guarantee uniformity and reliability. This review may include obtaining additional chest x-ray interpretations and additional pathology reports of tissue biopsies.

9. Section 79.37 is amended by revising the section heading, revising paragraphs (a) and (b), and adding new paragraphs (c) and (d) to read as follows:

§ 79.37 Proof of non-smoker and diagnosis prior to age 45.

(a)(1) In order to prove a history of non-smoking for purposes of § 79.32(c)(1), and/or diagnosis of a compensable disease prior to age 45 for purposes of § 79.32(c)(2)(i), the claimant or eligible surviving beneficiary must submit all medical records listed in this paragraph (a)(1) from any hospital, medical facility, or health care provider that were created within the period six (6) months before and six (6) months after the date of diagnosis of primary lung cancer or a compensable nonmalignant respiratory disease:

(i) All history and physical examination reports;

(ii) All operative and consultation reports;

(iii) All pathology reports;

(iv) All physician, hospital, and health care facility admission and discharge summaries.

(2) In the event that any of the records in paragraph (a)(1) no longer exist, the claimant or eligible surviving beneficiary must submit a certified statement by the custodian(s) of those records to that effect.

(b) If, after a review of the records listed in paragraph (a) of this section, and/or the information possessed by the PHS, NIOSH, state cancer or tumor registries, state authorities, or the custodian of a federally supported health-related study, the Assistant Director finds that the claimant was a smoker, and/or that the claimant was diagnosed with a compensable disease after age 45, the Unit will notify the claimant or eligible surviving beneficiary and afford that individual the opportunity to submit other written medical documentation in accordance with § 79.52(b) to establish that the claimant was a non-smoker and/or was diagnosed with a compensable disease prior to age 45.

(c) The Unit may also require that the claimant or eligible surviving beneficiary provide additional medical records or other contemporaneous records and/or an authorization to release such additional medical and contemporaneous records as may be needed to make a determination regarding the claimant's smoking history and/or age at diagnosis with a compensable disease.

(d) If the custodian(s) of the records listed in paragraph (a) of this section and the records requested in accordance with paragraph (c) of this section certifies that a claimant's records no longer exist, and information possessed by the PHS, NIOSH, state cancer or tumor registries, state authorities, or the custodian of a federally supported health-related study do not contain information pertaining to the claimant's smoking history, the Assistant Director may require that the claimant or eligible surviving beneficiary submit an affidavit (or declaration) made under penalty of perjury detailing the claimant's smoking history or lack thereof and, if the affiant (or declarant) is the eligible surviving beneficiary, the basis for such knowledge. This affidavit (or declaration) will be considered by the Assistant Director in making a determination concerning the claimant's history of smoking.

10. In § 79.51, paragraph (j) is amended by revising paragraphs (j)(3) and (j)(4), adding paragraph (j)(5) and adding a sentence at the end of the concluding text to read as follows:

§ 79.51 Filing of claims.

* * * * * * *

(j) * * *

(3) Onsite participation in a nuclear test,

(4) Exposure to a defined minimum level of radiation in a uranium mine or mines during a designated time period, or

(5) The identity of the claimant and/or surviving beneficiary.

* * * Claims filed prior to April 21, 1999 will not be included in determining the number of claims filed.

11. In § 79.55, paragraphs (d)(1)(i) and (d)(1)(ii) are revised to read as follows:

§ 79.55 Procedures for payment of claims.

* * * * * * *

(d) * * *

(1) * * *

(i) Any disability payments or compensation benefits paid to the claimant and his/her dependents while the claimant is alive; and

(ii) Any Dependency and Indemnity Compensation payments made to survivors due to death related to the illness for which the claim under the Act is submitted.

* * * * * * *

12. Appendix A to Part 79 is revised to read as follows:

Appendix A to Part 79—Pulmonary Function Tables

TABLE 1.—MALES FVC

[80% of Predicted; Knudson 1983]

Ht.	Age										
	35	37	39	41	43	45	47	49	51	53	55
56.0	1.74	1.70	1.65	1.60	1.55	1.51	1.46	1.41	1.36	1.32	1.27
56.5	1.83	1.78	1.73	1.69	1.64	1.59	1.54	1.50	1.45	1.40	1.35
57.0	1.92	1.87	1.82	1.77	1.72	1.68	1.63	1.58	1.53	1.49	1.44
57.5	2.00	1.95	1.91	1.86	1.81	1.76	1.72	1.67	1.62	1.57	1.52
58.0	2.09	2.04	1.99	1.94	1.90	1.85	1.80	1.75	1.71	1.66	1.61
58.5	2.17	2.13	2.08	2.03	1.98	1.93	1.89	1.84	1.79	1.74	1.70
59.0	2.26	2.21	2.16	2.12	2.07	2.02	1.97	1.92	1.88	1.83	1.78
59.5	2.34	2.30	2.25	2.20	2.15	2.11	2.06	2.01	1.96	1.92	1.87
60.0	2.43	2.38	2.33	2.29	2.24	2.19	2.14	2.10	2.05	2.00	1.95
60.5	2.52	2.47	2.42	2.37	2.33	2.28	2.23	2.18	2.13	2.09	2.04
61.0	2.60	2.55	2.51	2.46	2.41	2.36	2.32	2.27	2.22	2.17	2.12
61.5	2.69	2.64	2.59	2.54	2.50	2.45	2.40	2.35	2.31	2.26	2.21
62.0	2.77	2.73	2.68	2.63	2.58	2.53	2.49	2.44	2.39	2.34	2.30
62.5	2.86	2.81	2.76	2.72	2.67	2.62	2.57	2.53	2.48	2.43	2.38
63.0	2.94	2.90	2.85	2.80	2.75	2.71	2.66	2.61	2.56	2.52	2.47
63.5	3.03	2.98	2.94	2.89	2.84	2.79	2.74	2.70	2.65	2.60	2.55
64.0	3.12	3.07	3.02	2.97	2.93	2.88	2.83	2.78	2.73	2.69	2.64
64.5	3.20	3.15	3.11	3.06	3.01	2.96	2.92	2.87	2.82	2.77	2.73
65.0	3.29	3.24	3.19	3.14	3.10	3.05	3.00	2.95	2.91	2.86	2.81
65.5	3.37	3.33	3.28	3.23	3.18	3.14	3.09	3.04	2.99	2.94	2.90
66.0	3.46	3.41	3.36	3.32	3.27	3.22	3.17	3.13	3.08	3.03	2.98
66.5	3.54	3.50	3.45	3.40	3.35	3.31	3.26	3.21	3.16	3.12	3.07
67.0	3.63	3.58	3.54	3.49	3.44	3.39	3.34	3.30	3.25	3.20	3.15
67.5	3.72	3.67	3.62	3.57	3.53	3.48	3.43	3.38	3.34	3.29	3.24
68.0	3.80	3.75	3.71	3.66	3.61	3.56	3.52	3.47	3.42	3.37	3.33
68.5	3.89	3.84	3.79	3.74	3.70	3.65	3.60	3.55	3.51	3.46	3.41
69.0	3.97	3.93	3.88	3.83	3.78	3.74	3.69	3.64	3.59	3.54	3.50
69.5	4.06	4.01	3.96	3.92	3.87	3.82	3.77	3.73	3.68	3.63	3.58
70.0	4.15	4.10	4.05	4.00	3.95	3.91	3.86	3.81	3.76	3.72	3.67
70.5	4.23	4.18	4.14	4.09	4.04	3.99	3.94	3.90	3.85	3.80	3.75
71.0	4.32	4.27	4.22	4.17	4.13	4.08	4.03	3.98	3.94	3.89	3.84
71.5	4.40	4.35	4.31	4.26	4.21	4.16	4.12	4.07	4.02	3.97	3.93
72.0	4.49	4.44	4.39	4.35	4.30	4.25	4.20	4.15	4.11	4.06	4.01
72.5	4.57	4.53	4.48	4.43	4.38	4.34	4.29	4.24	4.19	4.14	4.10
73.0	4.66	4.61	4.56	4.52	4.47	4.42	4.37	4.33	4.28	4.23	4.18
73.5	4.75	4.70	4.65	4.60	4.55	4.51	4.46	4.41	4.36	4.32	4.27
74.0	4.83	4.78	4.74	4.69	4.64	4.59	4.55	4.50	4.45	4.40	4.35
74.5	4.92	4.87	4.82	4.77	4.73	4.68	4.63	4.58	4.54	4.49	4.44
75.0	5.00	4.96	4.91	4.86	4.81	4.76	4.72	4.67	4.62	4.57	4.53
75.5	5.09	5.04	4.99	4.95	4.90	4.85	4.80	4.75	4.71	4.66	4.61
76.0	5.17	5.13	5.08	5.03	4.98	4.94	4.89	4.84	4.79	4.75	4.70
76.5	5.26	5.21	5.16	5.12	5.07	5.02	4.97	4.93	4.88	4.83	4.78
77.0	5.35	5.30	5.25	5.20	5.16	5.11	5.06	5.01	4.96	4.92	4.87
77.5	5.43	5.38	5.34	5.29	5.24	5.19	5.15	5.10	5.05	5.00	4.95
78.0	5.52	5.47	5.42	5.37	5.33	5.28	5.23	5.18	5.14	5.09	5.04
78.5	5.60	5.56	5.51	5.46	5.41	5.36	5.32	5.27	5.22	5.17	5.13
79.0	5.69	5.64	5.59	5.55	5.50	5.45	5.40	5.35	5.31	5.26	5.21
79.5	5.77	5.73	5.68	5.63	5.58	5.54	5.49	5.44	5.39	5.35	5.30
80.0	5.86	5.81	5.76	5.72	5.67	5.62	5.57	5.53	5.48	5.43	5.38
80.5	5.95	5.90	5.85	5.80	5.76	5.71	5.66	5.61	5.56	5.52	5.47
81.0	6.03	5.98	5.94	5.89	5.84	5.79	5.75	5.70	5.65	5.60	5.55
81.5	6.12	6.07	6.02	5.97	5.93	5.88	5.83	5.78	5.74	5.69	5.64
82.0	6.20	6.16	6.11	6.06	6.01	5.96	5.92	5.87	5.82	5.77	5.73
82.5	6.29	6.24	6.19	6.15	6.10	6.05	6.00	5.96	5.91	5.86	5.81
83.0	6.37	6.33	6.28	6.23	6.18	6.14	6.09	6.04	5.99	5.95	5.90
83.5	6.46	6.41	6.37	6.32	6.27	6.22	6.17	6.13	6.08	6.03	5.98
84.0	6.55	6.50	6.45	6.40	6.36	6.31	6.26	6.21	6.16	6.12	6.07
84.5	6.63	6.58	6.54	6.49	6.44	6.39	6.35	6.30	6.25	6.20	6.16

TABLE 1.—MALES FVC—Continued

[80% of Predicted; Knudson 1983]

Ht.	Age										
	35	37	39	41	43	45	47	49	51	53	55
85.0	6.72	6.67	6.62	6.57	6.53	6.48	6.43	6.38	6.34	6.29	6.24

TABLE 1A.—MALES FVC

[80% of Predicted; Knudson 1983]

Ht.	Age									
	57	59	61	63	65	67	69	71	73	75
56.0	1.22	1.17	1.12	1.08	1.03	.98	.93	.89	.84	.79
56.5	1.31	1.26	1.21	1.16	1.11	1.07	1.02	.97	.92	.88
57.0	1.39	1.34	1.30	1.25	1.20	1.15	1.11	1.06	1.01	.96
57.5	1.48	1.43	1.38	1.33	1.29	1.24	1.19	1.14	1.10	1.05
58.0	1.56	1.52	1.47	1.42	1.37	1.32	1.28	1.23	1.18	1.13
58.5	1.65	1.60	1.55	1.51	1.46	1.41	1.36	1.31	1.27	1.22
59.0	1.73	1.69	1.64	1.59	1.54	1.50	1.45	1.40	1.35	1.31
59.5	1.82	1.77	1.72	1.68	1.63	1.58	1.53	1.49	1.44	1.39
60.0	1.91	1.86	1.81	1.76	1.72	1.67	1.62	1.57	1.52	1.48
60.5	1.99	1.94	1.90	1.85	1.80	1.75	1.71	1.66	1.61	1.56
61.0	2.08	2.03	1.98	1.93	1.89	1.84	1.79	1.74	1.70	1.65
61.5	2.16	2.12	2.07	2.02	1.97	1.92	1.88	1.83	1.78	1.73
62.0	2.25	2.20	2.15	2.11	2.06	2.01	1.96	1.91	1.87	1.82
62.5	2.33	2.29	2.24	2.19	2.14	2.10	2.05	2.00	1.95	1.91
63.0	2.42	2.37	2.32	2.28	2.23	2.18	2.13	2.09	2.04	1.99
63.5	2.51	2.46	2.41	2.36	2.32	2.27	2.22	2.17	2.12	2.08
64.0	2.59	2.54	2.50	2.45	2.40	2.35	2.31	2.26	2.21	2.16
64.5	2.68	2.63	2.58	2.53	2.49	2.44	2.39	2.34	2.30	2.25
65.0	2.76	2.72	2.67	2.62	2.57	2.52	2.48	2.43	2.38	2.33
65.5	2.85	2.80	2.75	2.71	2.66	2.61	2.56	2.52	2.47	2.42
66.0	2.93	2.89	2.84	2.79	2.74	2.70	2.65	2.60	2.55	2.51
66.5	3.02	2.97	2.93	2.88	2.83	2.78	2.73	2.69	2.64	2.59
67.0	3.11	3.06	3.01	2.96	2.92	2.87	2.82	2.77	2.72	2.68
67.5	3.19	3.14	3.10	3.05	3.00	2.95	2.91	2.86	2.81	2.76
68.0	3.28	3.23	3.18	3.13	3.09	3.04	2.99	2.94	2.90	2.85
68.5	3.36	3.32	3.27	3.22	3.17	3.13	3.08	3.03	2.98	2.93
69.0	3.45	3.40	3.35	3.31	3.26	3.21	3.16	3.12	3.07	3.02
69.5	3.53	3.49	3.44	3.39	3.34	3.30	3.25	3.20	3.15	3.11
70.0	3.62	3.57	3.53	3.48	3.43	3.38	3.33	3.29	3.24	3.19
70.5	3.71	3.66	3.61	3.56	3.52	3.47	3.42	3.37	3.33	3.28
71.0	3.79	3.74	3.70	3.65	3.60	3.55	3.51	3.46	3.41	3.36
71.5	3.88	3.83	3.78	3.73	3.69	3.64	3.59	3.54	3.50	3.45
72.0	3.96	3.92	3.87	3.82	3.77	3.73	3.68	3.63	3.58	3.53
72.5	4.05	4.00	3.95	3.91	3.86	3.81	3.76	3.72	3.67	3.62
73.0	4.14	4.09	4.04	3.99	3.94	3.90	3.85	3.80	3.75	3.71
73.5	4.22	4.17	4.13	4.08	4.03	3.98	3.93	3.89	3.84	3.79
74.0	4.31	4.26	4.21	4.16	4.12	4.07	4.02	3.97	3.93	3.88
74.5	4.39	4.34	4.30	4.25	4.20	4.15	4.11	4.06	4.01	3.96
75.0	4.48	4.43	4.38	4.34	4.29	4.24	4.19	4.14	4.10	4.05
75.5	4.56	4.52	4.47	4.42	4.37	4.33	4.28	4.23	4.18	4.13
76.0	4.65	4.60	4.55	4.51	4.46	4.41	4.36	4.32	4.27	4.22
76.5	4.74	4.69	4.64	4.59	4.54	4.50	4.45	4.40	4.35	4.31
77.0	4.82	4.77	4.73	4.68	4.63	4.58	4.54	4.49	4.44	4.39
77.5	4.91	4.86	4.81	4.76	4.72	4.67	4.62	4.57	4.53	4.48
78.0	4.99	4.95	4.90	4.85	4.80	4.75	4.71	4.66	4.61	4.56
78.5	5.08	5.03	4.98	4.94	4.89	4.84	4.79	4.74	4.70	4.65
79.0	5.16	5.12	5.07	5.02	4.97	4.93	4.88	4.83	4.78	4.74
79.5	5.25	5.20	5.15	5.11	5.06	5.01	4.96	4.92	4.87	4.82
80.0	5.34	5.29	5.24	5.19	5.15	5.10	5.05	5.00	4.95	4.91
80.5	5.42	5.37	5.33	5.28	5.23	5.18	5.14	5.09	5.04	4.99
81.0	5.51	5.46	5.41	5.36	5.32	5.27	5.22	5.17	5.13	5.08
81.5	5.59	5.55	5.50	5.45	5.40	5.35	5.31	5.26	5.21	5.16

TABLE 1A.—MALES FVC—Continued

[80% of Predicted; Knudson 1983]

Ht.	Age									
	57	59	61	63	65	67	69	71	73	75
82.0	5.68	5.63	5.58	5.54	5.49	5.44	5.39	5.34	5.30	5.25
82.5	5.76	5.72	5.67	5.62	5.57	5.53	5.48	5.43	5.38	5.34
83.0	5.85	5.80	5.75	5.71	5.66	5.61	5.56	5.52	5.47	5.42
83.5	5.94	5.89	5.84	5.79	5.75	5.70	5.65	5.60	5.55	5.51
84.0	6.02	5.97	5.93	5.88	5.83	5.78	5.74	5.69	5.64	5.59
84.5	6.11	6.06	6.01	5.96	5.92	5.87	5.82	5.77	5.73	5.68
85.0	6.19	6.15	6.10	6.05	6.00	5.95	5.91	5.86	5.81	5.76

TABLE 2.—MALES FEV1

[80% of Predicted; Knudson 1983]

Ht.	Age										
	35	37	39	41	43	45	47	49	51	53	55
56.0	1.54	1.49	1.44	1.40	1.35	1.30	1.26	1.21	1.16	1.12	1.07
56.5	1.61	1.56	1.51	1.47	1.42	1.37	1.33	1.28	1.23	1.18	1.14
57.0	1.67	1.63	1.58	1.53	1.49	1.44	1.39	1.35	1.30	1.25	1.21
57.5	1.74	1.69	1.65	1.60	1.55	1.51	1.46	1.41	1.37	1.32	1.27
58.0	1.81	1.76	1.71	1.67	1.62	1.57	1.53	1.48	1.43	1.39	1.34
58.5	1.88	1.83	1.78	1.74	1.69	1.64	1.60	1.55	1.50	1.46	1.41
59.0	1.94	1.90	1.85	1.80	1.76	1.71	1.66	1.62	1.57	1.52	1.48
59.5	2.01	1.96	1.92	1.87	1.82	1.78	1.73	1.68	1.64	1.59	1.54
60.0	2.08	2.03	1.98	1.94	1.89	1.84	1.80	1.75	1.70	1.66	1.61
60.5	2.15	2.10	2.05	2.01	1.96	1.91	1.87	1.82	1.77	1.73	1.68
61.0	2.21	2.17	2.12	2.07	2.03	1.98	1.93	1.89	1.84	1.79	1.75
61.5	2.28	2.23	2.19	2.14	2.09	2.05	2.00	1.95	1.91	1.86	1.81
62.0	2.35	2.30	2.26	2.21	2.16	2.11	2.07	2.02	1.97	1.93	1.88
62.5	2.42	2.37	2.32	2.28	2.23	2.18	2.14	2.09	2.04	2.00	1.95
63.0	2.48	2.44	2.39	2.34	2.30	2.25	2.20	2.16	2.11	2.06	2.02
63.5	2.55	2.50	2.46	2.41	2.36	2.32	2.27	2.22	2.18	2.13	2.08
64.0	2.62	2.57	2.53	2.48	2.43	2.39	2.34	2.29	2.25	2.20	2.15
64.5	2.69	2.64	2.59	2.55	2.50	2.45	2.41	2.36	2.31	2.27	2.22
65.0	2.75	2.71	2.66	2.61	2.57	2.52	2.47	2.43	2.38	2.33	2.29
65.5	2.82	2.77	2.73	2.68	2.63	2.59	2.54	2.49	2.45	2.40	2.35
66.0	2.89	2.84	2.80	2.75	2.70	2.66	2.61	2.56	2.52	2.47	2.42
66.5	2.96	2.91	2.86	2.82	2.77	2.72	2.68	2.63	2.58	2.54	2.49
67.0	3.02	2.98	2.93	2.88	2.84	2.79	2.74	2.70	2.65	2.60	2.56
67.5	3.09	3.05	3.00	2.95	2.90	2.86	2.81	2.76	2.72	2.67	2.62
68.0	3.16	3.11	3.07	3.02	2.97	2.93	2.88	2.83	2.79	2.74	2.69
68.5	3.23	3.18	3.13	3.09	3.04	2.99	2.95	2.90	2.85	2.81	2.76
69.0	3.29	3.25	3.20	3.15	3.11	3.06	3.01	2.97	2.92	2.87	2.83
69.5	3.36	3.32	3.27	3.22	3.18	3.13	3.08	3.03	2.99	2.94	2.89
70.0	3.43	3.38	3.34	3.29	3.24	3.20	3.15	3.10	3.06	3.01	2.96
70.5	3.50	3.45	3.40	3.36	3.31	3.26	3.22	3.17	3.12	3.08	3.03
71.0	3.56	3.52	3.47	3.42	3.38	3.33	3.28	3.24	3.19	3.14	3.10
71.5	3.63	3.59	3.54	3.49	3.45	3.40	3.35	3.31	3.26	3.21	3.17
72.0	3.70	3.65	3.61	3.56	3.51	3.47	3.42	3.37	3.33	3.28	3.23
72.5	3.77	3.72	3.67	3.63	3.58	3.53	3.49	3.44	3.39	3.35	3.30
73.0	3.83	3.79	3.74	3.69	3.65	3.60	3.55	3.51	3.46	3.41	3.37
73.5	3.90	3.86	3.81	3.76	3.72	3.67	3.62	3.58	3.53	3.48	3.44
74.0	3.97	3.92	3.88	3.83	3.78	3.74	3.69	3.64	3.60	3.55	3.50
74.5	4.04	3.99	3.94	3.90	3.85	3.80	3.76	3.71	3.66	3.62	3.57
75.0	4.11	4.06	4.01	3.97	3.92	3.87	3.82	3.78	3.73	3.68	3.64
75.5	4.17	4.13	4.08	4.03	3.99	3.94	3.89	3.85	3.80	3.75	3.71
76.0	4.24	4.19	4.15	4.10	4.05	4.01	3.96	3.91	3.87	3.82	3.77
76.5	4.31	4.26	4.21	4.17	4.12	4.07	4.03	3.98	3.93	3.89	3.84
77.0	4.38	4.33	4.28	4.24	4.19	4.14	4.10	4.05	4.00	3.96	3.91
77.5	4.44	4.40	4.35	4.30	4.26	4.21	4.16	4.12	4.07	4.02	3.98
78.0	4.51	4.46	4.42	4.37	4.32	4.28	4.23	4.18	4.14	4.09	4.04
78.5	4.58	4.53	4.48	4.44	4.39	4.34	4.30	4.25	4.20	4.16	4.11

TABLE 2.—MALES FEV1—Continued

[80% of Predicted; Knudson 1983]

Ht.	Age										
	35	37	39	41	43	45	47	49	51	53	55
79.0	4.65	4.60	4.55	4.51	4.46	4.41	4.37	4.32	4.27	4.23	4.18
79.5	4.71	4.67	4.62	4.57	4.53	4.48	4.43	4.39	4.34	4.29	4.25
80.0	4.78	4.73	4.69	4.64	4.59	4.55	4.50	4.45	4.41	4.36	4.31
80.5	4.85	4.80	4.76	4.71	4.66	4.61	4.57	4.52	4.47	4.43	4.38
81.0	4.92	4.87	4.82	4.78	4.73	4.68	4.64	4.59	4.54	4.50	4.45
81.5	4.98	4.94	4.89	4.84	4.80	4.75	4.70	4.66	4.61	4.56	4.52
82.0	5.05	5.00	4.96	4.91	4.86	4.82	4.77	4.72	4.68	4.63	4.58
	5.12	5.07	5.03	4.98	4.93	4.89	4.84	4.79	4.74	4.70	4.65
83.0	5.19	5.14	5.09	5.05	5.00	4.95	4.91	4.86	4.81	4.77	4.72
83.5	5.25	5.21	5.16	5.11	5.07	5.02	4.97	4.93	4.88	4.83	4.79
84.0	5.32	5.27	5.23	5.18	5.13	5.09	5.04	4.99	4.95	4.90	4.85
84.5	5.39	5.34	5.30	5.25	5.20	5.16	5.11	5.06	5.02	4.97	4.92
85.0	5.46	5.41	5.36	5.32	5.27	5.22	5.18	5.13	5.08	5.04	4.99

TABLE 2A.—MALES FEV1

[80% of Predicted; Knudson 1983]

Ht.	Age									
	57	59	61	63	65	67	69	71	73	75
56.0	1.02	.98	.93	.88	.84	.79	.74	.70	.65	.60
56.5	1.09	1.04	1.00	.95	.90	.86	.81	.76	.72	.67
57.0	1.16	1.11	1.07	1.02	.97	.93	.88	.83	.79	.74
57.5	1.23	1.18	1.13	1.09	1.04	.99	.95	.90	.85	.81
58.0	1.29	1.25	1.20	1.15	1.11	1.06	1.01	.97	.92	.87
58.5	1.36	1.31	1.27	1.22	1.17	1.13	1.08	1.03	.99	.94
59.0	1.43	1.38	1.34	1.29	1.24	1.20	1.15	1.10	1.06	1.01
59.5	1.50	1.45	1.40	1.36	1.31	1.26	1.22	1.17	1.12	1.08
60.0	1.56	1.52	1.47	1.42	1.38	1.33	1.28	1.24	1.19	1.14
60.5	1.63	1.59	1.54	1.49	1.45	1.40	1.35	1.30	1.26	1.21
61.0	1.70	1.65	1.62	1.56	1.51	1.47	1.42	1.37	1.33	1.28
61.5	1.77	1.72	1.67	1.63	1.58	1.53	1.49	1.44	1.39	1.35
62.0	1.83	1.79	1.74	1.69	1.65	1.60	1.55	1.51	1.46	1.41
62.5	1.90	1.86	1.81	1.76	1.72	1.67	1.62	1.58	1.53	1.48
63.0	1.97	1.92	1.88	1.83	1.78	1.74	1.69	1.64	1.60	1.55
63.5	2.04	1.99	1.94	1.90	1.85	1.80	1.76	1.71	1.66	1.62
64.0	2.10	2.06	2.01	1.96	1.92	1.87	1.82	1.78	1.73	1.68
64.5	2.17	2.13	2.08	2.03	1.99	1.94	1.89	1.85	1.80	1.75
65.0	2.24	2.19	2.15	2.10	2.05	2.01	1.96	1.91	1.87	1.82
65.5	2.31	2.26	2.21	2.17	2.12	2.07	2.03	1.98	1.93	1.89
66.0	2.38	2.33	2.28	2.24	2.19	2.14	2.09	2.05	2.00	1.95
66.5	2.44	2.40	2.35	2.30	2.26	2.21	2.16	2.12	2.07	2.02
67.0	2.51	2.46	2.42	2.37	2.32	2.28	2.23	2.18	2.14	2.09
67.5	2.58	2.53	2.48	2.44	2.39	2.34	2.30	2.25	2.20	2.16
68.0	2.65	2.60	2.55	2.51	2.46	2.41	2.37	2.32	2.27	2.22
68.5	2.71	2.67	2.62	2.57	2.53	2.48	2.43	2.39	2.34	2.29
69.0	2.78	2.73	2.69	2.64	2.59	2.55	2.50	2.45	2.41	2.36
69.5	2.85	2.80	2.75	2.71	2.66	2.61	2.57	2.52	2.47	2.43
70.0	2.92	2.87	2.82	2.78	2.73	2.68	2.64	2.59	2.54	2.50
70.5	2.98	2.94	2.89	2.84	2.80	2.75	2.70	2.66	2.61	2.56
71.0	3.05	3.00	2.96	2.91	2.86	2.82	2.77	2.72	2.68	2.63
71.5	3.12	3.07	3.02	2.98	2.93	2.88	2.84	2.79	2.74	2.70
72.0	3.19	3.14	3.09	3.05	3.00	2.95	2.91	2.86	2.81	2.77
72.5	3.25	3.21	3.16	3.11	3.07	3.02	2.97	2.93	2.88	2.83
73.0	3.32	3.27	3.23	3.18	3.13	3.09	3.04	2.99	2.95	2.90
73.5	3.39	3.34	3.30	3.25	3.20	3.16	3.11	3.06	3.01	2.97
74.0	3.46	3.41	3.36	3.32	3.27	3.22	3.18	3.13	3.08	3.04
74.5	3.52	3.48	3.43	3.38	3.34	3.29	3.24	3.20	3.15	3.10
75.0	3.59	3.54	3.50	3.45	3.40	3.36	3.31	3.26	3.22	3.17
75.5	3.66	3.61	3.57	3.52	3.47	3.43	3.38	3.33	3.29	3.24

TABLE 2A.—MALES FEV1—Continued

[80% of Predicted; Knudson 1983]

Ht.	Age									
	57	59	61	63	65	67	69	71	73	75
76.0	3.73	3.68	3.63	3.59	3.54	3.49	3.45	3.40	3.35	3.31
76.5	3.79	3.75	3.70	3.65	3.61	3.56	3.51	3.47	3.42	3.37
77.0	3.86	3.81	3.77	3.72	3.67	3.63	3.58	3.53	3.49	3.44
77.5	3.93	3.88	3.84	3.79	3.74	3.70	3.65	3.60	3.56	3.51
78.0	4.00	3.95	3.90	3.86	3.81	3.76	3.72	3.67	3.62	3.58
78.5	4.06	4.02	3.97	3.92	3.88	3.83	3.78	3.74	3.69	3.64
79.0	4.13	4.09	4.04	3.99	3.94	3.90	3.85	3.80	3.76	3.71
79.5	4.20	4.15	4.11	4.06	4.01	3.97	3.92	3.87	3.83	3.78
80.0	4.27	4.22	4.17	4.13	4.08	4.03	3.99	3.94	3.89	3.85
80.5	4.33	4.29	4.24	4.19	4.15	4.10	4.05	4.01	3.96	3.91
81.0	4.40	4.36	4.31	4.26	4.22	4.17	4.12	4.08	4.03	3.98
81.5	4.47	4.42	4.38	4.33	4.28	4.24	4.19	4.14	4.10	4.05
82.0	4.54	4.49	4.44	4.40	4.35	4.30	4.26	4.21	4.16	4.12
82.5	4.60	4.56	4.51	4.46	4.42	4.37	4.32	4.28	4.23	4.18
83.0	4.67	4.63	4.58	4.53	4.49	4.44	4.39	4.35	4.30	4.25
83.5	4.74	4.69	4.65	4.60	4.55	4.51	4.46	4.41	4.37	4.32
84.0	4.81	4.76	4.71	4.67	4.62	4.57	4.53	4.48	4.43	4.39
84.5	4.88	4.83	4.78	4.73	4.69	4.64	4.59	4.55	4.50	4.45
85.0	4.94	4.90	4.85	4.80	4.76	4.71	4.66	4.62	4.57	4.52

TABLE 3.—FEMALES FVC

[80% of Predicted; Knudson 1983]

Ht.	Age										
	35	37	39	41	43	45	47	49	51	53	55
52.0	1.66	1.64	1.61	1.58	1.55	1.53	1.50	1.47	1.45	1.42	1.39
52.5	1.71	1.68	1.65	1.63	1.60	1.57	1.55	1.52	1.49	1.46	1.44
53.0	1.75	1.73	1.70	1.67	1.64	1.62	1.59	1.56	1.54	1.51	1.48
53.5	1.80	1.77	1.74	1.72	1.69	1.66	1.64	1.61	1.58	1.55	1.53
54.0	1.84	1.82	1.79	1.76	1.73	1.71	1.68	1.65	1.63	1.60	1.57
54.5	1.89	1.86	1.83	1.81	1.78	1.75	1.73	1.70	1.67	1.64	1.62
55.0	1.93	1.91	1.88	1.85	1.83	1.80	1.77	1.74	1.72	1.69	1.66
55.5	1.98	1.95	1.92	1.90	1.87	1.84	1.82	1.79	1.76	1.73	1.71
56.0	2.02	2.00	1.97	1.94	1.92	1.89	1.86	1.83	1.81	1.78	1.75
56.5	2.07	2.04	2.01	1.99	1.96	1.93	1.91	1.88	1.85	1.83	1.80
57.0	2.11	2.09	2.06	2.03	2.01	1.98	1.95	1.92	1.90	1.87	1.84
57.5	2.16	2.13	2.10	2.08	2.05	2.02	2.00	1.97	1.94	1.92	1.89
58.0	2.20	2.18	2.15	2.12	2.10	2.07	2.04	2.01	1.99	1.96	1.93
58.5	2.25	2.22	2.18	2.16	2.14	2.11	2.09	2.06	2.03	2.01	1.98
59.0	2.29	2.27	2.24	2.21	2.19	2.16	2.13	2.10	2.08	2.05	2.02
59.5	2.34	2.31	2.29	2.26	2.23	2.20	2.18	2.15	2.12	2.10	2.07
60.0	2.38	2.36	2.33	2.30	2.28	2.25	2.22	2.20	2.17	2.14	2.11
60.5	2.43	2.40	2.38	2.35	2.32	2.29	2.27	2.24	2.21	2.19	2.16
61.0	2.47	2.45	2.42	2.39	2.37	2.34	2.31	2.29	2.26	2.23	2.20
61.5	2.52	2.49	2.47	2.44	2.41	2.38	2.36	2.33	2.30	2.28	2.25
62.0	2.56	2.54	2.51	2.48	2.46	2.43	2.40	2.38	2.35	2.32	2.29
62.5	2.61	2.58	2.56	2.53	2.50	2.47	2.45	2.42	2.39	2.37	2.34
63.0	2.65	2.63	2.60	2.57	2.55	2.52	2.49	2.47	2.44	2.41	2.38
63.5	2.70	2.67	2.65	2.62	2.59	2.56	2.54	2.51	2.48	2.46	2.43
64.0	2.75	2.72	2.69	2.66	2.64	2.61	2.58	2.56	2.53	2.50	2.47
64.5	2.79	2.76	2.74	2.71	2.68	2.66	2.63	2.60	2.57	2.55	2.52
65.0	2.84	2.81	2.78	2.75	2.73	2.70	2.67	2.65	2.62	2.59	2.56
65.5	2.88	2.85	2.83	2.80	2.77	2.75	2.72	2.69	2.66	2.64	2.61
66.0	2.93	2.90	2.87	2.84	2.82	2.79	2.76	2.74	2.71	2.68	2.66
66.5	2.97	2.94	2.92	2.89	2.86	2.84	2.81	2.78	2.75	2.73	2.70
67.0	3.02	2.99	2.96	2.93	2.91	2.88	2.85	2.83	2.80	2.77	2.75
67.5	3.06	3.03	3.01	2.98	2.95	2.93	2.90	2.87	2.84	2.82	2.79
68.0	3.11	3.08	3.05	3.02	3.00	2.97	2.94	2.92	2.89	2.86	2.84
68.5	3.15	3.12	3.10	3.07	3.04	3.02	2.99	2.96	2.93	2.91	2.88

TABLE 3.—FEMALES FVC—Continued

[80% of Predicted; Knudson 1983]

Ht.	Age										
	35	37	39	41	43	45	47	49	51	53	55
69.0	3.20	3.17	3.14	3.12	3.09	3.06	3.03	3.01	2.98	2.95	2.93
69.5	3.24	3.21	3.19	3.16	3.13	3.11	3.08	3.05	3.03	3.00	2.97
70.0	3.29	3.26	3.23	3.21	3.18	3.15	3.12	3.10	3.07	3.04	3.02
70.5	3.33	3.30	3.28	3.25	3.22	3.20	3.17	3.14	3.12	3.09	3.06
71.0	3.38	3.35	3.32	3.30	3.27	3.24	3.21	3.19	3.16	3.13	3.11
71.5	3.42	3.39	3.37	3.34	3.31	3.29	3.26	3.23	3.21	3.18	3.15
72.0	3.47	3.44	3.41	3.39	3.36	3.33	3.30	3.28	3.25	3.22	3.20
72.5	3.51	3.49	3.46	3.43	3.40	3.38	3.35	3.32	3.30	3.27	3.24
73.0	3.56	3.53	3.50	3.48	3.45	3.42	3.39	3.37	3.34	3.31	3.29
73.5	3.60	3.58	3.55	3.52	3.49	3.47	3.44	3.41	3.39	3.36	3.33
74.0	3.65	3.62	3.59	3.57	3.54	3.51	3.49	3.46	3.43	3.40	3.38
74.5	3.69	3.67	3.64	3.61	3.58	3.56	3.53	3.50	3.48	3.45	3.42
75.0	3.74	3.71	3.68	3.66	3.63	3.60	3.58	3.55	3.52	3.49	3.47
75.5	3.78	3.76	3.73	3.70	3.67	3.65	3.62	3.59	3.57	3.54	3.51
76.0	3.83	3.80	3.77	3.75	3.72	3.69	3.67	3.64	3.61	3.58	3.56
76.5	3.87	3.85	3.82	3.79	3.76	3.74	3.71	3.68	3.66	3.63	3.60
77.0	3.92	3.89	3.86	3.84	3.81	3.78	3.76	3.73	3.70	3.67	3.65
77.5	3.96	3.94	3.91	3.88	3.85	3.83	3.80	3.77	3.75	3.72	3.69
78.0	4.01	3.98	3.95	3.93	3.90	3.87	3.85	3.82	3.79	3.76	3.74
78.5	4.05	4.03	4.00	3.97	3.95	3.92	3.89	3.86	3.84	3.81	3.78
79.0	4.10	4.07	4.04	4.02	3.99	3.96	3.94	3.91	3.88	3.86	3.83
79.5	4.14	4.12	4.09	4.06	4.04	4.01	3.98	3.95	3.93	3.90	3.87
80.0	4.19	4.16	4.13	4.11	4.08	4.05	4.03	4.00	3.97	3.95	3.92
80.5	4.23	4.21	4.18	4.15	4.13	4.10	4.07	4.04	4.02	3.99	3.96
81.0	4.28	4.25	4.22	4.20	4.17	4.14	4.12	4.09	4.06	4.04	4.01

TABLE 3A.—FEMALES FVC

[80% of Predicted; Knudson 1983]

Ht.	Age									
	57	59	61	63	65	67	69	71	73	75
52.0	1.37	1.34	1.31	1.28	1.26	1.23	1.20	1.47	1.43	1.38
52.5	1.41	1.38	1.36	1.33	1.30	1.27	1.25	1.51	1.46	1.41
53.0	1.46	1.43	1.40	1.37	1.35	1.32	1.29	1.54	1.49	1.44
53.5	1.50	1.47	1.45	1.42	1.39	1.37	1.34	1.57	1.52	1.48
54.0	1.55	1.52	1.49	1.46	1.44	1.41	1.38	1.60	1.55	1.51
54.5	1.59	1.56	1.54	1.51	1.48	1.46	1.43	1.63	1.59	1.54
55.0	1.64	1.61	1.58	1.55	1.53	1.50	1.47	1.67	1.62	1.57
55.5	1.68	1.65	1.63	1.60	1.57	1.55	1.52	1.70	1.65	1.60
56.0	1.73	1.70	1.67	1.64	1.62	1.59	1.56	1.73	1.68	1.63
56.5	1.77	1.74	1.72	1.69	1.66	1.64	1.61	1.76	1.71	1.67
57.0	1.82	1.79	1.76	1.74	1.71	1.68	1.65	1.79	1.75	1.70
57.5	1.86	1.83	1.81	1.78	1.75	1.73	1.70	1.82	1.78	1.73
58.0	1.91	1.88	1.85	1.83	1.80	1.77	1.74	1.86	1.81	1.76
58.5	1.95	1.92	1.90	1.87	1.84	1.82	1.79	1.89	1.84	1.79
59.0	2.00	1.97	1.94	1.92	1.89	1.86	1.83	1.92	1.87	1.83
59.5	2.04	2.01	1.99	1.96	1.93	1.91	1.88	1.95	1.90	1.86
60.0	2.09	2.06	2.03	2.01	1.98	1.95	1.92	1.98	1.94	1.89
60.5	2.13	2.10	2.08	2.05	2.02	2.00	1.97	2.02	1.97	1.92
61.0	2.18	2.15	2.12	2.10	2.07	2.04	2.01	2.05	2.00	1.95
61.5	2.22	2.20	2.17	2.14	2.11	2.09	2.06	2.08	2.03	1.98
62.0	2.27	2.24	2.21	2.19	2.16	2.13	2.11	2.11	2.06	2.02
62.5	2.31	2.29	2.26	2.23	2.20	2.18	2.15	2.14	2.10	2.05
63.0	2.36	2.33	2.30	2.28	2.25	2.22	2.20	2.17	2.13	2.08
63.5	2.40	2.38	2.35	2.32	2.29	2.27	2.24	2.21	2.16	2.11
64.0	2.45	2.42	2.39	2.37	2.34	2.31	2.29	2.24	2.19	2.14
64.5	2.49	2.47	2.44	2.41	2.38	2.36	2.33	2.27	2.22	2.18
65.0	2.54	2.51	2.48	2.46	2.43	2.40	2.38	2.30	2.25	2.21
65.5	2.58	2.56	2.53	2.50	2.47	2.45	2.42	2.33	2.29	2.24

TABLE 3A.—FEMALES FVC—Continued

[80% of Predicted; Knudson 1983]

Ht.	Age									
	57	59	61	63	65	67	69	71	73	75
66.0	2.63	2.60	2.57	2.55	2.52	2.49	2.47	2.37	2.32	2.27
66.5	2.67	2.65	2.62	2.59	2.57	2.54	2.51	2.40	2.35	2.30
67.0	2.72	2.69	2.66	2.64	2.61	2.58	2.56	2.43	2.38	2.33
67.5	2.76	2.74	2.71	2.68	2.66	2.63	2.60	2.46	2.41	2.37
68.0	2.81	2.78	2.75	2.73	2.70	2.67	2.65	2.49	2.45	2.40
68.5	2.85	2.83	2.80	2.77	2.75	2.72	2.69	2.52	2.48	2.43
69.0	2.90	2.87	2.84	2.82	2.79	2.76	2.74	2.56	2.51	2.46
69.5	2.94	2.92	2.89	2.86	2.84	2.81	2.78	2.59	2.54	2.49
70.0	2.99	2.96	2.93	2.91	2.88	2.85	2.83	2.62	2.57	2.52
70.5	3.03	3.01	2.98	2.95	2.93	2.90	2.87	2.65	2.60	2.56
71.0	3.08	3.05	3.03	3.00	2.97	2.94	2.92	2.68	2.64	2.59
71.5	3.12	3.10	3.07	3.04	3.02	2.99	2.96	2.72	2.67	2.62
72.0	3.17	3.14	3.12	3.09	3.06	3.03	3.01	2.75	2.70	2.65
72.5	3.21	3.19	3.16	3.13	3.11	3.08	3.05	2.78	2.73	2.68
73.0	3.26	3.23	3.21	3.18	3.15	3.12	3.10	2.81	2.76	2.72
73.5	3.30	3.28	3.25	3.22	3.20	3.17	3.14	2.84	2.79	2.75
74.0	3.35	3.32	3.30	3.27	3.24	3.21	3.19	2.87	2.83	2.78
74.5	3.40	3.37	3.34	3.31	3.29	3.26	3.23	2.91	2.86	2.81
75.0	3.44	3.41	3.39	3.36	3.33	3.30	3.28	2.94	2.89	2.84
75.5	3.49	3.46	3.43	3.40	3.38	3.35	3.32	2.97	2.92	2.87
76.0	3.53	3.50	3.48	3.45	3.42	3.40	3.37	3.00	2.95	2.91
76.5	3.58	3.55	3.52	3.49	3.47	3.44	3.41	3.03	2.99	2.94
77.0	3.62	3.59	3.57	3.54	3.51	3.49	3.46	3.06	3.02	2.97
77.5	3.67	3.64	3.61	3.58	3.56	3.53	3.50	3.10	3.05	3.00
78.0	3.71	3.68	3.66	3.63	3.60	3.58	3.55	3.13	3.08	3.03
78.5	3.76	3.73	3.70	3.67	3.65	3.62	3.59	3.16	3.11	3.07
79.0	3.80	3.77	3.75	3.72	3.69	3.67	3.64	3.19	3.14	3.10
79.5	3.85	3.82	3.79	3.77	3.74	3.71	3.68	3.22	3.18	3.13
80.0	3.89	3.86	3.84	3.81	3.78	3.76	3.73	3.26	3.21	3.16
80.5	3.94	3.91	3.88	3.86	3.83	3.80	3.77	3.29	3.24	3.19
81.0	3.98	3.95	3.93	3.90	3.87	3.85	3.82	3.32	3.27	3.22

TABLE 4.—FEMALES FEV1

[80% of Predicted; Knudson 1983]

Ht.	Age										
	35	37	39	41	43	45	47	49	51	53	55
52.0	1.52	1.49	1.46	1.43	1.40	1.37	1.34	1.31	1.28	1.25	1.22
52.5	1.55	1.52	1.49	1.46	1.43	1.40	1.37	1.34	1.31	1.28	1.25
53.0	1.59	1.56	1.53	1.50	1.47	1.43	1.40	1.37	1.34	1.31	1.28
53.5	1.62	1.59	1.56	1.53	1.50	1.47	1.44	1.41	1.38	1.35	1.32
54.0	1.65	1.62	1.59	1.56	1.53	1.50	1.47	1.44	1.41	1.38	1.35
54.5	1.69	1.66	1.63	1.60	1.57	1.54	1.51	1.48	1.44	1.41	1.38
55.0	1.72	1.69	1.66	1.63	1.60	1.57	1.54	1.51	1.48	1.45	1.42
55.5	1.76	1.72	1.69	1.66	1.63	1.60	1.57	1.54	1.51	1.48	1.45
56.0	1.79	1.76	1.73	1.70	1.67	1.64	1.61	1.58	1.55	1.52	1.49
56.5	1.82	1.79	1.76	1.73	1.70	1.67	1.64	1.61	1.58	1.55	1.52
57.0	1.86	1.83	1.80	1.77	1.73	1.70	1.67	1.64	1.61	1.58	1.55
57.5	1.89	1.86	1.83	1.80	1.77	1.74	1.71	1.68	1.65	1.62	1.59
58.0	1.92	1.89	1.86	1.83	1.80	1.77	1.74	1.71	1.68	1.65	1.62
58.5	1.96	1.93	1.90	1.87	1.84	1.81	1.78	1.74	1.71	1.68	1.65
59.0	1.99	1.96	1.93	1.90	1.87	1.84	1.81	1.78	1.75	1.72	1.69
59.5	2.03	1.99	1.96	1.93	1.90	1.87	1.84	1.81	1.78	1.75	1.72
60.0	2.06	2.03	2.00	1.97	1.94	1.91	1.88	1.85	1.82	1.79	1.75
60.5	2.09	2.06	2.03	2.00	1.97	1.94	1.91	1.88	1.85	1.82	1.79
61.0	2.13	2.10	2.07	2.04	2.00	1.97	1.94	1.91	1.88	1.85	1.82
61.5	2.16	2.13	2.10	2.07	2.04	2.01	1.98	1.95	1.92	1.89	1.86
62.0	2.19	2.16	2.13	2.10	2.07	2.04	2.01	1.98	1.95	1.92	1.89
62.5	2.23	2.20	2.17	2.14	2.11	2.08	2.05	2.01	1.98	1.95	1.92

TABLE 4.—FEMALES FEV1—Continued

[80% of Predicted; Knudson 1983]

Ht.	Age										
	35	37	39	41	43	45	47	49	51	53	55
63.0	2.26	2.23	2.20	2.17	2.14	2.11	2.08	2.05	2.02	1.99	1.96
63.5	2.30	2.26	2.23	2.20	2.17	2.14	2.11	2.08	2.05	2.02	1.99
64.0	2.33	2.30	2.27	2.24	2.21	2.18	2.15	2.12	2.09	2.06	2.02
64.5	2.36	2.33	2.30	2.27	2.24	2.21	2.18	2.15	2.12	2.09	2.06
65.0	2.40	2.37	2.34	2.31	2.27	2.24	2.21	2.18	2.15	2.12	2.09
65.5	2.43	2.40	2.37	2.34	2.31	2.28	2.25	2.22	2.19	2.16	2.13
66.0	2.46	2.43	2.40	2.37	2.34	2.31	2.28	2.25	2.22	2.19	2.16
66.5	2.50	2.47	2.44	2.41	2.38	2.35	2.32	2.28	2.25	2.22	2.19
67.0	2.53	2.50	2.47	2.44	2.41	2.38	2.35	2.32	2.29	2.26	2.23
67.5	2.56	2.53	2.50	2.47	2.44	2.41	2.38	2.35	2.32	2.29	2.26
68.0	2.60	2.57	2.54	2.51	2.48	2.45	2.42	2.39	2.36	2.33	2.29
68.5	2.63	2.60	2.57	2.54	2.51	2.48	2.45	2.42	2.39	2.36	2.33
69.0	2.67	2.64	2.61	2.57	2.54	2.51	2.48	2.45	2.42	2.39	2.36
69.5	2.70	2.67	2.64	2.61	2.58	2.55	2.52	2.49	2.46	2.43	2.40
70.0	2.73	2.70	2.67	2.64	2.61	2.58	2.55	2.52	2.49	2.46	2.43
70.5	2.77	2.74	2.71	2.68	2.65	2.62	2.58	2.55	2.52	2.49	2.46
71.0	2.80	2.77	2.74	2.71	2.68	2.65	2.62	2.59	2.56	2.53	2.50
71.5	2.83	2.80	2.77	2.74	2.71	2.68	2.65	2.62	2.59	2.56	2.53
72.0	2.87	2.84	2.81	2.78	2.75	2.72	2.69	2.66	2.63	2.59	2.56
72.5	2.90	2.87	2.84	2.81	2.78	2.75	2.72	2.69	2.66	2.63	2.60
73.0	2.94	2.91	2.88	2.84	2.81	2.78	2.75	2.72	2.69	2.66	2.63
73.5	2.97	2.94	2.91	2.88	2.85	2.82	2.79	2.76	2.73	2.70	2.67
74.0	3.00	2.97	2.94	2.91	2.88	2.85	2.82	2.79	2.76	2.73	2.70
74.5	3.04	3.01	2.98	2.95	2.92	2.89	2.85	2.82	2.79	2.76	2.73
75.0	3.07	3.04	3.01	2.98	2.95	2.92	2.89	2.86	2.83	2.80	2.77
75.5	3.10	3.07	3.04	3.01	2.98	2.95	2.92	2.89	2.86	2.83	2.80
76.0	3.14	3.11	3.08	3.05	3.02	2.99	2.96	2.93	2.90	2.86	2.83
76.5	3.17	3.14	3.11	3.08	3.05	3.02	2.99	2.96	2.93	2.90	2.87
77.0	3.21	3.18	3.15	3.11	3.08	3.05	3.02	2.99	2.96	2.93	2.90
77.5	3.24	3.21	3.18	3.15	3.12	3.09	3.06	3.03	3.00	2.97	2.94
78.0	3.27	3.24	3.21	3.18	3.15	3.12	3.09	3.06	3.03	3.00	2.97
78.5	3.31	3.28	3.25	3.22	3.19	3.15	3.12	3.09	3.06	3.03	3.00
79.0	3.34	3.31	3.28	3.25	3.22	3.19	3.16	3.13	3.10	3.07	3.04
79.5	3.37	3.34	3.31	3.28	3.25	3.22	3.19	3.16	3.13	3.10	3.07
80.0	3.41	3.38	3.35	3.32	3.29	3.26	3.23	3.20	3.16	3.13	3.10
80.5	3.44	3.41	3.38	3.35	3.32	3.29	3.26	3.23	3.20	3.17	3.14
81.0	3.48	3.45	3.41	3.38	3.35	3.32	3.29	3.26	3.23	3.20	3.17

TABLE 4A.—FEMALES FEV1

[80% of Predicted; Knudson 1983]

Ht.	Age									
	57	59	61	63	65	67	69	71	73	75
52.0	1.18	1.15	1.12	1.09	1.06	1.03	1.00	1.38	1.32	1.25
52.5	1.22	1.19	1.16	1.13	1.10	1.07	1.04	1.39	1.33	1.27
53.0	1.25	1.22	1.19	1.16	1.13	1.10	1.07	1.41	1.34	1.28
53.5	1.29	1.26	1.23	1.19	1.16	1.13	1.10	1.42	1.36	1.30
54.0	1.32	1.29	1.26	1.23	1.20	1.17	1.14	1.44	1.37	1.31
54.5	1.35	1.32	1.29	1.26	1.23	1.20	1.17	1.45	1.39	1.32
55.0	1.39	1.36	1.33	1.30	1.27	1.24	1.20	1.47	1.40	1.34
55.5	1.42	1.39	1.36	1.33	1.30	1.27	1.24	1.48	1.42	1.35
56.0	1.45	1.42	1.39	1.36	1.33	1.30	1.27	1.50	1.43	1.37
56.5	1.49	1.46	1.43	1.40	1.37	1.34	1.31	1.51	1.45	1.38
57.0	1.52	1.49	1.46	1.43	1.40	1.37	1.34	1.52	1.46	1.40
57.5	1.56	1.53	1.50	1.46	1.43	1.40	1.37	1.54	1.48	1.41
58.0	1.59	1.56	1.53	1.50	1.47	1.44	1.41	1.55	1.49	1.43
58.5	1.62	1.59	1.56	1.53	1.50	1.47	1.44	1.57	1.50	1.44
59.0	1.66	1.63	1.60	1.57	1.54	1.51	1.47	1.58	1.52	1.46
59.5	1.69	1.66	1.63	1.60	1.57	1.54	1.51	1.60	1.53	1.47

TABLE 4A.—FEMALES FEV1—Continued

[80% of Predicted; Knudson 1983]

Ht.	Age									
	57	59	61	63	65	67	69	71	73	75
60.0	1.72	1.69	1.66	1.63	1.60	1.57	1.54	1.61	1.55	1.48
60.5	1.76	1.73	1.70	1.67	1.64	1.61	1.58	1.63	1.56	1.50
61.0	1.79	1.76	1.73	1.70	1.67	1.64	1.61	1.64	1.58	1.51
61.5	1.83	1.80	1.76	1.73	1.70	1.67	1.64	1.66	1.59	1.53
62.0	1.86	1.83	1.80	1.77	1.74	1.71	1.68	1.67	1.61	1.54
62.5	1.89	1.86	1.83	1.80	1.77	1.74	1.71	1.68	1.62	1.56
63.0	1.93	1.90	1.87	1.84	1.81	1.77	1.74	1.70	1.64	1.57
63.5	1.96	1.93	1.90	1.87	1.84	1.81	1.78	1.71	1.65	1.59
64.0	1.99	1.96	1.93	1.90	1.87	1.84	1.81	1.73	1.66	1.60
64.5	2.03	2.00	1.97	1.94	1.91	1.88	1.85	1.74	1.68	1.62
65.0	2.06	2.03	2.00	1.97	1.94	1.91	1.88	1.76	1.69	1.63
65.5	2.10	2.07	2.03	2.00	1.97	1.94	1.91	1.77	1.71	1.64
66.0	2.13	2.10	2.07	2.04	2.01	1.98	1.95	1.79	1.72	1.66
66.5	2.16	2.13	2.10	2.07	2.04	2.01	1.98	1.80	1.74	1.67
67.0	2.20	2.17	2.14	2.11	2.08	2.04	2.01	1.82	1.75	1.69
67.5	2.23	2.20	2.17	2.14	2.11	2.08	2.05	1.83	1.77	1.70
68.0	2.26	2.23	2.20	2.17	2.14	2.11	2.08	1.84	1.78	1.72
68.5	2.30	2.27	2.24	2.21	2.18	2.15	2.12	1.86	1.80	1.73
69.0	2.33	2.30	2.27	2.24	2.21	2.18	2.15	1.87	1.81	1.75
69.5	2.37	2.34	2.30	2.27	2.24	2.21	2.18	1.89	1.82	1.76
70.0	2.40	2.37	2.34	2.31	2.28	2.25	2.22	1.90	1.84	1.78
70.5	2.43	2.40	2.37	2.34	2.31	2.28	2.25	1.92	1.85	1.79
71.0	2.47	2.44	2.41	2.38	2.35	2.31	2.28	1.93	1.87	1.80
71.5	2.50	2.47	2.44	2.41	2.38	2.35	2.32	1.95	1.88	1.82
72.0	2.53	2.50	2.47	2.44	2.41	2.38	2.35	1.96	1.90	1.83
72.5	2.57	2.54	2.51	2.48	2.45	2.42	2.39	1.97	1.91	1.85
73.0	2.60	2.57	2.54	2.51	2.48	2.45	2.42	1.99	1.93	1.86
73.5	2.64	2.60	2.57	2.54	2.51	2.48	2.45	2.00	1.94	1.88
74.0	2.67	2.64	2.61	2.58	2.55	2.52	2.49	2.02	1.95	1.89
74.5	2.70	2.67	2.64	2.61	2.58	2.55	2.52	2.03	1.97	1.91
75.0	2.74	2.71	2.68	2.65	2.61	2.58	2.55	2.05	1.98	1.92
75.5	2.77	2.74	2.71	2.68	2.65	2.62	2.59	2.06	2.00	1.93
76.0	2.80	2.77	2.74	2.71	2.68	2.65	2.62	2.08	2.01	1.95
76.5	2.84	2.81	2.78	2.75	2.72	2.69	2.66	2.09	2.03	1.96
77.0	2.87	2.84	2.81	2.78	2.75	2.72	2.69	2.11	2.04	1.98
77.5	2.91	2.87	2.84	2.81	2.78	2.75	2.72	2.12	2.06	1.99
78.0	2.94	2.91	2.88	2.85	2.82	2.79	2.76	2.13	2.07	2.01
78.5	2.97	2.94	2.91	2.88	2.85	2.82	2.79	2.15	2.09	2.02
79.0	3.01	2.98	2.95	2.92	2.88	2.85	2.82	2.16	2.10	2.04
79.5	3.04	3.01	2.98	2.95	2.92	2.89	2.86	2.18	2.11	2.05
80.0	3.07	3.04	3.01	2.98	2.95	2.92	2.89	2.19	2.13	2.07
80.5	3.11	3.08	3.05	3.02	2.99	2.96	2.93	2.21	2.14	2.08
81.0	3.14	3.11	3.08	3.05	3.02	2.99	2.96	2.22	2.16	2.09

Dated: March 11, 1999.
Janet Reno,
Attorney General.
[FR Doc. 99–6524 Filed 3–19–99; 8:45 am]
BILLING CODE 4410–12–P

QUESTIONS SUBMITTED BY SENATOR SLADE GORTON

MICROSOFT

NOTE.—For cost-related questions, responses include only charges incurred by the Antitrust Division. The Microsoft Corporation was, however, one of 23 plaintiffs in a case challenging the Telecommunications Act of 1996. The Civil Division defended that case. There is, however, no reliable means of determining the portion of the defense cost attributable to Microsoft. Also, Microsoft is one of 26 defendants in a qui tam procurement fraud case being handled jointly by the Civil Division and the United States Attorney for the Eastern District of Texas. Again, the portion of costs

attributable to Microsoft cannot reliably be determined. It is also possible that individual U.S. Attorney Offices may have handled matters involving Microsoft. A survey of these 93 offices has not been conducted in response to the questions presented, though such a review can be conducted if this information is necessary.

Question. How much money has the DOJ spent investigating and litigating against Microsoft from 1990 to date? What percentage of the Department's total outlays for investigation and litigation during this period does it represent?

Answer. Over the past approximately 9 and one-half years [from October 1, 1989 (the start of fiscal year 1990) through February 26, 1999] the Department has spent $12.57 million investigating and litigating against the Microsoft Corporation. This includes such matters as the investigation and resulting civil action that culminated in a negotiated consent decree with Microsoft in 1995, the investigation and filing of a court case challenging Microsoft's acquisition of Intuit Inc. in 1996 (a proposed acquisition ultimately withdrawn by Microsoft), and the on-going litigation in U.S. District Court in Washington, D.C. The amount spent is .09 percent (nine one-hundredths of one percent) of the Department's total budget of $13.7 billion for investigation and litigation by its litigating divisions from fiscal year 1990 to fiscal year 1999.

Question. How much money did DOJ spend investigating and litigating against Microsoft in fiscal year 1998? What percentage of the Department's total outlays for investigation and litigation during this period does this represent? How many FTEs does this represent?

Answer. In fiscal year 1998, the Department spent $4.76 million investigating and litigating against the Microsoft Corporation. This represents .29 percent (twenty-nine one-hundredths of one percent) of the Department's total budget of $1.65 billion for investigation and litigation by its litigating divisions in fiscal year 1998 and 17.96 FTEs.

Question. How much money did DOJ spend investigating and litigating against Microsoft in fiscal year 1999 through February 28, 1999? What percentage of the Department's total outlays for investigation and litigation during this period does this represent? How many FTEs does this represent?

Answer. In fiscal year 1999 through February 26th (the latest date for which consolidated information is readily available), the Department spent $1.62 million investigating and litigating against the Microsoft Corporation. This represents .10 percent (one-tenth of one percent) of the Department's total budget of $1.64 billion for investigation and litigation by its litigating divisions in fiscal year 1999 and 11.46 FTEs.

Question. How much money does the DOJ anticipate spending investigating and litigating against Microsoft in fiscal year 1999 as a whole?

Answer. In fiscal year 1999 the Department anticipates spending an additional $690,000 in connection with the pending case against the Microsoft Corporation.

Question. In regard to the DOJ litigation against Microsoft that is currently pending in U.S. District Court in Washington, D.C., please provide a detailed breakdown of DOJ expenditures on such litigation to date in the following categories:

Expenditures for private lawyers to investigate and/or try the case against Microsoft. Please provide the full name of each outside lawyer, the lawyer's firm or other private affiliation, the lawyer's address and telephone number, the amount paid to the lawyer to date, and the tasks performed by the lawyer.

Answer. From the initiation of this matter in June 1995 through the most recent compilation of cost information on February 26, 1999, the Department has paid $213,731 to private lawyers working under contract as litigation consultants. Litigation in this matter currently is ongoing, and the release of identifying information about contracted legal consultants is inappropriate at this time, as it reasonably can be expected that the disclosure of such information would reveal confidential information about the government's case.

Question. Please provide a detailed breakdown of DOJ expenditures for private-sector economists and other private-sector experts to assist in investigating or litigating against Microsoft. Please provide the full name of each economist or other expert, the individual's outside affiliation, address and telephone number, the amount paid to the individual to date, and the tasks performed by the individual.

Answer. From the initiation of this matter in June 1995 through the most recent compilation of cost information on February 26, 1999, the Department has paid $2,232,961 to private-sector economists and other private-sector experts working under contract as litigation consultants and testifying experts. Litigation in this matter currently is ongoing, and the release of identifying information about private-sector economists and experts is inappropriate at this time, as it reasonably can be expected that the disclosure of such information would reveal confidential information about the government's case.

Question. Please provide a detailed breakdown of DOJ expenditures for public relations and public information activities such as issuing press releases, briefing members of the press, posting information on the internet, etc. Please provide a breakdown of cost by type of activity; also include time spent by full-time DOJ employees on public relations activities. In addition, please identify all employees, firms or individuals hired by DOJ to provide such communications services.

Answer. From the filing of the complaint in May 1998 through the most recent compilation of cost information on February 26, 1999, the Department has paid $194,140 for public information activities, including making information available to the public as ordered by the Court and/or in accordance with Freedom of Information Act (FOIA) requirements. Of this amount, $147,381 was spent to make documents and information available to the public via the Internet, and $46,759 in salary costs were incurred for one career government employee in the Department's Office of Public Affairs working part-time on the matter to ensure that questions from the substantial number of media present at the trial were responded to promptly, and for one career government employee (a paralegal) in the Antitrust Division providing part-time support dealing with requests for Division information in respect to this litigation. No employees, firms or individuals were hired by DOJ to provide the communications services referred to in the question.

Question. Please provide a detailed breakdown of DOJ expenditures for travel for DOJ employees, outside counsel, consultants, or other agents to meet with individuals or companies with respect to the Microsoft matter. Please provide a breakdown of all such travel, including who represented the DOJ or its interests, the other individuals or parties participating, the dates of the meetings, and the cost of the travel involved.

Answer. Over approximately the past four years (from the initiation of this matter in June 1995 through the most recent compilation of cost information on February 26, 1999) the Department has paid $233,100 in travel for DOJ employees to enable them to meet with individuals or companies with respect to the Microsoft matter currently pending in U.S. District Court. Travel costs by individuals under contract to the Department are included in the costs of these contracts as identified above. Litigation in this matter currently is ongoing, and the release of identifying information about travel related to the Microsoft matter is inappropriate at this time, as it reasonably can be expected that the disclosure of such information would reveal confidential information about the government's case.

Question. Please explain the justification for paying the salaries and benefits of full-time litigation attorneys in the Antitrust Division, and then also hiring attorneys from private practice to litigate cases brought by the Division on behalf of the United States.

Answer. The Antitrust Division periodically retains outside attorneys to supplement its full-time staff of attorneys for a number of reasons. In some instances, outside counsel has unique experience in investigating or litigating a particular type of matter. In others, such counsel are immediately available to provide short-term services in periods of very high work demands when the Division's full-time staff is fully occupied handling other matters. In these circumstances, using outside counsel can reduce expenditures in the long-term, because it permits the Division to perform necessary work without making a commitment to hire additional full-time staff.

Question. Please explain in what specific respects the Antitrust Division's full-time litigation attorneys are not competent to litigate the cases brought by the Division on behalf of the United States.

Answer. The Antitrust Division's full-time litigation attorneys are quite competent to handle the vast majority of cases brought by the Division on behalf of the United States. In some circumstances, however, a particular matter may require specialized expertise and experience, and Division attorneys with that expertise and experience may not be available to handle the matter.

Question. Please explain what steps are being taken by the DOJ and the Antitrust Division to correct these deficiencies and to eliminate the need to hire attorneys from private practice to litigate cases brought by the Division on behalf of the U.S.

Answer. The Department of Justice and the Antitrust Division engage in extensive efforts to hire and train highly competent counsel to represent the United States. But it would not be cost-effective, prudent or practical for the Division to maintain such a large full-time complement of lawyers that every conceivable need for attorney services could be met by the Division, regardless of the Division's workload.

Question. Please also explain the justification for paying the salaries and benefits of full-time economists in the Antitrust Division, and then hiring outside economists to work on the Division's cases.

Answer. The Antitrust Division periodically retains outside economists to supplement its full-time staff of economists for a number of reasons. In some instances, an outside economist may have unique experience in analyzing a particular type of matter. In others, it may be necessary to have as an expert witness a well-qualified economist who is not employed by the Department of Justice.

Question. Has the Antitrust Division consulted with private-sector economists or other private-sector experts regarding possible remedies in the pending Microsoft case?

Answer. Yes. The Antitrust Division has consulted with private-sector economists or other private-sector experts regarding possible remedies in the pending Microsoft case.

Question. Please identify any such economists or other experts. Has the Antitrust Division paid, or will the Division pay, compensation to any such economist or other expert for his or her advice? If so, please identify each economist or other expert who has received or will receive compensation and the amount he or she has received or will receive.

Answer. The Division has paid and will pay, its consultants for their services. Litigation in this matter currently is ongoing, and the release of identifying information about such economists or other experts is inappropriate at this time, as it reasonably can be expected that the disclosure of such information would interfere with the Division's decision-making process.

Question. Has the Antitrust Division convened any task force, committee, meeting or other working group (formal or informal) that includes private-sector economists, employees or executives with any high-tech company, trade association representatives, or other private-sector experts to consider, discuss and/or formulate possible remedies in the Microsoft case? If so, please identify each member of such task force, committee, meeting or other working group. Please describe the purpose of such task force, committee or other working group, and please describe the process or procedures by which the task force, committee or other working group is going about accomplishing that purpose. Please provide the dates and locations of all meetings of such task force, committee or other working group, including the dates of all scheduled future meetings. Has the DOJ complied with all applicable federal laws requiring public notice and opportunity to comment on the activities of this committee, task force or working group?

Answer. No, the Antitrust Division has not convened any such task force, committee, meeting or other working group. It has, however, retained the services of consultants (including economists) to assist it in evaluating various remedies options, and Division personnel have met with those consultants to discuss their work. In addition, Division personnel have met with interested parties (including high-tech companies and trade association representatives) to hear their views regarding possible remedies.

Question. Has the DOJ hired or consulted with any public relations or publicity experts in connection with the Microsoft case? If so, please provide the names of any such public relations or publicity personnel hired by the DOJ as full-time government employees, together with a description of their duties and the amounts paid to them. Please also identify any outside public relations or publicity firms or experts hired by the DOJ in connection with the Microsoft case, and provide a description of their duties and the amounts paid to them.

Answer. No, the DOJ has not hired or consulted with any such experts in relation to the Microsoft case.

QUESTIONS SUBMITTED BY SENATOR FRANK R. LAUTENBERG

GUN VIOLENCE

Question. There is a startling statistic in your opening statement—everyday in this country, 93 people die from gun-related injuries. That's about 34,000 deaths a year. That's the kind of body count you get during a war. For example, 33,651 Americans were killed during the entire Korean War. This must stop. For too long we have let the gun extremists define the debate at the expense of reasonable and common sense gun regulations. The powerful few over at the NRA and the politicians who toe their line keep misrepresenting the 2nd Amendment.

As former Chief Justice Warren Burger has said, the NRA's constant distortion of the 2nd Amendment is a "fraud on the American public." Remember, that's a Supreme Court Justice speaking—not only an expert on the law, but a conservative who was appointed by President Richard Nixon.

We cannot let the NRA destroy other rights. We need to protect the right of children to be free from violence and terror. And what about the right of taxpayers who pay billions of dollars in health care costs to take care of victims?

I have introduced legislation that will help taxpayers recover these costs—it's called the Gun Industry Accountability Act. Many mayors across the country—the local officials who face the everyday problems—are fighting back against the gun lobbyists.

They are saying that gun manufacturers and dealers must take responsibility for their product, just like other industries whether it's cars, aspirin, or toasters.

In addition to helping the cities and states with their lawsuits, my bill would also allow the Federal Government to participate in this effort—as it has with tobacco.

Is the Department of Justice considering working with cities and states in the effort to hold gun manufacturers and dealers accountable for their actions?

Answer. We are following the cities' suits closely. We are also reviewing the various legislative proposals that have been introduced in Congress, including your bill, in response to the lawsuits filed by cities against gun manufacturers. While we have not taken a formal position on these proposals, in general, we are supportive of efforts to specifically allow cities to have their day in court on these issues.

CHILDPROOF HANDGUN ACT

Question. Your budget proposal includes $4 million for the National Institute of Justice to support a new Childproof Gun and Gun Detection Technology Program. I commend this effort to make weapons safer.

But I think that many people are not aware of the existing technologies that are available to make guns safer. Since 1976, more than 30 patents have been granted for various technologies that will prevent a handgun from being fired by anyone except the authorized user. For example, the SafTLok company in Florida manufactures a push-button combination lock that is incorporated into the grip of a handgun. If the buttons are not pushed in the proper sequence, the gun will not fire. These locks sell for $80 each, and the Boston police department recently announced that these locks will be standard equipment for its officers.

Similarly, the Fulton Arms company in Texas has developed a revolver that cannot be fired unless the user is wearing a magnetic ring.

And Colt Manufacturing in Connecticut has used a grant from the Federal Government to design a prototype handgun that emits a radio signal and cannot be fired unless the user is wearing a small transponder that returns a coded radio signal. Because this technology exists today, I have introduced the Childproof Handgun Act. It would require that all handguns be engineered so that they can only be fired by an authorized user. To give manufacturers time to comply, this requirement would not go into effect until three years after the bill is enacted.

In many other areas, the Federal Government has taken steps to protect consumer safety: cars are now sold with seat belts and airbags, and aspirin bottles have childproof caps. It is hard to understand how anyone can oppose similar safety measures for deadly weapons. The time has come to hold firearm manufacturers to a higher standard of safety.

You probably have not had a chance to review this legislation, but would you please review it and get back to me with any recommendations?

Answer. The National Institute of Justice (NIJ) has reviewed S. 319, the Childproof Handgun Act of 1999. NIJ notes that the Act does not address the need for development and implementation of performance standards for gun safety technologies and independent locking devices. In addition, the Act does not make any provision for mandatory evaluation of the gun safety technologies or locking devices.

NIJ recommends that these areas be addressed. Currently, there are no performance standards to ensure that the gun safety technologies and locking devices actually function as intended.

FLATOW CASE

Question. We all share an interest in combating terrorism. To this end, Congress has passed legislation allowing the victims of terrorism, or their families, to sue the state sponsors of these heinous crimes. Steve Flatow won a $247 million judgment against Iran for its role in the suicide bombing which killed his daughter Alisa.

However, he has not been able to collect on this judgment in part because the Civil Division at Justice has opposed his efforts in court. Could you review this matter with National Security advisor Sandy Berger and any other State or Treasury Department officials so that our government will be working with Steve Flatow instead of against him?

Answer. The Administration conveys its deepest sympathy to the families, including the Flatows, who have lost loved ones as a result of terrorist acts. The United States Government has been unrelenting in its efforts to combat state-sponsored terrorism and has attempted to assist Mr. Flatow in a manner consistent with important national security and long-standing foreign policy objectives. The United States Government has provided Mr. Flatow with approximately 5,000 pages of information, which may lead to the identification of assets that are unblocked and potentially available for attachment.

The United States has, however, filed Statements of Interest opposing efforts to attach certain kinds of assets, when important national security and foreign policy interests are implicated. The legal positions taken by the United States in these Statements of Interest have been developed in consultation with the State and Treasury Departments. Specifically, the United States is opposing the attachment of diplomatic and consular property—property which remains blocked under the International Emergency Economic Powers Act (IEEPA) and regulations promulgated thereunder. Such attachments would interfere with the ability of the United States to abide by its treaty obligations, specifically, the Vienna Convention on Diplomatic Relations (VCDR) and the Vienna Convention on Consular Relations (VCCR). If foreign diplomatic or consular property in the United States is not protected from attachment or garnishment, then the United States risks exposing its diplomatic and consular property abroad to similar actions—a result that could seriously undermine the national security of the United States. In addition, allowing the attachment of blocked property would deprive the President of what the Supreme Court has recognized to be a "critical" tool to be used when dealing with a hostile country.

The United States is also opposing efforts to attach federal funds to be used to satisfy an award issued by the Iran-U.S. Claims Tribunal against the United States. The Tribunal was established pursuant to the Algiers Accords—an international agreement between the United States and Iran, which led to the release of the 52 hostages seized at the American Embassy in Teheran in 1979. Not only does the attachment of federal funds raise important legal issues, such as the doctrine of sovereign immunity, but the delay occasioned by the attachment has been used by Iran in an effort to undermine United States' claims against Iran before the Tribunal. These and other important issues should be resolved by the Courts.

Even though the United States has opposed efforts to attach certain types of property, we continue to assist Mr. Flatow and other plaintiffs. We are working with the relevant agencies, including the Treasury and State Departments and the National Security Council, to identify additional information that my be provided to assist plaintiffs further in locating unblocked assets that are legally available for attachment.

EXPANDING DNA TECHNOLOGY

Question. Recently, we have seen a number of criminals apprehended because of advances in DNA technology. At the same time, we have seen a number of innocent people freed from prison, including some on death row, because of new DNA evidence. So, DNA technology has become critically important in not just catching criminals, but in also ensuring that the right person is being charged with a crime. I notice that the budget includes $14.5 million for FBI law enforcement services including the federal offender DNA database.

Can you tell us more about this database and what additional funds might be needed so that we can take full advantage of DNA technology?

Answer. The 1998 Justice Appropriations Act directed the FBI to provide a plan to Congress to support the implementation of a program that requires a federal prisoner convicted of a criminal offense involving a victim who is a minor or a sexually violent offense to provide a DNA sample for inclusion in a law enforcement database prior to the prisoner's release from incarceration. The FBI plan for Congress included draft legislation needed to implement the plan. That plan to develop the Federal Convicted Offender DNA Database (FCODD) was submitted in December 1998 and would be implemented upon receiving legislative authority and funding.

All 50 states have now passed legislation that authorizes law enforcement agencies to take blood samples from felons convicted of specific offenses. The offenses vary from state to state, however, the DNA profiles created from these blood samples are all placed in the Combined DNA Indexing System (CODIS) database. The CODIS database is a national database shared by all state and federal law enforcement agencies. Currently, no DNA profiles from any individuals convicted of federal offenses are included in the CODIS database. The FCODD will provide DNA profiles

from federally-convicted felons to be included as part of the national CODIS database.

The FCODD will monitor sample receipt and disposition and include information about the sample contributor, i.e., name, sample's CODIS number, and date the sample was analyzed. The FBI Laboratory will consult and coordinate the collection of DNA samples with all affected agencies. Procedures for the collection of samples specify promulgation of each agency's responsibility in regulations. The FBI Laboratory is assuming responsibility for costs associated with providing DNA samples collection kits, DNA analysis and input of DNA data into the CODIS database.

The FBI requests $5.3 million to implement the FCODD and personnel to manage and type federally-convicted offender samples in fiscal year 2000. After establishment of the FCODD, there will be out year requirements to maintain the program, including funding for equipment such as genetic analyzers, analytical workstations, freezers, and thermal cyclers to improve operation of the FCODD; reagents to create DNA profiles of the estimated 15,000 federally-convicted offenders; and operational maintenance for the FCODD.

The fiscal year 2000 budget also proposes $4.2 million to improve interconnectivity between the FBI Laboratory and State and local crime laboratories using the CODIS and National Integrated Ballistic Imaging Network (NIBIN).

Only $9,500,000 is requested in 2000 for FBI law enforcement services. The additional $5,000,000 referenced in the question is for lab equipment for the new FBI Laboratory and is listed under the FBI infrastructure initiative.

DOMESTIC TERRORISM

Question. On January 25th of the year, the anniversary of *Roe* v. *Wade*, Hillary Rodham Clinton spoke to member of the pro-choice community and called the rising tide of abortion clinic violence and the murder of doctors who provide abortions "domestic terrorism." Indeed, abortion clinics are subject to bombings, arson, acid attacks and raids which damage property and injure clinic employees. And health care providers are murdered for helping women to exercise their constitutionally protected right to choose.

How does the Justice Department define "domestic terrorism?"

Answer. The Department of Justice defines terrorism as "conduct constituting a potential violation of federal criminal law, undertaken by an individual or group seeking to further political or social goals, wholly or in part, through threats or use of force or violence." As this definition could cover both international terrorism and domestic terrorism, one further factor must be added to differentiate between the two.

Domestic terrorist groups or individuals reside or operate in the United States without foreign direction or support.

Question. Would you consider that eradicating "domestic terrorism" is one of the Justice Department's highest priorities?

Answer. Deterring, detecting and preventing acts of domestic terrorism is one of the Department of Justice's and FBI's highest priorities.

Question. Would you consider the rising tide of violence directed at health care clinics that provide abortion, among other reproductive services, and the murders of health care providers who work at those clinics "domestic terrorism?" If so, do you believe that the highest level of resources should be allocated to investigate and prosecute the perpetrators of those violent crimes?

Answer. Attacks on clinics that provide abortions can be considered the unlawful use of force or violence in the furtherance of a political or social objective, and therefore, an act of domestic terrorism. However, there are also incidents of clinic violence that are perpetrated for personal vengeance or some other basis that would not constitute an act of terrorism. Several factors are incorporated into the determination to designate abortion violence as an act of terrorism, including, but not limited to, the incident's relationship to any ongoing cases; any previous related threats or subsequent claims of responsibility; the nature of the target; the timing of the event; the size and complexity of an explosive device if used; utilization of any secondary devices; and relationship, if any, to a diversionary device. Whether investigated as a violation of the Freedom of Access to Clinical Entrances Act or an act of domestic terrorism, the Department of Justice responds to incidents involving abortion clinic violence with all necessary resources to successfully identify and prosecute those individuals who carry out these violent crimes.

QUESTIONS SUBMITTED BY SENATOR PATRICK J. LEAHY

PRIOR UNANSWERED QUESTIONS—DOJ OVERSIGHT

Question. What is the status of the Department's responses to the written questions I submitted in connection with the Judiciary Committee's July 15, 1998 hearing on "Department of Justice Oversight"?

Answer. In response to Senate Judiciary Committee Chairman Hatch's September 14, 1998 request, Acting Assistant Attorney General Dennis K. Burke provided responses from the Department of Justice to written questions submitted for the Attorney General on March 11, 1999.

INDEPENDENT COUNSELS' ACCOUNTABILITY

Question. The Department filed court papers on March 8, 1999, defending your oversight authority to investigate allegations of misconduct by special prosecutor Kenneth Starr. You note in those papers that "inherent in your removal power" is the authority to investigate and assure that the independent counsel is competently performing his or her duties in a manner that comports with the law. The Department also states that "the ability to determine the pertinent facts is a prerequisite to responsible and effective exercise of that authority." Would full and complete access to independent counsels' expenditures help the Department fulfill its oversight responsibility of independent counsels?

Answer. While any and all additional information about an Independent Counsel's investigation could serve to better inform the Attorney General about the conduct of an Independent Counsel and possible grounds for removal, direct oversight of an Independent Counsel's budget alone would be unlikely to reveal the kind of misconduct or misfeasance that would be reasonably expected to result in removal, unless that misconduct involved abuse of finances. It should also be noted that such close budget oversight may arguably limit an Independent Counsel's independence.

COMMUNICATIONS ASSISTANCE FOR LAW ENFORCEMENT ACT (CALEA)

Question. To avoid further delays in CALEA compliance, should Congress resolve the ongoing dispute between the Department and the telecommunications industry and make the determination whether certain punch-list items being requested by the Department are simply too expensive?

Answer. Congressional action is not suggested at this time. The Federal Communications Commission (FCC) has already tentatively concluded that five of the nine capabilities in dispute are indeed required by CALEA. The Department hopes that the remaining capabilities, when thoughtfully considered by the FCC, will also be determined to be required under CALEA. The "punch-list" represents a small, but vitally important, set of capabilities to law enforcement. The "punch-list" capabilities are grounded in existing electronic surveillance legislation. With respect to your concern over the expense of individual capabilities, the Department believes that Congress considered that possibility by incorporating the "reasonably achievable" provision into section 109 of CALEA. In those instances where a carrier may not be able to comply with CALEA, the legislation allows those carriers to petition the FCC to determine whether compliance with the assistance capability requirements of CALEA is "reasonably achievable."

Furthermore, the Department remains sensitive to the fact that, based on the individual architecture of telecommunications equipment and the services made available by that equipment, not all manufacturers will be able to meet all technical requirements in the same way. The Department and the entire law enforcement community understand that reality and firmly believe that it is important for the FCC to establish the baseline functionality required by CALEA and the underlying electronic surveillance statutes. Only after a baseline of capabilities is established should the FCC consider individual carrier circumstances in relation to the cost of implementing CALEA.

The Department is not asking for any capability that is not allowed for under CALEA and under existing electronic surveillance statutes. In fact, the Department conducted an exhaustive legal analysis prior to petitioning the FCC, and determined that each of the nine capabilities currently in dispute is clearly within law enforcement's statutory authority. Furthermore, the urgency to protect law enforcement's ability to conduct lawfully-authorized electronic surveillance has not diminished. The Department is simply attempting to ensure that capabilities developed by the telecommunications industry are lawful and consistent with the intent of CALEA. It is the belief of the Department that the telecommunications industry should not develop an electronic surveillance capability that falls short of the requirements of the rules of evidence.

Question. The Attorney General has estimated that "[i]n excess of $2 billion would likely be needed" to cover the costs of modifying equipment to comply with the surveillance capability sought by the Department. Telecommunications carriers estimate that the costs associated with the punch-list items being requested by the Department for both the wireless and wireline industry are in excess of $5 billion.

If estimates by either the Attorney General or the industry are correct, would the FCC exercise its discretion appropriately if it were to determine that CALEA compliance is not reasonably achievable due to the costs associated with compliance?

Answer. The Department believes that Congress considered that the cost associated with compliance with CALEA may be out of reach for some carriers by incorporating the "reasonably achievable" provision into section 109 of CALEA. In those instances where a carrier may not be able to comply with CALEA, the legislation allows those carriers to petition the FCC to determine whether compliance with the assistance capability requirements of CALEA is "reasonably achievable."

The $2 billion referred to by the Attorney General is the estimate of government liability if the January 1, 1995, reimbursement eligibility date were to be changed. Many in the telecommunications industry would have the Congress change the January 1, 1995, reimbursement eligibility date so that the burden of deploying the vital capabilities of CALEA would shift to the government. Government estimates for modifying equipment, facilities and services installed or deployed prior to the current eligibility date of January 1, 1995, suggest the cost of implementing CALEA is less than $1 billion.

On May 7, 1999, the FCC released a Public Notice seeking comment on aggregated cost data submitted by five telecommunications equipment manufacturers. The data concerned revenue estimates for software; certain hardware; and, upgrades to switching equipment that manufacturers plan to sell to wireline, cellular, and broadband Personal Communications Services (PCS) carriers to meet the assistance capability requirements of CALEA. Specifically, the manufacturers provided revenue information to upgrade existing equipment with capabilities to meet the requirements of the industry's interim standard, J–STD–025, as well as estimates for the additional nine "punch list" capabilities.

The Department believes that the manufacturers' revenue estimates can be relevant to the FCC's task to define technical requirements of CALEA, to the extent that they can help the FCC identify the least expensive methods of curing particular deficiencies in the industry's standard. However, Congress has not authorized the FCC to delete any assistance capability obligations from CALEA, on the grounds that it would cost "too much." Any ruling by the FCC that discards certain capabilities on the grounds that they would cost "too much" would not meet the assistance capability requirements of CALEA's section 103.

The FCC, in carrying out its section 107 responsibilities, must determine whether the industry's technical standard, J–STD–025, is deficient as a means of meeting the assistance capability requirements of CALEA's section 103. If the FCC determines the industry standard to be deficient in meeting CALEA's assistance capability requirements, it must adopt technical standards that meet those requirements. Section 107(b) does not empower the FCC to remove assistance capability requirements from section 103 on the grounds that they would be financially burdensome for any particular carrier or the industry as a whole. Rather, CALEA addresses compliance burdens elsewhere, by providing that individual carriers with a demonstrated need may secure individual exemptions under section 109(b) of CALEA. The costs involved in providing the required assistance capabilities are relevant to the FCC's task, only with regard to choosing the means by which any identified deficiencies will be corrected.

Question. In the event that compliance is not reasonably achievable due to the costs, the law directs that equipment, facilities and services will be deemed to be in compliance unless the government provides funds to pay for compliance. If the FCC determines that CALEA compliance with the punch-list items are not reasonably achievable due to the costs, is the Department prepared to seek additional authorization and appropriations to pay for compliance?

Answer. The FCC is not currently considering whether compliance with CALEA is "reasonably achievable." Rather, the FCC is considering the Department of Justice (DOJ)/FBI petition which highlights the capabilities missing from the current industry technical standard. The Department and FBI believe that the missing capabilities make the standard deficient in meeting the assistance capability requirements of section 103 of CALEA. As stated in the DOJ/FBI petition, the ability of an individual carrier to meet the assistance capability requirements can be considered by the FCC pursuant to that carrier filing a "reasonably achievable" petition pursuant to section 109 of CALEA.

The $500 million authorized by Congress was intended to address law enforcement's priority electronic surveillance needs on equipment, facilities and services installed or deployed prior to January 1, 1995. Based on current information available from manufacturers of telecommunications equipment, the Department believes that most of law enforcement's priority needs can indeed be met with the current level of authorization.

In the event that a large number of carriers petition the FCC with the claim that compliance with CALEA is not "reasonably achievable," and the service areas of those carriers coincide with law enforcement's lawfully-authorized electronic surveillance priorities, the Department will promptly bring the matter to the attention of Congress for resolution.

FEDERAL TOBACCO LITIGATION

Question. If the Federal Government wants to recover its costs for tobacco-related diseases, the appropriate avenue to do that is a federal lawsuit, not a raid on the multi-state tobacco settlement. To the extent you are able in a public forum, please provide an update on the Department of Justice's litigation plan against the tobacco industry.

Answer. The Department is evaluating the legal and factual predicates that may support liability to the United States for its costs incurred as a result of the use of tobacco products. We previously have identified several statutory bases for such lawsuits, including the Medical Care Recovery Act (MCRA), 42 U.S.C.A., sec. 2651, et seq., and the Medicare Secondary Payer Act (MSPA), 42 U.S.C. § 1395y(b). These are not the only bases that the Department is considering for a potential lawsuit. Since this process is on-going, however, we cannot provide additional information at this time.

PRISON BUILDING FUNDS

Question. The Department's budget includes over $500 million to construct more detention facilities to detain individuals who are awaiting deportation, often for non-violent crimes that may have occurred many years ago.

How, if at all, are the mandatory detention requirements enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 responsible for the Department's request for funds for additional detention facilities?

Answer. The fiscal year 2000 request for the Bureau of Prisons Buildings and Facilities Appropriation contains $20 million for site and planning costs for 3 facilities to assume the non-removable criminal alien population from the Immigration and Naturalization Service (INS). These INS detainees are deportable criminal aliens whose countries have refused to issue travel documents allowing for their return. The mandatory detention requirements, which were enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, are not the primary reason for this request.

INS is requesting resources for the construction of additional detention space, or contract bedspace, to support the detention of aliens in federally-owned or contracted space, rather than continuing to rely heavily on the use of Inter-Governmental Service Agreements (IGSAs) to use state and local beds. Since 1996, INS' need for additional detention space has resulted in an increase in the use of IGSAs by 126 percent (3,281 to 7,430). Additionally, INS is detaining more criminal aliens, often violent criminals, and must upgrade many facilities to accommodate this criminal alien population. Older INS Service Processing Centers consist mostly of dormitory style, open bay areas. Newer facilities and upgraded facilities consist of more single and double style cells, which are more appropriate to detain the current and forecasted detainee populations.

Question. Are the mandatory detention requirements of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 an effective crime prevention strategy and use of Department funds?

Answer. The mandatory detention requirements of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 are not necessarily an effective crime prevention strategy since the mandatory detention requirements, in many cases, force the detention of individuals who are not a danger to their communities, and who could be released. The use of Department funds in these cases is often not an effective use of resources.

Currently, INS is examining legislative proposals to provide for the expansion of the Attorney General's discretion to release aliens from custody by amending section 236(c) of the Immigration and Nationality Act. A limited expansion of release authority would provide the Attorney General with enhanced flexibility in determining how to use limited detention space. While detention of aliens convicted of crimes is

a top priority, it is also important to detain some non-criminals in order to provide a deterrent to prospective illegal border crossers, and to support enforcement efforts across the southern land border, and in INS' interior enforcement operations.

Question. Would the Department support a change in federal law to return greater discretion to immigration adjudicators and federal judges to determine which individuals are a threat to their community or are likely to flee if not detained?

Answer. The Department would support a change in federal law to return greater discretion to immigration officers to determine which individuals are a threat to their community, or are likely to flee, if not detained. This discretion should rest with the Attorney General. Currently, almost all criminal aliens must be detained under INA section 236(c) during their immigration proceedings.

The Department wishes to work with Congress on the issue of an amendment to section 236(c) expanding the Attorney General's authority to release from custody low-risk aliens who have been lawfully admitted to the United States, cannot be removed, or who are cooperating with a criminal investigation. Release would only be allowed where the alien demonstrates, by clear and convincing evidence, that he or she does not pose a danger to the public, or is not a flight risk. This limited expansion of release authority would provide the Attorney General enhanced flexibility in determining how to best use limited detention space.

ENCRYPTION

Question. The Department has requested $9.63 million and 13 positions to develop technological capabilities to obtain access to plaintext in investigations where encryption is encountered. At the same time, the Department and the FBI are seeking additional positions and funding for the National Infrastructure Protection and Computer Intrusion Program (NIPCIP), the Computer Analysis and Response Teams (CART), and for Network Data Interception. Please explain fully the function and responsibilities of the agents assigned to each of these programs.

Answer. The counter-encryption program, the network data interception program, and the Computer Analysis Response Teams (CART) are technical support programs that provide investigative and forensic tools and services to the NIPCIP, other FBI field agents, and other law enforcement agencies. The relationship of these programs to investigations can be explained in the following example. An investigation determines that the Internet is being used by a suspect for criminal activity. The FBI obtains a court order to conduct an electronic surveillance of the suspect's account. To conduct this intercept, the FBI requires the capability of the network data intercept program so that the service to other network users is not affected by the court-authorized intercept. While collecting the information from the suspect's account, the FBI discovers that the suspect uses encryption to hide or mask illegal activities. The counter-encryption program will allow the FBI to gain plain-text from the encrypted communications. The investigation proceeds and an arrest warrant is issued. The FBI arrests the suspect and conducts a lawful search of the suspect's residence, at which time several computers are found. The CART program provides the FBI with the capability of examining the computers, hard drives, and related storage media in order to identify and analyze the evidence. Again, if the computer files are encrypted, the counter-encryption program can help gain plain-text access. Each of these techniques represent a critical set of highly specialized tools needed by the FBI to conduct investigations committed against, or facilitated by, computers, networks, and related technology.

The purpose of the counter-encryption initiative is to ensure the FBI and other law enforcement agencies can counter encryption schemes used by criminals, terrorists, and others committing illegal acts to thwart lawfully-authorized Title III interceptions. This initiative will provide the law enforcement community with the technical capability to analyze and process signals, conduct protocol analysis, encryption recognition, data format and compression technique identification, and decryption. This will be accomplished, in part, by providing equipment and technical assistance to law enforcement agencies.

The National Infrastructure Protection Center's (NIPC) mission is to detect, prevent, and respond to cyber and physical attacks on the nation's critical infrastructure and to oversee FBI computer crime investigations conducted in the field. In addition, NIPC analyzes and provides warnings of electronic threats and vulnerabilities to the infrastructure operators and investigates, analyzes, and responds to electronic attacks on the infrastructure should they occur. The Center is composed of representatives from multiple government agencies such as DOD, NSA, DOE, and CIA as well as federal and state law enforcement, including the U.S. Secret Service, the U.S. Postal Service, and the Oregon State Police. The National Infrastructure Protection and Computer Intrusion (NIPCI) field squads manage intrusion inves-

tigations and support other computer related investigations associated with FBI's criminal investigative and national security responsibilities. The fiscal year 2000 budget requests an increase of $1,656,000 for NIPC to conduct additional training, liaison, and outreach. In addition, $11,390,000 is requested to create 18 new NIPCI field squads and equip teams in the smaller field offices to establish baseline intrusion response and high technology capabilities in all field offices.

CART provides primarily a forensics function, facilitating the search, seizure and examination of magnetic and optical media recovered from computers pursuant to law enforcement searches and seizures. In doing so, CART examiners participate in searches, catalog items of evidence, examine items of evidence, and testify in court. CART, which serves all investigative programs, provides services through a headquarters element in the FBI Laboratory and a network of field examiners located throughout most of the FBI field offices. Currently, field agents trained as CART examiners perform these duties on a part-time basis. Due to increased demand for these services, the fiscal year 2000 budget proposes 79 full-time, non-agent examiners.

The network data interception initiative focuses on ensuring the FBI's ability to collect, pursuant to Title III or Foreign Intelligence Surveillance Act (FISA) authority, evidence and/or intelligence from data networks (including the Internet) in support of criminal law enforcement and national security investigations. Due to the complex technology involved, network intercepts can be very difficult and require specialized techniques. Network intercept assistance is provided, as needed, by a small group of technically-trained agents and engineers assigned to the FBI Laboratory. This funding will allow the FBI to examine existing, emerging and future data network communications technologies, conduct research, and develop solutions to ensure the ability to perform court-authorized electronic surveillance on network technologies. This is accomplished, in part, by long-term and strategic efforts to develop data network communications interception and collection equipment, industry liaison to provide awareness of law enforcement's electronic surveillance requirements, and the provision of onsite field support and expertise.

Question. Please explain fully how each of these programs is coordinated with functions and activities of each other.

Answer. The CART, counter-encryption, and data network intercept programs are all managed by the FBI Laboratory, Engineering Research Facility. As a result, programs are able to coordinate efforts, share technology and techniques, and avoid duplication of effort.

NIPCIP squads are managed by the NIPC. NIPC is a headquarters component that maintains close coordination with the FBI Laboratory, which it depends on for technical and forensic services.

Question. Please explain fully how each of these programs is coordinated with the functions and activities of the Field Computer Investigations and Infrastructure Threat Assessment (CITA) Squads and the Computer Investigations and Infrastructure Threat Assessment Center (CITAC).

Answer. In February 1998, the Attorney General authorized the expansion of the FBI's Computer Investigations and Infrastructure Threat Assessment (CITAC) into a Government-wide National Infrastructure Protection Center (NIPC). The FBI's former Computer Investigations and Infrastructure Threat Assessment (CITA) squads are now called National Infrastructure Protection and Computer Intrusion (NIPCI) squads, and are managed by the NIPC.

The technical investigative support programs of the FBI Laboratory coordinate activities with the NIPC through established (formal) liaison contacts as well as through continual day-to-day operational contacts. This ensures that activities associated with the development or procurement of technical and analytical tools are not duplicated. Technical investigative support to field investigative squads are provided through established technical advisors within each field office. The technical advisor and/or field CART examiner coordinates delivery of technical investigative capabilities to the various field investigative squads, including the computer crimes squads, and serves as a technical advisor to the field investigative squad.

Question. Please explain fully how, if at all, these programs will assist other federal law enforcement agencies and state and local law enforcement agencies.

Answer. Each of these programs supports state and local law enforcement agencies in a number of ways. For example, CART provides technical expertise and guidance to state and local law enforcement agencies with regard to computer media examinations. The FBI, along with state and local agencies, is establishing a pilot regional computer forensics laboratory in San Diego, California to serve the southern California area. The FBI Laboratory also provides equipment and technical expertise to state and local law enforcement to support the interception of wire and electronic communications in state and local cases (pursuant to Departmental Order

890–80—Guidelines and Procedures for the Loan of Electronic Surveillance Equipment to State and Local Law Enforcement by the FBI) as well as in support of joint federal/state/local cases.

Question. Is the encryption funding request included in or part of the "$122.55 million in increased funding to combat cybercrime and support the Department's counterterrorism efforts?"

Answer. Yes, the encryption request is included within the FBI's portion of the Department's request to combat cybercrime and support counterterrorism efforts.

DNA TESTING

Question. The Department requests $55 million to establish the Crime Lab Improvement Program to make grants to state and local governments to improve their investigative and analytic capabilities. Does this program include funding for DNA testing? If so, does the Department have any guidelines or requirements for DNA testing by the states with federal funds?

Answer. Yes, of the $55 million CLIP initiative, $15 million is specified for DNA purposes. All agencies receiving support under this program are required to sign a document ("Statutory Assurance") ensuring compliance with quality assurance and proficiency testing standards for DNA analysis established by the FBI's DNA Advisory Board under Title 42 U.S.C. 14131, and ensuring that DNA identification data shall be made available only for law enforcement/judicial purposes or, if personally identifiable information is removed, for population databases, research/protocol development, or quality control purposes.

Question. Please summarize the privacy safeguards that the Department follows in conducting DNA testing and any recommendations the Department has to improve those privacy safeguards.

Answer. There are well defined privacy safeguards with respect to DNA testing. Information maintained in the Combined DNA Index System (CODIS) may only be disclosed in accordance with the DNA Identification Act of 1994 (See 42 U.S.C. 14131–14134, 3796kk–6): to criminal justice agencies for identification purposes related to law enforcement; in judicial proceedings, if otherwise admissible pursuant to applicable statutes or rules; for criminal defense purposes, to a defendant who shall have access to samples and analyses performed in connection with the case in which such a defendant is charged; and if personally identifiable information is removed, for a population statistics database, identification research and protocol development purposes, or for quality control purposes.

Laboratories participating in National DNA Index System (NDIS) and/or receiving federal grant funding are required to certify their compliance with the above criteria. System wide standards have been established to ensure that only reliable and compatible profiles are contained in the NDIS files. These include quality assurance (QA) standards for performing forensic DNA analyses. Currently, pursuant to the DNA Act, the "Guidelines for a Quality Assurance Program for DNA Analysis" are the standards for QA in forensic DNA-typing laboratories. Additionally, a designated State Official must certify that all current and new CODIS users meet external proficiency testing standards as required by the 1994 Act. It is important to note, the FBI DNA profiles, which are a set of DNA identification characteristics (the particular chemical form at the various DNA locations which permit the DNA of one person to be distinguishable from that of another person) are not analyzed for physical characteristics. After analysis, the FBI returns DNA evidence to the contributor with instructions for storage.

Question. One important privacy protection would be to ensure the destruction of DNA samples collected from convicted offenders after they have been tested and entered into the database. After all, the law enforcement interest is in indexing the DNA profiles, not in storing genetic material. (a) Do you agree? (b) Is that the current federal practice, and is it the practice of states receiving federal grants?

Answer. Yes, the FBI's primary interest is in DNA profiles. However, current practice and technology requires the retention of some sample genetic material to confirm positive "hits." The 1994 DNA Identification Act requires that these samples are used for law enforcement purposes only. However, once a "hit" is generated by the database, another sample is tested to verify that "hit". Therefore, this process requires that some of the blood from the original sample be stored for possible future reference by law enforcement personnel for law enforcement purposes only. Other states that participate in the national DNA database program operate in the same manner. Also, the technology to develop DNA testing is constantly changing. When the CODIS database was established, samples were tested using Restriction Fragment Length Polymorphism (RFLP) technology. Today, Polymerase Chain Reaction (PCR)/Short Tandem Repeats (STR) technology is used to type the samples.

Since RFLP DNA profiles cannot be compared to the PCR/STR DNA profiles, the retained sample permits profiling using the newer technology. In the future, the technology will most assuredly change again. Therefore, storage of offender samples eliminates the need for relocating an incarcerated or released offender for additional samples.

The National Commission on the Future of DNA Evidence is currently examining whether maintaining cellular samples from convicted offenders is necessary or appropriate as part of their work in the area of privacy issues surrounding biological sample collection and databanking. The Commission expects to make recommendations to the Attorney General concerning privacy issues by August 1999.

Question. By statute, the federal DNA database may only contain information on DNA samples taken from convicted offenders, crime scenes, and unidentified human remains. Currently, Louisiana takes DNA samples from everyone charged with a crime, and other states have authorized or are considering a similar program. What assurances do you have that states will not use federal funds to create their own DNA databases for arrestees?

Answer. According to the FBI, the Louisiana State statute requiring collection from all arrestees of enumerated crimes will go into effect on September 1, 1999. To the FBI's knowledge, New York is the only other state considering taking the collection of DNA samples from all arrestees. NIJ's DNA Laboratory Improvement solicitations require applicants to conform to CODIS standards. Solicitations under this legislation will specifically prohibit the use of federal funds for the development of state-specific DNA databases of arrestees.

Question. What assurances do you have that states accepting federal grants for DNA testing, and any private laboratories used by such states, adhere to quality control standards, including blind external proficiency testing? To what extent does the Federal Government monitor the quality of state DNA testing?

Answer. Certification of the testing laboratory is required for states to receive National Institute of Justice or Bureau of Justice Assistance grants to be used for DNA testing. All agencies are required to sign a document ("Statutory Assurance") ensuring compliance with quality assurance and proficiency testing standards for DNA analysis established by the FBI's DNA Advisory Board under Title 42 U.S.C. 14131, and ensuring that DNA identification data shall be made available only for law enforcement/judicial purposes or, if personally identifiable information is removed, for population databases, research/protocol development, or quality control purposes. Neither the 1994 DNA Identification Act nor national DNA Advisory Board standards require blind external proficiency testing. The DNA Advisory Board's Quality Assurance Standards for Forensic DNA Testing Laboratories require an external proficiency test to be performed every 180 days. All laboratories accepting federal grant money must comply with these requirements. NIJ, at Congressional direction, has conducted a thorough examination of the feasibility of blind proficiency tests for DNA laboratories and will share the results within a year.

Question. Just as DNA testing can be a powerful tool for proving guilt, it can also be a powerful tool for proving innocence. Yet convicted offenders are often unable to obtain the genetic crime scene evidence that could prove their innocence, with states arguing that they have already exhausted their state and federal post-conviction appeals. (a) Would the Department support conditioning the grant of federal funds for DNA testing upon certification by the state that it will, upon request by a convicted offender, provide reasonable access, for the purpose of DNA testing, of any genetic crime scene evidence collected in his case? (b) If not, please explain in detail your reasons for not supporting such a proposal.

Answer. Awards are already conditioned in that manner. The Statutory Assurance document referenced above, specifically states that DNA samples shall be made available "for criminal defense purposes, to a defendant, who shall have access to samples and analyses performed in connection with the case in which the defendant is charged." In addition, the National Commission on the Future of DNA Evidence, for which NIJ is the executive secretariat, is recommending a series of post-conviction guidelines to the Attorney General, which include access to both public and private labs for post-conviction DNA testing.

Question. Although the national DNA database is open for business, it currently contains no federal offender DNA samples. What is the Department's timetable for collecting, testing, and indexing such samples?

Answer. The FBI Laboratory projects an initial workload of 15,000 samples from currently incarcerated offenders and an additional workload of 5,000 new offender samples per year that will require analysis for the FBI's Federal Convicted Offender DNA Database (FCODD). Draft legislation submitted to the Congress would require the FBI to begin obtaining samples, from the current population of federally-convicted offenders, 180 days after the bill's enactment.

Question. What conditions, if any, does the Department intend to attach on its grants for DNA testing (beyond those already prescribed by statute)? In particular, do you anticipate requiring states, when possible, to prioritize their testing of DNA samples by release date?

Answer. The National Commission on the Future of DNA Evidence is currently considering recommendations prioritizing convicted offender sample analysis. NIJ will provide copies of the Commission's recommendation to every laboratory in the program and encourage all grantee labs to adhere to the Commission's recommendations.

SUBCOMMITTEE RECESS

Senator GREGG. We will have a hearing on March 11, and we have moved the room to S–128 for that hearing, and it will be with Secretary Daley.

Thank you. The subcommittee is recessed.

[Whereupon, at 11:51 a.m., Tuesday, March 9, the subcommittee was recessed, to reconvene at 10 a.m., Thursday, March 11.]

DEPARTMENTS OF COMMERCE, JUSTICE, AND STATE, THE JUDICIARY, AND RELATED AGENCIES APPROPRIATIONS FOR FISCAL YEAR 2000

THURSDAY, MARCH 11, 1999

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

The subcommittee met at 10 a.m., in room S–128, the Capitol, Hon. Judd Gregg (chairman) presiding.

Present: Senators Gregg, Stevens, Hutchison, Campbell, Hollings, Inouye, and Leahy.

DEPARTMENT OF COMMERCE

SECRETARY OF COMMERCE

STATEMENT OF WILLIAM M. DALEY, SECRETARY

OPENING REMARKS

Senator GREGG. We will begin the hearing. I appreciate the Secretary being here. I understand that Senator Hollings is going to be joining us. So Mr. Secretary, whatever you would like to offer to the committee for thoughts, we would be happy to hear it.

Secretary DALEY. Thank you very much, Mr. Chairman. I am pleased to present the Commerce Department's budget for fiscal year 2000, the first budget of the new century. We are leaving the old century with a surplus and I know that the President and the Congress want to enter the new one the same way.

Without growing Commerce too much, we do want to make some key investments in 2000 to keep our economy growing. Our request is for $7.4 billion. Most of the increase over fiscal year 1999 is for the 2000 census.

In light of the Supreme Court ruling and the dress rehearsal evaluation, Dr. Kenneth Prewitt, the Census Director, announced in February the broad outline of a new plan. As soon as the numbers are available, I will convey them to the Subcommittee.

Let me quickly highlight some of the key areas of the budget, first, starting with the census. This is the Nation's largest peacetime mobilization. It is an enormous management challenge to count and determine where every person lives in America on April 1, 2000.

We requested a total budget of $2.8 billion, which is a $1.8 billion increase over 1999 levels. Again, this was done before the court rul-

ing in late January, so the request assumes the use of sampling for all purposes in the 2000 census. The Bureau remains convinced sampling will improve accuracy and should be used for all purposes other than apportionment.

Conducting a census without sampling in the initial count will require substantially more resources. We will now have to visit 45 million homes, up from the 30 million originally planned, and hire many more enumerators. We will need to send more people to areas traditionally undercounted and more resources will be needed for promotion activities.

I know that all of us agree that we need to do a better job in the year 2000 than we did in 1990 when 8 million people were missed and 4 million were overcounted.

The second key area of the Department of Commerce is a 13 percent increase for NOAA, $282 million over the last year's appropriation. The increase will help protect our natural resources and better protect people and property. For years this Senate Subcommittee has advocated that we bolster NOAA's oceanic and fisheries programs. I think we have heard the message and we have now put the "O" in NOAA.

Let me break down this increase; $105 million is to support the President's Lands Legacy initiative, which will enhance our support of marine sanctuaries and estuarine reserves, rebuilding coral reefs, fisheries habitat, and coastal programs. Today, a greater percentage of Americans live within 50 miles of coastlines, and 40 percent of our coastal waters are not fishable or swimmable.

$122.5 million is to reverse the decline of salmon stock in the Pacific. Of that total, $22.5 million is for endangered species, and $100 million is for a new Pacific Coastal Salmon Recovery program.

A priority will continue to be protecting the public from severe weather like tornadoes, hurricanes, and floods, and our budget fully funds the staff and operating requirements for the Weather Service. It proposes a $42 million increase so we can better predict where hurricanes hit. This will allow us to continue acquiring environmental satellites for storm monitoring and weather prediction.

Third, we are requesting a 7 percent increase for ITA, the International Trade Administration. In 2000, we want to open new posts in 11 countries and create greater presence in Africa, Latin America, and in China.

Last year our exports dropped—the first drop in more than a decade. Our exports to Asia plunged a staggering 14 percent. The huge drop accounted for over half of the increase in our trade deficit in 1998. Quite frankly, we need to do everything we can to help American exporters and help create new markets. We want to reach out more to small businesses to encourage them to export, especially now that the Internet makes worldwide access so easy.

As you know, we have an advocacy center to help firms win contracts overseas, and half the clients are small- and medium-sized businesses.

We want to beef up our trade compliance activities. We have benefited in America from open trade and open markets, but everyone has not played by the same rules. We saw that with a record surge in steel imports last year. Industry and workers complained, and we responded in a very aggressive manner.

Fourth, NIST (National Institute of Standards and Technology). About $55 million of the request for new spending is to construct the Advanced Measurement Laboratory. It will enable our scientists to continue to perform cutting edge research, and continue to have on our staff Nobel Prize winners and National Medal of Science winners, who need and deserve state-of-the-art facilities.

Fifth is the Economic Development Administration, where we want to continue fully funding important programs. We are requesting a $20 million increase to assist communities hurt by economic dislocation; $5 million will be for the Northeast where the fishing industry has been hit so hard.

Let me quickly run through a few other initiatives. We are asking $14 million to help public broadcasters transition from analog to digital broadcasting. The Patent and Trademark Office is expecting a 7 percent increase in applications, and a 10 percent increase in trademark applications. Both are sure signs that our economy is continuing to grow. To meet these workload increases and improve customer service, we will invest the increase of about $105 million in information technology and additional personnel.

We are requesting $1.5 million for the Bureau of Export Administration to fund inspections of chemical facilities under the chemical convention. There are about 2,000 potential sites, and the request is to inspect at least 42 of them.

Other requests are for increases in ATP (Advanced Technology Program), in statistical improvements, in research vessel support, and in preventing cyber attacks that could devastate our economy and American companies.

PREPARED STATEMENT

Mr. Chairman, if I could end on a personal note. I hope to be the last Commerce Secretary of this century. This is the best time to serve as Commerce Secretary because we are in the longest peacetime expansion. Our Commerce Department is very strong today because of the support which this Subcommittee has given and you have given, Mr. Chairman. I just wanted to thank you and your colleagues for the support and advice which you have given me and our Department over the last 2 years.

So I thank you and would be happy to answer any questions.

[The statement follows:]

PREPARED STATEMENT OF WILLIAM M. DALEY

Mr. Chairman and Members of the Subcommittee, I am pleased to appear before you today to present the Commerce budget for fiscal year 2000, the first budget of the next century. As we leave the old century in robust economic health and with a budget surplus, I know you join President Clinton and me in wanting to enter the new one the same financially sound way. We at the Department have worked very hard to limit our requests for funding increases in fiscal year 2000 to those key investments that will keep our economy growing strong.

The budget request the President has submitted for the Commerce Department for fiscal year 2000 is $7.4 billion. This reflects an increase of $1.8 billion over the fiscal year 1999 appropriated level, most of which is driven by the Decennial Census. Nevertheless, we are still reviewing the additional costs that will be necessary to conduct the Decennial Census in light of the Supreme Court ruling and the results of the Census Bureau's Dress Rehearsal. As soon as the numbers are available, I will personally convey them to the Subcommittee.

Within the $7.4 billion request, we are seeking $521 million in funding for other high-priority initiatives. The Commerce Department is dedicated to expanding op-

portunities for American workers and American businesses. In formulating our requests for fiscal year 2000, we have made tradeoffs among existing programs, and we have proposed, in a few instances, new sources of revenue, where appropriate.

This budget invests in our future. It invests in a successful Census so that future socioeconomic decisions are based on the most accurate data available. It invests in the stewardship of our Nation's natural resources and assets to ensure the wise use of fisheries, oceans and coastal areas. And it invests in expanding opportunities for trade and technology growth to create jobs and strengthen our economy.

For fiscal year 2000, the Administration's five highest priorities for the Department of Commerce are: Decennial Census and Other Statistical Programs; Oceans and Atmosphere; Broadening Trade; Technology for Economic Growth; and Assisting Distressed Communities.

DECENNIAL CENSUS AND OTHER STATISTICAL PROGRAMS

The President's budget was completed prior to the recent Supreme Court ruling. It assumes the use of scientific sampling for all purposes. Under that assumption, we requested a total budget of $2.8 billion for the Decennial Census, a $1.8 billion increase above fiscal year 1999. We look forward to presenting a new cost estimate to the Subcommittee that will reflect the plan that conforms to the Supreme Court ruling and incorporates lessons learned in the Dress Rehearsal.

The Supreme Court decision precludes the use of sampling for the numbers used to apportion seats in the House of Representatives. The Court noted, however, that sampling techniques are required for non-apportionment purposes, if feasible. As Dr. Kenneth Prewitt, Director of the Census Bureau, announced two weeks ago, it is feasible to use sampling for those other purposes. He presented the broad outlines of a plan to do so that includes an Accuracy and Coverage Evaluation (ACE) program to eliminate the undercount. While the Census Bureau will make every effort to count every person without sampling for apportionment purposes, it remains convinced that scientific sampling will improve the accuracy of the final numbers and should be used for all other purposes.

Conducting a Decennial Census without using sampling in the initial enumeration will require substantially more resources. For example, the Bureau will have to visit 45 million housing units, 15 million more than estimated in the original plan. The Bureau will have to hire more enumerators and send more people to areas with traditionally high undercount rates. The Bureau will also have to increase its partnership work with local communities, its promotion activities and paid advertising. Again, we look forward to working with the Subcommittee on the details and cost estimates for this plan.

By maintaining a reliable federal statistical system that readily monitors and measures economic activity and social trends, the Economics and Statistics Administration (ESA) helps national, state, and local governments and other institutions to make smart decisions that can improve the lives of all Americans. Our Nation's ability to respond to domestic and international developments that affect our economic infrastructure relies on a world-class information base and cutting-edge technology to make it accessible. In this capacity, ESA oversees the Census Bureau and the Bureau of Economic Analysis (BEA). ESA also manages STAT-USA, a user-friendly "one-stop shop" for the dissemination of business, economic, and trade statistics.

As the Nation's accountant, BEA combines and transforms extensive data from government and private sources to produce a consistent and comprehensive picture of economic activity, featuring a key summary measure known as the gross domestic product (GDP) estimate. In addition, BEA's estimates of regional products and incomes are used in the allocation of federal grants to states. We are requesting an increase of $4.5 million to further improve BEA measures.

OCEANS AND ATMOSPHERE

The National Oceanic and Atmospheric Administration (NOAA) is leading the way in the stewardship of our natural resources and in improving the detection of oncoming natural events with greater precision to save lives and property and minimize business disruption. For fiscal year 2000, under the Oceans and Atmosphere priority, Commerce is proposing initiatives that support NOAA programs in two areas—the Natural Resources initiative, and the Natural Disaster Reduction initiative.

Natural Resources Initiative

First, Commerce supports the Natural Resources initiative, including the programs that constitute "Ocean 2000" and "Climate in the 21st Century." In skillfully managing and protecting our Nation's assets and resources, NOAA plays a key role

in the Natural Resources initiative by overseeing programs that expand knowledge and understanding of our lands, water, and air. Protecting coastal habitats from loss and degradation, researching the effects of climate changes on the oceans and atmosphere, and promoting safe navigation are all objectives of the initiative. Among the increases for this initiative are the Lands Legacy request of $105 million, the Year of the Ocean request of $78.1 million, and the Resource Protection request of $131.3 million. Program increases supporting the Climate in the 21st Century program total $19.1 million.

Under Ocean 2000, NOAA will expand programs that are designed and integrated to capitalize on the sustainable use of the ocean's resources. Under the Lands Legacy component, NOAA manages and protects our coastal areas and promotes sound economic conservation of our fishery resources. Closely linked to Lands Legacy are programs to further resource protection, mainly in the Pacific Northwest for salmon conservation. This includes an increase of $100 million to encourage salmon conservation and habitat recovery efforts in cooperation with state, tribal, and local governments. The remaining major components of this initiative are the Year of the Ocean programs designed to enhance marine navigation safety, coral reef restoration, aquaculture and fisheries stocks assessment, conservation, and management.

Also, as part of the Natural Resources initiative, under the "Climate in the 21st Century" program, NOAA will develop newer and better data sets on seasonal-to-interannual time scales to produce climate forecasts to predict El Nino/La Nina events with more accuracy; and improve decadal to centennial climate change assessments, especially for greenhouse warming, ozone layer depletion, and air quality.

Natural Disaster Reduction Initiative

The second major component of Oceans and Atmosphere is the Natural Disaster Reduction initiative, under which NOAA requests a net increase of $42.1 million for fiscal year 2000. The Natural Disaster Reduction initiative supports improved weather warnings and forecasts to the general public through the National Weather Service (NWS), expanded weather research, and increased environmental data available for the public and private sectors.

NOAA's success in describing and predicting the changes in the earth's environment and conserving our resources to ensure sustainable economic opportunity relies on cutting-edge research to develop new technologies, improve operations, and supply the scientific basis for managing natural resources and solving environmental problems. Overall, we are requesting a net increase of $282 million for all NOAA programs, 12.8 percent above the fiscal year 1999 appropriation of $2.2 billion.

BROADENING TRADE

In an increasingly global economy, the role of exports in sustaining a robust economic infrastructure becomes manifold. Exports support over eleven million jobs, and have generated over two million of those jobs in the past two years alone. In recent years, export-related jobs grew about six times faster than total employment, paying wages fifteen percent higher than the average U.S. wage. The competitive nature of a global marketplace raises the bar of challenges for the International Trade Administration (ITA) in leveling the playing field for U.S. businesses abroad and removing tariff and non-tariff barriers to trade. ITA's chief goals are to enforce U.S. trade laws to promote free and fair trade, increase the number of small business exports, improve the role of the Trade Promotion and Coordinating Committee (TPCC), and strengthen advocacy efforts. Overall, we are requesting an increase of $21 million for ITA programs. This represents a net increase of 7.3 percent above the fiscal year 1999 appropriation.

Much of the success of the Broadening Trade initiative rests on the expansion of the U.S. Foreign and Commercial Service's (US&FCS) outreach efforts to small- and medium-sized enterprises (SME's) to help them unleash their full export capacity. As a National Partnership for Reinventing Government High Impact Agency, the US&FCS measures performance by the increase in number of counseling sessions and new-to-export and new-to-market firms. The U.S. Export Assistance Centers (USEAC's) perform the valuable service of educating and assisting SME's through counseling sessions and trade events, helping to identify export-ready firms in need of technical assistance. Electronic commerce and the Internet are other vehicles to increase export opportunities for SME's. We are proposing an increase of $13.8 million for the US&FCS to expand overseas staffing in Africa, Latin America, and Asia, and to establish new standards attaches positions.

In addition to our requests for program increases, we continue to support our key base programs in the trade arena. Among these, I would like to mention ITA's trade

development activities, particularly the Advocacy Center. The Advocacy Center focuses on intensive trade promotion and achieving new market openings. Over the past five-plus years of its existence, the Advocacy Center has played a pivotal role in helping U.S. businesses reap the benefits of access to foreign markets. Over half of the 800 users, or customers, of the Advocacy Center are SME's. These SME successes are valued at $11 billion. The Advocacy Center is currently reaching out more than ever to involve SME's in its work. Advocacy in support of trade promotion and development is something that I personally spend a lot of time on, and the Advocacy Center plays a key role in this effort.

Implementing an aggressive trade compliance program to aid U.S. companies in getting the full benefits of trade agreements is another key component of ITA's strategy. Market Access and Compliance's (MAC) region and country specialists can help ensure that this happens. By compiling case data on the access problem and outcome, MAC can measure the dollar value of opening world markets to U.S. exports as a result of reducing or eliminating trade barriers. We are requesting an increase of $4.4 million in this area. Through a sector-specific approach, the Import Administration (IA), another division of ITA, also improves the competitiveness of domestic firms by enforcing U.S. trade laws and agreements regarding subsidies and other harmful foreign trade practices. An increase of $1.7 million will allow the U.S. to strengthen implementation of the Uruguay Round, and resolve disputes in the World Trade Organization.

The Bureau of Export Administration (BXA) carries out the export licensing, enforcement, and defense industry conversion in a manner that protects our national security and our economic competitiveness. BXA supports the Broadening Trade initiative by helping to remove unnecessary obstacles to exporting, and to strengthen multilateral regimes. It also assists small and medium-sized businesses to increase their involvement in export markets by helping them understand export control requirements through outreach visits, conferences, and seminars. As a second component of the Broadening Trade initiative, BXA will administer Chemical Weapons Convention declarations and perform on-site inspections.

Overall, we are requesting an increase of $8 million for BXA programs, of which $2.5 million supports the Broadening Trade initiative. This represents a net increase of 15.5 percent above the fiscal year 1999 appropriation. The existing base program includes such activities as administering an understandable, accessible, and timely export control process and managing the Critical Infrastructure Assurance Office (CIAO).

The National Institute of Standards and Technology (NIST) helps to eliminate technical non-tariff barriers to trade, as part of the Broadening Trade initiative, by working to increase global recognition of U.S. measurements and standards. We are requesting an increase of $2 million for this activity for fiscal year 2000. NIST also works with ITA to place standards attaches in Russia, China, and South Africa and with PTO on the Commercial Law Development Program to institutionalize trade in emerging economies via training programs. Through the linkages established between the Manufacturing Extension Partnerships (MEP's) and U.S. Export Assistance Centers (USEAC's), NIST helps identify small export-ready manufacturing firms who need technical assistance.

TECHNOLOGY FOR ECONOMIC GROWTH

In TA, the Office of the Under Secretary and the Office of Technology Policy (US/OTP) promote innovation and industrial competitiveness by advocating and coordinating efforts at interagency, state, national, and international levels. TA also includes the National Institute for Standards and Technology (NIST) and the National Technical Information Service (NTIS). TA's primary mission is to improve the Nation's technological infrastructure and to facilitate innovation by working with industry. TA is essential to economic health, advances in science and technology, and our Nation's survivability in the information age.

One of NIST's programs is the Measurements and Standards Laboratories Program (MSL). MSL is focused on infrastructural technologies such as measurements, standards, evaluated data, and test methods that provide a common language for use by industry in commerce. The accuracy of transactions amounting to trillions of dollars in sales depends on NIST's maintenance and development of accurate weights and measures for the fair exchange of goods and services. Trillions of dollars in additional sales are supported by NIST-delivered measurement techniques, equipment, calibrations, and standards. Moreover, U.S. scientists rely daily on NIST's evaluated data services and measurement expertise for a host of both basic and applied research activities.

As part of the Technology for Economic Growth initiative, the Commerce fiscal year 2000 budget request also includes an increase of $55 million for a contract award to begin construction of NIST's Advanced Measurement Laboratory (AML). This facility will provide NIST with the temperature, humidity, vibration and air cleanliness required to perform cutting-edge research in the 21st Century. NIST will also establish a program to improve the quality of science education through its Teacher Science and Technology Enhancement Program.

NIST is requesting an increase of $34.5 million to further enhance its successful Advanced Technology Program (ATP). This request is designed to further stimulate U.S. economic growth by developing high-risk and enabling technologies through industry-driven cost-shared partnerships. In addition, NIST's Manufacturing Extension Program (MEP) will increase resources devoted to gathering and disseminating best practices to all NIST-MEP manufacturing extension centers. Overall, we are requesting an increase of $94 million for NIST programs. This represents a 14.6 percent net increase above the fiscal year 1999 appropriation. The existing base allows us to continue supporting U.S. industry, government, and scientific establishments with the development and application of technology, measurements, and standards.

NTIS compiles and disseminates non-classified scientific, technical, and engineering information useful to U.S. business and government. The Department faces a management challenge with respect to NTIS. NTIS has traditionally been funded by fees, but the Internet and advances in information processing and distribution technology have fundamentally changed the market for scientific, technical, and engineering information. As a result, the Administration is requesting $2 million to partially fund the costs associated with the organization and preservation of NTIS' technical information. This level is critical for NTIS to perform its mission. Nevertheless, I look forward to working with the Subcommittee to address this Bureau's financial problems.

In administering laws that grant and protect patents and trademarks, and in advising the Commerce Secretary, the President, and the Administration on intellectual property rights, the Patent and Trademark Office (PTO) plays a central role in America's economic growth. Through its stewardship of our Nation's intellectual property, PTO influences investment, development and marketing strategies, and the financial viability of American businesses. PTO plays a central role in increasing the competitiveness of our technology-based economy by providing more effective service delivery as product life cycles become shorter. Timely issuance of patents and trademark registrations make all the difference for firms operating in fast-paced markets. Toward this end, PTO is committed to customer-oriented and results-driven performance calling for reduced average processing time of patents and trademarks, the automation of various patent and trademark activities, and the establishment of a fee schedule aligned with actual costs.

Through its provision of technical assistance and its expertise on trade-related property rights issues, PTO also helps support the Broadening Trade initiative. PTO contributes to the protection and expansion of intellectual property rights systems worldwide, vital to the institutionalization of the commercial infrastructure of developing economies and to promoting trade, through education and training on laws, regulations, and enforcement. It conducts international outreach and works in partnership with other nations to help support these objectives.

Finally, improving communications, as part of a customer focus, is integral to the goal of promoting awareness of and providing effective access to patent and trademark information. This relies on an advanced information dissemination base able to respond to users in a timely fashion, make information available, and transform the majority of processes into electronic operations. It includes the increased use of the Internet to request the status of applications and place orders and to answer customer inquiries via e-mail.

PTO's program operations are revenue-generating, and it is a self-sustaining Agency that strives for external customer satisfaction. Similar to private business, it conducts a number of transactions with the public directly and must become efficient enough to respond to private sector needs and a potentially growing market for its services. Freed of certain federal restrictions and with a clear mission, accountability, and measurable goals, the PTO is a good candidate to become a Performance Based Organization (PBO). The Administration is developing a legislative proposal to establish a PBO.

We are requesting an increase of more than $100 million for the Patent and Trademark Business, Policy and Information Dissemination activities. These additional resources are completely funded by user fees and will increase staffing and expand existing workplace electronic systems to meet projected growth in workload.

The National Telecommunications and Information Administration (NTIA) maximizes the use of telecommunications and information resources in ways that create

jobs, augment U.S. competitiveness, and raise the standard of living. NTIA plays an important role in opening new markets and broadening trade by helping to implement the World Trade Organization (WTO) Basic Agreement on Telecommunications.

Through the Public Telecommunications and Facilities Planning & Construction program (PTFP), NTIA will assist public telecommunications facilities in converting to digital broadcasting. As necessary, PTFP will continue to fund grants to replace basic equipment and provide assistance to rural and other areas where financial assistance is lacking. It is part of the President's program to ensure that the benefits of public broadcasting continue for all our citizens.

NTIA manages radio spectrum allocated for federal use. It ensures that radio spectrum assignments provide the greatest public benefit by planning and implementing policies for both private and public sectors; meeting the requirements of federal agencies; and advancing the development of spectrally efficient technologies.

NTIA's Telecommunications and Information Infrastructure Assistance Program (TIIAP) provides matching grants to state, local, and tribal governments, and other not-for-profit organizations to demonstrate creative uses of information technology. Overall, we are requesting an increase of $24 million for NTIA programs.

DISTRESSED COMMUNITIES

The Economic Development Administration's (EDA) strategic goals are to create jobs and private enterprise in distressed communities and to build local capacity to achieve and sustain economic growth. Since its establishment, EDA has had to confront many challenges to the industrial and commercial growth of distressed communities of the United States. EDA was reauthorized for five years by the Economic Development Administration Reform Act (Public Law 105–393), to generate new jobs, help retain existing jobs, and stimulate industrial and commercial growth in economically-distressed areas of the United States.

Today, rapidly changing production, trade patterns, and technology threaten certain communities. EDA's highly flexible programs for public infrastructure, planning, technical assistance, and research allow the Department to respond strategically to the specific conditions of disenfranchised areas to expand industrial and commercial growth. EDA works through a nationwide network now comprising 320 Economic Development Districts (EDD's), 64 Indian tribes, 69 University Centers, and 12 Trade Adjustment Assistance Centers (TAAC's). EDA focuses on supporting local planning and long-term partnerships with state and local organizations that can assist distressed communities with strategic planning and investment activities.

As part of its Economic Adjustment Assistance Program, the Department of Commerce will assist distressed communities recovering from sudden and severe economic downturns, such as those caused by increased foreign imports, plant closings, environmental regulation, and natural disasters. Among other activities, this program will assist communities in the Northeast region with economic diversification and financial restructuring necessitated by federal restrictions imposed on the fishing industry. Commerce is requesting an increase of $20 million for assisting distressed and disadvantaged communities for fiscal year 2000. This represents a net increase of 0.2 percent for fiscal year 2000.

The Minority Business Development Agency (MBDA) has the lead federal government role for coordinating all minority business programs. The agency provides access to market and resource opportunities through a variety of direct and indirect business assistance services. For fiscal year 2000, MBDA will continue to define its program strategy through goals that promote job creation, economic growth, and sustainable development for the growing minority business population in the United States. These goals are to improve opportunities for minority-owned businesses to gain access to the marketplace, and to pursue financing.

CRITICAL INFRASTRUCTURE PROTECTION

Under the Critical Infrastructure Protection initiative, NIST will develop measurements, testing methodologies, and standards needed to help ensure the reliability, trustworthiness, and survivability of the information technology systems that support critical national infrastructures. The NIST program will address security technologies and methods used in a wide variety of systems (such as intrusion detection, cryptography, and access control), the processes used to build systems, and the application of these components to Federal government systems and to complex supervisory systems (which are a rapidly emerging area faced with important security concerns). These projects will focus on technologies not being developed by the private sector.

In housing the Critical Infrastructure Assurance Office (CIAO), a component of the interagency Critical Infrastructure Program established by Presidential Decision Directive 63, BXA helps to safeguard the interconnected systems that are necessary to the operations of our government and economy.

As part of the Critical Infrastructure Protection initiative, NTIA has the lead role for the information and communications (I&C) sector. It advances the public interest in communications, mass media, and infrastructure development by devising a plan that assesses the vulnerabilities of the I&C sector and identifying protection strategies in times of crisis. NIST and NTIA will carry out the research needed for I&C and will coordinate all research with the Office of Science and Technology Policy and CIAO. The research will help ensure against a catastrophic infrastructure failure, reduce the level of ongoing loss from attacks and failures, enhance overall national economic security, and reduce the direct and indirect costs associated with infrastructure failures.

CIAO is funded at $6 million in fiscal year 1999. Overall, we are requesting a program increase of $7.3 million in fiscal year 2000 for NIST and NTIA to help facilitate the Commerce Department effort in this national program for critical infrastructure protection.

KEY MANAGEMENT INITIATIVES

As you recall, when I took office I promised several actions to strengthen the management and operations of the Department. I reported on several of these last year, and I am pleased to report that we are continuing to make progress on key management issues at the Department of Commerce.

In addition to developing a Strategic Plan under the Government Performance and Results Act (GPRA), we have submitted our fiscal year 2000 Annual Performance Plan (APP) under that Act, reflecting substantial improvements over the fiscal year 1999 APP. It has substantially fewer goals and performance measures (about one-third as many performance measures as for fiscal year 1999), and these goals and measures are more outcome or results-oriented, than they were last year. The fiscal year 2000 APP is also much more closely linked to our fiscal year 2000 Budget Request than the fiscal year 1999 APP was to our fiscal year 1999 budget.

In addition to these improvements in our implementation of GPRA, we have developed an internal Strategic Management Plan, which focuses on seven elements that cut across the Department. These are as follows: Supporting a successful Census 2000; Ensuring reliable and accurate Department-wide financial management; Making the most efficient use of information technology investments; Implementing an integrated policy, planning, and budgeting process; Establishing a solid risk management program; Improving customer service; and Maintaining a workplace that celebrates diversity and is free from discrimination.

Each of these elements is described in more detail in Part IV of the APP, entitled "Commerce Management Strategy: Success and Challenges." We will continue to move aggressively to improve our management capabilities and to ensure that Commerce is well-managed, well-organized, efficient and effective in providing the best possible service to the American public and business community.

Here are just a few of our achievements during the past two years:

—Increased clean financial audits from 24 percent to 84 percent;
—Reduced security clearances by 34 percent;
—Consolidated field offices from a total of 747 to a 600;
—Increased Y2K compliance from 25 percent to 85 percent;
—Installed an accountability system for IT investments—on which we spend $1 billion per year;
—Increased the discipline in our budget process through an "Integrated Policy, Planning, and Budget" process, chaired by the Deputy Secretary;
—Hired over 3,000 "new workers" under the Welfare to Work Program;
—Launched a Government Wide Acquisition Contract (GWAC) for IT services for small, disadvantaged, and women-owned firms—the first such GWAC in government; and
—Hired a Chief Information Officer (CIO), and taken steps to create a Digital Department, including making investments in telecommunications and IT systems.

These initiatives are discussed in more detail in our Budget in Brief and APP. I am pleased to advise you that for the first time the Budget in Brief, the APP, and the budget justifications are available on a CD–ROM. The three documents are also available on the Internet at www.doc.gov/bmi/budget.

COMMERCE EMPLOYMENT

For fiscal year 2000, our budget request reflects a significant increase in FTE employment. This increase of 45,167 FTE's for fiscal year 2000, plus a sizeable increase in fiscal year 1999, is almost exclusively due to the requirements associated with gearing up for the Decennial Census. Fee-funded patent and trademark examiners comprise most of the remainder of the FTE increase. In the fiscal year 2000 Budget Request submitted prior to the Supreme Court decision, the FTE increase attributable to the Decennial Census was 44,749. This number of primarily temporary employees will increase further in light of the Supreme Court decision. It should be kept in mind that these FTE numbers are not the same as the number of full-time permanent positions within Commerce, which is growing at a very modest level.

SUMMARY

Mr. Chairman, we realize that you and the other Subcommittee Members have a difficult job before you to develop an appropriations bill that will conform to the spending caps, consistent with the eventual final Budget Resolution. We look forward to working with the Subcommittee on the key issues that will confront all of us as you work toward developing an fiscal year 2000 appropriations bill.

Thank you, Mr. Chairman, for this opportunity to review the progress we've made at Commerce over the past year and our requirements for the coming fiscal year. Last year I stated that we would hold every program and position to a stern test: keeping those we need to meet our goals, and searching for new and more efficient ways to get the job done. This year's plans and budget reflect this approach.

And Mr. Chairman, if I may end on a personal note. As the last Commerce Secretary of this century, I always say it is the best time in the entire century to serve. We are in the longest peacetime expansion in history.

But it takes your support to make Commerce what it is. I thank you for the past two years, and I look forward to two more good ones.

DECENNIAL CENSUS

Senator GREGG. Thank you, Mr. Secretary. I have great respect for the way you have managed the Department. I think you have been an extremely effective and positive force within this Administration and for the Department, and I have enjoyed working with you.

I must say that we are clearly headed, however, toward loggerheads on the census issue. I am not sure that I see a great deal of point in us even discussing or debating it because the issue is so fundamental and because the differences are fairly clear. I believe the Supreme Court has decided and directed what the Census Bureau should do, and we believe that a single census that is an enumeration is the proper way to proceed. So rather than spending a lot of time on that issue, because we are just going to simply legislate it, and, hopefully, you will follow the legislation and the law.

Let me ask you a couple other questions where the differences are not so acute.

INTERNET TAX POLICY

You mentioned the Internet and you mentioned the expansion of trade as a result of the Internet. Tax policy on the Internet has become a major issue, and obviously a significant issue for Commerce. We recently passed a moratorium relative to tax policy on the Internet. It is my belief that if we allow the different States and the different jurisdictions, which assess all sorts of different types of taxes against commercial activity, to use their taxing authority on the Internet, we will throw that huge engine of prosperity and growth in our economy into chaos.

I would be interested in knowing what your position as Secretary is relative to the tax moratorium, number one. And to tax policy relative to the Internet generally.

Secretary DALEY. First of all, we strongly support the moratorium that Congress passed. We do acknowledge that there are serious concerns by State and local entities. I have had the pleasure of meeting with the Governors Association, the National Counties Association, and this past weekend a League of Cities which represent thousands of mayors, and I must say they have great interest in this issue.

We have made the statement that we are not against sales tax over the Internet. But we are trying to get a handle on this issue. The commission which was created by Congress, as you know, has not met. They are charged with addressing this issue. There has been a dispute over the makeup of it. I think we are in the process of correcting that, trying to work with Congress to see a greater representation of the State and local representatives.

But you raise the bottom line, if we allow every governmental entity out there to nick the Internet in some way, shape or form—sales tax represents 30 percent of the revenue of most State and local governments, so it is vital to them that they find a way to protect that revenue. At the same time, our greatest concern has been about new taxes that creative revenue raisers would come up with on the Internet that would then, as you say, stymie this medium.

But they are very difficult and complex questions that hopefully this commission, which is charged with coming up with a report within 18 months, can get moving. I am a member of it, as well as the Secretary of the Treasury, and a couple of other Administration representatives. But it is a very difficult and complex issue that we are going to have to work through and then work on an international basis.

Senator GREGG. Should not our policy as a Government, as a Federal Government, be that the Internet is an international and interstate commerce area where the assessment of thousands of different levels of sales tax would be counterproductive? Should that not be our basic position?

Secretary DALEY. I think that position is the logical position to be at, but cutting off what potentially may be 30 percent of the revenue of some governments will put a tremendous strain on them.

Senator GREGG. It is not going to cut that off. I mean, the fact is that the people who are purchasing over the Internet are not going to be traveling to the State and purchasing at the State, so the revenue is not lost. It is the same way that we deal with mail order in many ways, and it seems to me that as a fundamental policy we should be taking the position that the Internet should not be, as you say, nicked to death. I would say nickeled and dimed to death, or matrixed to death, with an overlay of taxes that are assessed against it by States.

Secretary DALEY. I think the greatest fear is really not just the sales tax, it is all of these new creative taxes that people come up with.

Senator GREGG. Any taxes. We should be against all taxes on the Internet, should we not?

Secretary DALEY. We are against new taxes on the Internet and new taxes that will stymie the Internet. We saw an explosion this past holiday season of sales on the Internet that just were astonishing to most—e-tailing, as it is called, went from $3 billion in sales in 1997 to $9 billion in 1998 during the holiday season.

Senator HOLLINGS. Would the chairman yield?

Senator GREGG. I am about to turn it over to you, so I will turn it over to you.

Senator HOLLINGS. No, I would yield then to Senator Inouye.

Senator INOUYE. No.

Senator HOLLINGS. When you talk about taxes on the Internet, that sounds like a neat political expression. Nobody wants to tax anything. But I have observed over my years in this game that when WalMart moved in, they closed up Main Street substantially. I can tell you that right now. They just went out on the edge of town, plenty of parking places, poured some concrete, put the trusses so the snow wouldn't crush the roof, and everybody shops there.

Senator GREGG. Does it snow in South Carolina?

Senator HOLLINGS. Yes. We have some down there now.

What happens now with this Internet and the sales on it is that cities have not been collecting taxes because they have not bothered with trying to keep the records. But with this volume that the Secretary points out—and I am looking at the trend—business will increase that volume, and you will find that Main Street stores will say wait a minute, let me order this for you on the Internet and avoid the 8 percent sales tax. They start putting themselves out of the tax equation. If you want to buy a suit, they will order it for you over the Internet.

What happens is these cities and States lose all this revenue and it is a serious problem, because all the laws pertaining to sales and use tax—and I happened to write one of those back in 1950 and it is for use in your particular State of New Hampshire. Of course, you do not have anything up there. You all do not believe in——

Senator GREGG. Taxes.

Senator HOLLINGS. In Government, come on. [Laughter.]

Senator GREGG. This is true, too.

Senator HOLLINGS. It's just a rally. I have been to Concord. It is a wonderful event. Give everybody $100 and then free tickets to everything. No kidding. The nicest people in the world.

I did not mean to interrupt, but you are going to have to make some kind of arrangement. And I do not know whether the burden is on the salesman in interstate commerce, but some kind of records for the collection of taxes will have to be developed. Cities and States are going to have to be ready for this type of commerce otherwise I can tell you, it is going to be devastating. It really is, because that is the principal support of education funding.

For us playing catch-up ball in the south, sales tax is for public education, we are trying to get better schools, and pay teachers more. If we start cutting into that just because we in Washington cannot tax the Internet, I can tell you, it is going to be a serious problem.

Thank you, Mr. Chairman.

Senator GREGG. Thank you, Senator. Did you have an opening statement or anything?

Senator HOLLINGS. No. I apologize——

Senator GREGG. On the order of arrival, I think Senator Campbell would be next.

Senator CAMPBELL. Thank you, Mr. Chairman. Sorry I was a little bit late.

Senator GREGG. I am sorry, Senator Campbell, I did not see the Chairman of the committee here. It is our tradition——

Senator STEVENS. No, I am here for the duration, so I will just wait my turn.

Senator GREGG. Go ahead.

CANADIAN CATTLE DUMPING

Senator CAMPBELL. I would like to ask the Secretary a little about cattle dumping. Earlier this year on January 19, the International Trade Commission determined that Canadian cattle dumping is injuring U.S. producers, and of course in our part of the country we have a lot of producers in the American west. They also called for imposing countervailing duty.

They are supposed to, as I understand it, the Commerce Department is going to have a preliminary report out May 3. I was wondering what message you could give for me to take back to a lot of the cattle producers that have complained to us? Can that be accelerated? What progress is being made now? What do you expect to come out of that published report?

Secretary DALEY. To be honest with you, Senator, I do not believe we can accelerate that process. I think the schedule that has been outlined for a May date may even be statutorily required.

This is a unique case. It is the first case of its kind where a dumping case has been filed on a product that has four legs and moves. So it has presented a unique situation for us. We take the case very seriously. We have had a very aggressive period over the last 6 months on dumping cases being filed and we are looking at this because it may set a precedent for other sorts of commodities that have not historically used the dumping laws and countervailing duty laws as a remedy. So it presents a real unique challenge for us. But we are taking it seriously. We will have the report. If we can issue it sooner, I assure you that we will.

Senator CAMPBELL. In my view living out there is that some of the effects they are facing now, ranchers, with the dumping is really a result of some of the international trade agreements that we got ourselves into without making sure that we had some protections.

ASSISTANCE TO DISTRESSED COMMUNITIES

Let me ask you one other thing, too. You mentioned that assisting distressed communities, in your testimony, is a priority, but there is decreased funding for the Economic Development Administration. Would not some of the extra trade money, could that not be used to help distressed communities?

Secretary DALEY. There is a request that is lower than past years, than what was appropriated last year. It is the largest amount that we have ever requested. We are moving $20 million

of the EDA funds into distressed areas for purposes of trying to relieve pain and disruptions that were caused by some of the trade dislocations that have occurred. So we think that we are addressing both the impacts in communities based upon some of the trade issues. Obviously, EDA is a very popular program, one that has served communities well. But as I say, we are requesting this year the most we have ever requested of the Congress.

Senator CAMPBELL. My notes may be wrong.

ASSISTANCE TO NATIVE AMERICAN COMMUNITIES

One last question, Mr. Chairman. I think it is of interest to Senator Stevens and I because we both represent Native American communities. You probably know, the unemployment rate on many reservations is like 70 percent. Almost no jobs, no industry, and almost Third World conditions on some of the reservations.

We did a hearing in the Indian Affairs Committee on the 2000 budget request, and we in fact invited someone from your Department to testify, but they did not show up. I introduced a bill called S. 401; you might want to look at. It deals with Native American business development, trade promotion, and tourism.

I would like to know, without looking at it, I would like to know if you would support that kind of a concept. It is going to try and find alternative ways for the little industry there is on the reservations to do some promotion on the international level.

Secretary DALEY. First of all, I apologize that somebody was not at your hearing, and I will find out why. But I think trying to get our export assistance centers, we have 100 around the country, let me see which ones would be located closest to the reservations so that we could see if we can——

Senator CAMPBELL. Apparently there is very little knowledge on how to access those centers. If you have some ideas how we can do that that we could pass on to those communities, we would appreciate it.

Secretary DALEY. I will get back to your office, Senator. And let me say, you were right in your comment that our request this year on EDA is less than what was appropriated last year. So you were not wrong in your statement. We are requesting the most we, as an Administration, have ever requested for EDA's Public Works program.

Senator CAMPBELL. I see. Thank you.

Thank you, Mr. Chairman.

Senator GREGG. Senator Inouye.

Senator INOUYE. Thank you very much, Mr. Chairman.

I would like to join my chairman in welcoming you, Mr. Secretary. I would like to shift gears a little; instead of complaining, say a few nice words about the Department.

I wish to thank you for the participation of your Deputy Secretary Mr. Mallett at our recent coral reef meeting in Hawaii. Most people in the United States do not realize that over 83 percent of the coral reefs of this Nation happen to be in Hawaiian waters. These reefs play an important role in the maintaining of our fisheries, which as you know, are beginning to deplete. So I want to thank you for the role that your Department has been playing and the role that your Deputy Secretary Mr. Mallett has been showing.

He has shown great leadership, and we look forward to something good coming out of this.

The other matter that I am most grateful to your Department is the public broadcasting initiative, changing from analog to digital broadcasting. This would be a real help to the rural areas, and as you know, we have a lot of rural areas. So thank you very much.

Secretary DALEY. Thank you, Senator.

Senator INOUYE. That is all I have, Mr. Chairman.

Senator GREGG. Thank you, Senator.

Senator Stevens.

STELLAR SEA LION POPULATION

Senator STEVENS. Mr. Secretary, sorry I am a little late. I did look over your comments, and I just have a few questions.

First—about the stellar sea lion—there is a decrease from last year, and one of the real problems we have now with commercial fisheries from Portland north is the great question of whether the decrease in the stellar sea lion is something that is caused by man or by other conditions; and really whether it is something that should be addressed from the point of view of reducing the pressure on the biomass of the north Pacific as far as fisheries is concerned. So I just mention it to you. I am going to do my best to increase that if we can, to take it back up, because I think it is the most significant problem that we face in the north Pacific fisheries—the Gulf of Alaska fisheries—is the question of what is happening to the stellar sea lion. I just mention it to you. I do not know if you have a comment. I think I wrote to you about it as a matter of fact.

But it is a very serious thing so that requested decrease at the same time that other portions of the Administration are rising—its really saying we should slow down commercial fishing because of this, and we do not have the basic science to deal with it yet on stellar sea lions.

Secretary DALEY. I know, Mr. Chairman, that we are working with the council to try to come up with some ways to address the problem of the stellar sea lion, but let me see if we can address your concerns as far as the appropriation.

Senator STEVENS. You and the Secretary of Interior share with the president of the University of Alaska, the responsibility for approving a plan for spending the money that we set aside for scientific studies in the north Pacific. He is coming in today. I am going to ask him to get together with you and see if we can try to use some of that money to augment what you have got, because I think it is the number one problem that we have in fisheries.

NATIONAL UNDERSEA RESEARCH PROGRAM FUNDING

Secondly, we have had a decrease in the funding for the National Undersea Research Program. We said that should be allocated proportionately among the centers. Again, this is one of the reasons that the president of the University of Alaska is coming in. Our center believes that it has been given, unfortunately, a very sizable portion of that reduction—much out of line to what we in the Congress intended. Again, I have written you a letter on that. I hope you will take a look at that. It is a very important program for us now. I do not know if you know this, the National Geographic is

undertaking a study with Dr. Earl, who is going into a whole study of the outer continental shelf. Eighty percent of the outer continental shelf if off our State, and if our center is going to be able to participate at a time when others are putting a heavy emphasis on what is going on out there on the outer continental shelf off Alaska, I think that program, that undersea research program, should not be reduced to the extent it is.

If we can find some extra money, maybe we can increase that one a little bit this year. Have you had any chance to look at that program?

Secretary DALEY. We have. We have tried to do a fair allocation amongst all of the centers. The university, which does an excellent job, receives about $2.4 million per year. It is the most of any of the centers.

Senator STEVENS. We have half the coastline of the United States. If you are talking about undersea or continental shelf, you are talking about Alaska. Eighty percent of that continental shelf is off one State. The money is being spread around to a lot of places, and they do not have any undersea to research really in comparison to what we have.

I would want to urge you to try and partner with what the National Geographic is going to do, because I think they are going to get us a lot of information about the resources that may be available on the outer continental shelf and what we should do about them.

Senator CAMPBELL. Give them Colorado's portion of the money.

Secretary DALEY. Wish there was some money in Colorado to give them.

Senator STEVENS. Record that, Mr. Chairman. Colorado will give up their undersea research money. [Laughter.]

Secretary DALEY. I know there have been discussions between your staff and ours, Mr. Chairman. We will sit down with them and see if we can address that.

SEAFOOD MARKETING LEGISLATION

Senator STEVENS. Last, let me inform my colleagues about this. I have been working on a bill, and I am going to introduce it soon. It deals with seafood marketing. We have had a terrible time, really, competing in the world with seafood marketing. Alaska has the Alaska Seafood Marketing Institute. The rest of the country really does not.

We believe that we ought to promote our seafood industry. We do have the cleanest and safest seafood in the world, and we want to try to utilize a portion of the Saltonstall-Kennedy funds. Originally that Saltonstall-Kennedy fund was for the purpose of assisting the seafood industry to market their product, and we have gotten away from that. I would like to urge you to direct some of those funds, once again, to benefit the industry and to stabilize their markets.

The foreign seafood producers are advertising in our country at an alarming rate. You have a marketing council for beef; you have one for pork; you have one for chicken; you have one for a lot of other things. It is not in our agency. It is over in Agriculture. But this product is under your jurisdiction and not under Agriculture,

and of course, they have resisted for a long time our trying to create a seafood industry promotional concept using agricultural money. So I have decided to descend on your Department and see if we cannot find some way to institute a real marketing program for American seafood. Not just Alaskan, but American seafood. Whatever helps the seafood market for the Nation will help us, because we produce half the seafood in the United States. And we have a difficult time getting out of our State with promotions.

So I just urge you to take a look at this bill, and hope you will consider having your people take a good, hard look at it and help us. If Agriculture is involved as much as they are in assisting the marketing of the land-based meat producers, I think that it is a role that Commerce and NOAA could well take on to assist promotion in promoting our total national seafood industry.

It is lagging. It really is lagging. We are being overwhelmed with imports at a time when our product is much better than theirs. We are marketing wild salmon. They are marketing salmon that comes from pens and from various facilities, like they have in Chile, where really they are farming salmon. We are catching wild salmon. As my wife would say, salmon savage, that is the best salmon in the world. And we do not market it.

I see Scott Gudes [former minority clerk of the subcommittee] is smiling back there. You have taken one of our best salmon fisherman down there, and we will have to have him detailed for a month or two this summer.

Secretary DALEY. I will volunteer for that job.

Senator STEVENS. Thank you very much, Mr. Chairman.

Senator GREGG. I think the whole committee would be happy to. [Laughter.]

Senator STEVENS. It has been a long time since we took this committee up to Alaska.

Senator GREGG. I think the committee should go up there and see if we can find some of these wild salmon.

Senator STEVENS. I do not know if Senator Hollings went along, but Senator McClellan, when he was chairman of this committee, took every member—and in those days, if a chairman suggested it was time to go on a trip, everyone went. Those things have changed a little bit right now. But he took us all, and we had a three-week trip to Alaska. We went by train, by bus, and by air. And we went to the villages, but he did a little bit of scientific research about what creatures exist in the waters of Alaska. We might plan that.

Senator GREGG. That sounds pretty good to me.

Senator STEVENS. I hope you will look at——

Secretary DALEY. We will look at the bill and try to work with the industry to see if we can come up with a program.

Senator STEVENS. Thank you very much.

Senator GREGG. Senator Leahy.

Senator LEAHY. Thank you. I must say, the last time I went to Alaska with Chairman Stevens, I caught the largest fish I had ever caught in my life.

Senator GREGG. That is because you do not fish in New Hampshire.

Senator STEVENS. It was not as big as the one your wife caught. [Laughter.]

Senator LEAHY. You were not supposed to remember that, Ted. But anyway, if you want to set up a trip, I will go.

Mr. Secretary, you should know your Department has been very helpful in Vermont with the EDA grants in Burlington, and NOAA has helped with Lake Champlain, and I am pleased with what you have done on the Internet domain name study. I think as the Internet expands, it is extremely important.

NATIONAL TECHNICAL INFORMATION SERVICE

I do have a concern though about the National Technical Information Service, NTIS. I do not have a problem with the Federal Government having a clearinghouse for America's review of scientific, technical, and other business related material. But I think the role and products of the NTIS have gone beyond that scope.

I have raised concerns with the Department in the past, and I had hoped somebody would look at those because NTIS is marketing subscription products that compete directly with private companies that are providing nearly identical services. In full disclosure, I would note that the private company that does that most extensively is in a small town in Vermont.

But the Department of Commerce which promotes private business development is actually marketing, in this case, a product that competes directly and almost exactly with existing services in the private sector, and I do not think that is what they should be doing. There has been a request for a $2 million increase in the budget for NTIS.

You say you are preparing legislation to clarify the NTIS mission, for giving it greater flexibility. I am going to be looking at that very, very closely. I do not want to see it continue to compete with the private sector, and I will look very carefully at the request.

Secretary DALEY. My understanding, Senator, is that the service that we have provided for 20-some years, and now that it has gone on the Internet, is obviously being taken advantage of, and appropriately so, by the private sector.

As far as NTIS is concerned, we have raised our concern about the future of NTIS. I think we in the Department and the Congress have to figure out how we continue, if we continue. They are unable to compete with the private sector, to be frank with you. It is in a financial situation that is totally unacceptable, and I think there is going to have to be a decision made on how, if any way, this organization continues.

NTIS has a statutory mission. We are looking at options for its future and will come back to the committee and come back to the Congress and ask for direction on whether we ought to be continuing with this service that is, no doubt about it now, being in direct competition with the private sector.

Senator LEAHY. When NTIS was created it was a different world. NTIS was needed to go out and collect all of these articles out of archives, papers, and so on, but now with so much online, it is a lot different. It is something we could probably even carry on more

conversations about, but it is something that I am very concerned about.

UNITED STATES-EUROPEAN UNION TRADE

Last year you expressed concern about implementation of privacy standards by the European Union with regard to electronic trade and personal trade. Do you think their privacy standards have a potential for disrupting trade between the United States and the European Union?

Secretary DALEY. I do. There is no question that if the directive that was put out last October was implemented, it would have a serious impact on trade between Europe and the United States. We got the E.U. to agree to a standstill over the last 90 days. That directive did not go into place. We have been in intensive negotiations. As a matter of fact, Ambassador Aaron, the Undersecretary for International Trade, is meeting this weekend with Director General Mog of the European Union.

We have, as I say, basically a standstill now until the summer. And we are optimistic. There has been progress, but the member states of the European Union, as I understand it, are having problems with this kind of freezing where we are at, and staying in the standstill, and they are beginning to push for action, individual member states, which will create problems. We have got to reach some agreement on this or else we could have a serious impact on the trade flows.

For those companies that do business, send information, from payroll information to customer information, their businesses could be severely impacted. So it is a serious issue for us and one that, quite frankly, is getting to a delicate point in negotiations right now.

Senator LEAHY. I am getting a lot of inquiries, wearing my Judiciary Committee hat, from companies. Everybody is worried about 6 months from now, or 8 months from now, where are we going to be? Are we suddenly going to find things closed off? Which ironically, is something that will not be all that helpful to the European Union either. Whether this is a cut off your nose to spite your face, I do not know. But I would encourage you—and I do not think I need to encourage you because you are obviously doing it, but this has to be a major priority.

Secretary DALEY. They have, the Europeans take a much more government-led position. We have reached out to the private sector to get them to address the privacy concerns of the consumers. If privacy is not addressed, this Internet and doing business electronically will not succeed anywhere near to the level that we hope and expect.

We think we have prodded the U.S. industry to take some steps. There is a whole host of alliances; the Online Alliance, which is a number of major companies who have stepped forward with privacy principles and a self-regulatory process.

But the Europeans, to this point, take a much more government-led, regulatory-led position than we do. We are trying to get them to understand our attitude and our private sector-led, self-regulatory-led efforts so that they could be basically safe-harbored and be accepted by the Europeans. That if you meet our standards, our

self-regulatory, private sector-led standards, you would be—those actions would be acceptable in Europe.

At this point, even though we have the standstill, it is getting difficult, to be frank with you. But we will continue to let you know as we move forward with the negotiations.

Senator LEAHY. Thank you, Mr. Secretary.

Thank you, Mr. Chairman.

Senator GREGG. Senator Hollings.

NOAA FLEET

Senator HOLLINGS. Thank you.

Mr. Secretary, I will take a page from Senator Inouye's book and thank you for the rejuvenation of our NOAA fleet. We had not had any real requests from a Secretary of Commerce for 20 years. We did force-feed, a few years back, the research vessel. Ron Brown——

We only have nine vessels left. They are over 30 years of age, technologically obsolete. So I am glad to see that you are putting that money in, because we have under the Magnuson Act, the added responsibilities in fisheries, and we just cannot do the work unless we begin to modernize that fleet.

INTERNATIONAL TRADE ADMINISTRATION

Otherwise on the International Trade Administration, is well-organized and doing an outstanding job and I have recommended long since to abolish the International Trade Commission. Let the same entity; namely, ITA, that has to make a finding of whether or not there is a dumping violation—like the same jury that finds the guilt, let them find the sentence. Similarly, as they find a dumping violation, they ought to also find the injury and what action should be taken.

STEEL IMPORTS

Regarding steel, you have right this minute an export quota, import quota bill on steel that has passed the House, or will pass it, and it will arrive in the Senate next week or the following week. That comes about because one entity of Government does not look at the other. Namely, the World Bank runs all over the world telling every emerging Third World country that you cannot be a nation-state unless you can produce the steel for the weapons of war and the tools of agriculture. So they build 2 percent steel mills everywhere. This is being done over in China right this minute.

As a result, steel is being dumped on the docks right in my hometown. I can look out and see the steel coming in to the southeast for less than we can produce it here in the United States.

Under President Kennedy we had a hearing to determine the importance of steel to our national security. There was a provision in law that before the President could take executive action he had to find that the commodity or product that was necessary to our national security. So we had hearings. The Secretary of Commerce, State, Defense, Agriculture, and Labor came together and found that steel was the most important to our national security.

And we are just putting ourselves out of business because we are saying free trade, free trade, but there is no such thing. Every day we are thinking up some new regulation, some new provision whether it is minimum wage, Medicaid or Medicare, Social Security, Clean Air, Clean Water, plant closing notice, parental leave. Anything I can do on it. And then, by the way, you run around there with a white tent and put over NAFTA. I am losing jobs at an alarming rate.

With regard to China, this is the whole point. We ship more to Holland than we do to China. We ship more to Singapore in exports than we do to China. It has gone from, at the beginning of the decade, from $5 billion to $57 billion, $58 billion in a deficit. And you and secretaries preceding you and others on both sides of the aisle keep doing that, and the deficit keeps going worse.

TRADE MISSION TO KOREA AND CHINA

So I wish you well in that trip you are going on later this month. But I hope you will understand that we must do better.

Now by contrast, the Europeans have a balance. They do not have a deficit. Surplus with Japan. We are financing the rejuvenation of $1.2 billion. Well, I am going to ride home tonight and go down past the State Department and you will see the hungry poor sleeping on the steam coming up from the streets. We have the homeless and the hungry, and we have problems, crime and drugs, in this country. But you know, it is free trade, so we just send and send and we keep going out of business. All our manufacturing jobs are gone.

Be a hard-card Charlie over there rather than just a giveaway like Santa Claus.

Secretary DALEY. I appreciate your direction, Senator, and I do hope that on this trip to China and Korea we are able to get some deals for U.S. companies that will increase our exports. No doubt we share your same concern that our exports have not been better to China. We did see a 10 percent increase last year, which started at such a low base that it is just unacceptable.

We are trying to push them. We see tremendous opportunities. U.S. businesses continue to see opportunities to sell their products there, if we can get in the market. We hopefully will have some success on this trip and see that.

I would point out, there is no question that there are impacts that are negative to free and fairer trade. Markets are not open around the world to products that are manufactured in your State and in others. In steel, it is one area that I do think we have taken a strong step over the last 90 days in having a dramatic impact in reducing the imports. We have cut the imports about 70 percent from what was coming in last year.

We think that is important, and we have sent a strong message to the rest of the world that they should not look to dump their goods or steel into this country without strong action by the Commerce Department, and we will continue to do that on steel. It is a very difficult situation.

We are the envy of the world right now. Our economy is the only one that is humming along at 4.5 percent unemployment. Our standard of living has gone up. Even last month, for the first time

in a long time, our manufacturing jobs have increased, which was a positive sign. So compared to the rest of the world, we are doing very well, and the goal of all of ours, I know, is to try to keep this economy strong but not be taken advantage of by others.

LOSS OF MANUFACTURING JOBS

Senator HOLLINGS. But how we are hollowing out our manufacturing sector is the real thing to look at. You have the security of the country, and it stands on a three-legged stool. You have the values as a Nation unquestioned, you have your military might. Your economic leg has been fractured. We are down from 26 percent 10 years ago of the population workforce in the manufacturing, down to less than 13 now.

We lost—I saw all the publicity on the market jumping up to 9,770 or something close to it. But we lost 50,000 manufacturing jobs and this is very bothersome. It does not come out in your unemployment statistics because everybody is trying to get at least part-time work or whatever it is. I have in Lee County unemployment at 7 percent or 8 percent. I can go over to Marlboro County, and to other counties. I can go up to Greenville, you are right, it is down to 3.5 percent. But I have lost 28,000 jobs since NAFTA.

And Washington claims reeducate and retrain so we can get them a skill job in computers. Go down there to Oneida, for example, in Andrews, South Carolina where they had 487 workers. They were making good pay and everything; they had been there 30-some years. The jobs these people had went to Mexico. So the age average is 47 years of age, and if we do it Washington's way, you have 47 year-olds retrained as computer operators.

Now are you going to hire a 21-year-old computer operator or a 47-year-old computer operator? You are not going to take on the health costs, the retirement costs of the 47-year-old. If you are a good, corporate, competitive entity you are going to say, give me the 21-year-old. I am not going to take on that burden. So even retraining, they are high and dry. They are out. They just get out of the system.

DECENNIAL CENSUS

And it is going on not just in South Carolina, but all over the country. And we are whistling through the graveyard, which gets me to the main point, the census. We are whistling through the graveyard on that one.

Now because I am intimate to the budget, I know that what is being played is a budget charade. We have a messy charade. The Republicans want tax cuts and a little bit on education. Democrats want to take care of Social Security, and leave more on education and more for Medicare. Neither one is talking reality.

The reality is that we spent $12 billion above the caps. We broke the caps last year, $12 billion. We broke the caps this year, $21 billion. But we never changed the fiscal year 2000 cap. So in order to comply with that 2000 cap, defense must cut $31 billion or $32 billion to start off with. So I am starting off, what do I do? I ask $18 billion more for defense and $2.5 billion more in a supplemental for agriculture.

We are doing the same thing with the census. We are not getting a figure. I agree that you cannot use it for reapportionment. But in the other cases you must use some sampling if we are going to avoid the lawsuits. We had that in 1990. We just cannot sit around and say, do not count them.

Everybody—this is a Republican solution. I was here with President Bush when he gave it to the National Science Academy. Experts have saved the law on both sides of the aisle. That is the only way to get the best count. But they clothe themselves with the Constitution, everybody should be counted. That never did happen. In the old Constitutional days the marshals ran out and shouted, anybody? And they put down some figures.

So we are trying. If they have a better way than sampling, I will adopt that. But we must use it to avoid those court cases, and we need to get a figure from you to get going. What is your figure?

Secretary DALEY. As I mentioned, Senator, we have a figure that is in the 2000 budget that was before the court case in late January. We are in the process right now of trying to finalize what additional funds would be needed by now having to go out to 45 million homes instead of 30 million, and doing a whole host of other activities because of the Supreme Court decision.

We hope that this master activity schedule, which is about 4,000 different items—but the actual schedule of how this would be implemented will be done in mid-April. But we are in the process right now of scrubbing the numbers to try to come up with a number for 2000, additional, to give to you. We will give it to you as soon as we have it, but at this point I do not have it.

Senator HOLLINGS. That will be a figure for both the sampling and the enumeration?

Secretary DALEY. It would be what is needed on top of what we have requested in order to do the entire census, which would be the full enumeration for apportionment purposes, and then an accuracy evaluation program, which would include sampling, for reapportionment and distribution of Federal funds purposes and meet the statutory requirements of getting information to the States by April 1st.

Senator HOLLINGS. Obviously, we will be meeting many more times on this issue, Mr. Chairman. So thank you very much.

Senator GREGG. Yes, obviously we have a disagreement here. I mean, we do not agree to funding of sampling. I do not want Dick Morris doing the census. I want to count the people.

Senator HOLLINGS. I agree with you on Dick Morris. I do not want him doing anything. [Laughter.]

Senator GREGG. That is why we do not like sampling.

Senator Hutchison.

Senator HUTCHISON. I promise not to ask you a question about Dick Morris.

Secretary DALEY. Thank you.

VICTORIA, TEXAS WEATHER STATION

Senator HUTCHISON. Mr. Secretary, I want to, first of all, thank you for the outstanding work you did with the National Weather Service and how it would be allocated and administered. I really, frankly, have never seen a Secretary listen to what the people un-

derneath said, determine that you were not getting the full picture, hire someone from the outside to come in and do a total scrubbing of the organization to see what the facts were, and then basically change a decision that you had made, based on the facts. I commend you for it, and appreciate very much that you did that.

I do want to ask you a question regarding the Victoria weather station. Last Friday, I was in Victoria and Cuero, two of the hardest hit areas in the recent floods in Texas. As you know, Texas is probably the most weather-active State in America. We have not only the normal sorts of things, but hurricanes and tornado alley where we sit cause us to have more disruptions. This last year we had the worst of all possibilities, which was a terrible drought followed by a huge flood.

Victoria, Cuero, and Gonzales were particularly hard-hit, and the Victoria weather station has been severely hit. It has not yet been fully closed because you are looking at it. But they believe that had they had better warning they would have been able to protect more of their livestock loss. The livestock loss was huge, not to mention homes and the property damage. It is in the hundreds of millions. And they do not have, obviously, the capacity to replenish that, particularly because agriculture and ranching is in such bad shape because of the droughts.

So my question is, what is the status of the Victoria weather station, and what can you do to try to make sure that they do have the appropriate equipment with the radar that would anticipate these kinds of—of course, they get hit by hurricanes too, but in this case it was the drought followed by the flood.

Secretary DALEY. First of all, thank you for your comments about our actions in the past, and I thank you for pushing us, to be frank with you, to make sure that we did take all the information into account before we made a mistake. And we were on the road to making a mistake.

As far as Victoria is concerned, you are right, that office is one that has been on the list to be closed. We have closed 139 offices around the country, out of the total amount of 164 I believe it is, of offices from the original modernization program to be closed. As a result of the flooding, we have done an assessment of how we acted, what our warnings were. That assessment is to be finished, my understanding is, sometime late this week. Obviously, we are at Thursday, so it is probably going to be tomorrow or early next week.

Then off of that we will see whether or not there ought to be a review of a decision that had been made previously on that station. And if we were to close that office and there was another situation like that, would we be able to stand up and say there is no degradation of service if we do close the office? So we will contact your office as soon as we have the assessment in hand, go through it with your office. Then we are going to make some decisions off of that. I have not made a final decision on closing that office.

Senator HUTCHISON. I really would appreciate knowing what you find. The tornado in Jarrell 2 years before, the quick response of the southern regional office down to the emergency personnel in Austin, as much as you can ever say actually can be shown to have saved lives. Because they had a 30-minute warning where that tor-

nado was going, they were able to get the sheriff's office out there. They were on the radio stations throughout that area.

And although there were a number of people killed, it was people who just had not been able to be contacted. But the people who were saved were the ones that because, for instance, the HEB food store was aware because of the radio and the sheriff's activity. They were able to put every person in their food store back into a place that was protected.

When you went into that HEB store, you saw the whole roof was gone and everything in that store except where the people were was totally dilapidated. So you could see that the warning really made a difference, which I think is a testament to your keeping that southern regional administrative system in place.

So I think that we did save lives there, and I just worry that Victoria being another very active weather place, is going to really be hurt without that instant warning system that is there with the radar. So I will be interested in hearing what you have to say, and hope very much that we can look at that carefully.

Secretary DALEY. As I say, as soon as we have the assessment we will share it with your office. Then I am sure there will be a public comment period after that, and then off of the process of moving forward on whether or not we close the office. But a lot will depend on the assessment that is done by this report.

Senator HUTCHISON. All right, thank you.

Secretary DALEY. Thank you, Senator.

Senator GREGG. Yes?

Senator INOUYE. Mr. Chairman, I have one question.

Senator GREGG. Yes.

TREATING TUNA WITH CARBON MONOXIDE

Senator INOUYE. Mr. Secretary, I forgot to bring this up, but I was reminded of it by Senator Stevens. We are having a strange development occurring in the Pacific area. There are wealthy enterprises involved in doctoring tuna by using carbon monoxide. So you can get old tuna, bathe it with carbon monoxide, and it comes out pinkish-red. So the consumer looking at that would think that this is fresh from the ocean, when it is not.

Obviously, it concerns us, not only from the standpoint of commerce, but also from the standpoint of health. I do not know what to do about this. I do not know who has jurisdiction over this.

Secretary DALEY. We have the seafood inspection program, which is in NOAA. Let me—is this being imported from countries around——

Senator INOUYE. Japan has passed a law banning all of this. It is coming primarily from Asia, and it has already reached the west coast. So if you are going to have sushi out there, you had better watch it.

And the last thing is that it is good to see Scott there. He usually sits in the back. But now he's a deputy undersecretary.

Secretary DALEY. I will ask NOAA to look at this issue and see what we can do, Senator.

Senator INOUYE. I would appreciate that.

Senator HOLLINGS. Yes, we had a big debate about that. Relative to the Department of Agriculture, they are not as stiff on inspec-

tions as we were in Commerce. We tried to take it all over into Commerce. But if you can get with Dan Glickman and find out about it immediately, that would be a big help, Mr. Secretary.

Secretary DALEY. OK. It is the first time we have heard of the problem with the tuna, but we will get on it and see if there is anything we can do. Or where, if it is not us, where it should be.

[The information follows:]

The Department of Commerce looked into the matter and determined that the National Marine Fisheries Service is aware of the doctoring of tuna by using carbon monoxide. The Food and Drug Administration is addressing the problem.

Senator GREGG. I do have a few further questions. Do you have anything further?

Senator HOLLINGS. No.

DECENNIAL CENSUS

Senator GREGG. We gave the Department of Commerce $27 million last year to give us basically estimates on the census, and now we are still waiting for an estimate on the census, on the enumeration number. Can you give us a specific date when we will get a number from you? We have heard numbers as high as $6.5 billion. I would like a specific date when we can get a number.

Secretary DALEY. Mr. Chairman, I wish I could give you a date and say that this is a firm date that we would have for the 2000 additional funds that will be needed. We do plan on having the master activity schedule completed, which would obviously require that we have a number by mid-April. But I am optimistic that it would be before that, and we are pushing both the Census Bureau and OMB as we move forward, to try to get this as fast as possible.

I know the dilemma you are in as you try to move forward with putting the Commerce Department budget together, forget the overall budget of the Government, with such a potential hole. But I cannot give you a specific date because I could not be guaranteed that I could live up to the promise that on a date certain I would have it to you.

I do say that by the middle of April we do expect to have the master activity list finished, but my goal is to have a number for you much sooner than that.

Senator HOLLINGS. If the gentleman would yield? The Secretary, I have been on him, too. Just like you, I want to know how much this is going to cost. And he has been trying. The best I can understand it, the White House and OMB cannot agree upon an offset for the amount. That has been the hold-up. And I would like to have it, and I know the Secretary would like to have it this morning to deliver to you as chairman. But that is what is in the workings right now. I am trying to find that figure. If I find out any more, I will——

Senator GREGG. I would appreciate it. It is constructive if they are looking for offsets. So congratulate them for that.

I notice that there is a proposal on the enumeration side to expand significantly the amount of money spent on media and the amount of money spent on specialists, outreach specialists. I heard that 100 additional ones are being talked about.

ADVERTISING TO INCREASE CENSUS RESPONSE RATE

Now the last time we went through the census process a lot of money was spent on media. Allegedly 93 percent of America knew there was a census going forward and that did not have too much of an impact on compliance. Compliance is the wrong word—on people participating since there is no legal obligation to comply.

The problem arises again, why should we spend all this money on media and a bunch of consultants, 100 consultants, who are going to tell us basically what we already know, rather than spending it on hiring people to go out there and count?

Secretary DALEY. I think, Mr. Chairman, we will end up doing both. In 1990, as in previous decennials, the advertising that was done was donated by the media to us. I think the sense was that most of the advertising that was given to us was in weird hours, you know 1:00 a.m. to 4:00 a.m. sort of periods in the morning and on kind of off the main prime time sort of where we would reach the most people.

So a decision was made to try to do a paid advertising campaign for the first time by the census and get very aggressive, and also targeting into the historically undercounted areas with the message that would both educate people and then try to motivate them on participating in the census. Obviously we save money and we save time the more people that fill out the questionnaire or respond when there are people at the door. So the decision was made, and I think it was right.

We have had a brief rundown of the media campaign that will be done by Young & Rubicon as the principal contractor, and we expect that this will continue to help us in getting greater participation at the front end of this.

But I think there was a general consensus that the media that was done in the past, which was all donated, was not of the quality that one needs today when it is even more difficult to address people. And as we all know, media seems to be the medium in which people get motivated today. It is very difficult to do it just on civic pride, and we have to get out there on the television, on radio, and magazines, and billboards around America. We need to get them in the prime locations as opposed to those that were just given to us kind of off the beaten path both timewise and location-wise in the past.

Senator GREGG. I would like to get the numbers on what you are planning for in this area, and what the game plan is in this area.

SECOND CENSUS QUESTIONNAIRE MAILING

Secretary DALEY. OK.

Senator GREGG. Also I notice you are not sending out a second letter?

Secretary DALEY. The decision on not doing a second questionnaire was—our original plan was to do that. One of the things we did learn in the dress rehearsal was that the difficulties of the second questionnaire, following up, and the costs associated, and the potential for a large overcount by people getting two questionnaires and sending them back, was just too taxing management-wise on the census and did not add to an increase.

We are better off after the first questionnaire with the right sort of run-up to it, up to the first questionnaire with advertising, with a better mailing list, address list, that we would go immediately after that first questionnaire into the door to door direct enumeration. Again, because we have to do 45 million homes instead of 30 million, it is even going to make it more difficult.

But I think the decision was made by the people at the Census that a second questionnaire just caused us potentially more cost and most confusion, and a potential higher overcount by duplication.

Senator GREGG. What has been the historical experience with the second questionnaire? In the 1990 census, I thought the second questionnaire increased the count by about 7 percent or 8 percent.

Secretary DALEY. To be honest with you, I do not know the amount it increased it. Do you know, Rob?

Mr. SHAPIRO. There was no second mailing in 1990.

Secretary DALEY. There was no second mailing in 1990?

Senator GREGG. I thought there was a second mailing.

Secretary DALEY. 1980 was the last time we did a second mailing?

Mr. SHAPIRO. We have never done a second mailing.

Secretary DALEY. We have never done a second mailing?

Mr. SHAPIRO. We have never done a second mailing.

Secretary DALEY. Surprise to me.

Senator GREGG. A surprise to me. I had some numbers. Obviously I was inaccurate.

Secretary DALEY. But we tested a second mailing in the dress rehearsal?

Mr. SHAPIRO. We tested it in the 1995 test.

Secretary DALEY. This is Rob Shapiro, the Under Secretary for Economic Affairs which the Census Bureau is under.

Mr. SHAPIRO. We have never used a second mailing in the full census. It was tested in the 1995 test, and it did raise, the estimate is that it did raise the mail response rate. However, as was found in the dress rehearsal, a very large share of that additional response were duplicate responses. In this year's dress rehearsals, 40 percent of the additional response produced by the second mailing were duplicate responses.

TECHNOLOGY ADMINISTRATION STRUCTURE

Senator GREGG. Thank you. Now I have often wondered why we have this Under Secretary of Technology Policy when we have NIST (National Institute of Standards and Technology). That seems to be a lot of duplication. I mean, you have got NIST with a $647 million budget, and the undersecretary there has about a $9.5 million budget. Isn't the director of NIST really the person who is setting technology policy?

Secretary DALEY. No. He works with the Under Secretary. The Under Secretary in the Technology Administration helps our Administration and the Government lay out a technology policy broader than just the NIST. NIST is overseeing much of the specific research that is done, scientific research on behalf of the Government, in our labs.

Senator GREGG. Could we not just fold that office into NIST, give the director of NIST the title? It is an even higher title than he has even though that person has more responsibility in the area of dollars, dramatically more responsibility, and eliminate a level of bureaucracy and have the person who is running NIST manage the issues?

Secretary DALEY. I think to broaden the portfolio of NIST to some of the other issues that the Under Secretary for Technology is involved with would probably change the nature of NIST.

We have tried to cut the duplication and tried to cut some areas where we think the NIST organization functions best and not let the Technology Administration dabble in their business too much. But at this point we think the Under Secretary plays an important role in the overall Administration, along with the science advisor to the President.

INTERNATIONAL TRADE COMMISSION

Senator GREGG. How do you feel about Senator Hollings' idea on ITC?

Secretary DALEY. I would probably want to consult with my colleagues in the Administration before I advocate doing away with the ITC. I think they serve a function. It is a bipartisan organization, appointed Democrats, Republicans. I probably would not want to take a position on doing away with the ITC when we have so much activity before them right now. Maybe after I leave I will have an opinion, but we do a lot with them and it may not be——

Senator HOLLINGS. If the chairman would yield? It is the same activity we have before the ITA. That is the whole thing. It's the same situation all over again. And that fact that it is bipartisan, that is a bipartisan fraud, just like the Center for Democracy?

Senator GREGG. NED.

Senator HOLLINGS. National Endowment for Democracy. They have not only both political parties, they have labor and the Chamber of Commerce. We just distribute the money around and say it is a wonderful thing.

Senator GREGG. We try not to. [Laughter.]

TERMINATION OF THE NATIONAL TECHNICAL INFORMATION SERVICE

Unfortunately, others disagree with us.

How about this idea that Senator Leahy had of basically eliminating NTIS?

Secretary DALEY. I think that is a real option. I think because we have a statutory obligation to perform those functions, to get out of that business, I think it is an option that Congress and we ought to be seriously looking at.

Senator GREGG. Of course, it is a revolving fund situation, so we do not have a whole lot of appropriating authority except in a year like this where they need a couple million dollars.

Secretary DALEY. But the difficulty here, and why we have to get, to be frank with you, Mr. Chairman, Congress and us together on this is because we are going to continue to have to request more money because this business, they cannot compete with the private sector. The question is whether they ought to be competing.

My opinion right now is we should not be coming back asking for more money on a losing proposition, and we have got to find another solution to it. So getting out of that business or transferring it to the Library of Congress, or GAO, or the Government Printing Office are among our other options. But we have got to do something quick or else we are going to be back here too often asking for more money for a business that is basically going out of business.

Senator GREGG. Anybody else have any thoughts or questions?

CENSUS HEARING

Senator HOLLINGS. Mr. Chairman, could we have a hearing on the census? I forget the gentleman's name, but maybe——

Senator GREGG. Prewitt.

Senator HOLLINGS. Prewitt. Yes, bring him over sometime and get the full subcommittee at least and we get to find out how the census works, what our suspicions are, and clear up any misunderstandings. Then when we get down to the wire we will just have a money question. We will then be informed and all speaking from the same hymnal.

Senator GREGG. That might be very valuable. Until I can get a hard dollar number though from the Department, I would be reticent to have him here.

Senator HOLLINGS. That is all right.

Senator GREGG. Because I would like to have something to talk to him about besides hypothetically.

ADDITIONAL COMMITTEE QUESTIONS

Senator HOLLINGS. Yes, we are not trying to preempt that. I am just trying to find a hard dollar, too.

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

QUESTIONS SUBMITTED BY SENATOR PETE V. DOMENICI

PUBLIC TELECOMMUNICATIONS FACILITIES PROGRAM

Question. Secretary Daley, I am pleased to see that the Administration's fiscal year 2000 budget does not again propose to terminate or significantly reduce funding for the Public Telecommunications Facilities Program (PTFP), which provides grants to public radio and TV stations for equipment. The PTFP program was funded at $15.25 million in fiscal year 1997; Congress provided $21 million for each of fiscal year 1998 and fiscal year 1999. As recently as fiscal year 1995, PTFP received $29 million.

Mr. Secretary, I have been a longtime supporter of the Public Telecommunications Facilities Program because it is an important source of funding to rural states like New Mexico. PTFP grants enable local broadcasting stations to provide quality programming to populations that are generally underserved.

The budget includes $35.1 million for PTFP for fiscal year 2000, an increase of $14.1 million above 1999. The budget justification documents indicate that the Administration expects the additional funding "to assist public broadcasters with an orderly transition to digital broadcasting." Am I correct that the Administration's budget supports the basic PTFP program at the existing level of $21 million for the next fiscal year?

Answer. The Administration's request for PTFP's total funding is principally for public television's digital conversion; however, PTFP would continue the program's historical support for the basic equipment replacement and emergency needs of public television and public radio stations. The Federal commitment to supporting public radio applications through the PTFP represents about $3 million in funds each

year. These funds assist public radio in extending their service to areas of the country currently not receiving a public radio signal and for equipment replacement.

PTFP plans to continue to set aside between $2 and $3 million more for public television equipment replacement projects, whether for emergency situations, i.e., applications resulting from emergencies or catastrophic damage such as from a natural or man-made disaster, or for the replacement of existing analog equipment. PTFP will continue to work with the Corporation for Public Broadcasting's Digital Task Force to identify replacement needs for analog equipment between now and fiscal year 2006. These replacements also assist the digital transition because much of the replaced equipment is digital compatible. In this regard, there is not a clear split between PTFP's "traditional" funding program and the digital transition funding.

Question. How much does the Administration budget assume will be needed for the administrative costs for the ongoing PTFP program? Are those funds included in the salaries and expenses account for NTIA, or are they assumed to come out of the overall $21 million provided for PTFP grants?

Answer. The Administration's budget requests $3.5 million in fiscal year 2000 for administrative costs, consisting of $2 million for base program costs and an additional $1.5 million for the digital transition. These funds are included as part of the Administration's $35 million request for PTFP; however, the administrative costs for digital transition represent only a small portion of the full initiative. We do not anticipate a substantial increase in the administrative costs in the outyears. These funds will allow the program to add resources and staff necessary to assist public broadcasters with the transition in a timely manner. The program will be able to accept significantly more applications on a rolling basis and disperse funds quarterly. In addition, many small stations simply do not have the expertise on staff to complete the conversion task. The Department will be proactive in providing engineering and other technical assistance with stations to assist them in determining locally-tailored equipment and conversion plans.

Question. Last year, the Administration proposed that PTFP work "in coordination and cooperation with the Corporation for Public Broadcasting (CPB)," to concentrate on the transition from analog to digital broadcasting, and proposed the digital conversion funding through CPB. Why has the Administration changed its thinking on the digital conversion issue, and what is the rationale for providing these funds through PTFP rather than the larger CPB?

Answer. The Administration remains committed to the $450 million digital conversion initiative for public broadcasting. Over the past year, the Administration has re-examined PTFP and CPB's role in this effort. The Administration believes that funding through PTFP will be the most efficient mechanism to ensure that stations are able to meet the May 1, 2003 deadline to pass through a digital signal.

While CPB has not been authorized to carry out this initiative, PTFP's current statutory language and rules allow NTIA to award digital conversion grants. The program, if adequately appropriated, will help ensure that every station completes the transition according to the Federal mandate.

PTFP has a proven record of assisting public broadcasters with facilities purchases. For 35 years, the program has funded projects that extended the delivery of public telecommunications services to over 95 percent of the American public and strengthened the capabilities of existing public television and radio stations. In accordance with the program's Congressionally mandated objectives, NTIA has recognized technology advances in the industry and these benefits on station operations. Over the past five years, the PTFP program has been funding digital equipment as part of public television and radio's funding requests.

Question. What is the Administration's current estimated cost for public broadcasters to make the transition from analog to digital broadcasting?

Answer. The Administration wants to ensure that all public broadcasters meet the Federal Communications Commission's requirement to "pass through" a digital signal by May 2003. Public broadcasters will require core digital transmission and base equipment necessary to "pass through" a network signal from the PBS satellite. The equipment included in the PTFP plan also provides stations with the capability to insert local programming using encoders and aspect ratio converters. This equipment will permit stations to use existing analog production equipment to broadcast local programs on the digital channel.

The Administration estimates that the cost of the conversion to meet "pass-through" requirements is $703 million. This figure includes $506 million for converting transmission equipment plus $197 million for converting master control equipment required to pass through a digital signal. The Administration's estimates do not include other associated costs that are part of a broadcasting operation, such as personnel, buildings, and other administrative costs not historically funded by

the Federal Government. Other costs related to programming production and distribution are included in CPB's portion of the Administration's initiative.

Question. Does the budget request anticipate that PTFP in making grants for digital conversion will include public broadcasting entities other than those participating in the PTFP program?

Answer. Every public broadcasting station will be eligible for digital conversion funding. Non-public broadcasting entities, such as various distance learning projects that PTFP has supported, have no requirement to convert to digital broadcasting technology. Hence, they would not be eligible for digital conversion grants. Although the funds the Administration has proposed are principally for public television's digital conversion, PTFP funds will remain available for all other authorized purposes of the program, including distance learning, public radio and analog television service during the transition period.

Question. These grants are stated to be "competitive." What criteria does the Department plan to use in making these awards competitive?

Answer. NTIA will award funds for digital conversion using the same merit- and need-based criteria that PTFP has used over three decades. These criteria have proven to be a highly effective means of meeting public broadcasting's needs within funding limits. The program will consider the merits of a proposed project when evaluated against a set of established criteria. These criteria, which are attached, have been published in the PTFP Rules and include such factors as project objectives, implementation plans, urgency, technical considerations and whether the applicant has the necessary financial resources to meet the project requirements. Since Congress has mandated that public television stations must convert to digital broadcasting, any public television applicant applying for that purpose would meet the basic criteria. The urgency of a project would depend on the local conditions in each market. We will monitor events in local markets, especially those with commercial operators already on the air broadcasting in digital, to ensure that public broadcasters are keeping pace.

PTFP's needs-based criteria address the level of Federal assistance offered to projects which merit funding. As a needs-based grant program, PTFP will be able to award public television stations up to 75 percent of eligible project costs for their digital conversion projects. PTFP also will provide stations with the opportunity of using funds from the CPB as all or part of their local matching funds upon showing of "clear and compelling" need. PTFP intends to work with the CPB Digital Task Force to determine what criteria would establish "clear and compelling" needs.

Question. The budget in brief states part of this program is also to "promote consolidation and efficiency" within the public broadcasting system." What do you envision as the result of this process? Does the Administration intend to reduce the number of public broadcasters serving the nation?

Answer. Although the budget in brief stated that NTIA would promote consolidation and efficiency within the public broadcasting system, the statement does not imply that NTIA will encourage a reduction in the number of public broadcasting stations. PTFP has always promoted the efficiency of public broadcasting operations. The transition to digital technologies provides public broadcasting stations with new opportunities to increase the efficiency of their operations. PTFP not only encourages the purchase of more efficient equipment, but the program also encourages the sharing of facilities whenever possible. For example, PTFP funded a single routing switcher which serves both public television stations in Denver. In funding this routing switcher, PTFP encouraged the efficient use of both Federal and local funds. This facilities consolidation concept is intended to increase the efficiency of the existing public television station's ability to serve their audiences and is not intended to reduce the number of public broadcasters serving the nation. Both stations will continue to operate, each at lower costs.

Question. Do you think that public broadcasting infrastructure in New Mexico and throughout the country, especially in rural areas, can be sustained without Federal support?

Answer. Federal support has played an important role in maintaining and extending the public broadcasting infrastructure, especially in rural areas such as New Mexico. For the digital transition, it will be critical. Although difficult for all public broadcasters, the digital transition creates a severe hardship for rural stations. In many of these situations, transition costs will equal two to three times a station's annual revenue. Under current regulations, public stations that do not meet the 2003 deadline must go off the air. The initiative will ensure that Federal funding is available for all of the 353 analog public television facilities to construct new digital transmission systems.

Question. What benefits will digital conversion have to those who listen to and watch public broadcasting stations?

Answer. Digital systems will give public broadcasting stations the ability to increase the services they provide to the community and fulfill its mission of providing diverse educational and cultural programming in new and innovative ways. The digital system will have three main benefits: high definition television, multicasting, and data transmission.

High definition television (HDTV) will provide the viewer with a higher resolution and clearer picture than standard television. In addition, HDTV can provide CD-quality sound, providing the viewer with a "home theater" experience.

Broadcasters will be able to transmit simultaneously four or more channels of standard definition television programming when they are not transmitting high definition programs. This is called multicasting. Multicasting will allow stations to tailor their programming to distinct audiences. For example, a station can broadcast workforce training, college course work, children's programming, and cultural programs at the same time.

Because the signal is digital, public broadcasters can transmit data to the home television during regular program broadcasting. The public will be able to obtain data such as curriculum materials, educational children's games, photographs, and other public interest information without interrupting their video programming.

ADVANCE APPROPRIATIONS—NOAA AND PTFP

Question. Mr. Secretary, the President's fiscal year 2000 budget includes an unprecedented $37.4 billion in proposed advance appropriations for fiscal year 2001—spending the Administration wants to commit to but that won't fit within the spending caps for fiscal year 2000. My own Energy-Water Subcommittee is requested to provide the lion's share—$12.7 billion or 34 percent of the advances requested for 2001. The Labor-HHS Subcommittee is not far behind with $10.8 billion or 29 percent of the 2001 advance appropriations. This Subcommittee is requested to provide $1.021 billion in fiscal year 2001 advance appropriations with 71 percent within the Department of Commerce—$611 million for NOAA procurement and $110 million for PTFP digital conversion.

Secretary Daley, why did the Administration request such a significant amount of advanced appropriations for fiscal year 2001 and beyond?

Answer. The request for advance appropriations in Commerce's budget responds to the requirements of the Federal Acquisition Streamlining Act of 1994 and the Information Technology Management Reform Act of 1996. Including advanced appropriations in the budget request is consistent with and supports the Administration's capital asset policy for multi-year projects.

Question. I note that the NOAA procurement advance appropriations are proposed through 2018 when many of us will no longer be in the Congress. Is the Administration seriously entertaining the notion that this Congress would commit taxpayer dollars and future Congresses to significant expenditures through 2018?

Answer. The Administration will continue to support full funding for all multi-year capital asset acquisitions as part of an ongoing attempt to improve performance and reduce procurement costs. We would note that many types of legislation impose outyear funding decisions.

Question. Why does the Administration believe that the federal government should commit to the purchase of NOAA satellites on such a long-term basis?

Answer. The National Polar-orbiting Operational Environmental Satellite System (NPOESS) is a joint NOAA/DOD program that merges the operational requirements of both the DOD's Defense Meteorological Satellite Program (DMSP) and NOAA's Polar-orbiting Environmental Satellite Program (POES). The amount included for advanced appropriations is NOAA's share of the total funding required to develop, build, and launch five satellites that will meet both agencies' needs through 2018. The first satellite of this series is planned for launch availability in 2008.

This system is required by both DOD and NOAA to provide the necessary environmental data for both national security and civilian needs. The request for advanced appropriations supports full funding and ensures that this priority mission is implemented and is accountable to congressional oversight.

Question. For PTFP and digital conversion, the budget request includes $110 million, a significant increase above the $14.1 million proposed for the fiscal year 2000 bill that this Subcommittee will write in just a few months. If the Administration is committed to this project, why didn't it request the funding for fiscal year 2000?

Answer. Not all public television stations will be ready to convert their facilities in fiscal year 2000. Digital transition funding is significantly increased in 2001 and 2002 to match anticipated increases in demand as the deadline approaches. The request for an advanced appropriation of $110 million in 2001 is a significant increase. The fiscal year 2000 request for $35 million will allow NTIA and public broadcasters

to prepare for the out-years of the initiative. Conversion will be dependent on local circumstances such as a tower requirement or the ability to work with local commercial broadcasters, as well as the availability of local and state matching funds. Each station and each state will present a unique challenge, and each will arrive at its own solution to digital conversion. Our experience in funding hundreds of public broadcasting projects is that there will be many revisions, starts, and stops along the way.

The Administration is seeking advance appropriations for a multi-year program to promote planning and certainty in the public broadcasting system's transition to digital broadcasting. Advance appropriations will provide assurances to the public television stations that there will be Federal assistance available to make the conversion to digital, especially since each applicant may have different time frames to meet the May 1, 2003 deadline. PTFP plans to provide grants on a rolling basis. If the amount of digital transition funding is set now for 2001, 2002, and 2003, both PTFP and the public television stations will be able to plan for the future with some certainty. Stations that will not need to convert and also cannot afford to convert until 2002 will be assured of available funding at that time, if Congress makes the commitment to advance appropriations now.

Question. So you know the burden placed on our distinguished Subcommittee Chairman, the proposed advanced appropriations for the Department of Commerce must compete with some major commitments through the State Department. The President's budget also requests $3 billion over the next five years for embassy security upgrades, and $1 billion for aid to the nations signing the Wye River Middle East peace memorandum. Is this a legitimate way to budget, or is this a promise to pay for commitments another day by mortgaging future spending caps?

Answer. Yes, this is a legitimate way to budget. Advanced appropriations for multi-year capital asset acquisitions are designed to account for the full Federal liability for procurement of the assets involved. Full funding of projects or divisible segments, will improve the decision-making process by allowing agency managers, OMB and ultimately members of Congress, to understand the full cost of project implementation when making budget year funding decisions. In addition, advanced funding improves the procurement process by allowing acquisition managers to achieve cost efficiencies in contract negotiations and procurement of parts and other supplies requiring a long-lead time.

Question. Do you realistically expect this Subcommittee and this Congress to entertain these requests for significant future funding commitments through advanced appropriations?

Answer. The Administration hopes that this Subcommittee and the Congress will seriously consider this method of making appropriations available to agencies for multi-year capital asset acquisitions. Advanced appropriations allows incremental funding of projects or divisible segments of projects, over the acquisition period. However, despite full funding up-front for these projects, these multi-year appropriations are scored in the year the funds become available to the agency. In addition, Congress has the opportunity to revise the out-year budgets for these projects annually as part of the appropriations process.

GEOSTORM

Question. What would the proposed GEOSTORM I satellite do to minimize the impact of these space weather events?

Answer. Having a monitoring spacecraft upstream of Earth is the only way to tell whether a solar storm will hit Earth and, if so, how strong it is. Before real-time solar wind data were available there was very poor advanced warning of the onset of geomagnetic storms, with prediction accuracy a dismal 30 percent. NASA's Advanced Composition Explorer research satellite currently provides solar wind data, enabling nearly 100 percent accurate warnings with up to an hour of lead time. GEOSTORM will double the lead-time (up to two hours) while maintaining its predecessor's nearly perfect accuracy. After just one year of availability, real-time solar wind data have already become irreplaceable. Power companies and other vulnerable industries count on products based on these observations to trigger preventive measures. For example, electric utilities in the Northeast U.S. used the warnings on May 4, 1998 to help prevent a geomagnetic storm from causing widespread grid failures. While warnings are critically important, they are only half of what GEOSTORM will provide. Real-time solar wind data are necessary to initialize many of the geomagnetic forecast models the National Space Weather Program invested millions of dollars to develop. Without data to drive them, the models' outputs are highly questionable or not available.

Question. How would you rank this satellite project as a priority for NOAA vis-a-vis the procurement of other proposed satellites?

Answer. Within NOAA, the GOES and Polar satellites have higher priorities than GEOSTORM. However, power company representatives, the National Academy of Sciences, and the agencies in the National Space Weather Program all list as the number one national priority for space weather activities the continuation of upstream, continuous, real-time solar wind monitoring. The National Security Space Architect's plan for space weather in the new millennium acknowledges the need to monitor the solar wind operationally and incorporates it in its target architecture. NASA's Advanced Composition Explorer (ACE) satellite currently provides these data. No satellite near Earth (e.g., not GOES, POES, nor the proposed (NPOESS) can provide the necessary data).

Question. Does the Administration's budget include an advance appropriation request for the GEOSTORM I satellite as part of the procurement account? If so, how much and in what years?

Answer. The Administration's request for fiscal year 2000 includes the first year of funding for a new series (GEOSTORM) of operational satellites. This request can be found in NOAA's Procurement, Acquisition and Construction (PAC) account. The GEOSTORM I acquisition is a tri-agency program involving NOAA, NASA, and DOD/USAF. The satellite will be built, launched and operated by NASA, NOAA's contribution to the total acquisition cost is 25 percent. The NOAA contribution to the NASA/NOAA/USAF GEOSTORM partnership will be $4.34 million in fiscal year 2000, $6.16 million in fiscal year 2001, and $6.58 million each for fiscal years 2002–2004. Included in this budget is a request for advanced appropriations through fiscal year 2002 only, $6.16 million for fiscal year 2001 and $6.58 million for fiscal year 2002.

IMPROVING THE NATION'S ECONOMIC STATISTICS

Question. Secretary Daley, let me commend you on the initiatives that the Bureau of Economic Analysis (BEA) has taken to improve our national statistics.

Unfortunately, it is getting harder to produce accurate data as our economy becomes more service oriented. We are already seeing examples of these difficulties—for instance, we have markedly different measures of national output if we measure it as the sum of all outputs or the sum of all incomes. Theoretically, output should be the same no matter how we measure it.

I understand that the BEA has a very interesting proposal to deal with [the statistical] discrepancy and to enhance other aspects of the national accounts. Could you tell us a bit about this and what dividends you think this program could deliver?

Answer. As you point out, the rapid growth and increasing complexity of the American economy makes the job of producing an accurate and comprehensive statistical picture of the economy significantly more difficult. Dramatic evidence of this difficulty is the difference between gross domestic product (GDP), which is measured as total final expenditures for goods and services produced by the U.S. economy, and gross domestic income (GDI), which is the total of costs incurred and incomes earned in producing those goods and services. In theory, these measures should be equal, but in fact, there is a persistent and troubling discrepancy between them.

Much of this statistical discrepancy is attributable to the fact that the source data used to compile GDP and other economic accounts estimates are woefully inadequate. For example, there is an alarming absence of comprehensive and consistent data on rapidly growing sectors such as computer software and certain financial services. Structural changes in the economy, resulting from corporate downsizing, technological change, and the devolution of Federal government functions to state and local government have added new complexities and rendered source data increasingly out-of-date. BEA proposes to address the statistical discrepancy and other issues affecting the accuracy and coverage of its economic accounts by developing new concepts and indirect estimates, using existing and new source data, that will be used now to improve its existing estimates and, in the future, to form the basis for expanded Census surveys. Such improvements would provide the users of BEA's estimates with a more accurate picture of economic activity and with better data on which to base their decisions.

Question. What might be the consequences of not acting now to improve our national statistics? How could inaccuracies in GDP data impact Federal budget estimates for instance?

Answer. Failure to move ahead now with corrective actions will lead to an erosion of quality in our most basic measures of economic activity and will require more costly solutions in the future. BEA's data are vital ingredients for decision-making

by business, government, and individuals, and as the quality of the data declines, these users will receive increasingly less accurate economic information. This inevitably will lead to poor decisions, unsound planning, and inappropriate policies, all of which will weaken the Nation's economic performance. For example, with the level of GDP between $8 and $9 trillion, an error of one-half of 1 percent in the estimate would lead to an error in Federal budget forecasting over the next 5 years on the order of $200 billion.

It is hard to overstate the importance of accurate economic statistics. The Federal Government, the Federal Reserve, and all businesses rely on these statistics heavily. It is hard to imagine a case where such a small investment of money now could yield such enormous benefits for all Americans. I believe that BEA's $4.5 million request for its National Accounts Enhancement program could yield just such enormous benefits.

QUESTIONS SUBMITTED BY SENATOR FRANK R. LAUTENBERG

PATENT AND TRADEMARK OFFICE

Question. As you know, Secretary Daley, for many years now I have been vocal in my opposition to the diversion of funds collected by the Patent and Trademark Office for use outside the PTO. Last year, this was remedied by the enactment of a cap on the amount of surcharges the PTO could collect. This year, I understand that the PTO will collect $160 million more than it will spend in fiscal year 2000. Yet at the same time, your budget proposes collecting an additional $20 million in the form of a surcharge to cover the post-retirement benefits of PTO employees.

First of all, why is the PTO the only fee-supported Federal agency that contributes to the post-retirement benefits of its employees? Do you think this should be the norm for fee-supported agencies?

Answer. The Department supports the Administration's policy that fee-funded agencies should pay the "full-freight" costs of operations including indirect post-retirement costs. Currently, the expenses associated with post-retirement life and health benefits for PTO employees are paid by the Office of Personnel Management (OPM) from general taxpayer revenues.

The Administration has deemed this to be a pilot so that the policy's implementation can be assessed before expanding it to other fee-funded agencies.

As a Performance Based Organization, the PTO should be responsible for all its costs, including the costs of accruing post-retirement life and health benefits of PTO employees. The Administration's policy, as embodied in OMB Circular A–25, is for user fees to recover both direct and indirect costs associated with providing a specific benefit such as patent and trademark protection. As a fully fee-funded agency, aligning fees with costs has been one of the PTO's key objectives.

Question. Secondly, if the PTO will collect $160 million more than it can spend in fiscal year 2000, why is it necessary to impose a surcharge to collect an additional $20 million for these benefits?

Answer. In determining the need for fee adjustments, the PTO examines the long-term revenue and spending forecasts—currently through fiscal year 2005. This approach is necessitated by the fact that requests for products and services are paid in advance, with the end product or service not delivered until a future time. Thus, fees can be paid in one fiscal year while the costs of delivering the requested products and services ultimately will be incurred in a subsequent fiscal year.

Fiscal responsibility dictates taking a multi-year funding management strategy focused on keeping fees as low as possible and ensuring funding stability by banking some current year fees for future requirements. The PTO is projecting to carry forward $160 million to fiscal year 2001 to help offset increased costs associated with space consolidation, replacement of required information technology infrastructure, and anticipated increases to the labor force to process incoming work. As a business-like agency, having carryover has served the PTO's customers well in the past. For example, in fiscal year 1996 when a large portion of the government shut down because of an absence of appropriations, the PTO continued to operate because of prior year carryover.

The proposed fee surcharge, estimated to be about two percent in the aggregate, would enable PTO to meet its fiscal responsibility as a fully-fee funded agency to pay all direct and indirect costs without having to make reductions in its operating budget.

SUBCOMMITTEE RECESS

Senator GREGG. This hearing will therefore be recessed, and the subcommittee next meets on Tuesday, the 16th and we will hear from the FBI, INS, and the DEA.

Thank you very much, Mr. Secretary.

Senator HOLLINGS. Thank you.

Secretary DALEY. Thanks, Senator.

[Whereupon, at 11:16 a.m., Thursday, March 11, the subcommittee was recessed, to reconvene at 10 a.m., Tuesday, March 16.]

DEPARTMENTS OF COMMERCE, JUSTICE, AND STATE, THE JUDICIARY, AND RELATED AGENCIES APPROPRIATIONS FOR FISCAL YEAR 2000

TUESDAY, MARCH 16, 1999

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

The subcommittee met at 10 a.m., in room SD–628, Dirksen Senate Office Building, Hon. Judd Gregg (chairman) presiding.

Present: Senators Gregg, Stevens, Hutchison, Campbell, Inouye, and Leahy.

Also present: Senator Kyl.

DEPARTMENT OF JUSTICE

IMMIGRATION AND NATURALIZATION SERVICE

STATEMENT OF DORIS MEISSNER, COMMISSIONER

ACCOMPANIED BY:

MARY ANN WYRSCH, DEPUTY COMMISSIONER
MICHAEL A. PEARSON, EXECUTIVE ASSOCIATE COMMISSIONER, FIELD OPERATIONS
ALLEN ERENBAUM, DIRECTOR, OFFICE OF CONGRESSIONAL RELATIONS
JEFFREY M. WEBER, ASSISTANT COMMISSIONER, BUDGET
KATHY ST. DENIS, COUNSELOR TO THE COMMISSIONER

OPENING REMARKS

Senator GREGG. We will begin the hearing. I understand Senator Hollings is not going to be able to join us today. We welcome the Commissioner. We appreciate her time. Rather than having opening statements, we will go right to the Commissioner's statement and then to questions.

OPENING STATEMENT—COMMISSIONER MEISSNER

Ms. MEISSNER. Thank you. Good morning. Mr. Chairman, members of the subcommittee, thank you for the opportunity to appear before you today to discuss the President's fiscal year 2000 budget request for the Immigration and Naturalization Service. I appreciate your continuing efforts to provide INS with the support and resources that are necessary to strengthen the enforcement of our Nation's immigration laws and I look forward to working with you in the 106th Congress to expand what has been a productive part-

nership to address the many immigration issues that are of concern to us all.

Since 1993, the Clinton administration and Congress have worked together diligently to reverse decades of neglect that have hampered INS's efforts to enforce the Nation's immigration laws and to provide legal benefits to legal immigrants. Through your strong support, we have received record increases in personnel, equipment, and advanced technology. We have supported these unprecedented resources with coherent strategies that ensure that the resources are deployed in the most efficient and effective manner possible. As a result, we have strengthened significantly the enforcement of immigration laws at our borders and in the Nation's interior while improving the delivery of services to legal immigrants.

The President's fiscal year 2000 budget will allow INS to consolidate and to build on these successes. I have provided a detailed written account of the budget request, so let me highlight the major points.

INS SUCCESSES

I would like to begin by telling you about some recent successes that we have achieved as a result of the committee's continued support. Our greatest accomplishments have come in the area of border management, where more has been achieved in the past 5 years than had been done in decades. Nowhere else is the success of our strategic approach to enforcement more evident than along the Southwest border. Before 1993, there was no comprehensive plan for controlling this 2,000-mile frontier and it showed. Illegal immigrants came across the border undeterred, as did illicit drugs, while traffic entering the country legally encountered interminable delays at ports of entry.

To bring control and safety to the border, we developed a comprehensive multi-year Southwest border strategy. Our goal is a border that works. That is a border that deters illegal migration, drug trafficking, and alien smuggling while facilitating legal migration and commerce.

To meet this goal, we initiated unparalleled growth in personnel and resources, including doubling the number of Border Patrol agents to more than 8,000 as of today. The vast majority are stationed along the Southwest border. To reach this level, we hired 1,900 agents in fiscal year 1998 alone and trained them at facilities in Charleston, South Carolina, and Glynco, Georgia. These new agents have been backed by substantial state-of-the-art force multiplying equipment and technology, as well as by infrastructure improvements.

Operation Rio Grande in South Texas and New Mexico shows how deterrence works. In fiscal year 1998, apprehensions in Brownsville declined by 35 percent. In addition, local law enforcement officials credit our operation for having contributed significantly to falling crime rates in Laredo, Brownsville, San Diego, and elsewhere.

The border control strategy integrates activities between ports of entry with work at the ports of entry. Both are vital to the Nation's economy, just as they are potential entry points for criminals and

contraband. By working cooperatively with other Federal agencies, we have achieved impressive results.

At the San Ysidro port of entry, the world's busiest, we have worked very successfully with the Customs Service and have reduced the average waiting time, which had been running almost 2 hours, to under 20 minutes, while enhancing our enforcement results at the same time. We are replicating this record all along the border at other ports.

A necessary companion to enhanced border management is an effective approach to combatting illegal immigration in the Nation's interior. We have now developed and begun to implement a new interior enforcement strategy. Here, our priority is investigating alien smuggling, human rights abuses, and other criminal violations. Linking large-scale anti-smuggling operations with worksite enforcement is producing unprecedented results.

Last November, we announced the dismantling of the largest, most complex smuggling ring ever encountered by Federal authorities. It smuggled more than 10,000 people into the United States with organizers grossing nearly $220 million. Less than three weeks later, we announced the crippling of the largest global alien smuggling operation on the northern border.

We have also strengthened our capacity to detain and remove aliens who have committed serious criminal offenses. Today, we have more than 14,500 criminal aliens in detention. That is quadruple the 1994 number. And the number of criminal aliens that we have removed reached 56,100 last year, double the number removed in 1993.

Our top priority in the deliberation area of immigration services has been revitalizing the Nation's citizenship program. Beginning with restoring integrity to the process, our emphasis now is on reducing the historically high backlog of pending applications. In fiscal year 1998, we opened more than 120 new fingerprinting sites in immigrant communities across the country, implemented additional quality assurance procedures to continue to address integrity, and expanded access of our customers to information that they need.

The comprehensive effort to overhaul the entire naturalization process prevented INS from reaching the high levels of productivity we had hoped to achieve during the first quarter of this year, but we have set performance targets for which our managers are being held accountable. With the new staff that is now being hired and continued improvements in our conversion to automated processes, we believe we will meet very ambitious goals that we have set in naturalization for this year.

The progress that we have made on these and many other fronts demonstrates that we can achieve results. However, there is a barrier to achieving the effectiveness to which we are committed that no amount of resources or strategic planning can surmount, and that is INS's current structure.

RESTRUCTURING THE INS

Since last spring, we have been developing the details of a proposal to restructure our agency by dividing its primary functions of enforcement and service into distinct chains of command. INS es-

tablished an Office of Restructuring and hired a nationally renowned consulting firm to provide design support and best practices from other public and private organizations. The restructuring team has talked to more than 900 of our employees and a broad range of external stakeholders, including other law enforcement and government agencies, trade groups, and community-based organizations.

Because the processes of gaining legal status and losing that status are intertwined in statute and in practice, immigration enforcement and services are closely interrelated at both policy and operational levels. Some have suggested assigning enforcement and service to separate agencies. We believe that such proposals would fragment and seriously weaken the government's ability to administer immigration law effectively and to be accountable for immigration matters. By separating INS's structure into separate chains of command for enforcement and for service, we would establish a single point of accountability for performance in each of our primary functions while keeping the interconnected, interdependent functions that they represent under one roof.

Our proposal represents fundamental reform in the culture and the operations of the agency. It would replace our current region and district office structure with a design focused on assigning the proper mix of skills and management to meet the enforcement and case adjudication needs of local communities and the Nation. We will seek your views on our draft blueprint in the weeks ahead.

FISCAL YEAR 2000 BUDGET REQUEST

The fiscal year 2000 budget request, which totals $4.27 billion, 8 percent more than fiscal year 1999, continues to support the immigration goals and strategies that the administration and INS have effectively pursued over the past several years. The thrust of our fiscal year 2000 budget is to expand ongoing initiatives while maximizing the efficiency of current resources. It would allow us to strengthen our successful border management strategy, deter illegal immigration, combat illegal alien smuggling to the interior of the country, and remove criminal and other unauthorized aliens from the United States while continuing to address the naturalization backlog and improve the services we provide. I stand ready to work with you to ensure that the fiscal year 2000 budget provides INS with the resources necessary to meet our obligations to the American people.

PREPARED STATEMENT

Thank you very much. Thank you for your continued support and cooperation, and I am pleased to answer your and the committee's questions.

Senator GREGG. Thank you, Commissioner.

[The statement follows:]

PREPARED STATEMENT OF DORIS MEISSNER

INTRODUCTION

Thank you Mr. Chairman, Senator Hollings and Members of the Subcommittee for the opportunity to appear before you today to discuss the President's fiscal year 2000 budget request for the Immigration and Naturalization Service (INS). I appre-

ciate your past efforts to provide INS with the support and resources necessary to strengthen the enforcement of our nation's immigration laws, and I look forward to working with you in the 106th Congress to expand our productive partnership to address the many immigration issues of concern to all of us.

INS is charged with both enforcing the nation's immigration laws and providing benefits to legal immigrants. This mission has always been far-reaching and complex, but in recent years, as a result of sweeping social, economic, and political changes at home and abroad, the challenges we face have grown in scope and nature—even since I began my tenure as Commissioner more than five years ago.

Since 1993, the Clinton Administration and Congress have worked together diligently to reverse decades of neglect, providing INS with unprecedented increases in personnel, equipment, and advanced technology. We have supported these record levels of resources with coherent strategies that establish priorities and ensure that our resources are deployed in the most efficient and effective manner possible. As a result of these efforts, we have strengthened significantly the enforcement of immigration law at our borders and in the nation's interior, while improving the delivery of services to legal immigrants. The fiscal year 2000 budget I present to you today will allow INS to consolidate and build on these successes.

Before I provide a more detailed account of the budget request, let me highlight the major points. I would like to begin by telling you about some of the recent successes we have been able to achieve as a result of your continued support.

Without question, our greatest successes have come in the area of border management, where we have achieved more in the past five years than had been accomplished in decades. Nowhere else is the success of our strategic approach to enforcement more evident than along the Southwest border. Before 1993, there was no comprehensive plan for controlling this 2,000-mile frontier—and it showed. The number of Border Patrol agents and Inspectors stationed there was insufficient, and those we did have were ill-equipped. As a result, illegal immigrants came across the border undeterred, as did illicit drugs, while traffic entering the country legally encountered interminable delays at ports of entry.

To bring integrity and safety to the Southwest border, we developed a comprehensive, multi-year Southwest border strategy. Its goal is unambiguous: a border that works; one that deters illegal migration, drug trafficking, and alien smuggling, while facilitating legal migration and commerce. To meet this goal, we initiated unparalleled growth in personnel and resources. Since fiscal year 1993, we have more than doubled the number of Border Patrol agents to approximately 8,000, as of February 13, with the vast majority stationed along the Southwest border. To reach this level, we hired 1,900 agents in fiscal year 1998 alone and trained them at facilities in Charleston, S.C., and Glynco, Ga. These new agents have been backed by infrared scopes, underground sensors and other force-multiplying equipment and technology, as well as by infrastructure improvements. To ensure maximum effectiveness and efficiency, the new resources are deployed to operations, such as Rio Grande and Gatekeeper, which target traditional illegal immigration corridors.

Operation Rio Grande in South Texas and New Mexico has proven deterrence works. In fiscal year 1998, apprehensions in Brownsville declined by 35 percent. But, apprehension numbers aren't the only measure of the positive impact of enhanced border control. Our border operations have also contributed to falling crime rates in Laredo, Brownsville, San Diego, and elsewhere.

Our border control strategy integrates activities between ports of entry with those taking place at the ports, which we recognize as both vital to the nation's economy and potential entry points for criminals and contraband. By working cooperatively with other Federal agencies, we have achieved impressive results. In the San Ysidro Port of Entry, the world's busiest land port, we've reduced the average waiting time, which was recently two hours, to under 20 minutes, while strengthening our enforcement capabilities.

We are now adapting the strategic approach to enforcement that has greatly enhanced border control to combating illegal immigration in the nation's interior. We have developed a comprehensive interior enforcement strategy to complement our border efforts. It seeks to create seamless enforcement that extends from the border to the worksite by increasing internal coordination among the various INS enforcement disciplines and by forging closer ties with other Federal agencies and state and local law enforcement.

We have given priority to investigations of alien smuggling, human rights abuses and other criminal violations. Linking our worksite enforcement activities with anti-smuggling operations produced historic results in 1998. In November, we announced the dismantling of the largest, most complex smuggling ring ever encountered by Federal authorities. It smuggled more than 10,000 people into the United States, with organizers grossing nearly $220 million. Less than three weeks later, we an-

nounced the crippling of the largest global alien-smuggling operation on the northern border, an operation that smuggled 100–150 aliens per month into the country for at least two years at an average cost of $47,000 per person.

At the same time that we have enhanced our ability to identify and disrupt criminal enterprises that engage in egregious violations of human rights and immigration law, we have strengthened our capacity to detain and remove aliens who have committed serious criminal offenses. The number of criminal aliens in detention has quadrupled from about 3,300 in 1994 to more than 16,300 today, while the number of criminal aliens we have removed doubled from 28,000 in 1993 to 55,200 last year. These dramatic improvements underscore our commitment to restoring credibility to the nation's immigration law.

By adapting for the delivery of services the same aggressive approach taken to fulfill our enforcement responsibilities, we have been able to move closer to our goal of creating a world-class service agency that provides high-quality, customer-friendly service on a consistent basis nationwide.

Our top priority has been revitalizing the nation's citizenship program, with particular emphasis on reducing the backlog of pending applications. We opened 129 fingerprinting sites in communities across the country, implemented additional quality assurance procedures to further ensure integrity, and expanded our customers' access to information. The comprehensive effort to re-engineer the entire process prevented INS from reaching the high levels of productivity we had hoped to achieve, but we have established performance targets for which our managers will be held accountable.

The progress we have made in enforcing the nation's immigration laws and providing services to legal immigrants demonstrates that, when we are given the resources and develop focused strategies, we can achieve results. However, there is a barrier to achieving even greater success that no amount of resources or strategic planning can surmount—INS's current structure. We have been developing a detailed blueprint to fundamentally restructure the agency by dividing its primary functions of enforcement and service into distinct, separate chains of command, each with a single point of accountability for performance, while keeping these inter-connected and interdependent functions under a single roof. This is a bold initiative that would fundamentally reform INS from Headquarters all the way down to field offices by eliminating the current field structure and bringing the right mix of staff and skills to local service caseload and enforcement needs.

Because our immigration laws provide ways for both gaining legal status and losing that status, these processes are intertwined in statute and practice. As a result, immigration enforcement and services are closely interrelated at both policy and operational levels. Assigning them to separate agencies would seriously fragment and weaken the government's ability to administer the immigration laws effectively.

Since last spring, we have made significant progress on restructuring. INS established a temporary Office of Restructuring and hired a nationally renowned consulting firm to provide design support and best practices from other public and private organizations. The Restructuring Office staff has talked to more than 900 INS employees during field site visits and headquarters interviews and has consulted with a broad range of external stakeholders, from other law enforcement and government agencies to business and trade groups to community-based organizations. We will be sharing a detailed proposal with you in the coming weeks.

The fiscal year 2000 budget request, which totals $4.27 billion, 8 percent more than fiscal year 1999, continues to support the immigration goals and strategies that the Administration and INS have effectively pursued over the past several years. The thrust of our fiscal year 2000 budget is to extend the initiatives that we have in place while maximizing the efficient use of resources following the dramatic growth we have managed in recent years. It would allow us to strengthen our successful, multi-year strategy to deter illegal immigration, combat alien smuggling, and remove criminal and illegal aliens from the United States, while continuing to reduce the naturalization backlog and improve customer service.

BORDER ENFORCEMENT

In 1994, the Attorney General and I announced a comprehensive border enforcement strategy, which focuses on enforcement efforts, along with improved facilitation of legal traffic. We continue to concentrate resources on critical operational areas of the southwestern border, in support of this strategy.

Our border management efforts from 1993 to 1996 concentrated on El Paso, Texas and western San Diego County in California. In 1997, we began to expand our focus to eastern San Diego county and Imperial county, south Texas, Arizona, and New Mexico. "Operation Rio Grande," launched in August 1997 in Brownsville, Texas,

was a special multi-year operation designed to gain and maintain control of specific border areas through a combination of new technology and additional staffing. At the start of the operation, 69 Border Patrol agents were detailed to Brownsville in August 1997 to intensify existing enforcement efforts. In September 1997, we began deploying special response teams to those ports-of-entry where we expected increased numbers of fraudulent entry attempts. In fiscal year 1998, 260 new Border Patrol Agents were added to McAllen Sector and 205 Agents to Laredo Sector. An important feature of "Operation Rio Grande" has been the integration of a broad range of INS enforcement operations. Border Patrol agents, Inspectors at ports-of-entry, Investigators, Intelligence analysts, and Detention and Deportation Officers are all contributing to the operation. We are seeing lower apprehension and reduced local crime rates as a result of the operation, indicating the effectiveness of our deterrence strategy. The crime rate in Brownsville alone dropped by more than 20 percent in fiscal year 1998, and the overall apprehensions for McAllen Sector decreased by 17 percent compared to the previous year.

In fiscal year 1998, INS extended "Operation Gatekeeper" through the El Centro initiative to address changes in smuggling and illegal crossings occurring along the border in El Centro Sector. The initiative includes detailing additional agents to the immediate border areas of Calexico and El Centro, California, to deter alien smuggling operations in those areas. The El Centro Sector is also receiving an additional 78 new agents in fiscal year 1999 to bolster the efforts of the 134 new agents deployed in fiscal year 1998. As an indication of the positive effect on border control already attributable to this initiative, during the first quarter of fiscal year 1999, the sector experienced its first quarterly drop in apprehensions after four straight years of continuous increases. While, the rate of apprehensions is still fluctuating up and down, which is to be expected in the early stages of improved border control in any area. But it is clear that the initiative is having an impact, in both deterrence and control.

In June, INS launched a Southwest border-wide public safety initiative designed to educate migrants about the severe dangers associated with illegal crossings and to assist those who are in danger. The initiative was developed in cooperation with the Mexican government and state and local officials in border communities.

The President's fiscal year 2000 budget maintains Border Patrol staffing at the fiscal year 1999 level of nearly 9,000 agents, which represents a 122 percent increase and approximately 5,000 agents over the fiscal year 1993 level of 3,965 agents. INS has worked extremely hard over the last few years to meet its hiring goals for the Border Patrol. In the last two years (fiscal years 1997–98), in which Congress added funding for 2,000 agents, INS agent strength actually increased by 2,040 agents. The extent of this accomplishment is demonstrated by the fact that, in order to reach this level of new agents, INS had to hire and train more than 3,600 agents to compensate for attrition rates for those positions. A strong employment market has challenged INS's recruitment results during the current fiscal year, leading INS to develop an even more aggressive plan targeting a variety of employment markets. Currently, nearly 48 percent of our Border Patrol agents have less than three years of experience, and law enforcement experts indicate that it is risky to allow an agency's overall ratio of inexperienced to experienced officers to exceed 30 percent. With a year of consolidation, INS will be able to ensure that we maintain our current authorized strength, while continuing to safeguard the highest standards of law enforcement professionalism for this new workforce by building their experience and effectiveness.

In addition to providing the essential personnel enhancements needed for an effective border enforcement strategy, this Administration, with your assistance and support, has outfitted agents with the equipment and technology necessary to perform their jobs more efficiently and safely. Focusing additional resources on new Border Patrol personnel and equipment has yielded significant results. Apprehensions have dropped dramatically in targeted areas, indicating increasingly effective deterrence. Operations such as "Hold the Line," "Gatekeeper," "Safeguard" and "Rio Grande" have significantly disrupted illegal immigration and alien smuggling in El Paso, San Diego and other strategic areas along the Southwest border. For example, in San Diego, historically the most heavily crossed area of the border, apprehensions are at an 18-year low.

In September 1998, INS, in partnership with the U.S. Customs Service, launched the Border Coordination Initiative, a comprehensive effort by INS, Customs and other Federal agencies to create seamless immigration and narcotics enforcement and facilitation processes at and between border ports of entry, from Brownsville to San Diego, over the next five years.

As mentioned earlier, our progress along the border is also evident at the Ports-of-Entry. At San Ysidro Port-of-Entry, one of the world's largest and busiest ports,

not long ago, commuters had been waiting over two hours to cross the border into San Diego. Today, the average wait has been reduced to 20 minutes. The Inspections program staff is working on incorporating the best practices from San Ysidro into other ports-of-entry.

Overall, from fiscal year 1992 through fiscal year 1998, full-time Immigration Inspectors increased by 1,891 (67.6 percent), to a total Inspector strength of 4,687. An additional 100 Immigration Inspectors will be deployed to air ports-of-entry in fiscal year 1999. The increased number of Inspectors will facilitate the travel of passengers and emphasize INS's dedication to meeting the processing time requirements at our international airports. To strengthen border security while facilitating the flow of traffic through remote ports-of-entry on the northern land border, INS last year installed Automated Permit Ports (APP) in Bridgewater and Limestone, ME; and Mooers, NY. In fiscal year 1999, INS plans to install additional APP's in Sweetgrass, MT; and Nighthawk, WA.

Along the northern border, INS has targeted the increased use of the Remote Video Inspection System (RVIS) in fiscal year 1999 and fiscal year 2000. The RVIS system allows for remote inspection through the use of video equipment, biometric identifiers, and other forms of technology, through which an inspector can verify the identity and documents of a traveler without having to be physically present. RVIS allows the inspector to see and talk with a person at an unstaffed Port-of-Entry. The inspector can observe, remotely, the interior of the vehicle, the trunk, under the hood, etc. Documents can also be examined in detail. RVIS even includes provisions for communicating with the hearing impaired using a Telecommunication Data Display (TDD) device. Since there is a manual inspection, like at a staffed Port-of-Entry, the traveler does not have to be preapproved to participate in the RVIS. This program supports the INS objective of reducing the inspection time for travelers along the U.S.-Canadian border.

None of these accomplishments would have been possible without the continued support of the Subcommittee.

REMOVAL OF ILLEGAL ALIENS

The removal of criminal and other deportable aliens is an essential component of INS's comprehensive strategy to prevent and deter illegal immigration. During fiscal year 1998, INS removed more than 169,000 criminal and other illegal aliens, an increase of more than 50 percent over 1997.

Total criminal alien removals exceeded 55,200 in fiscal year 1998, 10 percent above the previous year. Of the criminal aliens removed, 84 percent had convictions for crimes considered aggravated felonies under immigration law. Drug convictions accounted for 46 percent of the criminal alien removals.

Much of the overall increase, however, was driven by non-criminal removals, which reached almost 115,400 last fiscal year, up 83 percent from fiscal year 1997. The expedited removal process, established by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), accounted for a large majority of this increase, producing more than 76,000 mostly non-criminal removals in its first six months of implementation.

In addition to the 169,000 of aliens formally removed, INS also removed about 70,000 aliens without formal proceedings in fiscal year 1998. This category included several methods of removal, but most were aliens who were living in the United States and were permitted to voluntarily return to their home countries. The combination of formal and informal removals, amounted to more than 240,000 removals. In addition, an estimated 1.5 million aliens were apprehended and returned at the border without detention.

The INS removed a total of 13,864 criminal aliens through the Institutional Removal Program (IRP) in 1998, a procedure which involves identifying and processing deportable inmates prior to their release from Federal, state and local institutions. This facilitates the prompt removal of deportable inmates once their criminal sentences are complete, saving resources that would otherwise have to be used by INS to keep the criminal aliens in custody. While removals through the IRP program in fiscal year 1998 lagged behind fiscal year 1997 levels, this is the temporary result of investments in systemic changes that INS has undertaken to improve management of the program, such as improved data integrity and implementation of a program redesign in June 1998. These investments will produce important, lasting benefits.

In fiscal year 1999, INS is already experiencing greater production. Through January 1999, we have removed nearly 6,000 criminals through the IRP, and expect to meet this year's target of 16,800 IRP removals, an increase of 23 percent over last year. INS has eliminated the backlog of unidentified criminal aliens awaiting

interviews in six of the seven states with enhanced IRP programs (excepting only California), and is finalizing IRP improvement plans in each of those states.

Even successful IRP cases, however, often require INS detention until departure arrangements are completed. Approximately 1,100 of the approximately 3,000 long-term criminal detainees held by INS began as IRP cases, but INS has been unable to return these individuals because of difficulties in obtaining travel documents from foreign governments to allow for their return. We are working with the Department of State to address this issue. INS's local jail programs successfully identify thousands of criminal aliens, but due to the brief sentences actually served, in most cases they are taken into INS custody after finishing their criminal sentences for completion of removal proceedings.

Additional tools used to maximize the efficiency of the IRP program include full use of administrative removal and reinstatement of prior orders of removal. As a result of these tools, there is an expectation that the average length of detention will decrease, which will give INS the capacity to detain more criminal aliens.

In fiscal year 1998, INS increased its use of the Justice Prisoner and Alien Transportation System (JPATS) to move aliens to available detention space and to remove them from the United States. In fiscal year 1999, it is estimated that INS will move more than 69,000 aliens by JPATS.

The INS's ability to remove aliens from the United States is directly linked to our ability to detain and transport them. Over the past few years, INS, pursuant to Congressional direction and funding, has rapidly expanded the number of detention beds used to detain removable aliens. While about 5,500 aliens were in detention in fiscal year 1994, more than 16,300 are detained today. The percentage of detainees with criminal records has also increased substantially during this period, from 60 percent in 1994 to more than 90 percent today. Increases continued to occur during a period when custody decisions were governed by the INS's Transition Period Custody Rules (TPCR), structured regulations which mandated detention in many circumstances and outlined the factors to be considered in weighing release in other circumstances.

As you know, the TPCR ceased to be effective on October 8, 1998, when the mandatory detention provisions of IIRIRA took effect. Mandatory detention requires the custody of a broader class of aliens than the TPCR, and does not permit any consideration of release in those cases. Soon after the TPCR expired, INS received from Congress its fiscal year 1999 appropriation, which, due to increased detention costs, funded only 14,250 beds, nearly 500 less than the average daily population in fiscal year 1998. At about the same time, INS stayed the removal of nationals of the four Central American nations devastated by Hurricane Mitch. Many criminal aliens from these nations who would otherwise have been returned have instead remained in INS custody. While these stays were lifted for criminal aliens in early January, this stay prevented the turnover of existing bed space, and thus further reduced the number of new detainees that could be accommodated.

As a result of these factors, and despite the fact that INS removes an average of 4,600 criminal aliens per month, the number of aliens currently in INS custody exceeds the funded bed space level for fiscal year 1999. I recognize that the INS budget request for fiscal year 1999 did not include an adequate request for detention space. One major reason for this shortcoming in the budget was that INS was hoping that the TPCR would be extended. Ultimately this did not happen. The Department of Justice and INS are working aggressively to alleviate this situation, and are exploring all administrative, legislative and funding options in an effort to fulfill INS's statutory responsibilities. Among the administrative options being explored and nurtured by INS are the following:

Administrative Removal.—The INS is currently revising and standardizing these procedures, which enable INS to remove non-lawful permanent resident aliens who are aggravated felons without a hearing before an Immigration Judge. The INS intends to couple the revised manual's issuance with field training.

Streamlining Appeals.—This regulation, which is scheduled to be published next week, will allow a single Board of Immigration Appeals member to review the record and affirm the immigration judge decision without issuing an opinion. In addition, the INS General Counsel has agreed to allow simultaneous briefing by both the alien and the INS in those cases where a detained alien appeals his or her case to the Board of Immigration Appeals. These actions will reduce the time required during the appellate process by reducing the briefing period by 30 days.

Hub Concept.—Under this INS program, aliens are transported to pre-designated hub sites for administrative hearings and removal. The sites are selected based upon exhibited efficiencies necessary to the removal process (e.g., access to immigration judges, consulates, and international transportation). This program is currently

in the process of being implemented in the INS Central Region and will likely be expanded.

On February 16, 1999, as part of the Administration's comprehensive response to Hurricane Mitch, INS requested an additional $80 million for detention bed space to mitigate the effects of migration relating to the devastation in Central America. The request will ensure that all Central American criminal aliens, and others subject to mandatory detention, are detained and removed and none are released from detention. It will also ensure a credible border deterrent is in place to send the message that the U.S. border is not open to illegal border crossers, while recognizing that the United States does not want to overwhelm the Central American countries by returning too many people too fast. In addition, the Justice Department and INS are working on a request to the Congress seeking permission to reprogram existing INS and DOJ funds and to ensure that INS will continue to detain every alien subject to mandatory detention, as well as thousands of others subject to discretionary detention, throughout this fiscal year.

AUTOMATION AND TECHNOLOGY IMPROVEMENTS

Technology improvements have played a key role in the success of INS enforcement and facilitation functions.

In fiscal year 1998, we exceeded, by 87 percent, our IDENT deployment goal of 100 sites, deploying the system at 187 new sites, primarily in California, Arizona, New Mexico, Texas and Florida. IDENT allows agents to identify criminal aliens and repeat crossers who were previously apprehended. IDENT deployment has continued in fiscal year 1999 to smaller sites as well as new sites along the Southwest border.

In fiscal year 1998, INS began installing the Integrated Surveillance Intelligence System (ISIS), a state-of-the-art force multiplier that continues our commitment to provide cutting-edge technology to our Border Patrol agents. This field-tested technology consists, in part, of poles to which daytime and night vision cameras are attached. The camera sites are linked to centrally located command centers equipped with video monitors allowing a single person to monitor a vast area of terrain. The ISIS system also includes ground sensors. By linking these technologies, when a ground sensor is triggered, a signal is sent, the designated camera receives the signal, and the camera then trains on the triggered ground sensor. At the centrally located video monitoring site, the person monitoring the video screens is alerted to which sensor/camera has been triggered, and can immediately view the site. The technology significantly enhances the Border Patrol's ability to maximizes effectiveness and officer safety, since the camera may reveal anything from armed drug smugglers requiring immediate dispatch of a team of agents to wild animals requiring no response at all. ISIS has been deployed in Nogales, Arizona, and El Paso and Laredo, Texas; and additional sites are planned in fiscal year 1999 for Texas, New Mexico, Arizona and California on the southwest border, and Buffalo, New York and Blaine, Washington, on the northern border. The system is expected to be particularly effective in those remote and relatively inaccessible areas that have been, in the past, difficult to patrol on a regular basis. The technology will provide a deterrent and enforcement presence while the Border Patrol more effectively deploys and builds the experience base of the agents it has hired and trained over the past several years.

In fiscal year 1999, INS expects to install the next increment of 58 ISIS systems. In addition to ISIS, the Border Patrol is assisted in its mission by a variety of other high-tech tools, including personal night vision equipment (goggles and pocket scopes), long-range infrared scopes (both vehicle and aircraft-mounted), state-of-the-art encrypted radios, and Geosynchronous Positioning System (GPS) locators.

Through the efforts of joint agency cooperation, the Secure Electronic Network for Travelers Rapid Inspection (SENTRI) Team successfully deployed Dedicated Commuter Lanes (DCL) at the Buffalo, Detroit and Otay Mesa Ports-of-Entry. These DCL's enable Inspectors to use advanced technology to quickly screen frequent, low-risk commuters enrolled in the program. In addition, the SENTRI Team has continued its efforts to deploy the secure, automated DCL to two additional sites along the southwest border. Lanes are scheduled to be deployed at San Ysidro and El Paso later this fiscal year. In addition, a similar program, known as a Pre-enrolled Access Lane (PAL) was developed for use at Border Patrol checkpoints. The prototype PAL is currently in use at the San Clemente Border Patrol Checkpoint in California.

Section 110 of IIRIRA requires INS to develop ways to automatically gather entry and exit information at all ports-of-entry in the United States. During fiscal year 1998, INS began testing an automated arrival and departure Form I–94 in the major public airport environment. Upon arrival in the United States, a traveler pre-

sents the new machine-readable form to an Immigration Inspector who records the arrival information. The Inspector then provides the traveler with a machine-readable departure card which the traveler returns when he leaves the United States. The automated I–94 System is currently in operation at three U.S. airports—Philadelphia, Pittsburgh, and St. Louis—in cooperation with US Airways and TWA.

In fiscal year 1998, INS expanded the Datashare initiative with the Department of State (DOS). The increase in the exchange of data between DOS and INS has streamlined the Inspections and Immigration Adjudication process. A pilot program for Immigrant Visa automation and sharing of information is now planned or operating at 15 consular posts and 16 ports-of-entry. The 16 ports-of-entry handle more than 75 percent of all Immigrant Visas issued by Datashare posts. We are currently working on the Non-Immigrant Visa phase of the Datashare program.

Progress was also made in fiscal year 1998 on the implementation of a new Border Crossing Card (BCC), mandated by Section 104 of IIRIRA. As of April 1, 1998, adjudication responsibility for the BCC was shifted to the Department of State (DOS), and INS became responsible for production of the card. Five production machines are now operational, as is a new production facility at Corbin, Kentucky, and total BCC demand is expected to reach approximately 1.6 million in fiscal year 1999. Under the auspices of INS's Integrated Card Production System (ICPS), these five machines (one each at the California, Nebraska and Vermont Service Centers, and two at the Corbin facility) have enabled INS to come current with the State Department's BCC requirements, as well as the Employment Authorization Documents (EAD) that are another of INS's card mandates. The ICPS was able to maintain currency for the EAD's despite the needs generated by the Temporary Protective Status afforded to certain Central Americans in support of aid efforts to countries affected by Hurricane Mitch. INS is presently examining a variety of options to meet growing, and highly sophisticated card production requirements of its other cards, including the Permanent Resident Cards (PRC). Total annual production demand on the ICPS is expected to reach nearly 5.7 million cards by the end of fiscal year 2001.

INS continues to improve and expand its INTERNET Web site for the public. To date, the INS site is serving in excess of 335,000 users per month and is currently averaging about 11,200 visits a day. INS is serving customers from 131 different countries and U.S. cities representing all 50 states. We are also in the process of developing an e-mail function, which will allow the public yet another way of communicating with the INS.

The INS special Web page for naturalization information allows the user to look at naturalization eligibility requirements, get forms, and even take an online self-administered practice test of U.S. history and government. The new site has been extremely successful in the two years that it has been operational. Currently the site is viewed by 5,000 users per day, and more than 4,000 users per month are taking the self-test.

In fiscal year 1998, we also continued work on improving standard office automation infrastructure and educating INS users about new automation. The INS held 2,450 training sessions with 17,780 attendees on basic automation so that INS staff can effectively use the new equipment. Initial deployment of office automation workstations to all INS sites will be completed in fiscal year 1999.

INTERIOR ENFORCEMENT

Interior enforcement is an essential complement to border management in forming the Administration's overarching immigration enforcement strategy. INS's formal Interior Enforcement Strategy was presented to staff of the Appropriations Subcommittee in January 1999. The Strategy establishes the following priorities: identify and remove criminal aliens, and minimize recidivism; deter, dismantle and diminish smuggling or trafficking of aliens; respond to community reports and complaints about illegal immigration and build partnerships to solve local problems; minimize immigration benefit fraud and other document abuse; and block and remove employers' access to undocumented workers.

Anti-Smuggling and Worksite Enforcement

With the progress of our border enforcement strategy in deterring illegal immigration and regaining control along the border, we have seen unfortunate increases in organized alien smuggling. Concurrently, as the border becomes more difficult to cross illegally, the demand for fraudulent immigration documents increases. Aliens are now also showing up in the work forces of industries that previously were not part of the illegal labor stream. We are broadening our efforts to deal with these changes.

Our accomplishments demonstrate our commitment to interior enforcement. In November 1998, INS agents put out of business what is believed to be the largest U.S.-based criminal enterprise producing fraudulent documents when they seized more than two million fake documents in Los Angeles with a street value of at least $800 million. To protect against fraud such as this and help employers to comply with the immigration law, INS introduced a new "Green Card" in April. Incorporating myriad security features, the new card is one of the most sophisticated, counterfeit resistant documents produced by the Federal government.

In fiscal year 1998, worksite enforcement cases directed against industries and major employers with a known history of noncompliance with the employer sanctions provisions of immigration law represented 59 percent of all worksite cases completed. In addition, in November 1998, the INS entered into agreements with the Department of Labor to share information from worksite enforcement operations and employer compliance investigations that will ensure that employers will not benefit by exploiting and intimidating illegal workers.

In fiscal year 1998, INS continued a variety of inter- and intra-agency pilot programs, including joint efforts with the Social Security Administration, to test systems designed to quickly and accurately verify whether new employees are eligible to work in the United States. The INS began seeking employers to participate in three IIRIRA-mandated programs in September 1998, in addition to our continued operation of the pre-IIRIRA employer verification and joint verification pilot programs.

In fiscal year 1998, INS presented 1,547 principal smugglers for prosecution of alien smuggling violations, a 19 percent increase over fiscal year 1997. Criminal alien cases include large-scale organizations involved in ongoing criminal activity or individual aliens involved in drug smuggling or terrorism.

We achieved impressive results in connection with major smuggling cases. In an effort to deter global migrant trafficking, INS has established a permanent presence of criminal investigators and intelligence analysts overseas to work on deterring migrant trafficking in source and transit countries. Our overseas offices, working closely with host governments, were instrumental in crafting legislation criminalizing migrant trafficking in several Latin American and Carribean countries.

Operation "Seek and Keep" demonstrates one of our greatest successes in combating international alien smuggling and provides a good example of the kinds of cases we intend increasingly to bring. Over a three-year period, the targeted smuggling ring had brought more than 10,000 illegal aliens into the United States, providing undocumented workers to employers in the United States who actively sought out cheap labor. In the course of its operations, the organization was believed to have collected in excess of $220 million in illicit fees. This was the largest, most complex and sophisticated alien smuggling operation ever identified by the INS, and was also the first INS-conducted Title III (wiretapping) operation. The investigation, which is ongoing, also demonstrates our ability to work effectively with a diverse mix of other Federal agencies. Along with our own agents, this investigation has involved personnel and resources from the FBI, U.S. Customs Service, Internal Revenue Service and the Department of State.

Also in November, INS announced the success of operation "Over the Rainbow II," which has crippled the largest alien smuggling operation ever encountered on the northern border. For at least two years, the ring smuggled 100–150 Chinese nationals per month into the United States at an average cost of $47,000 per person.

Cooperation with State and Local Law Enforcement and Communities

As you have directed, INS will establish Quick Response Teams (QRT) in fiscal year 1999, to work with law enforcement officers at local and district levels in areas specifically identified as having a growing illegal immigration problem. The QRT's will be made up of special agents and detention enforcement officers. Certain of the teams will include a supervisory special agent, and, in addition, deportation officers will be deployed to INS District Offices and selected cities to coordinate detention and removal operations. The teams are not independent organizations within INS, but rather are to be part of the present organizational enforcement structure. The INS District Officers will ensure that the teams respond to calls in a timely manner and that removal of QRT-processed aliens is a priority.

The Law Enforcement Support Center (LESC) was expanded during fiscal year 1998. The LESC, which is located in Burlington, Vermont, was started in fiscal year 1995 to respond to inquiries from Federal, state and local criminal justice agencies concerning aliens charged with aggravated felonies. The LESC currently responds to approximately 8,000 queries a month. The following locations currently have access to the LESC: Arizona; Iowa; Nebraska; Utah; Vermont; Puerto Rico; Florida; Colorado; Wyoming; South Dakota; Kansas; Missouri; Illinois; Kentucky; Massachu-

setts; El Paso, TX; Dallas, TX; Harris County, TX; Atlanta, GA; San Diego County, CA; Imperial County, CA; San Mateo County, CA; Anaheim City Jail, CA.

The INS brought increasing attention to bear on improving community relations in fiscal year 1998. The agency created the community relations officer (CRO) position to help identify and address immigration-related community issues and concerns and to educate the public on new immigration laws and regulations. By the end of fiscal year 1998, CRO's were on-board in key INS district and sector offices. The CRO's have dealt with a variety of issues, from responding to the public's need for information on IIRIRA implementation and the effects of welfare reform, to responding to citizen reports of alien trafficking patterns and requests for information. CRO's also implemented a major community relations operation in coordination with "Operation Rio Grande" along the Southwest border. In Illinois, the CRO helped resolve immigration-related conflicts and expanded state and city library citizenship outreach projects. In New York, the CRO has conducted conferences and public education seminars with various community groups and local government representatives.

In fiscal year 1998, INS held meetings with community groups from California and Texas to explain the issues of concern to INS that underlie day labor site problems. The INS also consulted with state and local law enforcement officers in Utah, Florida and Iowa on the designation of immigration enforcement functions.

Mr. Chairman, I realize that the Subcommittee has expressed concerns about several areas of INS's Immigration Services operations. I believe that we have made great strides in addressing the problem areas and in ensuring the integrity of our efforts.

NATURALIZATION IMPROVEMENTS

As it has been for the past two years, rebuilding the naturalization system is our top priority. The agency's focus has been, and will continue to be, improving customer service while ensuring the integrity of the naturalization process we have developed. To that end, the INS has laid the groundwork over the past year for significant changes to the naturalization process.

First, the agency began by restoring the integrity of the system by implementing the mandated in-house fingerprinting of applicants and opening INS fingerprinting sites across the country. In parallel, Naturalization quality procedures were begun along with appropriate oversight mechanisms to further ensure integrity. An outside auditor, KPMG Peat Marwick, has validated the success of INS's quality assurance procedures.

Having strengthened the integrity of the program, INS has begun its efforts to provide better service to customers by implementing direct mail of applications to improve efficiency, installing new technology to ensure consistency, hiring more adjudicators, and developing strategies for dealing with the backlog. The Immigration Services Division (ISD) is currently implementing the reengineering the naturalization process. Under ISD and its predecessor, the Executive Office of Naturalization Operations (EONO), INS has implemented strict quality assurance procedures to improve processing, ensure consistent practices nationwide and increase accountability.

Under ISD leadership, as of March 1999, INS opened 129 Application Support Centers (ASC) in or near immigrant communities. All of these ASC's are currently open and taking fingerprints. For those who cannot reach the fingerprint sites, a fleet of 42 vans are serving as mobile fingerprint centers, or the applicants are directed to designated law enforcement agencies (DLEA's) operating under sole source agreements with the INS. All DLEA's use INS fingerprint equipment and receive INS customer service training.

We have also made significant progress with the Direct Mail program. Through the program, certain applications and petitions for benefits are mailed directly to an INS service center for initial processing, rather than requiring applicants to come to local INS district offices or suboffices to submit applications. By using Direct Mail, INS standardizes processing, enhances processing controls and accuracy, and improves the quality of status information on cases provided to the public. All of the INS district offices have transitioned to Direct Mail for all new naturalization applications (N–400).

As a result of these efforts, the agency showed steady improvement in production during the first four months of fiscal year 1999. We completed more than 305,000 naturalization applications in this time period, a 70 percent increase over the previous four month period, and a 101 percent increase over the same four month period in fiscal year 1998.

While this upward trend is encouraging, the completion numbers are not as high as we had projected. We continue to encounter production problems and are experiencing frustrating delays in achieving solutions to production issues. Some of the most important problems we are addressing include high turnover of non-permanent staff as well as full coordination of new computer systems with older automation environments still in use. We are on the way to resolving these issues, but they have slowed our production somewhat. In addition, quality and production standards are being incorporated into the performance work plans of naturalization managers, and all field and regional directors are being held accountable for specific production goals. Additional managers are also being assigned to field offices to oversee backlog reduction efforts in key cities.

The naturalization program received a major boost when you approved, as part of INS's $3.95 billion budget for fiscal year 1999, the full $171 million reprogramming request to support naturalization activities plus an additional $5 million for records initiatives. The funding includes existing INS and Department of Justice funds and, for the first time, $60 million in appropriated resources. It will provide for the hiring of 200 term adjudicators, 100 Immigration Information Officers, begin expansion of INS telephone centers into a comprehensive national customer service center, and begin centralizing INS's 25 million paper files that are currently located in 80 offices throughout the country.

ASYLUM PROCESSING

Five years ago, INS initiated and completed the first large-scale reform of the asylum system, whose inefficiency and backlogs once made it a magnet for fraud and abuse. As a result, new claims have fallen from 124,000 in fiscal year 1994 to 35,000 in fiscal year 1998, which is the lowest level in 10 years. All cases that the INS Asylum Corps refers to the Executive Office of Immigration Review (EOIR) must be completed and submitted within 60 days of the asylum application's filing date. The EOIR Immigration Judge then has an additional 120 days to make an adjudication. Of the 16,624 cases referred by the Corps, 73 percent met the 60-day goal. In addition to keeping current with new applications, the Corps reduced the pending asylum caseload by 10 percent, from 400,000 to 360,000.

INSPECT AND INTEGRITY

Another example of our commitment to addressing problem areas and ensuring integrity is the INS Program for Excellence and Comprehensive Tracking (INSpect). INSpect is a top-to-bottom review process by the Office of Internal Audit (OIA) that focuses on assessing field office effectiveness; determining compliance with applicable laws, regulations, and procedures; measuring performance against established standards; and providing a means to share local successes and solutions applicable to service-wide problems. The program now consists of a corps of more than 800 subject matter experts who serve on INSpect teams on a rotating basis. During fiscal year 1998, INSpect reviewed 19 INS offices, which accounted for 44 percent of INS's field employees, and issued 11 final INSpect reports. The reports presented a total of 884 recommendations for corrections and improvements and 23 best practices or local successes with INS-wide applicability.

Our Office of Internal Audit visited INS field offices to follow up on INSpect recommendations and recommendations made by outside audit agencies. During fiscal year 1998, the OIA issued seven follow-up reports, and closed 328 recommendations where follow-up confirmed that corrective actions had been completed. This was the first full year of such follow-up reviews; they will continue in fiscal year 1999.

RESTRUCTURING

The challenges of immigration have changed dramatically over the course of the past several years. The growth of a global economy, public policy debates over immigration in the United States, and new legislative mandates, including the sweeping changes enacted in the 1996 immigration law, have made unprecedented enforcement and service demands on INS. The breadth of these changes, coupled with the agency's explosive growth, demands a change in the INS's structure to more effectively meet the challenges of the 21st century.

In early 1998, the Administration established a new framework for improving the INS through restructuring, which I shared with you last year. Our goals for restructuring are greater accountability, enhanced customer service, seamless enforcement, and insuring a coherent immigration system. The new structure would separate the enforcement and service-delivery functions of INS into two distinct chains of command under the roof of a single agency. This is a bold initiative that would fundamentally reform INS from Headquarters all the way down to field offices. It

would eliminate the current field structure in which regional and district offices serve both enforcement and service functions and will replace it with separate enforcement and service offices that bring the right mix of staff and skills to local service caseload and enforcement needs. It would also establish clear career paths with a single focus, either law enforcement or immigration services delivery, and corresponding training to ensure a professional workforce sensitive to the treatment of INS customers.

I believe that separating the functions but keeping them within one agency led by one person who is accountable on a full-time basis for the management of our nation's immigration system will result in the most effective and efficient use of the infusion of resources the Administration and Congress have provided INS over the past five years, and represents the most reliable approach to insuring that our nation's immigration law and policies are implemented in a coherent, balanced way.

As you know, our immigration laws allow ways for those who are residing in the United States illegally to gain legal status and outline how those who are here legally can lose that status. Because these processes are intertwined in statute and practice, immigration enforcement and services are closely interrelated at both policy and operational levels. Assigning them to separate agencies would seriously fragment and weaken the government's ability to administer the immigration laws effectively.

Implementing the law effectively and coherently requires access to comprehensive information on all aspects of an alien's immigration history, which includes enforcement and benefit-granting actions. Properly managing our immigration system requires policy processes and decision-making that balance the national interest in deterring improper migration flows and practices while upholding our tradition of individual rights and humanitarian commitments. In both realms, these objectives are most reliably achieved through one agency where there is a single, full-time locus for managing the enforcement and services sides and the attention, expertise, and accountability that flow from it.

INS has made significant progress on planning for restructuring since last spring. In the fall of 1998, INS established an Office of Restructuring and contracted with PricewaterhouseCoopers (PwC), for design support, to develop a detailed draft proposal of how the INS would look and operate under the Administration's plan.

The planning has involved wide-ranging consultation with INS field and headquarters staff. Last fall, the restructuring team talked to more than 900 INS employees during field site visits and headquarters interviews, and established an electronic mailbox and intranet site for continuous communication with our employees. We have also held two meetings with all of our senior field managers to elicit their feedback on proposed design concepts.

The restructuring team has also engaged in extensive consultations with our external stakeholders, ranging from other government and law enforcement entities to trade and international business organizations to community-based organizations. We have done this primarily through a stakeholder advisory board as well as through specific briefings on the restructuring effort. At the same time, we have regularly met with staff from this Committee and others in Congress for their input.

Earlier this year, the Restructuring team used this extensive internal and external input, analysis of the structures of other Federal law enforcement and service provision agencies, and PwC's change management expertise and experience with best practices in other public and private sector organizations, to develop several specific organizational concepts for INS enforcement, immigration services, and support operations components. These concepts were then shared with our employees and managers, our external stakeholders, and Congress for additional input. We are now finalizing our draft proposal which reflects the distillation of all these efforts.

We realize there are differing views on this, including the views of some on this committee and elsewhere in the Congress. However, for the reasons outlined above, we believe our proposal represents fundamental reform that will strengthen the immigration system. We should not let the frustration we share lead us to weaken our institutions and our ability to carry out responsibilities in both enforcement and benefit-granting that are mutually reinforcing, not fundamentally incompatible.

In the coming weeks, INS will share with this Committee and others in Congress its draft proposal for how a new INS would look and operate. I look forward to working with you this year to move this important issue forward.

FISCAL YEAR 2000 BUDGET

Now I will turn to the fiscal year 2000 budget and initiatives included in our request. For fiscal year 2000, we are seeking a total budget of $4.270 billion and 31,249 positions for INS to further strengthen the Administration's comprehensive

immigration strategy. The fiscal year 2000 budget represents a $298 million increase in funding over the anticipated fiscal year 1999 spending level, $150 million above the projected fiscal year 2000 base level, and adds a total of 306 positions.

The INS budget for fiscal year 2000 continues to support the immigration goals and strategies that the Administration and the Service have pursued so effectively over the past several years. The thrust of this budget is to further extend the initiatives aimed at controlling our borders—encouraging and accommodating lawful commerce while simultaneously discouraging and preventing the unlawful entry of illegal border-crossers and dangerous drugs. The INS intends to build on its successful multi-year strategy to regulate the border effectively, both at and between the ports-of-entry, to deter illegal employment in the interior of the United States, to combat and punish the smuggling of people and narcotics, as well as other immigration-related crime, and to remove criminals and other deportable persons quickly. At the same time, concentration on the border areas will be linked with the enforcement of the immigration laws at interior locations.

The intent of the INS fiscal year 2000 budget is to provide the INS with the most professional workforce possible, and to give those employees the modern tools essential to the performance of their vital mission in the safest and most effective manner possible.

BORDER MANAGEMENT

The fiscal year 2000 budget includes 101 positions and $56 million which will continue the escalation of our efforts to control the nation's borders and facilitate lawful commerce while deterring and denying the illegal movement of people and drugs.

A total of an additional $50 million is requested to support the Border Patrol. The Border Patrol has proven that it can control targeted sections of the border, and has achieved dramatic results in areas like San Diego County in California and the urban El Paso area in Texas. Recent expansion of efforts into the Texas and New Mexico border, most notably Operation Rio Grande, will continue. At the same time, INS will neither neglect nor abandon its successful regulation and enforcement operations in those border sectors now under control.

The Service's Border Patrol Agents are assisted in the successful accomplishment of their very difficult and demanding mission by state-of-the-art technology. The fiscal year 2000 budget provides 14 positions and $50 million for development and deployment of the Integrated Surveillance Intelligence System (ISIS). As previously noted, the ISIS system extends the efficiency and effectiveness of the line-watch Border Patrol Agents, especially in the more remote and desolate regions, helping to deny these areas to illegal aliens and drug smugglers. The ISIS system links ground sensors with night and day surveillance cameras, that are in turn linked to central controllers, where Border Patrol agents can be instantly dispatched to remote locations, with full knowledge of exactly who, what and how well armed their targets may be. Not only are "false alarms" all but eliminated, but overall officer safety and law enforcement effectiveness are increased immensely.

In addition, the Service requests 87 positions and $6 million to staff three new land border ports-of-entry in Texas—Eagle Pass, Los Tomates, and Laredo.

Furthermore, in fiscal year 2000, the INS is requesting $48.1 million to support new Border Patrol construction requirements. This request will provide $34 million for the construction of seven Border Patrol facilities. An additional $8.1 million is being requested in fiscal year 2000 for the planning, site development, and design work required to support the future construction of 12 new facilities and 10 checkpoint systems. The INS is also requesting $6 million for military (JTF–6) projects. The record increases in Border Patrol staff have far outpaced facility construction. These resources will allow us to begin to address the facility requirements to accommodate the growth in Border Patrol operations over the last several years.

IMPLEMENT INTEGRATED INTERIOR ENFORCEMENT STRATEGY

The fiscal year 2000 Budget includes $20 million to support 185 new positions to address the presence and consequences of illegal migration in the interior of the United States. The Interior Enforcement Strategy for fiscal year 1999 complements INS's Border Control Strategy to apprehend those who have eluded INS's front line of deterrence.

A total of 155 positions and $16.8 million are requested to expand INS's national transportation system, for transportation of aliens and other required detention functions. This includes $5 million to support continued INS movement of illegal aliens by JPATS, thereby reducing the need to remove aliens by commercial aircraft.

INS has included in this request $20.5 million for the construction of two detention projects to be completed in fiscal year 2000. An additional $2 million is being

requested for the planning, site development, and design work required to support three new detention projects scheduled for future construction.

IMMIGRATION SERVICES

In order to continue enhanced efforts to improve customer service, the fiscal year 2000 budget request includes $124 million to maintain enhanced staffing for backlog reduction and advance customer service initiatives, including a national customer service center.

CONCLUSION

These new fiscal year 2000 resources will give INS the personnel and tools needed to carry out the Administration's effective immigration strategy. I look forward to continuing to work with the Subcommittee. With your support of this budget request, we can carry forward the improvements made during the last few years. We have made great strides in addressing problem areas and working to ensure the agency's integrity. I want to work with you as we continue our efforts to make this nation's immigration system the best that it can be.

This concludes my formal statement on the fiscal year 2000 budget request for INS. I would be happy to answer any questions which you, Mr. Chairman, and Members of the Subcommittee may have.

STRATEGY TO TARGET CRIMINAL ALIENS

Senator GREGG. Senator Campbell?

Senator CAMPBELL. Yes. Thank you, Mr. Chairman. Let me ask maybe a very general one and then one specific to Colorado, Commissioner Meissner.

I am sure you are aware of the Monday, March 15, story in the Washington Post about the INS shifting its strategy to target criminal aliens. I would like you to comment a little bit on that. I know our office, like all of the offices, was under tremendous fire for awhile from people that wanted more and more pressure put on the illegal aliens, and at the same time, getting a quiet heat from businesses who said they could not survive without them in tourism and agriculture and a number of other industries.

With this shift, we are already starting to get some mail, some people saying that it is probably a good idea and other ones saying you are relaxing it and you are, in fact, going to encourage more illegal aliens if you do this new strategy. Could you comment a little bit on that for me?

Ms. MEISSNER. I am happy to do that, because the issue of how we enforce the law in the interior of the United States is a critical companion to our work at the border. We all know that the centerpiece of an effective immigration enforcement program must begin with deterrence at the borders to prevent and deter people from coming into the country illegally in the first place. But at the same time, it cannot be done solely at the border. There must be an effective effort and deterrence in the interior of the country.

The interior enforcement strategy that we have put forward is an effort to connect in the best way that we believe we can that border activity with interior enforcement. We have become increasingly effective at the border, and what we are finding is increasingly sophisticated organized efforts to move people past the border and to exploit document laws and so on.

Senator CAMPBELL. I understand that and I support that part of it. As I understand it, and tell me if I am wrong here, as I understand it, you will be relaxing the unannounced visits to businesses

and farms in areas that have a high degree of illegal immigrants working in those industries?

Ms. MEISSNER. I would not characterize it as relaxed at all. I would characterize it as being far more strategic in our workplace enforcement efforts vis-a-vis the smuggling of aliens into the country. That is best illustrated by a number of cases that we have made recently that show that there are very clear connections between employment practices and particular employers, and industries with smuggling. Those are the cases we want to make.

We made a case last year where we were able to indict the smugglers coming across the border along with the employer who was employing them. That was a multi-State case that originated, actually, in New Mexico. It ultimately ended up in indictments in Georgia in a factory that was employing illegal immigrants. That is a very effective way to get impact.

We are right now, for instance, pursuing employer leads that resulted from a major case of indictments that were announced last, I think, November or December. This is the case I referred to in my testimony that brought thousands of aliens into the country, and millions of dollars of profit. The follow-up to that case is now 1,000 employer leads of companies around the country that employed the people brought in through that smuggling. We are following up on all of those leads in order to sanction those employers.

But that kind of workplace effort connected to very seriously abusive practices brings us, we believe, to a much more strategic approach in the interior of the country.

ASSISTANCE IN SPECIAL NATURALIZATION CASE

Senator CAMPBELL. I know it is a tough question. I am sure most of us in the Western States that are high growth States, we have unemployment below 3 percent in Colorado. People are making $12 an hour working in McDonald's and there are just so many jobs going left unfilled. No one supports illegal immigration, but at the same time, those States that have that real low unemployment and a massive amount of jobs going unattended seem to be prime targets for people that would come in illegally and I would just hate to see businessmen get caught in the middle, where they have to be the policemen, so I thank you for clarifying that.

One question, if I might take a minute, Mr. Chairman, specific to our State that I would like your personal involvement in. We have a lady by the name of Mrs. Steinman who married an American some years ago. In fact, she came here in 1986 the first time and married her husband in 1993. He is a third-generation Coloradan. His parents were raised in Colorado. His grandparents were raised in Colorado.

Six years ago, she applied for citizenship, for naturalization, and it has been one endless mismanaged bungled mess after another and she is still waiting after 6 years. She sent her application in, did all the paperwork. They lost it, even though she had a receipt that was signed for when she turned it in. She has been sent, twice, over hundreds of miles, because she lives pretty far out in Colorado, to get the immigration records, but they were lost, too.

It has kind of been one thing after another, and I like to think that this is really an exception to the rule and that most people who are trying to be responsible and immigrate to the United States through the normal, legitimate, legal process, I hope they are not all treated like that.

We have this funny kind of a dichotomy, Mr. Chairman, where people that immigrate illegally seem to find all kinds of avenues for staying here and the ones that try their best to conform with the law often find it more and more difficult to stay here, and it is the darndest thing I have ever seen.

But if you would write her name down, her name is Steinman, spelled S-t-e-i-n-m-a-n, and I will get you her first name and address, but I would appreciate if you would look into that and try to find out what the heck has gone wrong, because for 6 years, this lady has been trying to get her paperwork processed. Would you do that for me?

Ms. MEISSNER. Absolutely.

Senator CAMPBELL. I appreciate that. I will get you her address and all the particulars on it.

Ms. MEISSNER. We certainly want to do everything that we can to overcome those problems. We have had some difficulties in our naturalization program that we are addressing, but I would be very pleased to try to rationalize that case.

Senator CAMPBELL. Thank you. Thank you, Mr. Chairman.

[The information follows:]

STATUS OF MRS. STEINMAN'S APPLICATION

Mrs. Steinman's I–485 (Application for Permanent Residency) application was approved on March 18, 1999. The application has been sent to the INS card-processing center in Lincoln, Nebraska, where all documentation will be subject to a final review, after which Mrs. Steinman's Permanent Resident Card will be issued.

Although it was 6 years between the date Mrs. Steinman filed her I–130 (Petition for Alien Relative) and when the Immigration and Naturalization Service approved her adjustment of status I–485, she did not file her I–485 until February 1997, 25 months (2 years) after the approval of her I–130. In actuality, her adjustment took about 25 months from the filing.

IMMIGRATION POLICY

Senator GREGG. Senator Leahy.

Senator LEAHY. Thank you, Mr. Chairman. Commissioner, I told you before that I do not envy you your job. I think when you were appointed, I offered my congratulations and condolences. I know you have one of the most difficult jobs in the government. We have seen illegal immigration across our southern border increase exponentially, but you have been faced with at the same time implementing immigration bills that have become the most contentious in our history.

You cannot say this, but I can. This administration's schizophrenic approach to immigration policy has made your job even more complicated. The number of changes in policies that Congress and the White House have asked you to implement, some in direct contradiction to each other, would drive any sane person crazy. It is a testament to you that you have stayed and worked so hard at being Commissioner. I think you have done a remarkable job.

But let me give you an example of how this one-upmanship in immigration policy directed, as I said, by both the Congress and by

the administration, has led to policies which result in decorated war veterans, U.S. decorated war veterans, being deported without any meaningful opportunity to be heard.

Under the Immigration Reform Act of 1996, Congress passed and the President endorsed a broad expansion of the definition of a criminal illegal alien. In the rush to be toughest on illegal immigration, the bill also provided expedited deportation proceedings, which the administration has pushed you to implement, with a severe curtailing of administrative discretion.

Well, the zealousness of Congress and the White House to be tough on aliens, to show who could be more macho, I guess, has successfully snared permanent residents, among them people who spilled their blood for our country in foreign wars. As INS prepares to deport these American veterans, we have not even been kind enough to thank them for their services with a hearing to listen to their circumstances.

That is a cold and ugly side of our tough immigration policy, the human consequences of legislating by 30-second political ads. Unfortunately, the checks and balances of our government have failed these veterans because Congress and this administration are determined not to be outdone by each other. Tough in this case means blinding ourselves to the personal circumstances of these people. It means substituting discretion with a cold rubber stamp that can only say no.

I am going to give you and ask to have in the record some examples of people, including one veteran with a silver star and others who are being deported with no chance to really be heard. I also have a number of other questions I will submit for the record.

REORGANIZATION

I do want to ask you about the reorganization of the INS. We have, on the one hand, an effort to centralize that should give more uniform policy implementation. But now I also understand that you are considering a reorganization of the regional operation centers, to move them from three national regional centers to a dozen or so regional areas. Is this contradictory? Is the INS centralizing and is that making it better? Is the INS decentralizing and going to regional areas?

Ms. MEISSNER. What we are proposing is a splitting of our operations along the lines of enforcement and service so that we have distinct chains of command that improve our accountability, and strengthen our operational effectiveness by focusing our managers on less tasks per manager. We are in the final stages of developing our thinking on these ideas and we will want to consult with you before we finalize them.

We do believe that there are distinct differences in the work and skills involved in the enforcement responsibility that we carry from the immigrant granting responsibilities that we carry. Our district offices at the present time are charged with both of those responsibilities, as compared, for instance, to the Border Patrol, which is responsible solely for enforcement activities. We need to and we believe that we would be a far more effective agency if those who are dealing with a mixture of responsibilities, in fact, are allowed to focus on what they are trained for, know best to do, and are oper-

ating in a culture that promotes the values that underlie the enforcement and the benefit granting, some of which are different.

As to centralizing/decentralizing, we are really talking about a mixture of those activities. It is not either/or. It is both/and.

PROFILE OF VICTIM OF IMMIGRATION POLICY

Senator LEAHY. I will submit more of this for the record, but let me just give you the profile of one of these people I spoke of. Danny Kazuba immigrated to the United States from Canada at the age of five. He has been a legal permanent resident for 41 years. He served 6 years in the U.S. military, served in active duty, was honorably discharged. His family consists of a mother, five siblings, and a U.S. citizen wife. They all live in the United States. He has no ties in Canada. He owns and operates his own commercial kitchen installation business. He has been in business for 19 years, a lot of American families employed by him.

He went through a period where he was battling an addiction. He was convicted 12 years ago of possession of a controlled substance. He plea bargained, was sentenced to probation. He was subsequently convicted of possession of a controlled substance. He plea bargained again. The substance, incidentally, was less than a half-a-gram. He was never informed that his conviction could result in deportation. After his release, he was psychologically evaluated by the Board of Pardons and Parole, determined to be free from risk of addiction again. He has led a rehabilitated life for over 10 years.

He was originally granted relief from deportation because of unusual and outstanding factors in this case, including service in the military. The INS appealed that. Then that languished in the courts for 2½ years until the new immigration laws were passed. They were retroactive. Now, he goes.

We have a whole lot of other cases like that. You could have somebody who has a silver star, could pass a bad check, be a legal immigrant, and be kicked out without a "by your leave". That is what the law says.

Ms. MEISSNER. Senator, we all know, I think, that the 1996 law did strengthen the immigration enforcement in ways that were important and were needed. However, we, too, are troubled by some of the results of the deportation provisions, particularly in the kinds of cases that you are citing. We are aware of many cases that are very sympathetic, as well, principally where lawful permanent residents are concerned who have lived in this country for some while.

We do think that there is room for some work on some of these provisions without undercutting the important enforcement strengthening that did occur in the 1996 law. We would very much welcome working with the Congress on the ideas that we have in connection with those kinds of cases.

Senator LEAHY. I hope we can make some changes, because I think that too much of it got wrapped up in who could be tougher for the 30-second ads and not so much what works well, and I think some of the experiences you have seen, your advice could be very helpful to us in that.

Thank you, Mr. Chairman.

Senator GREGG. Thank you, Senator.

Senator Kyl? We go in order of arrival.

Senator KYL. OK. Not being a member of this particular subcommittee——

Senator LEAHY. I arrived ahead of everybody here. I was in the room when you guys came in.

Senator GREGG. I did not see you or we would have had you go first.

Senator LEAHY. That is all right. That is OK. I have enjoyed listening.

Senator GREGG. I thought Ben was here first. You will notice, I did not even ask questions.

BORDER PATROL AGENTS

Senator KYL. OK. Fine. Thank you. I very much thank you for allowing me to sit in on this panel, Mr. Chairman.

Doris, how are you?

Ms. MEISSNER. Good morning, Senator.

Senator KYL. In your statement, on page two, you talk about the goals and said, "we initiated," and I have underlined "we", meaning the administration, obviously, "initiated unparalleled growth in personnel and resources. Since fiscal year 1993, we have more than doubled the number of Border Patrol agents." You also said later that the progress that you have made demonstrates that when we are given the resources and develop focused strategies, we can achieve results.

I think the "we" in this case really is more this committee than the administration, with all due respect. In 1996, the Act you just referred to that was passed by the Congress, requires the—requires—it says shall, not is authorized to, but shall—hire 1,000 additional Border Patrol agents each year between 1997 and 2001. Except for fiscal year 1998, the administration has not complied with the law and has requested only 500 agents, or as is the case for its fiscal year 2000 request, has completely ignored the law, requesting zero. It has been up to this committee to put the funds back in, and for that, I am very, very grateful.

At the same time that you are outlining your strategy for combatting illegal drugs and, as you put it, effectively securing the border, you are requesting zero additional Border Patrol agents and zero additional Customs inspectors and agents, even though we know that 70 percent of illegal drugs enter the United States through the Southwest border. In fact, if current trends continue in Arizona, the Tucson Border Patrol will seize over 220,000 pounds of drugs this year.

Illegal immigration is also at all-time highs. In Arizona alone, just in the Tucson sector, just last month, 49,000 illegal immigrants were apprehended. Who knows how many were not. If that is sustained at that level, then the Tucson sector Border Patrol will apprehend over 500,000 illegal immigrants in 1999.

In my conversations with Border Patrol Chiefs Association President Ron Sander and other chiefs, none of them agree with your assessment that we should take a time out from hiring additional Border Patrol agents in the year 2000. They say there are no widespread problems as a result of newer agents on the line. In fact,

according to press accounts, there is little statistical relationship between the experience of a Border Patrol agent and the number of disciplinary problems.

Indeed, former U.S. Border Patrol Chief and now Representative Sylvester Reyes has information indicating that many sectors do not have close to the 39 percent of agents with 2 years or less experience, as you estimate. In fact, in the Tucson sector, 80 percent of the agents have 2 or more years of experience, and 100 percent of the agents in Miami and New Orleans have 2 or more years of experience.

So the first question I have, and I will make one more brief statement and then ask you to respond, is why not train now and deploy to the areas that have these kinds of ratios, which even by your understanding do not result in an inappropriate number of untrained agents? The Tucson sector clearly needs the personnel and its levels of untrained agents do not yet meet the level that you are concerned with.

General McCaffrey, when he testified before the Treasury Appropriations Subcommittee, indicated that his budget—in fact, he said that the initial INS requested budget did include funding for additional Border Patrol agents and also reiterated his view that 20,000 Border Patrol agents are needed on line to effectively stop drugs from entering the country.

The second question I would be interested in is whether or not your initial budget did, in fact, include money for agents and was simply scrubbed by OMB?

And finally, if you could pull the other chart up, since I do not want to take all my time on this, the University of Texas at Austin study, which I am sure you are familiar with, a thorough 50-page comprehensive report, indicates that the Southwestern border needs at least 16,133 agents to effectively stop illegal immigrants and drug runners there. For example, in Yuma, we currently have 236 agents. They say we should have 787 there. The Tucson sector has 1,032. They say we need 2,512. The red bars are what they say are needed. The blue and green are what we have or will have under your budget.

Based upon this study, these statistics, the other numbers that I have indicated to you, can we not put some money in this budget this year? Would you not support this committee again overriding the recommendation of the administration, including budget for the training, recruiting, and training and deployment of more agents, particularly in those sectors where the percentage of inexperienced agents do not approach the level that you suggest is a problem, and particularly since people on the line say that it will not be a problem in any event?

Ms. MEISSNER. Well, let me begin to answer that question by emphasizing the extraordinarily dramatic growth that has occurred in the Border Patrol. Over the last 4 years, the Border Patrol has more than doubled in size, going from about 3,900 to today over 8,000, and this year, with the fiscal year 1999 agents, we will get to 9,000. We are confronting some issues in recruiting those 1,000 new agents which we can talk about, but there is a very, very dramatic increase that has taken place.

We have been able to support that increase by totally overhauling our recruiting and training procedures. We have been able to be successful in hiring up these people on time, deploying them, including opening a new training academy in Charleston, which this committee supported, and the hiring actually has required many more than 1,000 a year in order to keep up with attrition.

So we are able to deal with this level of growth. We have been able to attract very high quality new personnel. We have insisted on very high standards. We have been able to maintain those standards and we will be able to do that. We have the capacity to be able to continue this build-up.

Now, we do have a new workforce. We have gone through very dramatic growth and the administration did make the decision in this budget round to take a breather for a year. The money that is in the budget for the Border Patrol represents almost half of the budget request that the administration sent forward. That is money which is to be directed at facilities and at force multiplying technology.

Our facilities needs are very serious where the Border Patrol build-up has taken place. We simply cannot put the facilities out there as quickly as this personnel growth has occurred, and so we find ourselves with a serious shortfall which this budget by no means closes but makes some strong progress at dealing with.

And where the technology is concerned, there is a request for $50 million to expand a very, very advanced state-of-the-art system of video surveillance, that is included in this budget. It is not a substitute for agents. However, it is a very effective force multiplier for the agents that are out there. It will, particularly in places like the remote areas of Arizona, and the more remote areas of Texas that Senator Hutchison and I have visited, be of enormous assistance to the agents. It will enable them to see who is actually coming across the border, and to dispatch people. It does this by connecting our sensors with cameras, with command centers that surveil the border and allow an operator to see what is happening over vast expanses of territory and then dispatch agents where necessary.

So this budget does have very, very strong support for the Border Patrol's work. What I think I would want to say to this committee is that I personally as Commissioner, and the INS as an agency, is strongly committed to the border strategy that we have put into place and to continuing that border strategy. We know that it works. We see the results where the resources and the equipment and the technology have been applied. We are managing this as aggressively as we possibly can and this committee has been of enormous support in that effort. I want to continue to work with you in advancing that strategy because it is a multi-year strategy which does need to continue in the years ahead.

BORDER PATROL AGENT REQUEST

Senator KYL. Mr. Chairman, I do not think you have a 5-minute rule, but I took a long time, so let me just conclude this round with this statement. I appreciate the fact that you described the need. You correctly noted that the addition of agents has had tremendous positive results. I totally concur with that. It has brought crime down. It has also resulted in more apprehensions. It does good.

You also indicate that we have the capacity to train these agents, but you concluded that the administration decided to take a breather. Well, nobody else at the border is taking a breather, and if we have the capacity and if we know the need is there and if we know that it gets results, then I reiterate my two questions to you. Did you request more agents and was it scrubbed out by OMB, and would you be supportive of this committee's addition of money to continue the training and recruitment of agents, since it appears that we can do that and there are plenty of sectors along the border that do not approach the inexperience level that you suggest creates a problem, particularly in my State, where these agents could, obviously, with great results, be deployed?

Ms. MEISSNER. We did request 1,000 agents, both the INS and the Justice Department did. As I said in my testimony, at the administration level, a decision was made to do differently.

Senator GREGG. Senator Inouye.

GRATITUDE TO HONOLULU STAFF

Senator INOUYE. Thank you very much, Mr. Chairman. As you know, at this moment, the Committee on Labor and Health is having a hearing, the Subcommittee on Military Construction, and this subcommittee, so I find myself floating back and forth.

I wanted to be here, Madam Commissioner, because Donald Radcliffe, your man in Hawaii, has been very helpful to us and I wanted to express my gratitude to your staff in Honolulu. As you know, Honolulu is one of the major ports of entry for the United States, and as a result, we have a lot of business and your staff in Hawaii has been extremely helpful, cooperative, and very patient with us. So I wanted to come by to thank you personally.

I have questions, Mr. Chairman, on your activities with the Commonwealth of the Northern Mariana Islands. You are having a joint effort there to teach them how to set up a system. I just wanted to know what the status was, and second, on your immigrant investor visa program. These are technical questions. If I may, I would like to submit them.

Ms. MEISSNER. Thank you. Thank you. We will be happy to respond.

Senator INOUYE. Thank you very much, Mr. Chairman.

Ms. MEISSNER. And thank you for bringing that compliment.

Senator INOUYE. It makes it easier for you.

Ms. MEISSNER. Well, we have lots of very, very good people and they do a very good job.

Senator INOUYE. Mr. Radcliffe is a good man.

Ms. MEISSNER. Thank you. I will pass that on to him.

INS PROBLEMS IN ALASKA

Senator GREGG. Thank you, Senator.

It is the tradition in this committee, anyway, to recognize the chairman of the full committee on his arrival.

Senator STEVENS. You are very courteous and I thank you very much. We have six subcommittees meeting at the same time this morning.

I do have some questions I would like to submit for the record, but I just want to comment along with them that it does seem to

me that we have an inordinate number of INS problems coming up in Alaska. I think we are suddenly becoming a destination for a lot more immigrant people and it is very difficult for us to handle with a small population base. I would hope that you would review these questions that I am going to submit about the number of people that are in Alaska to handle INS-type issues, and I would like to discuss it with you at some time if we could. Thank you very much for your courtesy.

Ms. MEISSNER. I would be happy to do that. I will be in touch with you.

Senator GREGG. Senator Hutchison.

BORDER PATROL AGENTS IN BUDGET REQUEST

Senator HUTCHISON. Thank you very much, Mr. Chairman. I appreciate what Senator Kyl was saying as I came in. I had another hearing, as well, and I want to say how much I appreciate the chairman of the subcommittee not only holding this hearing but standing strong for the Border Patrol and the number of agents that we have had in the past.

Let me take us back to 1997, when it was the first year after we had authorized 1,000 new Border Patrol agents per year and the Justice Department and INS came in asking for only 500 after we had authorized 1,000. The same argument was made 2 years ago that we needed to take a breather because we had so many new agents. This was a time when the border in Texas was a sieve. There were literally ranchers walking into their front yards in the morning and seeing people with AK–47s crossing their lawns and they were defenseless.

After you and I and Janet Reno talked about this along with Sylvester Reyes and Senator Gramm and others, I give you credit because you came in and said, OK, we will go along with the 1,000 after the subcommittee forced the issue. You have increased it by 1,000 for 2 years, although, of course, this year, as you have said, there are recruiting problems.

But what is troubling, and I think that the chart that Senator Kyl has shows much of the problem, is that the theory for the Border Patrol as outlined by General Reno and yourself was to start in California, which was the biggest trouble spot, and try to do the full treatment for California, and then after California came under control, you moved to Arizona and gave full treatment to Arizona. And then the next was New Mexico, which is very closely tied to Texas because there is really only one small New Mexico station and a lot of New Mexico is covered in El Paso.

When we started talking in 1997, Texas still did not have as many Border Patrol agents as California, even though Texas has 1,200 miles and California has 400. But you said, now is the time to start dealing with Texas. So we come in and we start beefing up Texas. We got, thanks to Senator Gregg and Senator Hollings, we were able to get 666 of the first 1,000 and then 500, so that we began to start building.

So you can imagine the disappointment that we felt when we were just beginning to come into some improving situations to see this year's budget with zero. I very much appreciate your answer, which was direct, which I know is tough for you, and that is that

you asked for 1,000, that you were keeping your word, that you were staying with the strategy and it got cut out at a higher level, and so you are being a good soldier, as you must be.

But the fact of the matter is that your original decision was the right one, because we still have huge problems along the Texas border which are not just Texas problems. Those cartels, two of the major ones come right through Texas and they go to New Hampshire and they go to South Carolina and they go to Chicago right from those two cartels.

Senator GREGG. It is too cold in New Hampshire.

Senator HUTCHISON. Well, I know you have no problems in New Hampshire, but I promise you, if we do not increase Border Patrol agents, you will.

So we have got this problem that we are just beginning to see an improvement occurring and all of a sudden, we stop. So I want to say that the line that is being given, that we need a breather, is not the answer. The answer is to continue the strategy because it is not yet finished. You cannot stop at California, Arizona, New Mexico, and then halfway do Texas, which is the largest border, and finish the strategy so that we really do see some results.

Let me finish one other point, and that is General McCaffrey has said that the United States needs 20,000 in the Border Patrol force. We are at 8,000 now, so we are by no means anywhere close to what he says, and also, he is based by a University of Texas study performed by the Center for U.S.-Mexico Border and Migration Research, which says that more than 16,000 agents would be required to stop illegal immigration and drug flows across the Southwest border.

So we are about a third of the way there. I want to ask you if you will help us if this committee does push for the full 1,000 for the next 3 years for this strategy, to go where you say the problems are, recruitment and training, and help us finish the strategy that you started, which cannot be stopped midway.

Ms. MEISSNER. I will continue to work with the subcommittee on this in every way, collectively and individually. I have very much appreciated your willingness to work with me on this as a joint effort because it takes that kind of partnership.

Let me reiterate the very, very strong abiding commitment that we have to the strategy. We believe that it works. We believe that it is a long-term responsible response and we want to continue with it. We can continue with it.

In addition to that, we are ourselves looking very carefully now at what the sort of end game number there is for the size of the Border Patrol. Numbers have been put out, as you have cited. General McCaffrey has a number. The Texas study cites a number. Each of them have weaknesses in the way that they were derived.

We are looking now virtually station by station across the border at what the optimum number is, given the technology and the equipment that balances and gives tools to the agents. We think we will have that number in the coming round of budget discussions. It is a very careful look at what the best investment is, but it is for certain that we are not there yet. We would absolutely agree with you.

So what I want to impart is that we most certainly will work with the Congress on this in this and subsequent budgets. We are very committed to the continuation over the long term of the strategy that we have put into place, and adjusting it as needed based on the experience that we have along the way. And finally, we hope to be able to bring you our best analysis, as well, of what the ultimate costs and investments here are needed in order to get the control that we all want to have.

Senator HUTCHISON. Mr. Chairman, you have been very patient. Do I have time for a follow-up, or would you like to go forward?

Senator GREGG. Go ahead. I have not asked any questions yet, but I have some on this exact point, so why do you not do your follow-up questions.

NUMBER OF BORDER PATROL AGENTS

Senator HUTCHISON. Let me just say that under any circumstances, can you see that there would be fewer than 11,000, which is what we already have in our 5-year plan, that would be necessary for a full contingent? UT says 16,000. General McCaffrey says 20,000. Our 5-year plan says 11,000. Can you foresee that it could ever be under 11,000 with the problems that we are facing?

Ms. MEISSNER. Well, I have not really looked carefully—or it is not ready for me to look at yet, the analysis that our people are working on. I do know that we need more. I think I would rather reserve judgment on an exact number, but we certainly do need more, and once we have implemented the 1999 funding, we will be at 9,000, so we will be getting close to 11,000. I know we need more. How much more, I would rather not say right now because I do not know.

THREE TIER SYSTEM FOR BORDER CONTROL

Senator HUTCHISON. Well, let me just say this. In a 1,200-mile border, we are not going to have the density that they have in California and Arizona. We understand that. But I also want to just put out a red flag on the issue of equipment being any kind of a substitute for people, because while it is helpful and while we are going to have to have that in 1,200 miles, nevertheless, when someone calls because the infrared shows that there are crossings on the border 25 miles away, the chances of actually getting there in real time are not terrific.

So I would like to ask you to be looking at the three-tier system, where you have your border agents and you do not stop there. You have the second tier that catches the ones that fall through the cracks or perhaps the 25-mile trek that you have got to take because you see it on the infrared, and then the third inland port that is going to catch the next wave. That is what has worked in California and I would like to see you in the continuation of the strategy start putting that in key parts of Texas, as well.

Mr. Chairman, I thank you for your patience and for your leadership. I do not think it has to be said that you have been a statesman on this issue. New Hampshire does not have the problem of illegal immigration that Texas does, but you have nevertheless remained very firm that this is an issue that we must address for all of America and I appreciate it.

PROBLEMS RECRUITING BORDER PATROL AGENTS

Senator GREGG. Thank you, Senator.

Let me follow up on this issue, and there are a lot of other issues I want to discuss with you, Commissioner, but on this specific issue, we are not just talking lack of people. We are talking attracting people into the service. You have had a significant problem filling the 1,000, primarily because of pay, I presume. Is the entry-level pay about $24,000?

Ms. MEISSNER. The entry-level pay for the Border Patrol is GS–5, and it is in the mid-20s.

Senator GREGG. Is it correct to state that we are having trouble recruiting people to fill the 1,000 slots?

Ms. MEISSNER. We are coming against issues this year that we have not experienced in past years. We have, as I said earlier, been very aggressive and very successful in our hiring and recruiting over the last 4 years. We have met our goals. We have put the management into place.

Senator GREGG. What are the issues this year?

Ms. MEISSNER. But this year, those same methods are not yielding the results that we have wanted.

Senator GREGG. Why?

Ms. MEISSNER. For a variety of reasons. The first reason is a government-wide experience that is taking place in the military and in other law enforcement agencies, as it is in ours. It is the labor market, the low unemployment and the difficulty of competition in this labor market.

The second reason, we think, is that we are probably the most difficult in our requirements. We are the only Federal agency that requires a foreign language, and that is Spanish. We train in that foreign language and people must pass in order to ultimately make it to the field. That language requirement, along with the length that it requires in training to get that language requirement met, sets us at a different level from other government agencies. We have the longest training, 19 weeks for the Border Patrol, of any of the Federal law enforcement agencies.

We also are finding that we are having many more problems with the people that make it through the initial test. In other words, we have almost half of our people right now, this year, who have their background investigation for security clearances or their medical suitability on hold because of problems. We are absolutely not going to change our standards and not going to lower our standards, but most likely a high proportion of those people actually will not make it through. Based on the thousands that we start out with, we are getting less actual yield at the end of the hiring process.

And then, finally, there is the issue of pay. In our grade structure, although people start typically at the same grade levels that they do in other law enforcement agencies, the level to which you can advance in the Border Patrol is not as high a grade level as it is in some other occupations. So if given choices, they will often go with where they have a better opportunity.

We are addressing that. We have had a very careful review of our grade structure and of our pay structure underway for some

while. We are discussing within the administration the results of that review and hope to be talking with the Congress about that in the future.

Senator GREGG. Do we give any sort of extra compensation as a result of requiring a second language?

Ms. MEISSNER. We do not.

EQUIPMENT PROBLEMS

Senator GREGG. Also, do we not have significant equipment problems, with just the physical equipment? I understand we only have 4 percent of the pocket scopes, we have 22 percent of the goggles, 28 percent of the fiber optics, 4 percent of the hand-held search lights, 12 percent of the infrared scopes, 2 percent of the global positioning receivers, and only 4 percent of the vehicle infrared cameras.

Ms. MEISSNER. I think that the numbers that you are citing are from a technology report that we submitted to the Congress at the Congress' request, and it shows what in an ideal world would be the equipment that we would have. So we certainly are not in an ideal situation.

Senator GREGG. At current spending levels, when would you be able to fill up these shortfalls?

Ms. MEISSNER. Well, I think what we have to look at is the incredible increases in equipment and technology that have come in. We have in the last 5 years increased our number of scopes ten times. They are the single most valued piece of equipment by our Border Patrol, and I am sure Senator Kyl and Senator Hutchison, when you go out, that is validated by the agency. It certainly is when I talk to them. We have more than doubled our sensor capacity along the entire Southwest border, so there has been a tremendous investment in that and that now will be hooked up to computers so that they can automatically follow that.

Senator GREGG. I know what we have done. What I want to know is what is the lead time to get to the point where we have adequate equipment in the hands of the agents and adequate technology on the border to support the agents. What is the lead time?

Ms. MEISSNER. I would say that there is, of course, a lead time where procurement is concerned because these are all procurement items, but that procurement is working very, very well. We have been able to meet our deadlines and our procurement costs. We have built into all of our budget requests very substantial equipment increases. I think we are building up at a very, very aggressive rate. Could we do more? Could we do it faster? Yes, we could, but that is always the issue of proportion with the numbers of personnel.

SCOPES

Senator GREGG. Let us take a specific item. Let us take scopes. What is the projected time frame within which the Department expects that every agent on the border will have an adequate support in the area of scopes?

Ms. MEISSNER. Well, the scopes are very big pieces of equipment and they are very expensive. They are somewhere around $50,000 each, so we are talking about a very, very substantial outlay. Our

ideal on the number of scopes is in the technology report that we have provided. I am not going to pick out the column here because I might get the wrong one, but we could probably—in 5 years, we have increased our scopes by ten times. We could probably do that again to good effect because the scopes are such a force multiplier for our agents. I think probably the best thing for me to do on that is to follow up and give you precisely what we think we can accomplish in the next couple of years optimally.

Senator GREGG. Yes. I think what I would like is first, a statement of what you need in order to have the full complement of equipment and technology on the borders, and then a time frame within which acquisition of that should be made, anticipating technology changes, and the cost so that we could as a committee be able to see just what you need, when you are going to need it, and how much it is going to cost us to fund it.

Ms. MEISSNER. We can do that work and I would be happy to provide it. I would also add that the $50 million that is in this budget for 2000 is a very aggressive technology infusion of cutting-edge technology that will very dramatically expand the effectiveness of the people that are currently out there.

CONSTRUCTION BACKLOG

Senator GREGG. Is there not also a large backlog, multiple hundreds of millions of dollars in backlog, in construction?

Ms. MEISSNER. That is correct. Construction is the most difficult thing to accomplish at the rate that we bring personnel in, with the rates that we have been bringing them in with the funding that you have provided in the last 4 years. We have a substantial construction backlog. This budget asks for $48 million to work away at that backlog. It will not clear that backlog in construction.

Senator GREGG. Is not the backlog almost $500 million?

Ms. MEISSNER. Let me validate that number, but it is a substantial amount in addition to the money that we have asked for in 2000 and it is necessary in order to house and give proper facilities to the agents that are already on staff, as well as to repair deteriorating facilities that are currently in our inventory.

Senator GREGG. At a $48 million a year request, you are talking 10 years before we get the backlog that presently exists, not including the backlog that is going to be added to it by a result of more agents being added, are you not? I mean, this is an underfunded account, along with the number of agents.

Ms. MEISSNER. It is, and these are all balancing decisions that need to be made about what is the best way to move the whole effort forward as aggressively as possible but still keep a balance with all of the support needs and equipment and in construction that are required for this force.

PROBLEM WITH BUDGET REQUEST

Senator GREGG. This is the problem I see with this budget as it was presented, and it was not necessarily your doing. In fact, I suspect it was not your doing at all. In fact, it was done over at OMB.

We received a budget from the White House that underfunded the agents by 1,000 agents from what the law required be done. It underfunded the equipment the agents need who are already in the

field to do the job of protecting the border. It underfunded the construction accounts significantly, so that the borders, which are a primary responsibility of the Federal Government—is there anybody else who is responsible for the border besides the Federal Government? I mean, it is our responsibility, right?

Ms. MEISSNER. That is correct.

Senator GREGG. We cannot kick this one over to Texas or Arizona or New Hampshire.

Ms. MEISSNER. It is a Federal responsibility.

Senator GREGG. The borders are our responsibility. We are grossly underfunding our responsibility to the effect that we get 49,000 people crossing the border in Arizona who are caught. That does not count the number who are not caught and the drugs and everything else that comes across the border illegally.

At the same time that this primary responsibility of law enforcement of the Federal Government is being grossly underfunded by this administration, we get from the administration a request for $600 million for a new program, essentially a new program, and that is the 21st century policing program to effectively replace the COPS program. The original understanding of the COPS program was that we were going to put 100,000 cops on the street. We have done that. We paid for that and we did it. We are up to 92,000, and we will be at 100,000 pretty soon.

This administration, with its press conference approach to law enforcement, held a press conference and said, we are going to increase this number from 100,000 to 150,000, and then they sent us up this request which took $600 million and put it into the COPS program, which was not originally planned, which is an add-on, which is essentially a new COPS program on top of the COPS program which was successful and has been completed. Where did they get that $600 million is my question as chairman of this committee? Where did they find that $600 million?

Well, I think I know where they found it. They found it in your accounts. They took the money out of the Border Patrol, which is our responsibility, and a number of other things, to say the least. They took it out of LEA, and they took it out of Byrne grants, and they put it into the 21st century policing program.

You are not the person to ask this question to, but I asked the question of the administration: What is the responsibility of the Federal Government? Is it to defend the borders or is it to put a police officer on the street in Epping, New Hampshire? I happen to think it is to defend the borders. If the town of Epping wants a new police officer, that is great, but that is the town of Epping's decision. Just because this administration wants to wander around the countryside putting out press releases in every town that they deliver police officers to is not an excuse for eviscerating our attempts to bring the Border Patrol up to speed.

So this is not a statement directed to you, Commissioner, because you actually supported it in the budget which was responsible, I suspect, to the OMB, and then it got savaged. But that is what happened. I mean, when my friends from the border ask, where are the agents? Where is the equipment? Where is the construction? Well, it is in a press release that Al Gore is putting out in New Hampshire when he shows up and says, I got you 20 more police

officers in this town I just visited because I am trying to run for election. That is what is happening. It is that simple.

DETENTION BED SPACE

Moving on to another topic, because I think we have reached the point of no return on that topic, is the detention bed space issue which is tied into the Border Patrol. I should have mentioned this in where the money came from for the 21st century policing program. We estimate that there is a $165 million shortfall in detention bed space numbers as was presented in this budget. Is that an accurate estimate?

Ms. MEISSNER. In the fiscal year 2000 budget, there is a shortfall in detention given the mandatory detention requirements and given the costs that we now see.

Senator GREGG. Is $165 million about right?

Ms. MEISSNER. We are working on this issue right now in terms of the 2000 budget. As the Attorney General, I think, told you, she has been in communication with OMB Director Jack Lew, and we are working on a series of management issues, and we are working with OMB on what the funding mechanisms might be. So I would reserve judgment on the actual number, but the number is a substantial number.

Senator GREGG. Well, we know it is a substantial number, and we think it is $165 million. We know you are going to have to come to this committee and ask for money because you have got to retain these people under the law. So where are you going to find the offsets in your account as we move through this next budget cycle, this next funding cycle, to pay for this account where it is underfunded? I mean, it is underfunded. It has to be paid for.

This reminds me a lot of what I used to get when I was Governor [of New Hampshire]. Departments would send me their budgets and they would underfund things like health care for people who they already had on board, you know, the premiums that we had to pay. Then they would spend it on something else. In your case, you probably did not spend it on anything else. But I would know that I had to find that money sometime during the year because they were going to come to me with a request. They were going to say, we have got to pay the health bill.

Well, I know at some point during this year you are going to come to me and say, we have got this number of aliens that we have to detain, and it is going to cost this amount of money. We knew this at the beginning of the year, but we underfunded the account. So rather than going through that exercise 3 or 4 months from now or 6 months from now, why do you not tell us right now where you are going to find the offset?

Ms. MEISSNER. I cannot answer you today on where the offsets will be. What I can tell you is that we are working very intensively on this within the administration with OMB in order to address it. I also must say that in the case of detention, the growth in detention, too, has been an extraordinary growth supported by the subcommittee, over 140 percent growth in staffing and in space.

Solving the detention problem is both a question of money and a question of management, and where the questions of management are concerned, the INS has some very concentrated work un-

derway to be certain that people coming into our bed space are only the ones that need to come into our facilities. We are doing as much as we possibly can with States to deport people from State institutions when they have completed their sentences. We have done some very good overhauling of our own procedures and will continue to do so during this year so that the pressure on our facilities is truly from the cases that must come into our custody.

We will be coming back to the subcommittee, as you have suggested, and we will come back as soon as we possibly can with our analysis of needs, the offsets, and the management improvements that we have underway.

Senator GREGG. Well, that is important, because if you do not, we will, and I am not going to underfund this account. My reaction is that if I have to find money for this, it is going to come from the administrative accounts both at your Department and at the Attorney General's level. So I can assure you that nobody is going to be happy about that. So I suggest you come up with the money first, suggest to us where you are going to get the offsets, rather than us coming up with it, because our priorities will be much less attractive than yours.

Ms. MEISSNER. That is the effort we are making, and just if I could loop back for one moment on the construction issue. The construction backlog as we calculate it at the present time is about $150 million.

Senator GREGG. I may have the wrong numbers here. That is new construction. We have a one-time backlog of building out of $180 million on top of that and then a backlog in repair and alterations of $191 million.

Ms. MEISSNER. The repair and alterations are an additional element.

Senator GREGG. In fact, if I add up all the Border Patrol areas where we are underfunded, another 1,000 agents would cost us $100 million. Backlog, I guess is an issue, but my estimates are it is somewhere around $400 to $500 million. Detention is around $165 million, and the equipment could be anywhere from $100 million plus. So we get to the $600 million that went to new police officers and press releases pretty quickly.

UTILIZATION OF STATE FACILITIES

Senator HUTCHISON. Could I ask a question just on that point?

Senator GREGG. Yes.

Senator HUTCHISON. On the detention issue, are you fully utilizing State facilities where you could pay a per diem rather than building facilities or finding bricks and mortar?

Ms. MEISSNER. Absolutely. Actually, the vast share of the growth in our detention capacity has been in using State and local facilities, and that is particularly the case in Texas, where we have a strong, broad network of relationships with prison authorities in order to buy that space.

Senator HUTCHISON. Well, good, because the last thing we ought to be doing is making huge brick and mortar Federal prison investments for alien criminals that eventually are going to, hopefully, be eliminated when we have enough Border Patrol agents to keep illegal immigrants out.

Ms. MEISSNER. I mean, we have been expanding INS facilities, as well, but most of the funding has gone into that space that we have bought from others.

Senator HUTCHISON. Thank you for letting me jump in there.

Senator GREGG. I am going to move on to nationalization issues. Do you have any more questions you want to direct on the Border Patrol question?

SCAAP FUNDING

Senator KYL. Mr. Chairman, I just, on this last point, would note that my figures here under the SCAAP funding, which was funded at $500 million in 1996, States and localities were reimbursed 60 cents on the dollar for incarceration of illegal criminal aliens in our State and local prisons and jails. In 1998, with $585 million, with the additional people, we were reimbursed 39 cents on the dollar. It is estimated that the criminal incarceration of illegal aliens cost States and localities a total of $1.7 billion in 1998, my own State, $38 million, and it was reimbursed $15 million.

Senator GREGG. You may be interested to know that another account that this administration zeroed out was the State-side prison construction funds, which I think includes SCAAP money.

Senator KYL. Well, SCAAP actually is only funded in the budget, as I understand it, to $500 million, even though you put in for the last 2 years at $585 million.

Senator GREGG. $740 million for prison grants was eliminated by the administration when they sent up their budget.

Senator KYL. I appreciate your pointing out the problem of adding funds to programs that are not Federal responsibilities and taking the money away from programs that have a unique Federal responsibility, and I appreciate your attention to that matter.

Senator GREGG. Does anybody else have anything before we move on?

Senator HUTCHISON. One other question. I would like to ask if the Commissioner would submit the budget that she submitted to the OMB to the committee.

Ms. MEISSNER. I will certainly inquire whether I can do that and I certainly will if that is cleared.

Senator HUTCHISON. I would assume that is public information or subject to public information.

Ms. MEISSNER. I will follow up and find out.

Senator GREGG. I presume it will be submitted.

[CLERK'S NOTE.—The information was submitted to the Committee as requested.]

CITIZENSHIP USA COSTS

Senator GREGG. There is a large backlog in naturalization. Before we get into that, though, have we figured out how much Citizenship USA has cost us in order to try to correct that problem?

Ms. MEISSNER. We can provide that information to you. We are continuing to deal with those cases that have required revocation and those cases are all moving forward.

Senator GREGG. Of the 7,000, approximately, felons who received citizenship, how many of them have had their citizenship revoked?

Ms. MEISSNER. Well, there are actually far fewer than that number that were clearly naturalized improperly and those are the first target of revocation.

Senator GREGG. How many is that number, by your estimate, if it is not 7,000? I thought it was 7,000, but——

Ms. MEISSNER. It is actually about 300 cases that were clearly improperly granted. There are, in addition to that, about 6,000 cases where there were misstatements made by the alien about the criminal record, which we did not catch as a result of the background check not being completed.

Senator GREGG. I guess that is where the number must come from. Of the 6,300, then, how many have had their citizenship——

Ms. MEISSNER. They are all in various stages of citizenship revocation. I do not have it with me right now, but I can provide the subcommittee with the records on that.

Senator GREGG. I would like to know that, and I would like to know how much it has cost us.

Ms. MEISSNER. We can calculate that.

[The information follows:]

On July 21, 1997, the INS began reviewing approximately 7,000 cases for potential administrative revocation of naturalization. The projected cost of the revocation process associated with Citizenship USA activities through fiscal year 1999 is $9,550,954.

Prior to July 9, 1998, the date of the preliminary injunction in *Gorbach* v. *Reno*, the INS had issued final decisions administratively revoking naturalization in 27 cases. Sixteen of these cases were identified in the Service's audits of Citizenship USA cases. The other eleven cases were identified from sources other than the Citizenship USA audits. Since July 9, 1998, the Service has been precluded by the injunction from administratively revoking naturalization.

NATURALIZATION BACKLOGS

Senator GREGG. Now, on the naturalization side, how close are you coming to your targets, in your estimate, of where you want to be on naturalization?

Ms. MEISSNER. We have put together a 2-year effort at reducing this naturalization case backlog. Two years to get to timeliness, in other words, being able to process naturalization cases within the 6-month time period that we believe is legitimate, from beginning to end. This year, we hope and have set the goal of adjudicating 1.2 million applications. We are somewhat short in the first quarter of being able to meet that goal. However, we have held and will continue to hold to the goal because of the various changes that we are making this year in order to reach it.

The most important thing, I think, about the production is that the new staffing which the subcommittee provided in the last appropriation is currently in the process of being hired. Those personnel, by and large, arrive in our offices, both adjudicators and clerical staff, in March and April, fully in April, so that their productivity is going to then be available to us in the latter part of the year.

We are finding problems, again, with this labor market, resulting in very high turnover with the term slots that we have for naturalization. We believe that we have a solution to the problem. We believe that if we can bring that solution into place with those term

adjudicators, we will be able to reduce the attrition and the training costs that go with that.

We are also with naturalization in the midst of an entire conversion to computer-based processing for naturalization. That conversion is a massive effort which is not easy to do and which necessarily or inevitably brings with it some difficulties. We are managing our way through those difficulties. That conversion is taking place at the same time that we are handling this record caseload and have set very high performance targets for our managers and for ourselves.

So what I would say to the subcommittee, bottom line, is that we expect to complete 1.2 million cases this year. We have a great deal of work to do in order to be able to achieve that. We have set out the targets and we have the conversions to automated processes taking place in a way that is working through a series of problems as systematically as we can. We are doing that on a base of having installed entirely new integrity procedures so that we can be sure that the process is sound, that the proper people are being naturalized, the improper ones are not being naturalized, and also on a base of having entirely redesigned the fingerprint process that led to the problems we experienced. All of that fingerprint process is working. We have 120 or more new fingerprint sites in place. Our rejections of fingerprints have dropped from what was running around 45 to 50 percent to less than 5 percent. So there is a very steady record of progress here, but we need to stick with it because it is a very big job.

Senator GREGG. Well, it is, and obviously, at least for the first 3 months, you are well behind the 1.2 million, but I guess what you are saying is you are going to be able to get up to the 100,000 a month level fairly soon.

Ms. MEISSNER. That is what we are committed to doing. We are working this extremely hard. We have a lot of people focused on it and we are dealing with it virtually on an office-by-office basis, particularly in our large offices, because there are five offices that account for literally half of this caseload.

QUALITY ASSURANCE

Senator GREGG. I do think it is important that you continue to stress, as you have just said, that you do not reduce quality of the review in order to try to get the 100,000.

Ms. MEISSNER. The quality assurance here is a very, very high standard of review. Our people are paying very close attention to it. It is the foundation of it all and we insist on that, and we are monitoring that very closely. I mean, we have internal auditing capabilities that are constantly checking that and reviewing it to be certain it is functioning the way it should.

Senator GREGG. I know you are going to keep the committee posted on your progress on that, on the numbers, on a monthly basis.

Ms. MEISSNER. That is correct.

UNDERESTIMATION IN DETENTION

Senator GREGG. When we went through the supplemental, we suggested a series of offsets to pay for the $80 million needed to

take care of the underestimation in detention, representing $65 million, and your Department sent out a memo which was broadly circulated and in this memo there are a number of statements made relative to the offsets we suggested.

One of the statements was this cut would force the INS to stop recruitment, hiring, training—I guess they dropped the "to", so I will put in the "to"—this cut would force the INS to stop recruitment, hiring, training of 1,000 new Border Patrol agents as well as those needed to keep pace with attrition. This would result in a net decrease in the Border Patrol agents' strength. It is unlikely that this fact could be kept from the illegal immigrant community, so an increase in land border violations and drug smuggling would be expected. This was from our $45 million decision. We were going to basically destroy the border.

Then the further statement was made that the INS would have to forgo or stop work on many of the improvements planned for this year, including the National Records Center in Missouri, and the Telephone Center in Kentucky. In addition, INS may also have to reduce the number of contractors who support and facilitate various aspects of processing. That was because of the $25 million decision on the naturalization side.

The INS is in the process of leasing negotiations with the National Records Center in Lees Summit, Missouri. INS will not be able to move forward with the establishment of the records center if the resources are rescinded. The National Records Center is an essential component of the reengineering of the naturalization program.

So the rescissions which we proposed, $45 million on the Border Patrol account, which I think is a $2 billion account, and $25 million on the INS account, on the naturalization account, which is probably about $1 billion, we are going to destroy both agencies, as a memo from your office reflected, sent out by fax to, I suspect, all news agencies and certainly all members of the Southwestern border States.

I will tell you this. I found this to be one of the most insulting things that I have seen in my career in government. It was an attempt to hyperbole a situation. It was an attempt to basically throw gasoline on a minor match in order to burn down the building in order to make a claim. It was not good governance, and it certainly reflected an agency which, in my opinion, has serious management issues if it cannot handle those types of offsets in a more comprehensive and constructive way. I would be happy to hear your thoughts on this memo.

Ms. MEISSNER. Well, Mr. Chairman, I must tell you that I did not see the memo before it went, although I certainly take responsibility for what takes place in the agency.

Senator GREGG. Well, where did it go from? What division of your agency put this out?

Ms. MEISSNER. My understanding is that it was information requested within the administration. I am not certain how it was transmitted.

Senator GREGG. It is entitled, "Talking points on the impact of rescinding $65 million from the INS 1999 appropriation," and it does not come from OMB, which would be an OMB-type memo. It

comes from a fax machine at the Immigration and Naturalization Service.

Ms. MEISSNER. Well, I am sure that it came from that fax machine. I think what I would like to tell you is that there has since been a letter that you and Senator Hollings have sent on this issue. We have developed a response to that memo, which I believe we will be able to transmit today. It goes through in detail attempting to analyze what the impact of the rescission would be.

I think that the rescission proposal is a proposal which would create serious difficulties for INS because it would not be against our entire budget. If one does take the $65 million as against $4 billion, it seems to be manageable. But given the accounts and the way that our accounts are set up, there are certain accounts that would not be able, for proper reasons, to be subject to this offset and, therefore, a much higher percentage of difficulty would come about as a result of that amount of money against the pool that would be available for rescission.

We do have, I think, a very carefully developed impact statement, if one would want to call it that, for you that explains the accounts that would be available for a rescission action. They would cut into salaries and expenses in areas such as inspections and in some of the areas that are supporting our naturalization work. I do recognize that these are decisions ultimately that the Congress will make, but we will try to inform you as dispassionately as we can of what it would mean for us.

Senator GREGG. Well, they really are not decisions Congress should have to make. The point is, that is the way it should be done. It should be done dispassionately and with objectivity. The point is, we knew this $80 million in detention underfunding had occurred. You knew this a long time before the crisis arose, just like we know the $165 million, which is our estimate of what the underfunding of detention is for next budget, is going to occur.

So there should have been from your office and from the administration an offset. There was not. There was a stonewall on offsets from this administration on this issue. So we had to come up with the offsets here.

Now, I am perfectly happy to offset it in other areas of your accounts. You tell us where you want it offset and we will use the accounts that you think are going to make the most sense for running the agency. That is the way it should be done. It should not be done by sending out inflammatory statements like this. It should not be done by us unilaterally doing it. It should rather be done by the administration acknowledging that they underestimated this account. Regrettably, they have underestimated again, so we are going to go through this exercise again, it appears, in the next budget unless we can get offsets and get it straightened out earlier.

But either way, we need your input as versus having us doing it unilaterally, and we need it to be something other than a letter that says that we are about to burn down the building.

Ms. MEISSNER. Let me, on the issue and on the need, tell you that, apparently, the information that you are talking about was requested by subcommittee members. I do not know which subcommittee members and it was provided through our Congressional

Relations Office and I am apologetic for the way in which it was written. But we will certainly want to work with the subcommittee on the proper way to do this if an offset is required.

HURRICANE

In the detention budget for this year we do have a very important need in relation to the hurricane. The hurricane situation was one that obviously could not be anticipated. That effect of staying deportations of people from Central America for several months has created a real difficulty for us in our detention resources and that has converged, of course, with the requirement for mandatory detention of criminals which created a planning issue for the INS that was not fully covered in this year's funding.

So I do appreciate your willingness to work with us on this overall. We would, of course, hope that this is a situation that is able to be resolved without offsets.

Senator GREGG. Well, there will be offsets. This Congress is going to offset this spending. It is not an emergency. This hurricane argument really does not hold a whole lot of weight. So there will be offsets.

Ms. MEISSNER. Well, we will work with the committee and we will try to work together with you to identify what would be the best approach.

ADDITIONAL COMMITTEE QUESTIONS

Senator GREGG. I think that is important, and it is going to be important that we anticipate next year's problem with the shortfalls and specifically detention. We will try to come up with some money in that account. Somehow, we have to make sure that we do not have this issue again next year.

Ms. MEISSNER. I will do everything that I can to assure that.

[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 TED STEVENS

NEW OFFICE IN KODIAK, AK

Question. At my request, Chairman Gregg and Senator Hollings included language in the fiscal year 1999 Senate Report directing the INS to open a new office in Kodiak to serve the growing immigrant population there. I am advised by the Alaska District Office that it has not followed this congressional directive because it lacks the $25,000 necessary to do so. However, your office has advised this subcommittee that the money would be made available. I would appreciate your taking whatever action is necessary to get the funds transferred to Alaska so that the office can be opened before the fishing season begins, which generates much of the INS caseload in Kodiak.

Answer. The Kodiak office space and start-up costs have been fully funded. An expedited space request was sent to the General Service Administration (GSA) on March 9, 1999. The GSA expects that the INS office in Kodiak will be fully staffed and in service prior to the end of this fiscal year. The proposed office space request includes 1,488 sq/ft and 2 parking spaces to house one full time employee and 2 intermittent (circuit ride) employees from the Anchorage office.

REPORT ON OFFICE SPACE NEEDS IN ANCHORAGE, FAIRBANKS, AND JUNEAU, AK

Question. Office space seems to be an increasing problem for the INS in Alaska with space shortages in Anchorage, Fairbanks, and Juneau. Would you please re-

view the space requirements of those offices and report back to me on what is needed to address the work space needs in those communities?

Answer.

Juneau International Airport

Current Staff	2
Projected fiscal year 2001 Staff	[1] 2

[1] If workload does not change.

Canadian flights are being encouraged to increase air traffic into Juneau and, if this occurs, additional inspections staff may be required subject to any projected workload increases.

Current Inspections space in the airport is 300 sq/ft, plus a counter where the inspector can stand to check passengers. Current off-site Inspections office space consists of 100 sq/ft co-located within 900 sq/ft of space leased by the U.S. Customs Service.

Requirements: A total of 605 sq/ft is required in the Juneau airport facility. In addition to the existing 300 sq/ft, 80 sq/ft is required for an interview room, an additional 100 sq/ft is needed for a holding room, and an additional 125 sq/ft is needed for an Inspections office.

An increase in Canadian flights into Juneau will require an increase of approximately 200 sq/ft for the waiting area for inspections.

Fairbanks International Airport

Current Staff	1
Projected fiscal year 2001 Staff	2

Current Inspections space in the Fairbanks airport is 2,400 sq/ft of space, and is rated to hold 50 passengers at one time. There are four inspection lanes.

Requirements: In addition to the existing 2,400 sq/ft of space, additional space is required for an interview room (80 sq/ft), a holding room (100 sq/ft), and for Inspections office space (125 sq/ft); totaling 2,705 sq/ft.

Anchorage International Airport

Current Staff	17
Projected Fiscal Year 2001 Staff	18

Current Inspections space in the FIS facility is 3,204 sq/ft.

Requirements: In Anchorage airport, space for four inspection booths having a total processing capacity of approximately 400 passengers/hr., plus an administrative space requirements of 3,335 sq/ft (offices, conference rooms, equipment, general and secure storage); secondary inspection space (2,775 sq/ft) (supervisors office, passenger waiting/processing, Alien Documentation Identification Telecommunication (ADIT) lab, interview rooms, search room, juvenile detention area, male & female detention rooms); and a support functions requirement of 1,900 sq/ft (training room/lunch/break room, male/female locker rooms, locker facilities and showers) are all required. This totals to approximately 8,010 square feet.

REPORT ON HOUSING REQUIREMENTS FOR THE ALCAN PORT-OF-ENTRY

Question. Housing costs in remote communities in Alaska are often astronomical. It is almost impossible to attract top caliber personnel to man federal facilities when there is no adequate housing for their families. The INS staff at Alcan Port-of-Entry (POE), at one of only four road entries into Alaska, has quadrupled since the INS housing was built there, so there is a long waiting list for adequate housing. I request that you have your staff examine the housing requirements for the Alcan POE and report back to this subcommittee on what would be required to provide adequate employee housing in the area.

Answer. The extremely remote location, the increase in staffing, and the need to accommodate families at the Alcan Port-of-Entry (POE) requires the INS to provide additional residential facilities to house the inspectors and their families. Although the INS currently discourages families with school age children from locating at Alcan, it is prudent to provide residential units that are adequately sized to accommodate families. At a minimum, housing units should include three bedrooms and an attached single-car garage. Because of the harsh winter environment, which can last over half of the year, and the remoteness of the Alcan facility, extension of the tunnel system to the new residential units should also be considered. Construction quality is also very important. It is very expensive to build in remote locations, with

construction seasons very limited because of harsh weather conditions, but it is even more expensive to repair buildings that are/were not originally built to withstand extreme environmental conditions. The first set of duplex housing (1971) is extremely well constructed. The second set of housing units constructed in the 1980s, which were not designed or built to stand up to the environmental conditions, are failing. Any new housing should be of the quality of the original design, or better. It is important that the garage is heated and that there is adequate space for long-term food storage.

Adding new residential units, whether individual structures, a triplex, or a fourplex, will require ground preparation and utility extension work before construction can begin. Given the relatively short period of favorable weather for construction, considerable attention and coordination needs to take place to ensure that on-site construction activity begins at the earliest possible date. Ongoing coordination of delivery of building materials will be necessary to ensure that delays are avoided and construction can be accomplished within the minimum possible length of time. Design review prior to construction needs to determine that existing utilities can be extended to and meet the requirements of the added capacity demand.

The INS submitted its Request for Space to GSA for two housing units in November 1997. The request included two houses of approximately 1,530 square feet each, including a heated garage. The INS submitted a signed 10-year Occupancy Agreement to GSA for the two Alcan housing units in October 1998. The GSA indicated in a letter to INS, dated March 15, 1999, that they are not able to commit funds to the Alcan project at this time. We will attempt to obtain funding for construction in the fiscal year 2001 budget process.

ADDITIONAL POSITION IN ANCHORAGE, AK

Question. My office generates a tremendous amount of casework for the INS office in Anchorage. I receive hundreds of requests for INS assistance from Alaskans each year. The workload from visa requests for foreign adoptions alone is staggering. The Director of the INS office in Anchorage has cheerfully taken the time to issue the visas for these children. I've had the good fortune to see personally how these Romanian, Russian, Korean, Chinese and other foreign babies thrive once they arrive in the arms of loving Alaskan parents. In fact, many of my staff have adopted children from overseas and prevailed on Robert Eddy to help them get the necessary visas when the call comes that a baby is available and waiting. All Alaskans would appreciate an additional position in Anchorage to handle the tremendous caseload.

Answer. The Anchorage District Office remains one of INS's most productive offices, having completed more cases in recent years than actually received. Currently, the Anchorage District has four permanent District Adjudications Officers (DAO), one permanent Application Support Center (ASC) Manager, one permanent Quality Assurance (QA) Analyst and one temporary clerical position authorized, representing 0.37 percent of the total INS adjudication program positions. With respect to overall workload, the Anchorage District has received a total of 4,004 applications since fiscal year 1998, representing 0.12 percent of the INS total receipts. During this same period, the District completed 4,147 cases. These workload figures highlighted the fact that the Anchorage District is adequately staffed in proportion to its workload. In terms of its current I–600: Petition to Classify Orphan as Immediate Relative; I–600A; Application for Advance Processing of Orphan Petition; and N–643; Application for Citizenship on Behalf of Adopted Child workload, the Anchorage District has received a consistent level of application receipts for each document type. Moreover, Anchorage has completed on average over the past 18 months, 82 percent of all such applications received. Workload indicators will continue to be monitored and should additional resources become available, the needs of the Anchorage District will be evaluated in relation to all other INS district workload factors to determine if an enhancement in personnel resources is justified.

QUESTIONS SUBMITTED BY SENATOR DANIEL K. INOUYE

IDENT SYSTEM

Question. For several years, the INS has been working with the government of the Commonwealth of the Northern Mariana Islands (CNMI) to develop a more effective immigration system.

Please provide a status report on this joint effort, including what mechanisms and technology are being used to keep track of immigrants to the CNMI.

Answer. The CNMI Labor and Immigration Department is currently utilizing the Labor and Immigration Identification and Documentation System (LIIDS) program.

The INS provided assistance in the development of LIIDS, which provides work permits to immigrant workers.

Question. The CNMI has expressed interest in acquiring an IDENT system, as used by the INS, to document the arrival and departure of immigrants to the CNMI. Does the INS support this effort and, if so, what is the INS doing to facilitate it?

Answer. The INS has been talking with senior CNMI officials about the creation of an entry-exit control system and training issues related to the introduction of such a system. IDENT is an element in those discussions, but there has been no decision yet as to whether it is the best and most cost-effective approach to entry-exit control in the CNMI.

IMMIGRANT INVESTOR VISA (EB–5) PROGRAM

Question. The INS has focused on the issue of "at risk" investments using standards which are not customary in normal business transactions or in the major international and U.S. financial markets. Why is the INS not able to rely on the "at risk" standards of the Internal Revenue Service which has long experience and expertise in dealing with this issue?

Answer. The INS analysis of whether an investment has been placed "at risk" is entirely consistent with customary standards. A transaction or arrangement in which there is no realistic possibility that the investor will lose money on the investment does not place that investment "at risk," under either INS or Internal Revenue Service standards.

Question. If an investor can show that it has actually invested $500,000 or $1 million in the United States, placed the investment at risk, and created 10 direct or indirect jobs, why is the INS relying on complicated analyses which are not related to the primary intent of the EB–5 statutes to delay or prevent the immigration of the alien?

Answer. In adjudicating EB–5 petitions to obtain conditional lawful permanent resident status, or to remove conditions, the INS's sole purpose is to ensure that the investors have met the requirements established by the relevant provisions of the Immigration and Nationality Act and by the implementing regulations. Relevant criteria for making these determinations include: whether the petitioners have invested the statutorily required amount of capital; whether the petitioners own and have lawfully obtained the capital which they are investing; whether the petitioners have established a new commercial enterprise or engaged in an enterprise permitted by the applicable law; and whether the new commercial enterprise created by the applicant has generated the statutorily required amount of employment.

The INS has not imposed burdens on petitioners other than those necessary to establish their eligibility for the immigration benefits they seek.

Question. Assuming the INS can resolve the backlog of EB–5 cases by March 31, 1999, what is the targeted adjudication time for EB–5 cases at the Service Centers?

Answer. The INS targeted adjudication time for EB–5 cases at the Service Centers is 60 days.

Question. What specific guidelines did the INS rely on to adjudicate EB–5 cases prior to December 1997? Why has the INS used inconsistent field memoranda, memorandum decisions and internal policy guidelines instead of the formal rule making process to set the standards of adjudication? When does the INS anticipate promulgating new rules for the EB–5 program?

Answer. Both before and after December 1997, INS has relied upon the applicable provisions of the Immigration and Nationality Act and the implementing regulations as the framework for EB–5 adjudication. As is typical in any agency adjudicative process, legal and policy questions regarding proper interpretation of the statute and regulations, either generally or with respect to particular cases, have arisen from time to time, and have been addressed by policy memoranda, legal opinions, or by non-precedent or precedent decisions from the INS Administrative Appeals Office (AAO) in cases under adjudication, as appropriate for the particular issue or case. As the EB–5 program evolved, the INS learned from its experience with the program, and as a result clarified its positions with respect to certain issues. In particular, the INS Office of General Counsel clarified in detail in December 1997 its legal interpretation of a variety of questions of statutory compliance raised by a number of petitions, concluding that certain business arrangements did not comply with the law. In addition, several precedent decisions issued by the AAO during the summer of 1998 determined whether certain petitions containing such business arrangements met the requirements of the law, and concluded that they did not. The AAO relied solely on the language of the statute and regulations in adjudicating these petitions. The INS has concluded that improved regulations regarding the requirements for EB–5 petitions will assist petitioners in complying with the law, and

the INS is currently in the process of drafting them. At this time, INS is unable to state with certainty when those regulations will be promulgated.

Question. The INS has questioned investors regarding the relation of the investments to the issue of export thus making the State of Hawaii certifications meaningless. While the EB–5 statutes permit the use of economic studies to prove indirect job creation, the INS still requires proof of the creation of 10 direct jobs. The State of Hawaii is unique as an island state which is primarily based on tourism as an export. It appears the INS is applying standard rules of export which go against the intent of the statutes and may affect only manufacturing states on the mainland. The foreign tourist who brings monies to Hawaii and spends for goods and services is equivalent to a mainland factory which ships its products to a foreign country and gets paid. In both cases, a U.S. made good is purchased with foreign monies. Why does the INS continue to question whether the investments are export-related when the entire State of Hawaii is designated as a regional center and certifies qualifying projects?

Answer. With respect to investments in regional centers, the INS does not require evidence of direct job creation. However, the fact that a petitioner has invested in a regional center does not relieve the petitioner from producing evidence that the new commercial enterprise which he or she established is responsible, either directly or indirectly, for the creation of at least ten positions. The INS must adjudicate each individual petition on its own merits regardless of whether or not it falls within a regional center.

The INS continues to question whether certain investments in Hawaii are export related because, regardless of Hawaii's status as a regional center, individual investments by petitioners in Hawaii must still meet the legal requirements of the EB–5 program. Hawaii's designation as a regional center simply means that EB–5 petitioners in the State of Hawaii and certified under the Hawaii regional center program may establish a job creation requirement by showing indirect job creation through export-related activity rather than by showing direct job creation. As noted above, INS is responsible for adjudicating all EB–5 petitions, regardless of whether they involve a regional center and must therefore examine each petition individually to determine if it meets the legal requirements.

Question. In implementing the Immigrant Investor Visa Program (EB–5 Program), the Immigration and Naturalization Service (INS) set forth a position (8 C.F.R. 204.6(m)(7)) that the investor can provide indirect job creation only by showing revenues generated from increased exports rather than relying on the broader stated intent of the statute (106 STAT. 1828) for the "promotion of economic growth." Please explain the inconsistency between the expressed statement and the intent of the statute and the implementing regulation and practice of the INS. Will the INS amend said regulation to clarify this discrepancy between the statute and the implementing regulation?

Answer. There is no inconsistency between the statute (section 610 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1993, Public Law 102–295, 106 Stat. 1874 (Oct. 6, 1992)) and the regulations at 8 C.F.R. § 204.6 as they relate to the requirement that regional centers promote exports. The statute specifies that the pilot program "shall involve a regional center in the United States for the promotion of economic growth, *including increased export sales*, improved regional productivity, job creation, *and* increased domestic capital investment" (emphasis added). Furthermore, the section 610(c) clearly directs that the agency should permit petitioners "to establish reasonable methodologies for determining the number of jobs created by the pilot program, including such jobs which are estimated to have been created indirectly through revenues *generated from increased exports resulting from the pilot program*" (emphasis added). Section 610(c) makes it clear that the "indirect job creation" option applies only to export-related jobs and not to the other goals of the pilot program. INS followed the text. In its April 15, 1994, final rule, the INS responded to the single commenter on the rule by confirming its interpretation of the statute as specifically requiring that the investment in the regional center create jobs through increased exports.

The INS has no specific plans to amend section 204.6 of the regulations to take a contrary position, but in the course of any future rule making on the Immigrant Investor Pilot Program, the INS will consider the concerns that have been raised about the export-related requirements of that program, and examine possible regulatory changes to the extent they are consistent with the guiding statute.

QUESTIONS SUBMITTED BY SENATOR FRANK R. LAUTENBERG

LAUTENBERG AMENDMENT IMPLEMENTATION

Question. Several groups which settle refugees in the U.S. have brought to my attention Embassy Moscow's steadily decreasing approval rate for refugee status for Jews and other persecuted religious groups. This is happening at a time when anti-Semitism in Russia is tragically again on the rise. Could you explain the basis for this decline in approving refugee status under the Lautenberg Amendment?

Answer. We have been watching with concern, reports of the recent resurgence of anti-Semitism in Russia and other countries in the former Soviet Union as well as new restrictions on the practice of certain Protestant faiths. The Office of International Affairs in INS Headquarters and the Moscow office have been actively exchanging such reports. Our refugee adjudicators in Moscow have been instructed to give careful consideration to current country conditions in evaluating refugee claims.

Since January 1999, we have noted a significant rise in refugee approval rates in Moscow, which we believe is in direct correlation to the deteriorating country conditions for some Jews and Evangelical Christians. (Note: new applicants for refugee status reach the INS interview stage three or four months after submitting their preliminary applications to the Washington Processing Center. Accordingly, those applicants who applied for the refugee program as a direct consequence of the backlash against religious minorities following the collapse of the ruble, were first seen by INS in January.)

NEWARK INS OFFICE

Question. On April 16, 1998, roof repair workers found asbestos on the 16th floor of the INS office in Newark, New Jersey. Employees were evacuated and the entire floor, including the records room was quarantined. This added to an already considerable backlog in processing green card and citizenship applications.

Why did the clean up process not begin until January 20, 1999, nine months after the problem was identified?

Answer. The INS Newark District Office lost access to the files on June 1, 1998, due to asbestos contamination. After consulting with experts in the field, it was determined that this was a unique problem with no precedent. A committee was formed to develop a protocol to clean the 400,000 plus files. The committee members were representatives of U.S. Public Health Service (USPHS), the Environmental Protection Agency (EPA), the INS and the General Services Administration (GSA). EPA had regulatory oversight authority and approved the clean up plan in August 1998. Subsequently, GSA sent out the contract for bid and they awarded it on September 23, 1998. Contract employees were then subject to Department of Justice security clearance requirements because they would be handling A-files. This was completed and the contractor began in December 1998 to build the necessary clean rooms and take other measures for the asbestos cleanup. Work on cleaning the A-files began on January 20, 1999.

Question. Thus far, only about half of the files in Newark's 16th floor records room have been cleaned and transferred to examination and adjudications units. When will the rest of the files be available for processing, and when will the cleanup be completed?

Answer. The Newark District Office completed cleaning all of the contaminated files in the 16th floor records room and transferred them to a reconstructed file room in another location. This major project was completed before the end of May 1999. The files are now fully available for use by district office personnel.

Question. INS District Director Andrea Quarantillo has worked hard to move delayed cases along, but more needs to be done. What measures are you undertaking to expedite applications for which the records were inaccessible? How will you ensure that applicants are not disadvantaged by these delays?

Answer. Throughout this project, the District has maintained lists of files that are needed on a priority basis. The specific files came as referrals from Community Based Organizations, the American Immigration Lawyers Association, Congressional offices, from all branches of the Newark District Office and from other INS offices.

As the Newark District Office gains access to files, these files will be located and action to complete the pending application or Service initiative will be taken. Additionally, there were a large number of naturalization applications that were in this area and that have been identified, cleaned and are now accessible. These applications are currently being processed and will be interviewed on a priority schedule as soon as all preliminary clearances are completed.

QUESTIONS SUBMITTED BY SENATOR PATRICK J. LEAHY

INS REORGANIZATION

Question. It is my understanding that the Immigration and Naturalization Service (INS) is preparing a Reorganization Strategy for the INS. As I mentioned at the hearing, you worked closely in the past with Congress on the reorganization of the Administrative Centers where the INS felt is was necessary to centralize responsibilities. According to your staff, the preliminary reorganization plan will propose a decentralization of responsibilities from the Regional Operations Centers. If this is the case, why has INS chosen to centralize the Administrative centers but decentralize operations functions?

How will the reorganization affect responsibilities, services and personnel levels at the Regional Operations Centers? Will INS include in the cost to implement this proposal?

Answer. In April 1998, the Administration announced its intention to pursue fundamental structural change in INS to provide improved performance and increased results for those who depend on the Nation's immigration system. The new proposal, described in the document, Framework for Change, would restructure INS immigration services and enforcement functions into two separate chains of command, yet retain these functions within one agency to provide the coherence needed to effectively administer U.S. immigration laws.

The INS Restructuring Team is currently finishing a design proposal that provides information about this new structure for the agency. This proposal will be provided to members of Congress and their staffs for discussion in June 1999. At that time, we will be pleased to discuss the impact of the proposal on all INS offices and clarify why the proposal should not be categorized as a decentralization of operations.

Information requested on the specific impact on positions in each office and the cost to complete the restructuring will be available once detailed planning is completed.

It is important to note that the restructuring under consideration would have minimal impact on the approximately 1,400 employees (including contractors) in Vermont. Where there are changes in office mission, existing offices will receive priority consideration for the new functions. This approach will keep costs to a minimum and also reduce the impact on employees. In addition to the offices currently located in Vermont, the National Debt Management Center (located in the new LESC building) in Williston will continue to enhance the INS's presence in Vermont.

The Restructuring Team has kept employees informed about restructuring events through several different communication methods. In response to specific questions about the impact on employees, a set of guidelines, Restructuring Human Resources Principles, was developed and distributed in December 1998 and again in January 1999 These principles outline the INS's commitment to its employees to minimize the impact on the individual while optimizing the operation of the agency as a whole.

DETENTION OF VETERANS

Question. As a result of the IIRIRA of 1996, many legal permanent residents, including those who have served in the U.S. armed forces are being subjected to mandatory detention and mandatory deportation for past convictions. I have heard of such cases involving veterans who suffered permanent physical and psychological injury during active combat duty in Vietnam and the Gulf War. Some of these veterans have been living in this country for decades, and have U.S. citizen children and grandchildren. They now face detention and deportation for as few as one conviction, incurred years ago, for which they spent little or no time in prison. Do you believe this is an appropriate and efficient use of the INS's budget resources?

Answer. The Immigration and Nationality Act does not provide specific language or exceptions for veterans in its provisions on the removal and detention of persons convicted of aggravated felonies. However, a District Director has the authority to consider the merits of an individual case in deciding whether to proceed with removal proceedings. Once the criminal alien is placed in proceedings, the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) provides local District Directors with no discretion to release him if he is subject to mandatory detention despite any individual merits of the case. However, while not a frequent occurrence, a detained person who served honorably in the U.S. armed forces could request the District Director's discretion for release, and his military service would be considered as a positive or favorable equity provided that he is not subject to mandatory detention by law.

Question. Do you have any objection to District Directors granting deferred action to veterans?

Answer. Notwithstanding the impact of the mandatory detention provisions of IIRIRA on District Directors' discretion regarding the detention of aliens, they do have latitude in their discretion whether to institute or continue removal proceedings (i.e., prosecutorial discretion). In cases where the underlying conviction was comparatively minor, occurred many years in the past and stands alone, District Directors may exercise their discretion not to pursue removal and to grant deferred action. Ideally, each case should be considered on its individual merits as well as the potential risk to the community as a whole. In a case where the District Director has determined that it is appropriate to pursue an alien's removal despite any equities in the case, the INS must detain the person if required by statute. Even if detention is not required by statute, it is still proper for the INS to hold the person in custody if he presents a threat to the community or is a flight risk.

These forms of prosecutorial discretion are not ideal to address the kind of situation you describe. The Department and the INS would like to work with Congress to restore the Attorney General's statutory discretion to release from custody low-risk aliens who have been lawfully admitted to the United States and to grant relief from removal to long-term lawful permanent residents with relatively minor criminal convictions.

Question. In the past, the INS operations instructions provided additional review procedures and protections for veterans who have served this country. What procedures has the INS substituted for the rescinded operations instructions to review the cases of veterans so that they are not routinely subjected to mandatory detention and deportation?

Answer. Specifically the INS develops Operation Instructions to address special circumstances that are not covered in Title 8 Code of Federal Regulations. Presently, the Immigration and Naturalization Service has promulgated Interim Enforcement Procedures. Interim Enforcement Procedure Number V(D)(8) requires approval from the Regional Director prior to issuing a notice to appear against any current or former member of the armed forces. At this time, there are no regulations or operating instructions relating to the detention or deportation of veterans.

Question. It is my understanding that two district courts have recently ruled that mandatory detention is unconstitutional, including a case which involved a Vietnam veteran who grew up in Oregon (*Van Eeton* v. *Beebe*). What if anything is the INS doing to ensure that veterans and others are not being unconstitutionally detained?

Answer. Two federal district courts have ruled recently that mandatory detention under Section 236(c)(1) of the Immigration and Nationality Act is unconstitutional. In one case, *Martinez* v. *Greene*, a federal judge in Colorado ruled in December 1998 that "due process requires an individualized consideration of whether each alien detained pursuant to Section 236(c)(1) presents a flight risk and a threat to the community's safety." Three of the aliens in that specific case were lawful permanent residents who were deportable based upon convictions for aggravated felonies, and the fourth was a lawful permanent resident with a firearms conviction.

The second case, *Van Eeton* v. *Beebe*, was decided by a federal judge in Portland, Oregon, in February 1999. In that case, the alien was, in fact, a veteran, but also an aggravated felon, with both drug and firearms convictions. However, the judge made no mention of the alien's veteran status during the hearing. The judge stated that he agreed with the reasoning in *Martinez* v. *Greene* (above) and ordered a bail hearing. At the bail hearing, the alien was ordered released on $5,000 bond, under the additional conditions that he possess no firearms, illegal weapons, or drugs.

However, other courts have disagreed with the decisions of the courts in these cases. Most recently, the Seventh Circuit Court of Appeals, ruled in *Parra* v. *Perryman* that Section 236(c) is not unconstitutional.

LAW ENFORCEMENT SUPPORT CENTER

Question. The Law Enforcement Support Center (LESC) has become a valuable enforcement tool for local law enforcement agencies throughout the country to identify criminal illegal aliens. INS has continued to expand the number of local law enforcement agencies and states, which are linked to the LESC through the National Law Enforcement Telecommunications System (NLETS). What states are currently linked to the LESC and what is the timetable to complete links with all 50 states?

Answer. The following 26 states are currently linked to the LESC: California; Arizona; Utah; Colorado; Wyoming; Texas; South Dakota; Nebraska; Iowa; Kansas; Illinois; Missouri; Ohio; Kentucky; Tennessee; Georgia; Florida; North Carolina; Alabama; West Virginia; Maine; New Hampshire; Vermont; Connecticut; Massachu-

setts; and Hawaii. The LESC plans on establishing the electronic link with the other 24 states this fiscal year, with the states providing the funding through NLETS. Although the Center will not have staffing to conduct training in all states or process queries from all states, the electronic link will be established.

Question. How much did INS request for the LESC in fiscal year 2000 and what does that translate into additional linkages with states? How many personnel will be required to handle the expected additional inquiries from the new linkages?

Answer. The fiscal year 2000 Budget did not request additional funding for the LESC. The fiscal year 2000 Budget includes a request for 25 positions and $1.262 million to be used for the data entry of qualifying records into the National Crime Information Center (NCIC) at the field level.

Question. What is the number of queries that the LESC has received over the past year? Please list a month by month tally and if possible, the number of queries by state and number of criminal aliens identified.

Answer. The total number of queries received from law enforcement agencies for the period of March 1998 to February 1999, by month, is as follows:

Month	*Total Queries*
March 1998	8,509
April	8,188
May	8,643
June	7,741
July	6,962
August	7,237
September	8,023
October	11,132
November	13,024
December	14,290
January 1999	25,584
February	36,926

The LESC's FBI Rapsheet Unit began operations in August 1998. Queries related to rapsheets have significantly increased monthly workload totals since that time.

The number of queries received from Law Enforcement Agencies for the period of March 1998 to February 1999, by state, as well as the number of prior deportations and aggravated felons is identified as follows:

State	Total	Prior Deportations	Aggravated Felonies
Arizona	23,691	1,998	2,174
California	23,462	1,894	2,483
Colorado	125	20	17
District of Columbia	131	12	8
Florida	35,119	521	3,679
Georgia	1,372	37	57
Iowa	1,377	99	130
Kansas	782	42	45
Kentucky	41	.....	.....
Massachusetts	1,932	72	413
Missouri	29	.....	1
Nebraska	698	44	66
New Hampshire	10	.....	.....
New Jersey	36	25	30
Pennsylvania	43	1	7
Texas	882	73	100
Utah	1,392	79	91
Virginia	20	4	11
Vermont	78	2	2
West Virginia	527	67	37
Related to the Brady Bill	91,747	4,990	9,351

Note.—Numbers from states where the LESC is not yet available statewide reflect queries from federal agencies who send a text message, as our message screen is not yet formatted and available in those states. The National Crime Information Center (NCIC) state codes are used rather than postal service codes.

Question. Are there other queries that the LESC conducts which are not prompted by local law enforcement agencies? For example, in the past the LESC has provided assistance to states with regard to prison populations? Please provide a list of these projects and the number of queries involved as well as the number of criminal aliens identified.

Answer. The following is a list of special projects completed by the LESC during the preceding calendar year. Not all statistics are available for every project.

Date	Project	Total	Prior Deportations	Aggravated Felonies
1/98	INS 340 Project (no data available)	.....	.....	.....
2/98	GAO IHP Follow-up	7,017	.....	.....
3/98	DFF/NCIC Boston Revalidation	.....	.....	.....
7/98	Florida Department of Law Enforcement Sexual Predators Project	690	17	179
9/98	INS SFR Domestic Violence/Sexual Predator Project	44	.....	.....
10/98	Boston Probation Project (no data available)	.....	.....	.....
10/98	Huntsville IHP	491	290	.....
10/98	California Department of Corrections	900	.....	.....
11/98	BOS OIG Project (no data available)	.....	.....	.....
11/98	Miami Project—Suspension of Deportation Conditional Grants [1]	1,200	.....	.....
12/98	RNACS FBI Fingerprint Project BOS/ERO	5,556	.....	.....
12/98	California I–213 Project	622	.....	.....
2/99	BOS INV/BOS PD	200	.....	.....
3/99	Los Angeles County Jail Admission Analysis	200	.....	.....
	TOTAL	11,468	.....	.....

[1] The total (1,200) represents a 10 percent criminal hit rate.

Question. The current LESC tracking system is "named" based. Has the INS considered upgrading the LESC system to include fingerprint search capability? Would a fingerprint search capability improve the capability to identify criminal illegal aliens?

Answer. The INS has considered upgrading the LESC system to include a fingerprint search capability. A true automated fingerprint identification system would improve INS's ability to identify criminal aliens. Based on joint efforts of the Department of Justice, the INS and the FBI, this capability will eventually be provided through the FBI's Integrated Automated Fingerprint Information System (IAFIS).

QUESTIONS SUBMITTED BY SENATOR JON KYL

INEXPERIENCED WORKFORCE ISSUE

Question. Commissioner Meissner, in my conversations with Border Patrol Chiefs Association President Ron Sanders and other chiefs, none of them agree with your assessment that we should take a "time out" from hiring additional Border Patrol agents in the year 2000. They say there are no widespread problems as a result of newer agents being on the line. I understand there is little statistical relationship between the experience of a Border Patrol agent and the number of disciplinary problems (205 agents were disciplined in 1998) reported to INS from Border Patrol.

Will you please provide to my office the number of years experience of each agent who was disciplined in 1998? If there is little statistical relationship, isn't the problem one of training? What evidence do you have that the expert opinion of current and former Border Patrol chiefs is inaccurate? If none, then why not provide funding for more agents?

Answer. Our current personnel data system does not allow us to track disciplinary actions in conjunction with years of service as a Border Patrol Agent. However, let me emphasize that our concerns about the extremely rapid influx of new agents are far broader than conduct meriting formal disciplinary action. Rather, our broader concerns relate to our ability as an institution to assimilate this extremely large proportion of inexperienced officers. The current rapid influx is placing a severe strain on the ability of the system to orient, train, guide, evaluate and otherwise support such a high proportion of new officers. Not only is there an unprecedented

high proportion of unseasoned Border Patrol Agents in the field, but the level of experience of the first-line supervisors we rely on to mentor and guide those agents is concomitantly much lower than ever before. These factors involve inherent risks that are likely to manifest themselves in results much broader than any disciplinary statistics. Judgments made by law enforcement officers who lack sufficient experience may not necessarily constitute misconduct, but they can still have tragic results for the officers and others. We take our responsibilities for these matters seriously and, while we value the advice of the Border Patrol Chiefs Association, we have received considerable feedback from within the organization indicating serious concerns over matters related to assimilation of these new agents. We don't want to overemphasize these problems, but neither do we believe that they should be ignored.

Question. Former U.S. Border Patrol chief and current Representative Silvestre Reyes (TX-D) has information indicating that many sectors do not have close to 39 percent of agents with two or less years experience, as you estimate. In fact, in the Tucson sector, 80 percent of the agents have two or more years experience and 100 percent of the agents in Miami and New Orleans have two or more years experience.

Why not train and deploy to areas with these ratios and where there is a need? (Tucson, Arizona)?

Answer. A further review of personnel staffing information for the Tucson Sector indicates that as of March 27, 1999, almost 40 percent of the Border Patrol Agents on-board have two years or less experience. Overall, on that date, approximately 35 percent of all Border Patrol Agents stationed on the Southwest border had two years of job experience or less.

Our agent deployment strategy is an extension of our border control strategy; new agents are assigned to locations with the highest level of illegal entry. Assigning new agents based on the average experience level of the receiving location would slow the progress of our border control strategy.

The fiscal year 1999 deployment plan does provide for an additional 350 agents to be assigned to the Tucson Sector, and 50 new agents for the Yuma Sector in Arizona. The Border Patrol recognizes that there are many stations throughout the country with higher years of experience levels; however, the Patrol must deploy as its first priority to the station locations which are experiencing the greatest need for additional resources to counter the highest levels of illegal entry activity. The placement of inexperienced agents in locations that have high levels of experienced agents will be an ineffective use of the additional agents if the focus of the deployment does not significantly contribute towards the goal of gaining control of illegal immigration along the entire southern border.

Question. What type of supervisory training does INS employ?

Answer. In March 1996, the INS established the Leadership Development Center (LDC) in Dallas, Texas. The LDC was established to address the supervisory and managerial training needs of the INS. With the growing ranks of new supervisory positions created by retirements and the hiring initiative, it was deemed imperative that fundamental training be made available to individuals who face new supervisory responsibilities. The Center currently offers twelve courses in management and supervision.

The LDC has also been actively working with Headquarters Border Patrol for the past year to develop a technical module to complement the core curriculum for first-line Border Patrol supervisors. The core curriculum focuses on skills for first-time supervisors such as diversity, preventing sexual harassment, labor relations, discipline, performance counseling, communication, developing effective teams, motivating others and stress management.

Question. Is the problem that you don't have a good field training component in your program?

Answer. No. Larger sectors along the Southwest border (i.e., San Diego Sector) have a Field Training Officer (FTO) program in place. This program served as a model for the 1998 initiative for a Western Region FTO program for all Border Patrol Sectors in that region. Sectors in the Central Region currently have, or are planning to implement, FTO programs.

The INS Training staff have recently completed an evaluation of the San Diego FTO program, and FTO programs of State and local law enforcement agencies for the purpose of implementing a national FTO program.

Question. Who are the law enforcement analysts and experts who say that a workforce with more than 30, or is it 40, percent of its troops with less than two years experience is dangerous? Any who say 20 percent is too many? With attrition at 1,000 per year, how can we keep up unless we deploy at least 1,000 per year?

Answer. The International Association of Chiefs of Police (IACP) was asked to conduct a study on Border Patrol growth in 1995. The IACP, in the position paper, which they submitted to the Border Patrol, cautioned that a workforce with too many inexperienced officers and supervisors could pose serious risk. In its discussion of hiring options the IACP stated: "[this option] would create a core in which almost 30 percent of members have no experience. This seems to pose unacceptable risks." We are not aware of any experts citing that a workforce with 20 percent of its members having less than two years experience is dangerous.

The rate of attrition of our Border Patrol Agents had definitely had a negative impact on INS meeting the staffing goals it had hoped to achieve. For fiscal year 1999, while 503 new Border Patrol Agents had entered duty as of April 10, during the same period Border Patrol lost 444 agents, resulting in a net gain of 59 agents.

INEXPERIENCED AGENT AND RECRUITMENT ISSUES

Question. In the President's weekly radio address, he said he is deeply concerned by questionable shootings by urban police departments, and is requesting $20 million to fund police ethics and training at all 30 Justice Department policing institutes, rather than at just two of them. He has also asked for $20 million for scholarships for police officers and $5 million to expand "citizen police academies." The Administration's budget requests $600 million in fiscal year 2000 to add "30,000 to 50,000" new police officers over the next five years.

Why couldn't we do this for INS and Customs inspectors and agents? They are a federal responsibility, while local police are state and local responsibilities.

Answer. While we are not in the position to address all of the concerns you have expressed, we can assure you that basic training for INS employees in our officer corps and related occupations, at both the Border Patrol and Immigration Officer Academies, emphasizes discipline, integrity, professionalism, and judgement, as well as technical skills and firearms training. Advanced training conducted at the academy in Artesia, New Mexico, also contains instruction on ethics and integrity, as well as firearms training.

Question. If the logic follows, should President Clinton and Ms. Reno suggest we "take a time out" on helping to hire new police officers? President Clinton has not proposed that, on the contrary, he has requested additional funding for more police and for more training. How do you reconcile the discrepancy in the two positions.

Answer. By advancing community policing and helping communities put additional officers on the street, the Community Oriented Policing Service program has contributed to the lowest crime rate in a quarter of a century. However, crime is still too high. We need to continue to add officers to the beat, particularly in the areas that have not benefitted from the recent drop in crime.

Question. With regard to recruiting, are you doing so in logical locations, such as San Diego, Phoenix, Tucson? Have you thought of requesting money for a 1–800 number for Border Patrol? Have you thought about asking for money to target public service ads for areas such as San Diego? If you are having a problem recruiting, why didn't you include funding in the budget for more recruiting? How could your existing recruiting efforts be improved? Will you please provide a summary of your recruiting program to Chairman Judd Gregg and the rest of the Appropriations Committee?

Answer. The INS has developed a strong, effective hiring and recruiting program that has met ambitious Border Patrol hiring goals in recent years. However, with the strong economy and very low unemployment rate, applicants have multiple job opportunities. The military and other law enforcement agencies are also experiencing significant recruitment problems similar to INS. Because of this labor market and the sheer numbers needed, one approach or a specific labor market will not give us the number of hires needed.

The National Recruitment Program (NRP) staff has focused efforts on increasing public awareness of job opportunities in the Border Patrol. There is often little public awareness of the Border Patrol occupation outside of the Southwest border states. We hope to increase awareness of job opportunities in the Border Patrol in the rest of the United States, as well as continuing our efforts in the Southwest Border states. Using this approach, we hope to attract well-qualified and diverse candidates.

We have continued our efforts in the home states of our successful recruiting efforts, based on our tracking information. We track all of our ads with a predetermined code to determine which ads draw candidates. We are also tracking the colleges our new agents graduate from, the college majors they pursued, their hometowns and the magazines they read. All of this information helps us to better understand where we need to build awareness of the Border Patrol, and where we cur-

rently have a strong awareness and some recruiting success. The five states that most of our Border Patrol agent applicants come from are California, Texas, New York, Arizona and Florida.

In fiscal year 1999, concentrated hiring events were held in El Paso, Tucson, and the New York metro area. Additionally, over the last year (April 1998 to April 1999) we have placed advertisements for Border Patrol jobs in Tucson and San Diego. For Tucson, we did a media blitz in December placing the Border Patrol ad in 8 major newspapers on two weekends in both the classified and sports sections, and ads in 2 minority targeted publications and 2 military base papers. All papers selected were within a 400 mile radius of Tucson. We also aired a radio ad 14 times on 2 Tucson stations. Additionally, we placed a 4-Color Display ad in the Arizona Highway Patrolman in their March 1999 issue and in the Tucson Star Citizen on March 21, 1999, in a general media blitz. In San Diego, ads appeared on April 11 and 18 in nine major newspapers within a 400 mile radius of San Diego. Additionally, the INS recruits at military bases, colleges and universities in or near San Diego, Phoenix and Tucson.

In fiscal year 1999, the NRP will participate in 200 events including job fairs, career days, employer workshops, transitioning military seminars, classroom presentations, conference exhibits and community events (fairs, festivals, Native American celebrations, etc.).

The INS is actively recruiting on college campuses. We plan to recruit at 120 key colleges based on student demographics and/or law enforcement curriculum. The INS has already participated in 4 interactive student events (Campus Fests—sponsored by Sports Illustrated attracting thousands of students from all academic disciplines) on college campuses this year. We are not hiring as many applicants who substitute experience for college education; more and more of our new hires are college graduates who can meet our rigorous hiring standards. Also, the INS will target recruitment efforts at key military bases identified by installation population and the number of separations each month; and 40 identified organizations based on the mission and target audience of the organization.

New Border Patrol classified and display ads have been developed and placed in hundreds of newspapers (classified and sports sections), college placement manuals, Black Collegian and Newsweek magazines (metro NYC edition) and a wide variety of other journals and magazines. In addition, we routinely fax job vacancy flyers to campus career planning and placement offices, criminal justice faculty, military base transition offices, and INS offices nationwide.

The INS created a Border Patrol Careers Website and is starting to increase Internet advertising with links to this website. In fiscal year 1998, nearly 50 percent of our applicants applied to take the Border Patrol test on line and 50 percent used the TAPS phone system. This year, the number of those applying over the Internet has increased to 70 percent. Internet application is quicker, less expensive, and more pleasant for the applicant than the telephone process. It is also less expensive for us than the TAPS line or a 1–800 number to apply for testing. We are, however, in the process of establishing a 1–800 job information line in the National Hiring Center in Twin Cities. We expect it to be in use in approximately one month. We also started a direct mail campaign to separating military service members through use of the Department of Defense (DOD) Transition Bulletin Board and Defense Outplacement Referral Service (DORS). As of April 14, we will have job postings on the following Internet recruitment sites: Tribal College Journal; College Grad Hunt; Job Web; Monster Board; America's Job Bank; Excite Career Network; Federal Jobs Digest; Great Outdoor Recreation; Cool Works; Black Voices, and Diversity Career Fair. The time they remain posted varies from site to site. This is just a beginning as we hope to expand this in the near future.

Through May 31, we have spent approximately $750,000 on Border Patrol recruitment and advertising. As a result, we have tripled the number of campus visits from last year, doubled the number of military visits, and placed nearly as many ads as all of last year. However, we have attracted slightly fewer applicants. In fiscal year 1998 through April 30, 1998, we had 27,600 applicants. This fiscal year through April 30, we have had 27,400 applicants. As a result, we are significantly increasing our recruitment efforts by earmarking an additional $2.2 million for the following initiatives:

Up to 200 Border Patrol Agents will be identified as recruiters. They will focus their recruitment efforts on local college campuses, military bases and other recruitment events. They will be backed up by an extensive ad campaign. Recruiter training is scheduled to be on June 28.

Compressed testing started on May 20 in San Diego and will be expanded to six other sites over the next two months. Sites include Tucson, El Paso, McAllen, San Antonio, Buffalo, and New York City. Compressed testing will allow applicants to

receive immediate test results and could reduce the total hiring process to as little as two months.

A 1–800 job information line has been created. The job information line provides recorded information on a variety of Border patrol subjects. It also allows an applicant to have information faxed to him or her. Finally, applicants can speak directly with a hiring representative for further information. We are averaging 50 calls per day and the volume is growing daily.

In addition, public service announcements will be developed. Finally, we plan to enhance our Internet website by making it interactive, allowing applicants to ask questions to a Border Patrol Agent on line.

Question. As you know, we just raised salary levels for our military personnel. What is the current GS grade level for a first year Border Patrol agent? What are your views on raising the salary level for Border Patrol agents? Benefits?

Answer. The entry level for Border Patrol Agents is at the GS–05 and GS–07 levels. Providing the same percentage increases to both military members and Federal civilian employees would have positive effects on Border Patrol starting salaries. The following chart shows average compensation for Border Patrol Agents projected for fiscal year 1999.

AVERAGE COMPENSATION FOR BORDER PATROL AGENTS PROJECTED FOR FISCAL YEAR 1999

GRADE	BASE SALARY	AUO	OTHER OVERTIME (Includes FLSA)	TOTAL
05	$27,220	$1,845	$1,386	$30,451
07	30,901	7,019	4,611	42,531
09	35,937	8,914	6,229	51,080
11	44,873	11,089	7,117	63,079

NOTES:

AUO: Administratively Uncontrollable Overtime. An annual premium pay equal to 10–25 percent of base salary payable to employees in positions, the duties of which cannot be controlled administratively, and which require substantial amounts of irregular or occasional overtime work with the employee generally being responsible for recognizing, without supervision, circumstances which require the employee to remain on duty.

FLSA: Fair Labor Standards Act. Provides that employees covered by the provisions of the Act are to be paid time and one-half for all overtime hours above a specified standard.

Agents enter at grades GS–05/07.

Journey level grade for Border Patrol Agents is GS–09.

Agents entering at the GS–05 level are promoted to GS–07 in 6 months and to GS–09 within 18 months of entering on duty. Agents entering on duty at GS–07 level are promoted to GS–09 within 12 months of entering on duty.

Senior level GS–11 positions are filled under competitive procedures. Approximately 26 percent of non-supervisory Border Patrol Agents are at the GS–11 level.

INS BUDGET BEFORE BEING AMENDED BY OMB

Question. When General McCaffrey testified before the Treasury Appropriations subcommittee on March 4th, he said the initial INS request did include funding for additional Border Patrol agents, and, that as head of ONDCP, he certified the pre-OMB INS budget. He also reiterated his view that 20,000 Border Patrol agents are needed on-the-line to effectively stop drugs from entering the country.

Did your fiscal year 2000 budget submission to the Office of Management and Budget include funding for Border Patrol agents in fiscal year 2000? How many agents did it include?

Answer. INS's fiscal year 2000 budget submission to the Office of Management and Budget included a requested increase of 1,000 agents and 140 support positions for the Border Patrol program.

UNIVERSITY OF TEXAS AT AUSTIN STUDY OUTLINING NEED FOR ADDITIONAL AGENTS ON SOUTHWEST BORDER

Question. Researchers at the Center for U.S.-Mexico Border and Migration Research at the University of Texas have concluded in a 50-page comprehensive report that the southwestern border needs at least 16,133 agents to effectively stop illegal immigrants and drug runners there. These researchers visited all nine Southwestern sectors and worked with Border Patrol chiefs and agents there.

The researchers found that every sector on the southwestern border needs significant increases in Border Patrol agents. For example, Yuma currently has 236 agents—the researchers said that Yuma should have 787 agents. The Tucson sector, which currently has 1,032 agents, needs 2,512 agents.

Question. How do you respond to this study?

Answer. The INS has not undertaken a formal review of the study. The INS is currently in the process of developing a nationwide Border Patrol Resource Effectiveness Model that will integrate the relationships between resources in adjoining border locations and the effect of those resource deployments on the effectiveness of controlling the border against any illegal entry attempts. Border Patrol field managers across the country have been directly involved in the development of the resource model in an effort to determine the appropriate levels of staffing and technology to produce the optimum sustained deterrence effect against illegal entries occurring along the entire border. The extent to which the University of Texas study, limited in scope to the Southwest border, can contribute valid information in the formation of the Border Patrol's nationwide resource model is unknown at this time. However, the study will be reviewed for possible attributes to be considered by the Border Patrol within their nationwide model.

Question. Commissioner Meissner as we have pointed out, we disagree with your administration's assessment that 1,000 additional agents cannot and should not be deployed next year. Having said that, when the State Department estimates that 60 percent of the cocaine entering the U.S. from Colombia comes via Mexico, and HHS estimates illegal drugs cost 16,000 lives each year, how can your administration, and your attorney general, with a straight face say we need a year to catch up? Will you take our recommendations to the Attorney General and the President and ask him to resubmit his Justice Department budget so that it reflects an increase of 1,000 agents for fiscal year 2000?

Answer. The Attorney General and the INS have clearly stated since the beginning of the Border Patrol buildup in 1994 that gradual growth in the agent force is essential for effective management of the hiring, training, supervision and equipping of the agents. Such a process will enable the INS to maintain the highest professional standards in this agent corps. After six years of sustained yearly growth in the Border Patrol ranks, with an increase of over 5,000 agents by the end of 1999, it is imperative that these new agents assimilate and gain critical field experience. Moreover, INS must be allowed to expand advanced training and supervision, and build the infrastructure to maintain the existing agent force.

STATE CRIMINAL ALIEN ASSISTANCE PROGRAM (SCAAP)

Question. I have just finished a productive round of meetings with the Arizona Association of Counties and Arizona League of Cities. In addition, I will be holding a meeting with the newly formed Border Counties Coalition on Thursday to discuss the federal government's responsibility to reimburse states and localities for the unreimbursed costs to states to deal with illegal immigration. Adequate funding for SCAAP is a primary priority for all of the groups I just mentioned.

As you know, the President requested only $500 million for this program for fiscal year 2000. It was funded last year at $585 million (SCAAP was authorized in the 1994 Violent Crime Control Act at $650 million per year). The last two years the Congress has provided $585 million for SCAAP, even though the Administration only requested $500 million.

When SCAAP was funded at $500 million in 1996, states and localities were reimbursed 60 cents on the dollar for incarceration of illegal criminal aliens. In 1998, with $585 million, but with more localities applying, states and localities were reimbursed on 39 cents on the dollar. It is estimated that criminal incarceration of illegal criminal aliens cost states and localities a total of $1.7 billion in 1998 (Arizona and its localities incurred costs of over $38 million last year and were reimbursed $15 million).

How can the Administration justify its budget request of only $500 million given the situation I just illustrated?

Answer. With regard to the fiscal year 2000 funding level for the State Criminal Alien Assistance Program, the Administration developed a budget request within the funding caps set under the balanced budget act. In order to stay within the caps, we had to make choices about what we could afford with our limited funding. The 2000 budget includes a 32 percent decrease in overall state and local law enforcement assistance funding, consistent with the 2000 crime bill authorization for state and local enforcement assistance, which drops off because of the reduction in the authorization of Public Safety and Community Policing Grants Program.

Our budget request does not really trade-off one grant program for another, but it uses the limited funding we have available in 2000 for state and local assistance to help communities combat crime and to bolster the technological capabilities of law enforcement in a way that focuses on specific weaknesses that the law enforcement community has told us exist. We do not believe that there was ever any intent

to fund all the programs authorized in the 1994 Crime Act, forever. As a result, we put together a package of state and local assistance that responds to specific needs.

GALLEGLY VENTURA COUNTY LOCAL JAIL PROGRAM

Question. Why, when Congress appropriated an extra $10 million last year for national expansion of the pilot program in Ventura County, CA, that place local INS officials in local jails to identify illegal immigrants, has not one INS agent been placed in another local jail? And why did the administration not request any money to comply with the provisions of the law in its fiscal year 2000 budget?

Answer. In fiscal year 1999, Congress earmarked $10 million from existing funds for implementation of Public Law 105–141. A review of current jail programs and analysis of the impact of redirecting base funding to implement the provisions of Public Law 105–141 has been completed. The review, analysis and related recommendations are currently under review.

Five Immigration Agents staff the Ventura County Jail and coordinate their presence with the Ventura County Sheriff's Office to provide maximum coverage at the institution. These agents are also responsible for identifying and processing criminal aliens at the California Youth Authority Facility, Paso Robles Youth Facility, and the Work Furlough Facility at Camarillo.

We did not request additional funding for local jail programs in fiscal year 2000 pursuant to Public Law 105–141, as we are still assessing the effectiveness of prearraignment alien identification programs at local jails and their potential for deterring criminal aliens from returning to local communities.

REDUCTION OF PROCESSING TIMES

Question. As part of the June 11, 1998 Senate Immigration Subcommittee, I asked you to inform me what steps the INS was taking to reduce processing times across the board for all immigration benefits, especially in the Phoenix District, and in INS Districts and INS Service Centers throughout the country. You confirmed backlogs have risen at the four Service Centers during the last year and that, as a partial remedy, INS allocated $1 million in overtime to service centers to be directed towards backlog reduction. However, we now see, at least in the California Service Center, backlogs growing increasingly longer. For example, as of the end of 1998, applications filed by U.S. citizens to immigrate a spouse took an estimated three-quarter of a year to adjudicate. Adjustment of status cases weren't much better at 225 days. Would you agree that the increase in processing times at the Service Centers is inappropriately long? If so, what is the agency doing to remedy the problem? How long might it take for the public to see an appreciable affect? Might additional adjudications personnel be a solution to the problem? If so, how much money has INS requested in the fiscal year 2000 budget to accomplish this?

Answer. The INS agrees that certain processing times at the Service Centers need to be shortened. The INS is taking incremental steps to improve productivity, including buying new netframes at the Service Centers to increase the speed and reliability of the CLAIMS4 case processing system. In fiscal year 1999, INS is focusing much of its resources on addressing the pending naturalization caseload. A total of 100 information officer positions, contained in the fiscal year 1999 Appropriations Act, have been allocated to the Service Centers to support their role in processing naturalization applications. As of April 30, 1999, 75 candidates had been selected, and 61 were on-board.

The INS does not anticipate reducing processing times for most other applications this fiscal year. To improve service to our customers, INS will focus on ensuring that processing times for each application are consistent among the four Service Centers. Further, the Service Centers have been instructed to focus on meeting processing goals for applications for which long processing times would negatively affect our business community or cause extreme hardship. These applications include the I–129, I–765, I–130, I–140, I–526, and the I–131.

In fiscal year 2000, as processing times for naturalization applications are reduced, INS will look to reallocate resources to focus on lowering processing times for other applications. In support of this, the President's fiscal year 2000 budget annualizes $124 million of the Naturalization initiative funded beginning in fiscal year 1999.

Question. This problem of increasing processing times also extends to INS districts; again, Phoenix in particular. As I've previously expressed to you and the INS Phoenix District Director, it's important to me that the INS take necessary steps to reduce processing times to a more reasonable level. For example, adjudicate primary petitions before derivative benefits expire—typically one year. It seems no coincidence that processing times for naturalization and adjustment of status applica-

tions increased significantly with the implementation of the Citizenship USA project, passage of the Welfare Reform legislation of 1996 and the sunset of IA Section 245(i). As with the Service Centers, might not additional adjudications personnel be helpful to the Districts in reducing these specific processing times and processing times for all immigration benefits? If so, has the INS explored the use of "term" employees which, as I understand, may be hired for short periods of time, say 2–4 years. If the cause of the problem is temporary, would not temporary help be useful?

Answer. The INS was appropriated resources for 400 term district adjudications officer (DAO) positions in fiscal year 1998, and 200 term DAO positions in fiscal year 1999 to support naturalization application processing. The increased staff received in fiscal year 1998 has helped INS increase production. The fiscal year 1999 personnel increase is expected to increase production further. The attrition rate for the fiscal year 1998 term positions, however, has reached as high as 44 percent in certain cities. To ensure the best use of our resources, INS would prefer to receive authorization for permanent DAOs where possible. To that end, we have recently converted 300 term positions to full-time permanent positions.

The situation for support staff is much different. The INS is relying on temporary and contract staff to perform much of the data entry and clerical activities in District Offices. In most offices, temporary and clerical staffing has worked well. The INS could use more temporary or contract support staff to help process the high level of pending cases.

Question. Please advise me if INS queried the California Service Center and Phoenix District Office about the need for additional personnel to reduce processing times. If so, please advise me of the monetary figures INS incorporated into the fiscal year 2000 budgetary request for these two offices.

Answer. All of INS's offices, including the California Service Center and the Phoenix District Office, have requested more funds to address their pending caseload in a more timely fashion. Within the current funding level, INS has focused existing and new resources on naturalization activities. In fiscal year 1999, the Phoenix District Office has been allocated approximately 2.5 percent of INS's DAO positions, a level equal to its share of the Service-wide application level. Further, the Phoenix District Office has been allocated 12 new contract clerks (Phoenix—6, Las Vegas—3, Tucson—2, Reno—1) to help address the pending naturalization caseload in the district. In fiscal year 1999, the California Service Center has received 38 new Information Officer positions to support its role in naturalization application processing.

To augment the application fees that INS receives, the President's fiscal year 2000 budget requests an annualization of $124 million of the Naturalization initiative initially funded in fiscal year 1999 to ensure that INS can maintain these and other positions.

PROPOSED CONSTRUCTION OF A NEW DOUGLAS, AZ BORDER PATROL STATION

Question. I am concerned about the low priority assigned to the construction of a new Border Patrol Station in Douglas, Arizona. The existing 5,837 square foot facility was built in 1987 for a capacity of 35 agents, and an additional 6,600 square feet of work space has since been added in modular buildings. Currently, there are 315 people working out of that station with another 100 employees expected in fiscal year 1999.

I understand that there are plans to build a new facility (according to the Tucson Sector Border Patrol, INS has said it will request $15.3 million in the fiscal year 2001 budget for construction of the new Douglas facility), but the Douglas project will not be completed until 2004. The agents and support personnel in Douglas cannot wait until 2004 for relief of this unprecedented overcrowding. Also, we must remember that Douglas continues to be the hot spot for illegal crossings on the Southwest border.

With the high level of overcrowding and the importance of the mission in Douglas, is it possible for the construction of a new station to be reprioritized for completion by the end of fiscal year 2002?

Answer. In order to have the project completed in the third Quarter of 2002, the Douglas Border Patrol Station would have to be fully funded with construction funding in fiscal year 2000, instead of the present time-frame of fiscal year 2001. Fully funding the project includes the $300,000 in design funds in the fiscal year 2000 budget, plus $15,293,000 required to complete the construction. However, to more effectively manage its construction resources, INS requests initial design resources in one year, and the construction-phase resources in a subsequent fiscal year.

Question. Out of a total $48 million fiscal year 2000 INS budget request for construction of Border Patrol facilities in Texas, California, and Arizona, why did the

INS only request $2.3 million for Arizona, and only in site design and planning and not actual construction?

Answer. The fiscal year 2000 Border Patrol construction projects were prioritized in accordance with the strategic needs of the INS. The INS has a backlog of over $400 million in construction projects to support the Border Patrol. Most of these requirements are due to the same conditions that exist in Arizona. Only a portion of these projects can be funded each year. The requirements and needs of the Arizona Stations have been recognized. In an effort to meet this need, INS reprogrammed $307,000 to start the Douglas Border Patrol Station project. Additional funding was requested in fiscal year 1999 for design of the Douglas, Yuma and Tucson Border Patrol Stations. The actual construction funds were to be requested in the fiscal year 2000 budget. However, no design-phase funds were provided in fiscal year 1999, so these projects have been moved back one year.

INTERIM DOUGLAS BORDER PATROL FACILITY

Question. I understand that there is a 40,000 square foot building (the Breed Technology building) available in the area which would be suitable as an interim facility after its renovation. There is precedent for interim facilities within the Tucson Sector—the Tucson Station recently moved to the old Tucson Police Academy site while awaiting construction of its new station. The cost of renovating the Tucson Police Academy for interim use was $1.2 million.

If the construction of a new station cannot be moved up, is it possible for the Douglas Station to move into an interim facility until the construction of a new building is completed?

Answer. Leasing an interim facility has been discussed as a potential option. However, the costs associated with leasing, particularly outside of larger urban areas with strong commercial real estate markets, make leasing an uneconomical and costly alternative. For example, the estimated costs for build-out, cabling, phones, furniture and security for a lease facility of the size required to house the Douglas Border Patrol Station would be approximately $4,400,000, with the first year rent estimated at $1,800,000. This makes the first year cost to the Border Patrol $6,200,000. Over a six-year lease period, the Border Patrol will have spent $15,200,000, an amount equal to the cost of constructing a permanent Government-owned Border Patrol Station.

As an alternative to short-term leasing, we will be assessing the potential use of modular, mobile construction units. We believe that these units could be acquired and installed quickly to meet expansion needs on an interim basis. Once the permanent Border Patrol Station construction has been completed, these units could be relocated to support other Border Patrol Stations facing similar circumstances elsewhere along the Southwest border. However, this option, like those above, requires time consuming compliance with the National Environmental Protection Act.

SUBCOMMITTEE RECESS

Senator GREGG. OK. I thank you for your time and appreciate it.

Ms. MEISSNER. Thank you, and thank you for your continued support. Again, thank you very much.

Senator GREGG. Have a good day.

[Whereupon, at 11:31 a.m., Tuesday, March 16, the subcommittee was recessed, to reconvene subject to the call of the Chair.]

DEPARTMENTS OF COMMERCE, JUSTICE, AND STATE, THE JUDICIARY, AND RELATED AGENCIES APPROPRIATIONS FOR FISCAL YEAR 2000

FRIDAY, MARCH 19, 1999

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

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

Present: Senators Gregg, and Hollings.

DEPARTMENT OF COMMERCE

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

STATEMENT OF DR. D. JAMES BAKER, UNDER SECRETARY FOR OCEANS AND ATMOSPHERE

ACCOMPANIED BY:

TERRY D. GARCIA, ASSISTANT SECRETARY FOR OCEANS AND ATMOSPHERE

SCOTT GUDES, DEPUTY UNDER SECRETARY

PAUL ROBERTS, CHIEF FINANCIAL OFFICER

NANCY FOSTER, ASSISTANT ADMINISTRATOR FOR OCEAN SERVICES

JOHN KELLY, JR., ASSISTANT ADMINISTRATOR FOR WEATHER SERVICES

CLERK'S NOTE.—The following items were submitted for the hearing record of March 19, 1999 regarding the budget request of the National Oceanic and Atmospheric Administration.]

PREPARED STATEMENT OF DR. D. JAMES BAKER

Thank you, Mr. Chairman, and members of the Subcommittee, for this opportunity to testify on the President's fiscal year 2000 Budget Request for the National Oceanic and Atmospheric Administration (NOAA).

I am accompanied today by Terry Garcia, Assistant Secretary for Oceans and Atmosphere, Scott B. Gudes, Deputy Under Secretary for Oceans and Atmosphere, and Paul F. Roberts, Chief Financial Officer/Chief Administrative Officer.

Before I begin, let me state that because of investments championed by this subcommittee, NOAA is a world leader in weather and climate research and forecasts, environmental monitoring and research, fisheries management, and sustainable use of the coast. This proposed budget is a good budget for NOAA; this is a good budget for the Department of Commerce; this is a good budget for America.

This budget demonstrates our commitment to meeting our responsibilities for investing in and maintaining our infrastructure. The challenge of investing strategically in the Nation's future requires continuing investments in NOAA's infrastructure, including investments in our people. The fiscal year 2000 budget request in-

cludes essential funding to meet these investment needs. Most notably, the budget request:

—includes funding to address our data acquisition needs by providing for the first of four new Fisheries Research Vessels (FRV's), while at the same time increasing the number of days-at-sea by 245 for University-National Oceanographic Laboratory System (UNOLS) ship time for critical data collection needs for the Global Ocean Ecosystem Dynamics (GLOBEC) and Ecology and Oceanography of Harmful Alagal Bloom (ECOHAB) programs.

—provides funding to maintain our supercomputing capacity at the NWS Central Computing Facility in Suitland, Maryland, and the Forecast Systems Lab (FSL) in Boulder, Colorado while acquiring a massively parallel, scalable computer to be located at OAR's Geophysical Fluid Dynamics Lab (GFDL), in Princeton, New Jersey.

—provides increased recurring lease and/or operations costs at a number of NOAA facilities coming on-line in fiscal year 1999 and fiscal year 2000, such as the Santa Cruz and Kodiak Fisheries Laboratories, the Marine Environmental Health Research Laboratory in Charleston, South Carolina and the David Skaggs Research Center in Boulder, Colorado. At the same time funds are requested to complete the planning and design of a new state-of-the-art NMFS research facility near Juneau, Alaska.

—provides adjustments-to-base for pay related and inflationary cost increases to the National Weather Service, as well as for the fiscal year 2000 pay raise for the remaining Line Offices.

—includes funds to begin replacing outdated observing equipment in order to maintain continuity of core data and services and provides funds for continuing technology infusion for systems developed for the Weather Service Modernization;

—reflects the Administration's plans to restructure and maintain the NOAA Corps and includes Payments for Retired Pay for Commissioned Officers as mandatory funding;

—includes $1 million to establish educational training relationships through a joint partnership with a consortium of Historically Black Colleges and Universities (HBCU). These efforts would not only result in the education of new marine, atmospheric and environmental scientists, but would also assist many coastal communities in the development of new business and environmental engineering alternatives to support sustainable economic development; and,

—provides funds to accelerate the implementation of the Commerce Administrative Management System (CAMS), which is critical to meeting NOAA's financial management requirements.

We, at NOAA, know that performance is what counts. Therefore, our fiscal year 2000 budget includes measures that will track results to the level of investment.

NOAA's fiscal year 2000 request is for $2.6 billion in total budget authority which includes $2.5 billion in discretionary budget authority. This request collectively represents a 12.9 percent increase over the total budget authority appropriated for fiscal year 1999.

The request is predicated on the need to ensure the continued delivery of essential science, technology and services to the Nation. The President's Budget Request also allows NOAA to perform an essential role in a number of Departmental, interagency and Presidential initiatives, including the Lands Legacy Initiative and other important components of the Ocean 2000 Initiative, the Natural Disaster Reduction Initiative, the Climate in the 21st Century Initiative, and building the capacity of the Nation's Historically Black Colleges and Universities (HBCU's). Let me take a moment to say a few words about some of these important activities.

OCEAN 2000

Ocean and coastal resources are the foundation of the Nation's coastal and regional economies. One-third of the U.S. GDP and one-half of the Nation's jobs are produced in the coastal zone through industries such as fishing, tourism, and marine transportation. With increasing national attention on the value of the ocean and coastal resources and the important role of ocean navigation and shipping, the $317.6 million Ocean 2000 initiative will increase the protection, restoration and sustainable use of the Nation's ocean and coastal resources.

The Ocean 2000 crosscut integrates the Administration's Lands Legacy programs and initiatives supporting the Year Of The Ocean (YOTO), Resource Protection, South Florida ecosystems restoration and research, and implementation of NOAA's responsibilities under the Clean Water Action Plan.

LANDS LEGACY

NOAA's fiscal year 2000 budget requests $105 million of new funding to fulfill the environmental goals outlined in the Administrations Lands Legacy Initiative.

The economic and environmental well-being we derive from the abundant and essential natural resources and the beauty provided by coastal ecosystems is being undermined by the very critical economic and aesthetic uses that make these diverse areas so valuable to the Nation. Escalating losses and degradation of coastal wetlands, fisheries habitat, and coral reef ecosystems must be reversed.

NOAA has the vision, expertise and partnerships to successfully confront this challenge. The request includes funding for targeted investments to: strengthen and expand protection of the Nation's most significant ocean and coastal areas; restore critical coastal habitat and vibrant coral reef ecosystems; and provide states and coastal communities with the tools and resources for environmentally-sound and economically-sustainable "smart growth." Some examples of our investments include: $32 million for Coastal Zone Management of which: $28 million will help states and localities, through Section 310 of the Coastal Zone Management Act, to implement community-based solutions to restore or enhance coastal resources and community revitalization; $2 million for coastal non-point pollution control program development (Section 6217); and $2 million for Section 309 Grants for coastal non-point pollution control program implementation.

NOAA will work with 32 Coastal Zone Management state partners and coastal communities by providing grants and technical assistance to improve land use and address impacts of increased development and urban sprawl on coastal resources.

An increase of $15 million will be used to strengthen the nation's only system of marine protected areas, the National Marine Sanctuary program. The Sanctuary System will be enhanced by bolstering operational capabilities at the twelve existing sites, expanding Sanctuary educational and outreach opportunities, and positioning the System for the future by beginning the planning process in consultation with states and communities to identify possible new sites. This represents growth in the Marine Sanctuary Program funding by a factor of four since fiscal year 1993 (a total of $29 million).

In addition an increase of $14.7 million will be used to enhance the protection of critical estuaries by providing funds to states and communities for the acquisition of lands from willing sellers in and around the existing National Estuarine Research Reserves System ($19 million total), as well as strengthening existing management and upgrading facilities at these sites.

More than 95 percent of U.S. overseas trade by tonnage (excluding Mexico and Canada) passes through U.S. ports and harbors. It is often necessary for our ports and harbors to dredge deeper channels to accommodate larger and larger sized cargo ships. Such efforts must be undertaken in a way that protects the environment, including a continued commitment to environmentally sound dredging and safe disposal or reuse of dredged materials. An increase of $10 million is requested for NOAA to work with the Corps of Engineers, other federal and state agencies, and coastal communities to help them avoid costly delays in the dredging process and to determine ways to use material dredged from ports and shipping channels to restore important coastal habitats.

Coral reefs are exquisite yet endangered ecosystems which sustain tourism, recreation and fishing industries worth billions of dollars in economic activity. New funding of $10 million will enable NOAA, by working with states and other agencies, to restore injured reefs in Puerto Rico, Florida, Hawaii, U.S. territories and the commonwealths. Funding will be provided for: development and implementation of emergency restoration activities; restoration of small to moderate-sized injured sites; development of coral nurseries to provide donor material for restoration projects; monitoring to evaluate restoration effectiveness; and the transfer of restoration technologies to other coastal stewards. This request complements and supports the $2 million Coral Reef Protection increase requested under the Year of the Ocean Initiative.

Finally under this Initiative, NOAA requests $22.7 million to increase the number and geographical scope of community-based habitat restoration efforts that generate quality coastal or river habitat to improve survival of many salt water fish species nationwide.

It is the intention of the Administration that funding for the Lands Legacy Initiative be derived from the Land and Water Conservation Fund. Although the fund has traditionally been used to fund programs within the Department of Interior, there is clear authority for it to be used for certain NOAA programs.

YEAR OF THE OCEAN

At the 1998 National Ocean Conference in Monterey, California, the President launched a series of major initiatives to explore, protect and restore America's vital ocean resources. Highlighting the important role the ocean plays in the daily lives of all Americans, the Administration introduced measures to promote new scientific insight into the oceans, sustain use of fisheries and other marine resources, provide new opportunities for economic growth, and protect fragile coastal communities and ecosystems, such as coral reefs, from damage and environmental degradation.

NOAA's fiscal year 2000 budget request ($78.1 million) for the Year of the Ocean (YOTO) Initiative includes increases of:

—$5.2 million to promote safe and efficient navigation, through balanced investment that will improve the competitiveness of U.S. ports and exports while lowering the risk of marine accidents and resulting pollution. Within this amount, an increase of $2.75 million will enable NOAA to fully develop and implement quality assurance and modernization capabilities required to support the installation of additional Physical Oceanographic Real-Time Systems (PORTS) through cost sharing partnerships.

—$4 million to better understand the role of oceans in shaping our weather and climate. Finer measurements of ocean data are needed to track climate shifts, understand the interaction of the oceans and atmosphere, and predict severe weather and the regional impacts of global climate change. Funds will be used to construct, deploy and operate an array of 1,000 profiling autonomous floats for data collection in the Pacific and Atlantic Oceans.

—$58.2 million for Fisheries Data Collection Capacity, Stock Assessments and Fisheries Conservation, and Management, including:

  —$51.6 million to construct the first of four new state-of-the-art research vessels necessary to conduct essential stock assessment surveys and monitor fish and marine mammal species, assess ecological changes and provide the best available data to rebuild sustainable fisheries. These new ships will be both calibrated and acoustically quiet to mitigate disturbance of sea-life under study. The ships will complement our increasing charters with research partners in industry and academia and will modernize NOAA's aging fleet of research vessels.

  —$2.6 million for NOAA to carry out requirements of the Magnuson Stevens Fisheries Conservation and Management Act.

  —$2 million for enhanced observer coverage to carry out increased observer workload mandated in the Act.

  —$2 million to support work on fisheries oceanography to improve stock predictions by identifying and assessing critical environmental processes controlling long-term trends in the Nation's fishery production. A network of biophysical moorings in the North Pacific Ocean will provide data on key oceanographic indicators and give greater insight into environmentally-induced shifts in the productivity of commercially important fish stocks.

—$4.6 million for NOAA, in cooperation with industry, Federal, and State partners, to develop and promote an environmentally friendly and commercially viable domestic marine Aquaculture industry. Of this amount, $3.6 million will support an OAR program on Mariculture, and $1 million is for NMFS to work with industry to develop environmentally sound Aquaculture standards.

—$2 million in order to work with the states, U.S. territories and commonwealths, and local communities, to carry out important research, monitoring, management and mapping of the Nation's coral reef system. These funds will be used to better understand the state of this fragile ecosystem and help identify solutions to protect this vital resource.

—$4.1 million to unravel deep-sea mysteries, discover new opportunities in the ocean, and better understand how to protect marine resources. These funds will launch a program to map and explore U.S. ocean waters with advanced underwater technology, and support an economic evaluation of the contribution that the oceans vast resources provide to the Nation's economy and environment.

RESOURCE PROTECTION

Development is posing an increasing threat to numerous marine species and their habitat. The number of species either listed by NOAA under the Endangered Species Act or under consideration for listing is growing. Stemming this crisis of extinction is one of NOAA's greatest challenges. NOAA is committed to preventing the extinction of at-risk marine species, and restoring their habitat and ecosystems.

Our ongoing efforts to protect and conserve our natural resources include establishing greater public involvement in conservation planning, creating incentives for

landowners and states to protect species and their habitat in order to prevent the need to list, and entering into long-term conservation plans with landowners.

NOAA's fiscal year 2000 budget request includes over $130 million to support the Resource Protection Initiative, including:

—$100 million to establish a Pacific Coastal Salmon Recovery account for grants that will bolster salmon recovery through a new partnership agreement that will double the federal dollars with matching non-federal contributions. The Presidential initiative focuses on improving federal conservation activities and building crucial federal-state-tribal partnerships to share limited resources while improving scientific information to ensure a lasting recovery of salmon. Many salmon runs are at risk of extinction in California, Oregon, Washington, and Alaska.

—$2.6 million to characterize and map biodiversity and protected species habitat. These efforts will permit the identification of crucial habitat for the conservation of at-risk species and will identify increased conservation efforts under the ESA.

—$27.5 million for Endangered Species Act (ESA) Recovery Planning to stem the decline of highly endangered species including Atlantic and Pacific Salmon, leatherback and loggerhead turtles, Hawaiian monk seals, and North Atlantic right whales through protecting and restoring critical habitat; eliminating incidental take in commercial fisheries and conducting research and monitoring to determine species status and habitat requirements.

SOUTH FLORIDA

NOAA's fiscal year 2000 budget request includes $5.1 million to address issues related to the South Florida Everglades Restoration effort—an increase of $1.6 million over fiscal year 1999 to support an integrated effort among federal, tribal, state and non-governmental partners to halt the degradation and restore the healthy function of the South Florida ecosystem.

NOAA supports the portion of the South Florida Everglades Initiative exclusively devoted to restoring and protecting the coastal and marine portions of the South Florida ecosystem such as fisheries habitat and coral reefs.

The Initiative has already produced significant accomplishments in this area. Continued investment is necessary to restore and maintain the marine ecosystem and the associated economies of South Florida Bay, and the Florida Keys.

CLEAN WATER INITIATIVE (CWI)

NOAA's fiscal year 2000 budget request includes a total of $22 million to support the Administration's Clean Water Initiative, an increase of $5.8 million over fiscal year 1999. This Initiative will help protect coastal communities from toxics and reduce the flow of pollution into coastal waters from nonpoint sources (e.g., runoff from agricultural fields, city streets, and other areas). Polluted runoff is now a major source of coastal water pollution and one of the primary factors associated with outbreaks of harmful algal blooms (e.g., pfiesteria) and the spread of hypoxic zones in U.S. coastal waters.

Communities, businesses and human health are increasingly threatened by polluted runoff and the symptoms of polluted coastal waters. For example, every year degraded water quality causes warnings or closures of thousands of beaches resulting in losses to tourism and recreation industries. Degraded water quality continues to close or restrict the use of nearly 30 percent of U.S. shellfish growing areas. This includes 4.5 million acres or 50 percent of the shellfish growing area in the Gulf of Mexico, the Nation's top shellfish-producing region.

Over the past 20 years, harmful algal blooms have affected nearly every coastal state and produced an estimated $1 billion in economic losses. The increasing frequency and magnitude of these problems suggests that significant action is required now to reduce the costs and symptoms of nonpoint source pollution, and improve the quality of U.S. coastal waters.

An increase of $4 million under the Clean Water Initiative (also presented under the Lands Legacy Initiative CZM component), will address polluted runoff by providing CZM states with additional resources to develop and implement coastal nonpoint control programs. At this point, I want to highlight to the Committee our strong opposition to the $2 million rescission in the fiscal year 1999 Emergency Supplemental for non-point source pollution funds. These funds are important to the nation's coastal states as they develop and implement plans to alleviate and mitigate this expensive problem of non-point pollution. $2 million, half of the fiscal year 1999 appropriation, is a small but crucial amount of money that goes to the states.

An increase of $1.8 million will enable NOAA to increase its efforts in national pfiesteria research and monitoring. The increase will also allow NOAA to assist states, universities and communities in the development of detection and assay technologies essential for pfiesteria and other types of harmful algal bloom outbreaks.

Each of these components, integrated in the Ocean 2000 Initiative, is essential for ensuring the long-term health of our Nation's oceans and coastal areas. The fiscal year 2000 budget reflects NOAA's commitment to meeting these needs and fulfilling our mission as the Nation's leader in ocean and coastal stewardship.

NATURAL DISASTER REDUCTION INITIATIVE (NDRI)

Natural hazards related to severe weather (hurricanes, tornadoes, winter storms, droughts and floods) or geophysical activity (volcanoes, geomagnetic storms, earthquakes, and tsunamis) threaten lives, property and the stability of local and regional economies throughout the United States.

In fiscal year 2000, NOAA requests a net increase of $42.1 million for the Natural Disaster Reduction Initiative (NDRI) to implement a second phase of the Department's multi-agency strategy, which includes NOAA, EDA and NIST, to reduce and mitigate against the impacts of extreme natural events. The strategy calls for an end-to-end approach to natural disaster mitigation, from research to improve prediction and understanding of extreme events, to advances in developing response and recovery plans, to assessment of vulnerabilities of communities and infrastructure, and providing information, technology, and training to reduce vulnerability before and after natural disasters.

The modernization of the Weather Service represents a significant commitment by the Administration. The modernization effort has made considerable progress in providing more accurate and timely weather warnings and forecasts services. The National Weather Service (NWS) vision of becoming a "no surprise weather service" is becoming more and more a reality today. The NWS has significantly improved its services since the 1974 super-tornado outbreak. Just in the past five years, NWS has more than doubled tornado warning lead-times from 5 minutes in 1993 to approximately 11 minutes in 1998. These extra minutes have saved lives. In order to ensure that these improvements are sustained the fiscal year 2000 Budget includes:

—an adjustment to base of $20 million in pay-related and inflationary cost increases and $12.3 million in programmatic changes to the National Weather Service to ensure the continuation of quality accurate and timely weather warnings and forecasts services to the public.

—$25.8 million to expand operation and maintenance support for the entire NWS Advanced Weather Interactive Processing System (AWIPS) network and fund systems evolution activities.

—$2.7 million to support AWIPS operations and Weather Forecast Office (WFO) Facilities Construction at offices established as the result of mitigation actions per the Secretary's Report Team recommendations on the adequacy of NEXRAD Coverage and Degradation of Weather Services under National Weather Service Modernization for: Caribou, Maine and Key West, Florida; and continue current operations at Erie, Pennsylvania; and Williston, North Dakota. An additional $1 million for mitigation activities is included in the Operations and Research request.

—$3.7 million for other NWS systems activities such as product improvement initiative and acquisition closeout activities for Automated Surface Observing System (ASOS) and Next Generation Weather Radar (NEXRAD) and to provide commercial aircraft observations from the ARINC Communication Addressing and Reporting System (ACARS) for operational use in numerical weather prediction models.

—$3.7 million for Weather Forecast Office Construction and Maintenance activities such as: construction of Alaska housing in remote areas and the implementation of corrective and preventive maintenance actions at selected WFO's across the country; in addition to continuing facility retrofit projects necessary to meet current usage requirements as well as safety and fire code regulations.

The request includes an increase of $30.1 million for NOAA's share of the Polar Convergence (NPOESS) program, for a total request of $80.1 million in fiscal year 2000. In fiscal year 2000, the NPOESS program will continue Phase I design and development of five key sensors and initiate Phase II production of these sensors in fiscal year 2001. This program will be jointly and equally funded by NOAA and DOD.

The request also includes an increase of $6.8 million for GOES N-Q spacecraft acquisition (a total program of $189.5 million for fiscal year 2000), including develop-

ment funds for advanced instruments to be ready for the GOES-Q satellite, and the upgrading and replacement of aging ground systems that will remain operational through the life of GOES-Q.

The fiscal year 2000 Request also provides increases for maintaining the operational support for the on-orbit satellites and expanding the use of satellite data.

—$1.7 million will fund Satellite Operational Control Center (SOCC) non-discretionary labor and non-labor costs increases in order to avoid serious risk to the health and safety of the current operational satellites. This increase will also maintain adequate operational data processing capacity and engineering support for satellites data streams; and,

—$2 million will be used to establish an integrated Global Disaster Information Network (GDIN) to improve all phases of disaster management. This will be a public/private partnership to develop a comprehensive information system for those who manage and those who are affected by disasters.

The fiscal year 2000 budget also includes funding for other projects that will enhance observation and prediction capabilities, such as:

—$6.4 million to continue the replacement and modernization of the obsolete upper air radiosonde network that provides critical upper air observations which are the principal data source for all weather forecasts. Modern radiosondes and ground receiving equipment will permit more efficient use of radio frequency spectrum and ensure reliable and consistent upper air data acquisition.

—$2.2 million to initiate the national implementation of the Advanced Hydrologic Prediction System (AHPS), an integrated real-time modeling and data management/analysis system for flood forecasts, in the upper Mississippi, including the Red River of the North and the Ohio River Basin. AHPS will expand and improve forecasts of river levels from days to several months in advance.

—$4.3 million will be used for the GEOSTORM satellite, a follow-on to the Advanced Composition Explorer (ACE) satellite. This multi-agency program leverages the interests and requirements of NOAA, NASA and the Air Force to increase the lead time of warnings currently provided to power companies and other industries vulnerable to solar storms. These industries have told us to make GEOSTORM our number one priority as they now depend on solar wind warning products to trigger preventative measures that help avert wide-spread power blackouts and satellite failures.

—$0.4 million will be used to provide for a second flight crew for NOAA's G-IV high altitude jet to meet the operational requirement of 24-hour storm surveillance. This funding will allow the jet to be flown on high priority back-to-back missions (12-hour intervals) during land-falling hurricanes. It will also permit storm tracking for long duration hurricanes when crew rest limitations may ground the aircraft.

Finally, an increase of $1 million is requested to expand work with coastal states and communities to develop coastal risk atlases and provide new remote sensing data in a more timely and effective manner. This will enable coastal communities to better prepare for and recover from natural disasters.

CLIMATE IN THE 21ST CENTURY

Over the past two years, climate variability has emerged as one of the most urgent, long-term strategic environmental security issues facing the United States. The demand for scientifically sound climate information by decision-makers and the public is accelerating. For this reason, as the Department prepares to enter the 21st century, NOAA requests $19.1 million to meet the Nation's climate service needs.

Underlying NOAA's ability to improve climate and weather models is maintaining state-of-the-art computer capabilities for world-class research. Included in this request is $5.7 million to acquire a massively parallel processing computer to improve forecasts of El Nino events, model climate variability, and make better hurricane predictions. Procurement of this computer will help close the computing gap between the U.S. and European climate centers.

Four key components of this initiative will provide critical funding for NOAA's unique responsibility to obtain long-term observations of the ocean and atmosphere and maintain national data archives. They are:

—$1.2 million to restore and maintain operations at its baseline atmospheric observatories in Alaska, Hawaii, Samoa, and Antarctica,

—$3 million to begin the modernization of the Cooperative Reference Network and Rain Gauge Network ($1.5 million in NWS and $1.5 million in NESDIS). At present, NOAA uses paper punch tapes which are processed on a machine

for which, there are no spare parts. It is one of two such machines in the world. We must move forward technologically on this,

—$0.9 million for NESDIS to meet the increased demand for near real-time products, data, and information related to unusual weather, climate, and environmental events, and

—$1.6 million to make long-term measurement of carbon dioxide in the ocean, develop new ocean data assimilation methods, and improve existing climate models.

NOAA is requesting $6.7 million for fiscal year 2000 in the Climate and Global Change Program to launch new climate research projects. These will provide critical data to deepen our scientific understanding of, and thus our ability to predict, climate variability and change. The successful forecast of the 1997–1998 El Nino and the subsequent La Nina events demonstrated dramatically that this kind of research can realize tangible benefits. A well-documented predictive understanding of the El Nino Southern Oscillation (ENSO) and other aspects of how our climate works is needed to determine the effects of climate anomalies on our daily lives, and is also needed to guide potential decisions regarding the role human influences play in climate change.

Beyond the waters of the tropical Pacific—where the ENSO signal is measured—are similar climate cycles that are as important to weather and climate patterns over North America as ENSO. NOAA plans to investigate and forecast these other key climate signals—the North Atlantic (or Arctic) Oscillation to learn its effects on hurricane tracks and strengths in the Atlantic; and the Pacific Decadal Oscillation and its impact on the Northwest salmon fishery. Learning more about these cycles will enable NOAA to improve both climate and weather forecasts and predict their impacts at regional levels. In turn, these predictions can be used by the effected populations to guide a range of decisions from emergency management to agriculture and fisheries.

NOAA also plans to investigate the recently-identified "North American carbon sink", describing on a regional scale the characteristics that lead to the net uptake of atmospheric carbon by the land. This will be done by sampling the atmosphere from aircraft flying at low altitudes, measuring carbon dioxide levels to see how they vary according to vegetation type and other terrestrial characteristics. NOAA will conduct similar experiments on tropospheric (low-altitude) ozone, measuring variations in its concentration to determine the importance of this gas in regional warming scenarios relative to carbon dioxide.

CONCLUSION/WRAP-UP

In conclusion, Mr. Chairman, the fiscal year 2000 request builds on the progress we have made, with your assistance and support over the past years. NOAA's environmental stewardship and assessment missions are essential to securing our Nation's success in the 21st Century.

In meeting our mission, NOAA continues to focus the efforts of government on what matters to the American people. Success in this changing world increasingly depends on partnerships with business and industry, universities, state and local governments and international parties. NOAA continues to develop these partnerships to leverage resources and talent, and provide the means for meeting program requirements more effectively. For example:

—The Penobscot Bay Collaborative, a multi-year pilot demonstration funded by the National Environmental Satellite, Data and Information Service (NESDIS) of NOAA, is demonstrating the applicability of environmental satellite oceanographic data to develop predictive tools for understanding lobster abundance in Penobscot Bay in the Gulf of Maine. In a cooperative effort with the State of Maine, local universities and the private sector, the project is helping to help provide improved environmental data and information to resource managers to help them understand and respond to changing ecological dynamics in both near-shore waters and coastal environments. A new generation of resource management tools using satellite ocean remote sensing data is being developed and tested for their suitability in building sustainable marine resource utilization.

—The Penobscot Bay Collaborative is also contributing to complementary growth in Maine's emerging information technologies economic sector. The NOAA-NESDIS effort is being joined by a new economic development initiative being promoted by Angus King, Governor of Maine. Known as "Jobs From the Sea", this State initiative is seeking to foster new and expanded opportunities related to Maine's tremendously productive marine waters. A statewide bond issue of $20 million has recently been approved to leverage the State's investment for jobs development in the technology sector.

—Through this unique partnership between Federal, State and private organizations, the NESDIS-Maine Penobscot Bay Collaborative not only promotes Maine's emerging technology intensive sector (particularly in spatial information products and satellite application technologies), but also is envisioned to foster more sustainable management of Maine's natural resource-based industries. If successful, the goal is to enable resource managers, technology entrepreneurs, and private citizens will use environmental satellite data as routinely as they do now weather reports.

The fiscal year 2000 budget is an investment for the 21st century, a step toward a more viable, economically sound, and ecologically sustainable future—where environmental stewardship, assessment and prediction serve as keystones to enhancing economic prosperity and quality of life, better protecting lives and property, and strengthening U.S. trade.

Thank you again for the opportunity to appear. I would be pleased to respond to any questions members of the Subcommittee may have.

LETTER FROM D. JAMES BAKER

UNITED STATES DEPARTMENT OF COMMERCE,
THE UNDER SECRETARY FOR OCEANS AND ATMOSPHERE,
Washington, DC, May 13, 1999.

The Honorable JUDD GREGG,
Chairman, Subcommittee on Commerce, Justice, State, the Judiciary, and Related Agencies, Committee on Appropriations, United States Senate, Washington, D.C.

DEAR MR. CHAIRMAN: I would like to thank you and the members of the Subcommittee for the opportunity to testify on the President's fiscal year 2000 Budget Request for the National Oceanic and Atmospheric Administration (NOAA). I request that this letter and clarifying comments be included in the formal record of the hearing.

FISHERIES VESSELS

NOAA continues to work with the Navy and other Federal agencies to determine if surplus vessels can meet our mission needs. We believe that there are two excess Navy torpedo test vessels that potentially could be converted and used to replace our coastal research vessels. Unfortunately, these vessels have no trawl capability, limited range and endurance, and inadequate seakeeping (unsafe) for operations in Bering Sea or North Atlantic waters.

However, the fiscal year 1999 appropriations bill and our program provides for modernization of about half the NOAA fisheries fleet with acoustically quiet fisheries research vessels (FRVs) that will improve the science supporting fisheries management, and have the endurance needed for extended projects. This core fleet of purpose-built FRVs will conduct NOAA Fisheries' primary research and monitoring missions and will be used to calibrate supplemental vessels chartered from the University-National Oceanographic Laboratory System and private fleets. Because of their quieting, speed, and capability, we will be able to quickly survey more area. The 40-day endurance makes this vessel especially capable of operating in harsh environments like the Bering Sea and the North Atlantic.

Improved data collection from acoustic quieting will result in less conservative stock assessments, providing greater opportunity to commercial fishing. In addition, the noise reduction technology developed for our fleet could be transferred to commercial industry, decreasing search time and increasing fishing time. It is vital that fisheries stay sustainable; in areas like New England, we need to rebuild fisheries that have been part of our culture for centuries.

NOAA has one remaining T-AGOS ship, the ADVENTUROUS, which is in inactive storage. It is estimated that $10 million in upgrades may be required to enable the T-AGOS for light to medium duty trawling, marine mammal surveys and classical oceanography. However, the T-AGOS would have no mid-water trawling nor deep water slope trawling capability, have insufficient towing power (1,600hp vs. 3,000hp FRY), and cannot meet the International Council for the Exploration of the Sea noise and speed specifications for acoustic surveying (11 knots) requiring the ship to go slower during acoustic surveys making it an inadequate alternative to the FRVs. In addition, T-AGOS cannot accomplish multi-mission cruises requiring a return to dock to switch out gear at an additional cost of research days-at-sea, and have substantially reduced transit speed to survey area and between stations. Nevertheless, there may be missions for which this vessel would be appropriate, such

as the marine mammal observations and long line surveys in the Pacific currently conducted by the TOWNSEND CROMWELL.

AWIPS

Within the $550 million funding cap, the Advanced Weather Interactive Processing System (AWIPS) program will successfully deploy 152 systems and complete the development and operational field test of software Build 4.2. These activities, planned for completion by the end of June, will enable removal of the legacy system known as Automation of Field Operations and Services. Software Build 4.2 code is complete and currently undergoing testing.

Other demonstrated capabilities for streamlining National Weather Service (NWS) operations and significantly improving severe weather warning services are planned to be implemented in two years immediately following completion of Build 4.2. Our acquisition budget request for fiscal year 2000 ($22.6 million) is primarily for Build 5.0, which will allow the NWS to further enhance the system and reduce the NWS workforce by 69 additional positions. Build 5.0 was reviewed and endorsed by an Independent Review Team chaired by the Air Force, and established after consultation with the Congress. Continued investment to refresh AWIPS system software and hardware is planned throughout the system's service life to avoid obsolescence and the need for a total system replacement in the foreseeable future. Further enhancements to AWIPS are similar to the product improvements that are being implemented with NEXRAD. NOAA is migrating NEXRAD to an open systems architecture, rehosting the system software, and redesigning and retrofitting system hardware components. Once completed, the NEXRAD Product Improvement Program will provide dramatic increases in system capacity. This will allow NWS to utilize recent development in radar algorithms, providing significant improvements for weather warning and forecast services.

PACIFIC SALMON RECOVERY

Included in the fiscal year 2000 budget request is a new $100 million Pacific Coastal Salmon Recovery Fund to be available for distribution to the Governors of the four states of California, Oregon, Washington and Alaska on an equitable basis. This fund was developed to ensure that the states have the resources they need to develop their recovery plans to address species listed or proposed for listing. Coastal tribes would also be eligible for up to ten percent of the total appropriation for the fund, to be made available to appropriate coastal tribal fishery agencies or to individual coastal tribes in Oregon or California. For the states, these funds are to be matched dollar for dollar. This fund will also apply virtually every dollar to the task of Pacific coastal salmon recovery because administrative costs will be kept to a minimum, approximately 1 percent for the Federal government and 4 percent for the states.

NOAA has been working successfully with State, tribal and local entities in numerous salmon conservation efforts. With the recent ESA listings of chinook salmon in urban areas of Washington, NOAA has been actively involved in assisting a coalition of local governments, treaty Indian tribes, businesses, and community groups around Puget Sound to develop and implement conservation plans to benefit salmon and minimize impacts on local economies. Recovery and conservation of these at-risk salmon populations and their habitat is possible only with local participation. State-level conservation plans in Washington, Oregon and California, such as Washington's "Extinction Is Not An Option" plan, have been cooperatively developed with NOAA's technical input and advice. NOAA also has successfully worked with local entities to develop "Habitat Conservation Plans" that protect and restore salmon habitat on private lands which are essential for salmon recovery in some areas. In California's central valley, NOAA has been instrumental in CalFED (state/federal cooperative) efforts on water projects to protect water quantity and quality needed for salmon. Also, NOAA has worked with local power and irrigation entities to provide passage and access to habitat above dams in many rivers and tributaries coastwide. One such example is Butte Creek in California where the salmon populations have increased from 500 spawners to 15,000 spawners due to removal of barriers and restoration of flows.

The funding will be provided as single grants to each state, but will be based on a grant proposal that describes the state/local activities and projects to be undertaken with Federal and state funding to the states of California, Oregon, Washington, and Alaska. The Pacific Coastal Salmon Recovery Initiative bolsters and deploys existing and new Federal capabilities to assist in the conservation of Pacific coastal salmon runs, some of which are at risk of extinction. This proposal responds to current and proposed listings of coastal salmon and steelhead runs under the En-

dangered Species Act by forming lasting partnerships with states, local and tribal governments, and the public for saving Pacific salmon and their important habitats.

NOAA has developed broad guidelines on the types of projects that will be funded by these grants. Examples of the types of projects that this fund will support are: salmon habitat conservation; watershed assessments; science and research activities directly related to salmon conservation; monitoring and evaluation activities; public education; tribal capacity and infrastructure support; and other efforts directly related to salmon conservation.

NOAA will establish specific reporting requirements and other measures to ensure full accountability of the available funds to meet the purposes of the fund.

Active and constructive discussions are underway among the four governors, the affected tribes, and the Administration on the details of the funding distribution and the terms of eligibility. This initiative consists of three fundamental components and the establishment of a Pacific Salmon Conservation Fund. The fundamental components are: (1) improved coordination of Federal activities that may affect salmon and their habitats; (2) increased support to make available the extensive Federal scientific capabilities among the major departments for building a science foundation; and (3) increased coordinating capabilities for Federal, state, tribal, and local entities to ensure close partnership in recovery efforts. Improved coordination of Federal programs and activities are part of a lasting solution to the salmon problem.

Our salmon initiative will also contain an important science component through which it will seek to marshal and make available to state, local, and tribal governments the extensive Federal scientific capabilities for building a science foundation upon which to construct a lasting recovery effort.

NORTHEAST FISHERIES

In addition to NOAA's budget request to recover West Coast salmon, our budget request also includes funding which would provide up to $45.2 million in assistance to help rebuild overfished and overcapitalized northeast fisheries, including groundfish and scallops. The additional funding will be used to implement rebuilding plans developed for such fisheries as required by the Magnuson-Stevens Fishery Conservation and Management Act.

This funding is targeted specifically for use in the Northeast because of the seriousness of the problem, the near collapse of the groundfish fishery, and the overfished status of the scallop fishery. The stringent management measures needed to recover these stocks and the Sustainable Fisheries Act's mandate to address the impacts of management actions on the fishing communities in the Northeast warrant a significant, targeted request.

The funding for Northeast fisheries includes $5.18 million to expand the industry/government cooperative research surveys. For example, 5 to 6 additional surveys would be conducted by chartered fishing vessels in the scallop and clam fisheries to measure abundance and distribution. This funding will also expand stock assessments in the Northeast, including Atlantic herring and mackerel survey, and expand the current, limited inshore survey program to additional areas in cooperation with the Atlantic States Marine Fisheries Commission and the States. Data for this program is necessary for effective management of these areas.

NOAA will also use these funds to increase the number of external scientists involved in the review of stock assessments. This external review is needed to ensure that the data upon which management measures are based is accepted by the scientific and fishing communities. Additional funding would be used to expand NOAA's ability to analyze economic and social data and determine the impact of changing regulations and the decline in fishery stocks on fishing communities and the behavior of fishing fleets.

Finally, this funding will be used to improve administrative and monitoring programs and public outreach and education of fisheries management activity. Funding will also be used to increase enforcement resources for new management programs. The efficacy of these management programs is directly tied to our ability to enforce, monitor, and administer them. If the efficacy of these programs is compromised, it will be necessary to continually add new management provisions to compensate for the ineffectiveness of the existing programs.

In addition, the Fisheries Finance Program account includes $8.32 million to provide a $40 million buy-out program to reduce the harvesting capacity in the scallop fishery. The budget proposes to fund $8 million in direct payments and provide a $0.32 million subsidy for $32 million in loans. The loans awarded as part of this program will be repaid by the industry.

LANDS LEGACY INITIATIVE

As you know, NOAA's budget includes $105 million in new funding to fulfill the environmental mandates outlined in the Administration's Lands Legacy Initiative. This initiative will significantly strengthen our efforts to protect America's valuable ocean and coastal resources, and bolster the tools and resources necessary for state and local communities to achieve economically sustainable smart growth. The economic and environmental well-being derived from our Nation's ocean and coastal resources are being undermined by the very critical economic and aesthetic uses that make these diverse areas valuable to the Nation. This initiative was developed to meet the challenge of escalating losses and degradation of coastal wetlands, fisheries habitat, and coral reef ecosystems. It enhances the National Marine Sanctuary Program, the National Estuarine Research Reserve Program, and the state Coastal Zone Management Program. In addition, NOAA will work with the Corps of Engineers, other Federal and state agencies and coastal communities to help them determine ways to use dredging material to restore important coastal habitats.

The fiscal year 2000 President's Request proposes to use the Land and Water Conservation Fund as a source of the $105 million. It is the Administration's position that NOAA has authority to use this fund. The Land and Water Conservation Fund is an unappropriated special fund within the Treasury Outer Continental Shelf revenues and are deposited into the Treasury throughout the year. The general purposes of the Land and Water Conservation Fund Act, found at Section 4601–4, provide that the Fund is to assist in preserving, developing, and assuring accessibility to all U.S. citizens to outdoor recreation resources by (1) providing funds for Federal assistance to the states for planning, acquisition, and development of land and water areas and facilities; and (2) providing funds for the Federal acquisition and development of certain lands and other areas. The NOAA programs to be funded by the Fund all serve purposes similar in nature to those currently funded out of the Fund. Both the Department of Interior and case law have broadly defined what constitutes outdoor recreation resources. In addition, Section 4601–5(c)(2) states that moneys from receipts under the Outer Continental Shelf Lands Act shall remain in the Fund until appropriated by the Congress to carry out the purposes of the Act.

Therefore, through the appropriation process, NOAA's programs may be funded by the Land and Water Conservation Fund. If the Committee disagrees and determines that Land and Water Conservation Funds cannot support these activities, it is my hope that the Committee will still consider these priority issues and fund them at the level requested in the President's fiscal year 2000 budget.

I am available to answer any additional questions you may have. Thank you for your time and continued support of NOAA.

Sincerely,

D. JAMES BAKER.

QUESTIONS SUBMITTED BY SENATOR DANIEL K. INOUYE

LAND LEGACY INITIATIVE

Question. I was very pleased to learn of the Administration's Land Legacy proposal to restore, protect, conserve and manage our precious natural resources. I support the administration's efforts.

With more than 83 percent of America's coral reefs in Hawaiian waters, I am particularly interested in working with the Administration on its coral reef initiatives. As you know, the Administration's Coral Reef Task Force met in Hawaii two weeks ago.

What mechanisms are in place to coordinate the Commerce Department's efforts with those of the Interior Department?

In your view, what do you feel is an appropriate role, if any, for the Interior Department to play in the protection of ocean resources?

The Interior Department has apparently proposed creating marine reserves to protect important ocean ecosystems. What will marine reserves accomplish that cannot already be accomplished through the Commerce Department's Sanctuaries and Reserves program administered through the National Oceanic and Atmospheric Administration?

Answer. The Commerce Department's National Oceanic and Atmospheric Administration (NOAA) coordinates efforts with the Interior Department (DOI) through a number of mechanisms. For coral reef activities, the Coral Reef Task Force (CRTF) is the primary mechanism for coordinating federal and state agencies efforts. The CRTF has initiated a number of efforts to coordinate federal activities on specific

topics such as mapping and monitoring of the nation's coral reefs. The CRTF is also coordinating federal and state efforts through development of a comprehensive Action Plan to protect and sustainably use the nation's coral reefs. The Action Plan will be presented at the next CRTF meeting scheduled for October 1999.

Several other state-federal Task Forces help coordinate interagency activities on other topics such as restoration of the South Florida Ecosystem (South Florida Ecosystem Restoration Task Force) and control and prevention of non-indigenous species (Aquatic Nuisance Species Task Force).

The Interior Department has several important roles to play in protection of ocean resources, including management of ocean mineral resources and management of National Parks and National Wildlife Refuges with marine habitats. There are several National Parks and National Wildlife Refuges that include coral reef areas within their boundaries. Like National Marine Sanctuaries, these Parks and Refuges can play important roles in protecting U.S. coral reef resources and educating the public about the value of marine ecosystems.

However, many of these protected areas still need to establish specific, coordinated programs to better monitor and manage coral reefs. Other than the CRTF, there currently is no formal mechanism to ensure coordination between NOAA and DOI in areas such as ocean and coastal monitoring, or the designation and management of marine protected areas. NOAA has much experience and knowledge about the design and management of marine protected areas and marine resources that is available to federal and state partners and could be better utilized in DOI efforts.

The Coral Reef Task Force has begun to make some progress in this area. Through the CRTF, NOAA, DOI and other federal and state agencies are developing the blueprint to link existing coral reef protected areas into an integrated network to better monitor, assess and improve the condition of U.S. coral reefs.

Marine reserves can be beneficial and important tools for protection and sustainable use of ocean and coastal resources. NOAA has been a leader in designing and evaluating the role of marine reserves in the U.S. waters. NOAA is currently evaluating the role of different types of marine reserves in several areas including the Florida Keys National Marine Sanctuary, and some fishery management plans.

To be successful, marine reserves must comply with other laws governing the use of marine resources such as the Magnuson-Stevens Fishery Conservation and Management Act, the National Marine Sanctuary Act, and the Coastal Zone Management Act. In developing marine reserves, DOI should coordinate efforts with NOAA and make use of NOAA's available information, tools and expertise in this area. How best to identify and use marine reserves will be one of the most challenging and important areas for improving management of marine resources over the next five years. Greater coordination is both welcome and needed in this area.

NOAA is currently working with the Interior Department on a joint marine reserve (Tortugas 2000) in areas within the Florida Keys National Marine Sanctuary and the Dry Tortugas National Park. Because marine reserves can provide special benefits when used within already established marine protected areas, we anticipate that NOAA and the Interior Department will continue to research and test the impacts of marine reserves within National Marine Sanctuaries as well as National Parks and/or National Wildlife Refuges with marine waters. NOAA's system of 12 National Marine Sanctuaries cannot begin to address the many needs and uses of special marine areas. Appropriate use of marine reserves by state and federal agencies can improve the condition of many marine habitats including coral reefs.

HIGHLY MIGRATORY SPECIES

Question. I am concerned about the sustainability of tunas, billfishes, oceanic sharks, mahimahi, wahoo, and other Pacific pelagic species. I believe these commercially and recreationally valuable highly migratory species warrant increased and improved data collection efforts and stock assessments.

What is the National Oceanic and Atmospheric Administration doing domestically to increase and improve fisheries data collection efforts and stock assessments, especially with regard to highly migratory species?

Is funding a limiting factor? If so, what would be an appropriate level of funding for these activities?

Answer. Current data collection efforts needed to support stock assessments for Atlantic highly migratory species (HMS) include the Large Pelagic Survey, which originally focused on bluefin tuna but has evolved into a broader survey. A review committee will soon begin to explore methods to better tune this survey to meet stock assessment requirements for these HMS species. Current efforts to improve collection of commercial fishery data for HMS stock assessments include refining data base protocols between different NMFS offices, establishing quality assurance

procedures, and standardizing data reporting formats and requirements. Ongoing observer programs for pelagic lone line and shark driftnet fisheries also furnish data used in stock assessments for HMS. The Atlantic Coastal Cooperative Statistics Program is a state and Federal partnership to organize and share fisheries data sets. NMFS is an active participant in the development of this program that will support stock assessments for HMS fisheries by unifying Atlantic fisheries data sets.

There is an increasing need for data collection for central and western Pacific Ocean, HMS especially in light of international efforts to develop a convention for the conservation and management of highly migratory species in the central and western Pacific. This process, known as MHLC (Multilateral High Level Conference) has resulted in a set of draft articles for the convention. If such convention is put in place the U.S. will need to expand its data collection efforts for highly migratory species that will be under the jurisdiction of the convention. In addition very little is known about the stocks being fished or effects of the U.S. fishery on those stocks. NOAA is investigating the possibility of reallocating existing resources so that the information needed to understand the effects of NOAA's management strategy and effort in the fishery.

In general, collecting information about and conducting scientific research on fisheries is resource intensive. The recent activities noted above in both the Atlantic and Pacific are limited by available funding for all NMFS data collection and stock assessment activities. The fiscal year 2000 President's request includes base funding of approximately $2.5 million currently allocated for HMS.

PACIFIC ISLANDS AREA OFFICE

Question. I am concerned about the lack of base funding for the Pacific Islands Area Office (PIAO) of the National Marine Fisheries Service. Much time has passed since the NMFS established this office, but its mission, purpose, and responsibilities still remain largely undefined today. This situation is compounded by the fact that despite commitments by the Southwest Regional Director to attend regional meetings in March to discuss and finalize the strategic plan for the PIAO, he canceled his trip at the very last minute with little explanation. I am further concerned because I understand the current Regional Director will be reassigned to another region in the near future.

What do you feel is the appropriate role for the PIAO and what are your funding and support plans for the PIAO?

How do you see the PIAO fitting into the NOAA organization overall?

Answer. The Pacific Islands Area Office (PIAO) was created to manage and administer NOAA's fisheries programs related to the Western Pacific Fishery Management Council and the U.S. island jurisdictions in the central and western Pacific Ocean. The Administrator of the PIAO represents the Regional Administrator, serves as the principal day-to-day contact for the Council and other constituent groups, and is the principal source of advice and guidance on matters relating to domestic and international fisheries, habitat conservation, and protected marine resources in the Pacific Islands area. We view the mission of the PIAO, acting on behalf of NOAA's National Marine Fisheries Service, as the interpretation and implementation of U.S. fisheries policies in the western and central Pacific Ocean. We are in the process of transferring all responsibilities related to the management of living marine resources in the western and central Pacific Ocean from Long Beach to the PIAO.

Future PIAO activities might include: 10 percent observer coverage for the Hawaii longline fishery; studies to reduce or avoid the incidental take and mortality of sea turtles associated with the longline fishery; full utilization of sharks and socio-economic studies for baseline data needed for regulatory action; data collection and monitoring for fisheries for highly migratory species; support to State Department for the multilateral high-level conference (MHLC) process and the South Pacific Tuna Treaty; intern program; mapping and removing marine debris; and initiate work on coral reefs. Recently, the Deputy Assistant Administrator for Fisheries visited this office to learn more about its programmatic needs. The Southwest Region and NOAA fisheries headquarters are working on developing a "base budget" for PIAO. We will work through the administration's budget process to develop funding proposals for these proposals. The fiscal year 2000 President's request includes base funding of approximately $1.1 million for the PIAO.

COOPERATION WITH FISHERY MANAGEMENT COUNCILS

Question. The Magnuson Act was amended several years ago to allow Fisheries Management Council staff members access to confidential information.

Why have the Honolulu National Marine Fisheries Service (NMFS) Lab and the Long Beach (NMFS) staff refused to give the Western Pacific Regional Fisheries Management Council (WPRFMC) staff confidential information to draw Essential Fish Habitat (EFH) maps?

I am informed the Southwest Region's contractor for this project spent most of his time working on the Pacific Council's (EFH) amendment and provided little or no support to the WPRFMC. Is this information accurate?

What kind of support has NMFS provided to the Councils in the development of Sustainable Fisheries Act amendments?

Answer. First, we (NMFS Honolulu Laboratory and NMFS SWR Long Beach), did indeed make a mistake in interpreting confidentiality statutes concerning access to confidential fisheries data by the Western Pacific Regional Fishery Management Council's (WPRFMC) Essential Fish Habitat (EFH) private contractor in the Spring of 1998. We regret our error and our Honolulu Laboratory has subsequently worked with the WPRFMC, the NMFS Pacific Islands Area Office, and the NOAA Southwest Region General Counsel to make on-going arrangements for access to confidential data to the WPRFMC staff and its contractors.

The Honolulu Laboratory did at that time (Spring and Summer of 1998) provide a broad spectrum of non-confidential data to the contractor, provided for on-site use of confidential data by the contractor (an offer which was not taken up), and relied on the Southwest Region, Long Beach's EFH contractor to provide other non-confidential coverages to the WPRFMC's contractor. We also offered to provide confidential data to Council staff for their own analysis.

Finally, we would note that the EFH portions of the WPRFMC's Sustainable Fisheries Act (SFA) amendments were approved by NMFS.

Support was provided to the WPRFMC. According to the contractor's billing statement, about two-thirds of the contractor's (Tierra Data Systems) time was spent working for the Pacific Council and one-third of their time was spent working for the WPRFMC. However, the Southwest Region also sent additional funds to the WPRFMC to assist in collecting EFH information, a portion of which was spent on the hiring of a graphical information system (GIS) consultant. Because of this additional GIS assistance, NMFS redirected more of the contractor's time to the Pacific Council needs at that time. Overall, more money, $36.0 thousand, was spent to support the WPRFMC compared to the Pacific Council, $27.0 thousand.

NMFS Honolulu Laboratory staff provided Western Pacific Regional Fishery Management Council (WPRFMC) staff with detailed scientific documentation as input into the WPRFMC's proposed over-fishing definitions for the Lobster, Bottomfish and Seamount Groundfish, and Pelagic FMPs. This material was based on the extensive research and analysis on stock assessments conducted by the Honolulu Laboratory over the history of these fisheries, most of which was the basis for the original FMPs for these fisheries and their subsequent amendments. Honolulu Laboratory staff also engaged in a series of meetings, consultations, and subsequent discussions with WPRFMC staff as the WPRFMC staff drafted their over-fishing amendments.

Honolulu Laboratory staff were also involved in consultations with the WPRFMC staff and contractors on the Essential Fish Habitat (EFH), By-Catch, and Fishing Communities portions of the SFA amendments. The Lab also provided some data and documentation directly to the WPRFMC on these portions of the SFA amendments, and provided additional information to the NMFS SWR's EFH contractor.

Honolulu Laboratory staff also serve as the chairpersons of the WPRFMC's plan teams for these three FMPs and for input into the SFA amendments, and two Honolulu Laboratory staff also serve on the WPRFMC's Scientific and Statistical Committee which reviewed the WPRFMC's proposed SFA amendments.

We believe we provided a broad range of support to the WPRFMC on the SFA over-fishing amendments (although these amendments were subsequently disapproved by the agency). We also attempted to provide advice to the extent possible on the other portions of the SFA amendments.

RECREATIONAL FISHERIES

Question. Having recently reviewed the NMFS 1997 Recreational Fishery Resources Conservation Plan Accomplishment Report and the 1996–2001 NMFS-Specific Plan to Meet the Goals and Objectives of the Recreational Fishery Resources Conservation Plan, I note very little mention of efforts being carried out under the Recreational Fishery Resources Conservation Plan in Hawaii and the other U.S. territories and possessions in the Western Pacific.

What is the National Oceanic and Atmospheric Administration doing to identify, acquire, quality control, and analyze data on recreational fisheries throughout the Pacific Basin?

Answer. NOAA's National Marine Fisheries Service has been an active participant in planning and coordination of fisheries statistics for the Pacific basin through its membership and leadership on the Western Pacific Fisheries Information Network (WestPacFIN), a partnership of state, federal, island governments and the fishing industry and university community in Hawaii and the U.S. trust territories and possessions.

In the area of recreational fisheries, the NMFS Marine Recreational Fisheries Statistics Survey, a comprehensive data collection and analysis program on recreational and subsistence fishing, was conducted in this area in 1979–1981. This region was dropped from the program in 1982 because of shifting funding priorities. However, in 1998, NMFS staff and the Executive Director and staff of the Western Pacific Fisheries Management Council began planning efforts to re-initiate sampling of marine recreational fishing throughout the Pacific Basin. The NMFS Office of Science and Technology is providing seed money this year (fiscal year 1999) to the Pacific Basin to prototype methodological approaches and implement planning efforts begun in 1998. This initial planning will be used to establish what types and amounts of sampling are needed. The $1 million resource requirement has been outlined in a Report to Congress submitted by NOAA in January 1999 titled "Proposed Implementation of a Fishing Vessel Registration and Fisheries Information System." The report was prepared in response to a Congressional request for a nationwide plan for a comprehensive, integrated fisheries statistics system that would meet the need of federal and state resource managers.

OCEAN FLOOR OBSERVATORIES

Question. At the National Oceans Conference and in the fiscal year 2000 budget request, NOAA is requesting an increase of $3.1 million to expand shallow water observatories, develop new deep-sea observatories, and enhance vehicles through the use of advanced technologies to explore and understand the undersea environment.

As you know, the Hawaii Undersea Research Laboratory (HURL), funded through the National Undersea Research Program (NURP), has an ocean floor laboratory to gather data from Loihi, an underwater volcano off the Island of Hawaii. I am concerned about recent press reports that, due to budget cuts in the NURP program, HURL for the first time in 12 years, will not have sufficient funds for dives to Loihi. Assuming that Congress funds the President's request, will HURL be eligible for funds from this account?

Answer. The Hawaii Undersea Research Laboratory (HURL) is not planning to carry out its normal dives on Loihi this year due, in part, to a shift in focus of their research program. To make their research more relevant to pressing management needs of NOAA, the research center has begun a program in cooperation with the Honolulu Laboratory of the National Marine Fisheries Service to carry out research on fisheries and corals important to Hawaii. Last summer, for the first time, the specialized skills and technologies employed by HURL to study Loihi, were applied to study corals and the elusive deep water fisheries. These studies are continuing this year, and coupled with necessary maintenance on the HURL facilities, precluded Loihi dives this year.

Regarding the request for funding of sea floor observatories from the National Oceans Conference, the HURL sea floor observatory will not be directly funded by this item, although it will benefit from technologies developed to enhance and support sea floor observatories in general. The requirements of HUGO will be taken into account as development is planned for the four observatories to be included in this package.

INTERNATIONAL PACIFIC RESEARCH CENTER

Question. The International Pacific Research Center (IPRC) was established within the School of Ocean and Earth Science Technology at the University of Hawaii at Manoa in October of 1997 within the framework of the U.S.-Japan Common Agenda for Cooperation in Global Perspective. Its mission is to provide an international, state-of-art research environment to improve understanding of the nature and predictability of climate variability and regional aspects to global environmental change in the Asia-Pacific area.

What level of support can we expect from NOAA for the IPRC?

Answer. NOAA has provided approximately $68,000 in support of the IPRC for fiscal year 1999. It supported two conferences that the IPRC held in Honolulu: (1)

Equatorial Theoretical Panel Meeting, March 22-March 24, 1999; and (2) U.S.-Japan Workshop on Indo-Pacific Climate Observations, April 12-April 14, 1999.

The Equatorial Theoretical Panel Meeting held at the East-West Center in Honolulu from March 22–24, 1999 was sponsored by NOAA through the Joint Institute for Marine and Atmospheric Research (JIMAR) at the University of Hawaii, one of NOAA/OAR's 11 University partnerships. NOAA contributed approximately $40,000 to support this event.

NOAA's contribution to the IPRC's Indo-Pacific Climate Observations workshop at the East-West Center in Honolulu (April 12–14) is through the Pacific Marine Environmental Laboratory (PMEL), one of OAR's 12 Environmental Research Laboratories. NOAA's Office of Global Programs (OGP) transferred approximately $28,000 in grant funds to PMEL to specifically support this activity.

The IPRC has indicated interest in expanding its activities with NOAA, which would most likely be funded through the OGP competitive grants process.

CARBON MONOXIDE INJECTED TUNA

Question. During the Department of Commerce budget hearing on March 11, 1999 at which Commerce Secretary Daley testified, I raised my concerns about the importation of tuna which has been injected with carbon monoxide. Secretary Daley indicated he would "ask NOAA to look at this issue and see what we can do * * *."

What action has NOAA taken to look into this matter? Do you have any recommendations on how to best address this problem?

Answer. During the past few years, there has been an apparent increase in the practice of exposing tuna products such as steaks or sashimi cuts to carbon monoxide (CO) gas treatment to fix or enhance the natural color of the product. The U.S. Food and Drug Administration has historically considered the product which has been subjected to such a process to be adulterated under the provisions of Sec. 402(b) of the Federal Food, Drug, and Cosmetic Act in that damage or inferiority has been concealed, and/or that a substance has been added to make it appear better or of greater value than it is.

In 1997, NOAA became aware of a process which employed what the company termed "tasteless smoke" using wood smoke origin gas. The purpose of its application was to retard the development of the brown color that rapidly occurs in tuna flesh after it has been cut. Although CO was a component of the "tasteless smoke" gas, it was at a concentration found in normal wood smoke. Unlike other processes that result in the color of the product being enhanced or brightened and fixed through the use of higher concentrations of CO, this process did not enhance the natural color and the color of the flesh degraded over time. The importer provided data to FDA through correspondence and meetings to support the acceptability of its process.

FDA has chosen not to take regulatory action against a product which has received the "tasteless smoke" process. NOAA has implemented policy within its voluntary Seafood Inspection Program to only inspect and certify products which have originated from firms that NOAA has verified employ acceptable process controls.

SUBCOMMITTEE RECESS

Senator GREGG. The subcommittee will stand in recess.

[Whereupon, at 10:35 a.m., Friday, March 19, the subcommittee was recessed, to reconvene subject to the call of the Chair.]

DEPARTMENTS OF COMMERCE, JUSTICE, AND STATE, THE JUDICIARY, AND RELATED AGENCIES APPROPRIATIONS FOR FISCAL YEAR 2000

MONDAY, MARCH 22, 1999

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

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

Present: Senator Gregg.

SMALL BUSINESS ADMINISTRATION

STATEMENT OF AIDA ALVAREZ, ADMINISTRATOR

ACCOMPANIED BY:

GREG WALTER, DEPUTY CHIEF FINANCIAL OFFICER

RICHARD HAYES, ASSOCIATE DEPUTY ADMINISTRATOR FOR GOVERNMENT CONTRACTING AND MINORITY ENTERPRISE DEVELOPMENT

OPENING REMARKS

Senator GREGG. I think it is just going to be you and I, Ms. Administrator.

Ms. ALVAREZ. We are in good company.

Senator GREGG. I will let you make any statement you want to make, and then I have some questions. Obviously, you have your statement, so, please.

Ms. ALVAREZ. All right. I am not going to read the whole thing. I am just highlighting it.

Mr. Chairman, thank you for inviting me here today, and you do have my written testimony. I would like to talk briefly about the SBA budget for the year 2000 which is a request of $994.5 million and, which I believe, is a sound blueprint for the SBA in the 21st Century to help small businesses succeed.

This is a modest budget. It actually requests nearly level funding for the current programs. Because, while the appropriation required to maintain the programs at current levels is greater this year, it is largely because we have a lack of carry-over funding that was available in previous years; carry-overs that were due primarily to the fluctuations in the demand for disaster and 7(a) loans.

But with what is essentially level funding, we will be able to offer unprecedented levels of credit and capital, $10.5 billion for

7(a), up from $10 billion; $3.5 billion for 504; and $2.4 billion for the SBIC program, which is an increase of $1 billion.

We also are hoping to carry out a number of statutorily mandated programs, including $9 million to support the expanded Women's Business Center Network and $4 million for the HUBZone Program, which we are kicking off today. I believe that you have a package that goes into some detail about the HUBZone Program. We actually have a very sophisticated way of getting folks on-line, typing in their address, and making an instant determination as to whether they qualify or not. There are also going to be electronic applications.

The budget contains a modest request to carry out the New Markets Initiative. The New Markets Initiative is essentially focused on filling the critical gap for small businesses. Last year, our average loan size was $229,000. That loan size is growing. We believe those businesses need those loans but those are not small-sized loans. The critical gap is providing more smaller-sized loans for the newer businesses.

In addition, recognizing that they also need equity investments, not simply debt, and that investment has to be accompanied by technical assistance.

We believe this is a sound, fiscally prudent budget. It continues the trend toward lower subsidy rates. Since the beginning of the Clinton Administration we have 18 percent fewer employees. This fiscal year 2000 budget would reduce our operating budget by an additional $10 million.

With significantly fewer employees, we are doing more than ever before. We are relying heavily on credit decisions by our lending partners for about 75 percent of our loan portfolio. In fact, what we have seen is fewer employees and more out-sourcing of decision making to our private sector partners. The SBA portfolio has actually grown to almost 500,000 loans worth about $40 billion, which is nearly double what it was 6 years ago, when it was about 260,000 loans worth just over $20 billion.

This budget contains a request for $8 million to continue the systems modernization, which we began in fiscal year 1998. We are hoping to continue to better identify and manage portfolio risk. We want to integrate the SBA system with those of our private sector lenders. We are looking for staff training that goes along with the modernized systems.

I am proud to say that SBA was the first credit agency in the Federal Government to receive an unqualified opinion from an independent auditor and that it is an opinion that we have received 2 years in a row. In the meantime we are trying to make some of the necessary changes. The $8 million will help us with the modernization aspects. As the Government goes forward, and other agencies are facing the same challenge, there are revised and expanded financial accounting requirements and we are working on that with our latest audit.

As you are aware, we have requested $761.5 million in regular appropriations; $233 million in emergency contingent funds for disaster assistance. This budget also includes $1.4 million for the Office of Advocacy and $11 million for the Office of the Inspector General.

PREPARED STATEMENT

I think that, as I said, this is a fiscally sound blueprint for the future, and I look forward to working with you and the committee to meet the needs of America's small businesses. I welcome any questions.

[The statement follows:]

PREPARED STATEMENT OF AIDA ALVAREZ

Mr. Chairman, Senator Hollings, and Members of the subcommittee, thank you for inviting me here today.

I am very proud to present the U.S. Small Business Administration (SBA) fiscal year 2000 budget request of $994.5 million. It is a budget that provides a blueprint for the SBA and how we will prepare small businesses to succeed into the 21st Century. With this budget, we will provide record levels of assistance for small businesses; provide targeted assistance to smaller, newer firms; and we will do it with fewer staff and lower costs.

SBA'S FISCAL YEAR 2000 BUDGET: PREPARING SMALL BUSINESSES TO SUCCEED INTO THE 21ST CENTURY

The budget offers good news for America's small businesses. In fiscal year 1999, SBA provided record levels of financial support to America's small businesses. The fiscal year 2000 budget again would offer small businesses unprecedented levels of credit and capital: $10.5 billion for the 7(a) general business loan guarantee program, up from $10 billion in fiscal year 1999; $3.5 billion in SBA-backed loans under the Section 504 Certified Development Company Program; and $2.4 billion—compared to $1.4 billion in fiscal year 1999—in equity assistance and debenture leverage under the Small Business Investment Company program.

TARGETING SMALLER, NEWER BUSINESSES

While our record shows we have done a good job helping small businesses succeed faster and easier, our job is far from done. Because of bank consolidation, centralized processing, credit scoring and other changes in the marketplace, smaller loans are harder to get.

The average SBA guaranteed loan is around $229,000 and growing. But whether you are black or white, male or female, urban or rural, if your business is newer, if your financing needs are smaller, if you lack sufficient equity, you are more likely to be turned down. We must ensure that our smaller, newer firms can get the smaller loans they need. Last fall, we improved and expanded two of our loan programs to meet the needs of smaller, newer businesses. We now average a 36-hour turnaround time for SBA LowDoc loans and we have expanded SBAExpress from 17 to in excess of 300 lenders. We have raised the loan limit to $150,000 for both programs.

This year's budget would further encourage loans under $150,000. It would cut the guarantee fee from three to two percent for loans between $100,000 and $150,000, saving small businesses up to $1,000 on each loan. It reduces the servicing fee for lenders on these loans from 50 basis points to 30, providing a greater incentive for lenders to make the loans. For non-SBAExpress loans, the proposal also would increase the maximum guarantee percentage for loans between $100,000 and $150,000 from 75 to 80 percent. The guarantee percentage for Export Working Capital loans will remain 90 percent.

The budget increases support for our smallest businesses. Four million dollars of new budget authority, combined with an expected carryover from fiscal year 1999, would provide $60 million in direct loans and $16 million in loan guarantees under the Microloan program. Thirty-two million dollars for technical assistance would nearly double last year's funding and would allow us to expand the number of microloan intermediaries to 200.

NEW MARKETS INITIATIVE

Since President Clinton took office, the economy has created nearly 18 million new jobs. Yet even during one of the greatest periods of sustained growth in American history, there remain areas of untapped potential.

In his fiscal year 2000 budget, the President announced a New Markets Initiative, a sweeping new public/private partnership designed to boost business opportunities in distressed rural and urban areas. Key elements of the initiative include: tax cred-

its; loan guarantee incentives; targeted investments by private venture capital companies; technical assistance; and mentoring programs. All of these are designed to meet the unmet needs of small businesses.

I would like to emphasize why this initiative is so important to small businesses. Just last week, Federal Reserve Chairman Alan Greenspan, in a speech to the Federal Reserve System Research Conference on Business Access to Capital and Credit, stated: "I would emphasize that credit alone is not the answer. Businesses must have equity capital before they are considered viable candidates for debt financing. Equity acts as a buffer against the vagaries of the marketplace and is a sign of the creditworthiness of a business enterprise. The more opaque the business operations, or the newer the firm, the greater the importance of the equity base."

A recent study by SBA's Office of Advocacy estimates that each year 50,000 small firms need start-up equity financing. In 1996, SBIC's and private venture firms together invested in only about 4,000 firms. As you well know, the problem is particularly acute in economically distressed areas—from rural Main Streets to our inner cities—where perceived risks overshadow the real opportunities that exist there.

To address this problem, SBA's fiscal year 2000 budget includes a number of proposals, developed in consultation with venture capital experts, to make it more attractive for Small Business Investment Companies (SBIC's) and Specialized SBIC's to invest in distressed rural and urban areas.

The Low- and Moderate-Income (LMI) Investment initiative complements our existing SBIC Program by offering a special LMI debenture. The new tool allows SBIC's to defer interest payments on LMI debentures for five years, giving SBIC's more time to nurture their investments in small businesses before they have to start making payments on the money they used to finance them.

To qualify, investments must be in small businesses that are located in LMI areas, or that hire at least 35 percent of their workforce from residents of LMI areas. LMI areas will include HUBZones, Empowerment Zones, Enterprise Communities and counties with persistent poverty.

While we want to expand equity investments in LMI areas, we also want to provide the specialized technical assistance that must go with it. To do this, the SBA is proposing the creation of between 10 and 20 New Market Venture Capital Companies (NMVC's), which will target investments in the range of $50,000–$300,000.

Modeled on the existing SBIC program, which typically supports investments between $300,000 and $5 million, NMVC's will be a new and separate venture capital network. The program will offer a combination of equity financing through debentures and unique, specialized equity technical assistance in LMI areas.

For the NMVC initiative, we are requesting $15 million in budget authority for a program level of $100 million. Another $30 million is requested for technical assistance grants that would be matched by the NMVC's over a five-year period.

SBA has organized a series of workshops to recruit SBIC investors and management teams with investment experience in LMI areas. Beginning in late March, workshops are scheduled for Chicago, Kansas City, New York, Atlanta, Dallas, San Francisco and Los Angeles.

In further support of the New Markets Initiative, SBA will work with the Department of Housing and Urban Development (HUD) on the America's Private Investment program. That program would leverage government guarantees of debt against private investment to allow investments in larger firms with the opportunity to grow. The funds for this program are contained in HUD's budget request.

MODERNIZATION AND LENDER OVERSIGHT

We know to be effective we must continue to modernize. SBA is delegating greater authority to its lending partners than ever before. Today, with 19 percent fewer employees than in 1992, we rely on the credit decisions of our lending partners for about 75 percent of our loan portfolio. The total SBA portfolio has grown to almost 500,000 loans worth around $40 billion, nearly double that of as little as six years ago, when it consisted of around 260,000 loans worth just over $20 billion.

The budget includes $8 million to continue the systems modernization efforts SBA began in fiscal year 1998. When completed, we expect the system will enable us to better identify and manage portfolio risk. It also will allow us to integrate SBA's system with those of private sector lenders. Included is critical funding to carry out the staff training that goes along with the modernized systems.

To protect your investment in small business and to protect the public trust, we also have:

Established a Risk Management Committee to assess loan risks and design strategies for assuring program soundness. Implemented a comprehensive program for reviewing our Preferred Lenders Program (PLP's). Designed and implemented a new

Small Business Lending Company (SBLC) oversight program to assure the safety and soundness of the 14 non-depository, non-regulated lenders that participate in the SBA's 7(a) loan program. Designed a new database to evaluate the portfolios of each Certified Development Company. Implemented regulations to govern the securitization, or sale, of the unguaranteed portions of 7(a) loans. The final rule was published in the Federal Register in January.

I am proud to say that the SBA was the first credit agency in the federal government to receive an unqualified opinion from an independent auditor, the highest rating attainable. In fact, the SBA has received an unqualified opinion for two years in a row. We are confident that this year's audit will find the SBA to be in substantial compliance with appropriate accounting standards.

The $8 million requested for systems modernization in fiscal year 2000 will also enable us to continue our efforts to meet the federal government's revised and expanded financial accounting requirements. Today, all federal credit agencies are striving to meet the challenges of the new requirements, which will result in greater accountability throughout the government.

BUSINESS DEVELOPMENT, CONTRACTING AND TECHNICAL ASSISTANCE

The fiscal year 2000 budget is strong on business development and technical assistance. It proposes $62 million for the Small Business Development Centers (SBDC's) which, combined with our proposal to permit SBDC's to charge nominal fees for services, would support current levels. It calls for $9 million to support an expanded Women's Business Center network. There is $10 million for 20 new One Stop Capital Shops in the recently announced Round II Empowerment Zones. It also includes $5 million for Section 7(j) technical assistance, $1 million for Native American outreach, and $615,000 for veterans' outreach.

The budget contains $6.5 million for increased federal contracting initiatives to help meet the increased government-wide small business goal of 23 percent (previously 20 percent). Included is $4 million for the HUBZone Empowerment Contracting (HUBZone) program, which will allow us to build on the extensive work we have done already in preparation for the program's rollout, which we are kicking off today. In its first year alone, the HUBZone program is expected to create as many as 25,000 new jobs in America's inner cities and rural areas. By the year 2003, around $6 billion worth of Federal contracts should be available to HUBZone firms each year. There also is $500,000 for PRO-Net and $2 million for promoting small business use of electronic commerce.

OTHER KEY PROVISIONS

Included in the budget request of $994.5 million is $761.5 million in regular appropriations and $233 million as contingent/emergency appropriations for disaster assistance. This compares to the fiscal year 1999 appropriated level of $820 million, which included a $101 million contingent/emergency appropriation for disasters. The budget also includes $1.4 million for the Office of Advocacy and $11 million for the Office of the Inspector General.

CONCLUSION

SBA's fiscal year 2000 budget proposal is a fiscally sound blueprint for how SBA will help America's small business prepare for the 21st Century. I am particularly excited about the New Markets Initiative, which will couple much needed equity investments with easier to access, less expensive loan dollars. Mr. Chairman, I look forward to working with you to meet the needs of America's small business community, to stimulate small business growth and expand opportunities. Thank you again for inviting me to appear today. I will be happy to answer any questions you have.

AUDIT ISSUE

Senator GREGG. Thank you.

Well, you mentioned several areas I want to find out a little bit about, starting with the audit issue. The audit for 1998 has not been completed. Why is that?

Ms. ALVAREZ. Greg Walter can certainly speak in detail to that, but we have a whole series of new questions that we need to answer and it is really tied to the modernization effort.

Senator GREGG. Well, what? Was it not supposed to be done by March 1?

Mr. WALTER. I am Greg Walter, the Deputy CFO. The Government Management Reform Act a few years ago required audit statements be produced by March 1. This year, the Office of Management and Budget [OMB], who defines the financial statements for the agencies that are to be audited, doubled the number of statements that need to be included in the audit process.

SBA, like most of the other credit agencies has had a very difficult time trying to produce those additional statements. The reason for the delay is that we have not been able to produce the statements yet, that must now include budgetary resources, in addition to traditional statements that we have been producing.

The remainder of the audit has been completed by the auditors. They have been working with us hand-in-glove for about 6 months and they are now just waiting for us to deliver the final statements to them so that they could complete their audit cycle.

Senator GREGG. Well, when do you expect them to complete the audit?

Mr. WALTER. We are probably still a couple of months away from completing the audit, sir.

Senator GREGG. That is not going to do us too much good to get an audit half-way through the year, is it?

Ms. ALVAREZ. Well, I think unfortunately, or fortunately, we are trying to modernize and it is not business as usual for us in terms of this audit. I think OMB understands that. We have no reason to believe that the agency is any less sound from a safety and soundness standpoint, and we think that when all is said and done, we will get the sort of report that we have gotten in the past couple of years from the independent auditor, which is a good report. But in the meantime we are trying to implement these changes.

Senator GREGG. I noticed in reading the report from 1997 that they expressed a number of concerns, one of which was that the agency lacks a comprehensive plan of preparing financial statements, including identification of all requirements; funds balances with the Treasury reconciliation adjustments were not completed; and the subsidy rates that are re-estimated were not completed until January 1998. Incorrect data were used in several re-estimate cash flows, spread sheets, including incorrect discount rates and incorrect cell references and incorrect formulas occurred in several re-estimate spread sheets.

It seems to me that even though it was an unqualified statement, there were a lot of fairly significant complaints in this audit about fiscal structure and where the money was going in accounting.

Do you have any thoughts on that?

Mr. WALTER. Sir, most of those findings dealt with the re-estimate process under credit reform and last year, it is true, we did not have written procedures and controls in place for how we conducted the re-estimate process. This year, working with the auditors, we have put those in place. There were some things, from last year, that have been corrected throughout this year. So, we do now have greater——

Senator GREGG. So, when we see the audit this year we are not going to see those types of reservations on this statement?

Mr. WALTER. You will not see that the procedures are not in place this year, that is correct.

Senator GREGG. Can you get us what you have had audited so far? Is there a preliminary?

Mr. WALTER. The auditors have not provided us anything in writing on this. We can give you a status report on what parts of the audit they have completed from our perspective, but they have not provided anything to us that we would be able to turn over to you as far as the results of their audit. They have reserved that to the end.

Senator GREGG. OK.

Well, here is my concern. I think that an agency like yours, which is essentially a private lending agency—that is the way I look at it—that the audit is absolutely critical and that we need that information. We need to get it on a timely basis because for all we know you could have contingent liabilities in immense proportions that are coming due as a result of your issuing so much debt.

There could be a liability here that we do not know about that is coming at us. And, so, how do we get this audit structure so we can get the results in a timely way?

Mr. WALTER. Sir, a major piece of it is, as the Administrator mentioned, that our systems, themselves, lack some of the accounting capabilities that have been required of us recently by the JFMIP and the new FASAB. Those folks require that we embed budgetary accounting into the agency's financial structure and our systems. However, these systems are so old and outdated that they do not contain that information. So, this year, we have to manually go back and create the general ledgers from 1992 forward to include those entries.

Our systems modernization plan, which is a multi-year plan, will include replacement of the financial systems to have those types of entries embedded in the system. We are still a couple of years away from completing that system.

Senator GREGG. Now, we have given you about $8 million over the last 2 years for that modernization effort, I think.

Mr. WALTER. Eight in the last 2 years, each, that is correct.

Senator GREGG. So, what are we getting for that if you are not up to speed yet?

Mr. WALTER. The first part of the effort is to comply with the Clinger-Cohen Act which requires us to go through eight planning steps to make sure that we have completed requirements analysis, benchmarking, and all the data analysis before we actually start acquiring or developing systems. We will have completed all these planning steps by May of 1999. And at that point in time, we will have an actual acquisition plan so that starting in the fall of this year we will be able to acquire and develop the systems. Most of these efforts will really take place mostly in fiscal year 2000.

Senator GREGG. Well, I would like to get a time-line listing the areas where you are now being asked to produce documentation that you do not have the structure for, and the time-line as to when you are going to have in place systems that will allow you to produce that information in a timely way.

Mr. WALTER. OK.

Senator GREGG. With costs.

ADDITIONAL EMPLOYEES

Now, on the employee side, I notice you have added about 120 employees. You say you are in a freeze mode. Where did these 120 employees come from?

Ms. ALVAREZ. We have some new requirements which we are trying to meet, like the HUBZone Program, and the Small Disadvantaged Business certification. And in addition, we have increased the Women's Business Centers.

We have actually had a hiring freeze for 5 of the past 6 years. And the hiring has been done on a mission-related basis where we need to hire people to meet legislative requirements or who are essential to carry out our function. Otherwise, there has been no material increase.

Senator GREGG. Well, of the 120 people, how many of them are assigned to you from other agencies that you get reimbursements relative to those people, if any?

Ms. ALVAREZ. That is the Small Disadvantaged Business [SDB] piece. Otherwise, we have hiring that has occurred for the Low/Doc Centers, for the One-Stop Capital Shops. For fiscal year 2000 we are proposing to do some increased hiring in the investment division. As we increase our Small Business Investment Company Program, we want to make sure that we have the staff to execute that.

Senator GREGG. I guess my question is, if you have a hiring freeze, how do you hire 120 people?

Ms. ALVAREZ. Well——

Senator GREGG. If you do not really have a hiring freeze, you basically have a permanency hiring freeze.

Ms. ALVAREZ. The hiring freeze going forward, this year is partly due to the fact that we have to contend with a budget that goes to June 15 and after that we need to see where we are.

Senator GREGG. You have enough money to get you through to the end of the year?

Ms. ALVAREZ. We have been very conservative, yes, sir. Anticipating that we might not have enough money to get through the year so we have been very careful about that.

There is a discussion right now going on about how to fund the emergency funding for the supplemental for Central America and there is talk about taking some of that funding out of our budget, at least $5 million. I am really reviewing all of our processes for budgets because right now we have 130 different locations where decisions are made about hiring people, and I do not think that is the way to run a railroad. And, so, we are revisiting that because unless I put a stop to it right now, 130 different offices might decide that they were all going to hire people which they feel they need but which, in the scheme of things, we cannot afford. That is the reason we have a hiring freeze.

We have a process now where we have centralized the decision making, and people are presenting their proposals and justifying on a priority basis who needs to be hired to fulfill the mission.

Senator GREGG. So, of these 120 new employees, these are almost all on your payroll? You are not getting reimbursements on many of these from any other agency?

Ms. ALVAREZ. That is right, with the exception of SDB certification.

Senator GREGG. And you mentioned LowDoc, is that what it is called?

Ms. ALVAREZ. Right.

MICROLOAN PROGRAM

Senator GREGG. And you have the microloan program?

Ms. ALVAREZ. Yes. We are looking to expand that microloan program.

Senator GREGG. You have this New Markets Venture Capital program?

Ms. ALVAREZ. That is right. We are proposing a new program called the New Markets Venture Capital program which we believe will meet some of the equity investing needs of smaller-sized businesses, smaller amounts of equity investments accompanied by technical assistance.

Senator GREGG. Is there not significant overlap in some of these programs? I mean, we seem to be developing a plethora of little programs here.

Ms. ALVAREZ. No. I do not think so. I mean the only new proposal is the New Markets Venture Capital. The reason is that our loans keep getting bigger and bigger.

But what happens to many of the rural businesses, women-owned businesses, minority-owned businesses and just plain old, small businesses that are the future for our country? They are having a harder time.

Now, there are lots of reasons why that is happening. Certainly the bank mergers have an effect and probably credit scoring has an effect. The fact that smaller loans are not as profitable as bigger loans has an effect. So, we have tried to look structurally at our existing programs and figure out how we create some incentives for the banks to do smaller loans.

And we are looking to try to reduce, for example, the fees for the smaller-sized loans, we are looking to also create an incentive for the lenders by reducing their costs. We have expanded SBAExpress which has only a 50 percent guarantee. So, actually there is less exposure for us, but it allows the lenders to make credit decisions without SBA paperwork for loans $150,000 or smaller.

The only real new proposal requiring legislation is the New Markets Venture Capital program because the structure is somewhat different than the Small Business Investment Companies [SBIC]. The SBIC investments are in the range of $250,000 to $5 million. New Markets Venture Capital would fund investments in the range of about $50,000 to $300,000. It is really a totally different need.

Senator GREGG. What has been the default rate on the microloans?

Ms. ALVAREZ. There have been no losses for us in the microloan program. The micro lenders all have a reserve fund and they have to make good decisions because losses come out of that reserve fund. We have not lost anything.

7(J) PROGRAM

Senator GREGG. The 7(j) program, why is it taking so long to get those dollars awarded?

Ms. ALVAREZ. I have been very hard on our folks in the past because I believe we need 7(j) dollars desperately, and I do not think we have done a good enough job of both evaluating how we spend the existing money and justifying going forward. However, I know we need those dollars because it is the only targeted assistance that we have for our 8(a) programs to help them with business development.

As a result, they are doing a thorough evaluation, and in the process, they have held off allocating the funding. We have talked about this, and they are going to go ahead and certainly fund some of the university programs. The Amos Tuck Program is a terrific one, the others are not all equally good. We have to go ahead and spend some of that money but I want some hard-nosed justification for how to spend those dollars.

Senator GREGG. Well, I understand that, but it does seem to me that in terms of at least the Amos Tuck Program, you know, I mean there was a letter from your office——

Ms. ALVAREZ. I saw that letter. I did not like that letter. I thought that was not a very responsive letter, and we are acting on that immediately.

Senator GREGG. Because I do think that these folks have to have some lead time.

Ms. ALVAREZ. Absolutely. I agree.

Senator GREGG. You cannot get applicants to participate in the program if you are going to wait until June to give them the go-ahead to do the programs.

Ms. ALVAREZ. I think we do have time because it is a summer program, but I agree with you.

Senator GREGG. Plus, the applications are unsolicited and are coming in every year.

Ms. ALVAREZ. That is right. That is right.

Senator GREGG. For the SBDC programs you have a reduction here, a significant amount of dollars, which is a $20 million reduction. How do you expect them to make up for that?

Ms. ALVAREZ. Every year the funding for SBDC goes up and up and up. It is a terrific program, but we are operating under some serious belt-tightening at SBA as we try to meet more needs with fewer dollars. We believe that they ought to be able to make up the difference by charging fees.

We are concerned that there is legislation that says, by law, they should not charge fees, because I think most Federal programs should be able to charge fees if needed. In addition, they already do charge fees in some areas. They charge fees for training small businesses. Last year they generated $5.8 million in income from fees for training. They charge fees for prequalification for loans. They also refer clients to resources who charge fees. And SBDCs receive funding from other sources, Federal sources that do not require a match: the Occupational Safety and Health Administration, Internal Revenue Service, Environmental Protection Agency, Department of Defense, and so forth.

We are very supportive of SBDCs but we really believe that they can charge a modest fee which their clients will be able to pay, and in the process generate some income just as all of our other programs have to do.

Senator GREGG. Would you agree that we could do 20 percent in other parts of the agency?

Ms. ALVAREZ. We would have to sit down and work with the SBDCs and see what is reasonable but we think that they can, given the amount of counseling that they do, make up the difference.

Senator GREGG. They are authorized to charge fees and collect them and keep them in their own accounts?

Ms. ALVAREZ. They have done so for the training program. By law they are not supposed to charge fees for counseling but they are allowed and do charge fees for training for small businesses and for the prequalification efforts. And they use them—we do not see them—they plough them back into their own accounts.

Senator GREGG. Well, the fee increase would be fairly significant. I mean that was not 20 percent—it is actually 25 percent, $20 million of $80 million. And the base over which it could be spread is pretty narrow, is it not? That is basically a small part of their activity that they could actually charge fees for.

Ms. ALVAREZ. Well, their own studies say that they have counseled over a million customers last year. So, even if you're talking about a $15 counseling session which is not a lot, even if you multiply that by 8 or 10 sessions, it is not a lot for a customer.

Right now, the training is usually for the newest businesses. Counseling is for businesses that are further along and probably have a greater capacity to pay. Training is for those who walk through the door, very basic information and their customers are paying them now.

COUNSELING FEES

Senator GREGG. Can you assess fees on counseling?

Mr. WALTER. Not today, Senator.

Ms. ALVAREZ. Not given the law, that is why I am concerned that we have language that prohibits the charging of fees. Even though they are charging fees for training.

Senator GREGG. So, you are assuming the law is going to be changed in order to collect this $20 million?

Ms. ALVAREZ. The law would have to be changed, yes.

Senator GREGG. So, where do we get the $20 million?

Ms. ALVAREZ. We believe the law should be changed, and we believe that it is reasonable, especially in this day and age, for any Federal agency to ask that the customers, the users, contribute something.

Senator GREGG. Well, that may be but I suspect by the time we mark this budget up the law will not have been changed. And, so, we will have to find $20 million somewhere or some percentage of that and, so, you might give some thought as to where that should come from.

This contingency fund that you suggested, I do not think we can appropriate a contingency fund. The law does not allow us to do that.

Ms. ALVAREZ. Well, that is a bigger discussion than the discussion of our budget in terms of contingency funding. We believe that, in fact, since credit reform, disasters have been funded through contingency funding and the breakout of that funding is historically along the same lines as the proposal that we are making, about a third on budget and two-thirds off budget.

We also believe that given the unpredictability of disaster spending that rather than tie up an allocation in advance and, in the process, forego other valuable programs, it is best to do the funding in an emergency contingency fund.

Senator GREGG. But you cannot have a contingency fund and not have it scored against a direct appropriation. So, there is no advantage to calling it a contingency fund. From the standpoint of your appropriation, it will still be scored against this committee and, therefore, against your agency.

You cannot create an emergency fund under the present structure and fund it and have it outside the caps. So, my question to you is, you have $39 million in here for funding of disasters, and what is a reasonable number for that account assuming no contingency fund?

Ms. ALVAREZ. Well, sir, the Administration's position is that this should be funded out of a contingency fund and that is where we are right now with our proposal.

Senator GREGG. Well, that may be but we are not going to do it that way. So, you know, we are asking——

Ms. ALVAREZ. I cannot act——

Senator GREGG. Because we cannot do it that way.

Ms. ALVAREZ. I have to act within the context of OMB and the Administration position. So, this is a discussion that we definitely need to have but right now—this is the President's proposal.

Senator GREGG. Well, unfortunately, the President has made a lot of proposals in this budget that are gamesmanship of the worst order. He has zeroed-out accounts that he knows are not going to be zeroed-out, and spent money on accounts he knows he cannot afford to spend it on because he has zeroed-out these accounts which he knows are going to have funding.

If your agency is unwilling to give us suggestions in this area that are within the context of the present budgeting structure, then we will simply go forward and do it unilaterally and that is not going to be constructive to you because it is going to end up coming out of accounts that you might not be comfortable with.

I think that you have sent up a budget for talking points. I suggest you send up one for substance on these points, the SBDC and this contingency fund. If you do not, we will have to act unilaterally and that I do not think is constructive, and I do not think it is a good way to go. So, can you give us any specifics?

Ms. ALVAREZ. We are here to work with you but I would have to go back to OMB and work with them.

Senator GREGG. Well, maybe you should.

MINORITY BUSINESS DEVELOPMENT

The Minority Business Development Agency (MBDA) in the Commerce Department, does that do anything substantively different than your own minority business development?

Ms. ALVAREZ. Richard is here and can speak to it. First of all, MBDA, which is an office in the Department of Commerce, helps large businesses and medium-sized businesses. These are outside of the scope of what we can do, and their responsibilities are really somewhat different from ours.

For example, our budget for Government Contracting Minority Enterprise Development is used to ensure, for example, that the 23 percent set aside for small businesses is implemented. A significant part of our activity is directed at ensuring that.

We also have a responsibility for the 8(a) program which is meant to be a business development program. However, SBA does not have funding for business development training except for the 7(j) program and that is a very small amount of money. It is, I think, $2.6 million.

So, the fact that MBDA has a pot of money for counseling and business development is helpful to these minority businesses. Since we cannot afford it and we like to work closely with them and refer people to them for assistance. In this regard we work side-by-side in a cooperative way.

Senator GREGG. Do you know what the administrative costs are of your small business development activities as a percentage of the amount of money?

Ms. ALVAREZ. For the set aside part for the 23 percent?

Senator GREGG. For your overhead.

Ms. ALVAREZ. The total budget for GC/MED is $20.6 million. I think MBDA has a budget of about $25 million. So, with our $20 million we complement not duplicate each other.

I do not know if you want to speak to it, Richard?

Mr. HAYES. I am Richard Hayes. I am the Associate Deputy Administrator for Government Contracting and Minority Enterprise Development. Their MBDA focus is really medium-sized and larger-sized businesses. For example, they provide export assistance to firms engaged in exporting. They have Phoenix, an electronic Internet system, that they use to try to find business opportunities for the middle-sized and larger-sized companies registered with them.

Our dollars are used to provide assistance to small, minority, and women-owned businesses. There is a need for different ways of providing assistance to the smaller- and mid-sized and larger-sized minority firms.

They are the only agency in the Federal Government whose mission is solely dedicated to serving minority businesses. And we work very closely together in carrying out a variety of activities, such as Med-Week, in September, when minority businesses come to Washington to be honored for their activities and participate in a variety of training activities.

So, again, as opposed to duplicating what is going on, we think they help us meet the greater need that is out there.

Our businesses, once they finished the 8(a) program and do not meet SBA size standards can acquire additional assistance from MBDA through its network of centers.

So, we view our efforts as collaborative.

Senator GREGG. What is the size criteria? What would be the size of a business that moved into MBDA?

Mr. HAYES. All of our businesses have to meet the SBA small business size standards that vary depending upon what industry category the firm happens to be in. It can be a dollar limit, it can be an employee limit. If you are in petroleum, it is actually barrels pumped per day.

All of our activities are really geared towards small businesses.

We offer, for example, PRONET in which small firms can register for various procurement activities. The Federal agencies can use PRONET to find small firms eligible for business opportunities too. But those are all small businesses.

MBDA does not have that constraint. They tend to relate to mid-sized and larger-sized businesses.

Senator GREGG. Well, what size would MBDA be dealing with? What, in terms of dollar amounts.

Mr. HAYES. Again, it depends upon the industry. For manufacturers, for example, a small business is anything less than 500 employees. For management consulting, it is $3.5 million averaged over 3 or 4 years. Anything below that is a small business, anything above that is a large business. And, again, we gear our activities toward small businesses. And, the size standards really depend upon the industry. Small business activities can be as much as $15 million averaged again over 3 years.

It is dependent upon the industry that the assistance is being provided to.

Senator GREGG. OK.

Is there anything else that the committee needs to know?

Ms. ALVAREZ. I think that overall SBA is doing a very good job in meeting small business needs. My concern with any budget is that it be future oriented. That the budget is a document that is not just about what we have done well but it is about what we need to do for future generations. That is why we have spent a lot of effort thinking through on this New Markets concept. Because if we are just continuing to help those who have and are not gearing ourselves towards those that could be the future bigger businesses, then we are making a mistake.

We have seen the growth that is occurring with women-owned businesses, and there is a lot of activity with minority-owned businesses.

If you just look at demographic projections from the Census Bureau, which project that by the year 2050 there will be no single majority in this country. This means collectively all these minorities will be a significant presence in this country. And, so, part of what we are trying to do is ensure that we provide the sort of assistance that they need to have to be contributing to the nation's bottom line.

We will not see a terrific economy in the future if we just continue to help those who have had and not recognize that there is demographically a huge change in this country.

That is what the New Markets proposal in part attempts to do, and given what we can do nowadays electronically and so forth, there are an awful lot of opportunities that we have not explored for rural communities. And that we can do more in a decentralized way with the right kinds of programs and the right kinds of systems.

We are very focused at the SBA. When I took this position I focused on both the growing small business population, the newer segments that were growing, and also on the modernization of the SBA. We are working on that. We are very serious about that. It has to be an effective and efficient agency, otherwise, good programs will not go anywhere. So, we have both of those in the front of our minds at all times.

ADDITIONAL COMMITTEE QUESTIONS

Senator GREGG. Thank you.

Ms. ALVAREZ. Thank you.

Senator GREGG. I appreciate your time.

Ms. ALVAREZ. Thank you.

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

QUESTIONS SUBMITTED BY SENATOR TED STEVENS

Question. Last year, $5 million was provided to the Small Business Administration to be administered as emergency loans to small business concerns impacted by the fishery failure in Western Alaska. Since that time, I have heard reports that SBA has had difficulty approving loans under this program to many Alaskan business concerns. Please provide this subcommittee a breakdown of loan applications from Alaskan companies under this program. I would like to know how many applications have been approved and denied. For each application that is denied, please provide a detailed justification for SBA's actions.

Answer. The funds have been used for the needs of Alaska's small businesses. On September 19, 1998 I issued an economic injury declaration covering much of Alaska as a result of the El Nino currents. The filing deadline for that disaster is June 1, 1999. Thus far (to March 16, 1999), we have received 1,061 applications and completed action on 1,015. Of these, 55 were withdrawn prior to decision, 553 were approved for $23.2 million and 517 have been declined. The average processing time was 14.75 days and 98 percent were processed within our 21 day goal.

Of those declined, 58 percent were for lack of repayment ability, 21 percent for inadequate working capital before the disaster, 17 percent because of no demonstrated economic injury and 13 percent because of unsatisfactory credit reflected in their credit reports. (Note: some cases were declined for more than one of these stated reasons.)

Question. Does the SBA have sufficient regulatory flexibility within the emergency loan program to take into account the unique circumstances presented by the two consecutive years of fishery failures in Alaska? Specifically, how does two consecutive years of losses affect the ability of a company to qualify for a loan under this program?

Answer. We are aware of the difficulties they face. I assure you that we are being very flexible in processing these loans.

The approval rate (of loans with completed action) in Alaska is 62 percent, which is higher than the approval rate in most economic injury disasters.

The Economic injury loan program is a limited one. It is not intended to cover all of the financial ills of a business. It is intended to permit the business to help it pay the ordinary and necessary operating expenses that it could have paid had there not been a disaster but now cannot meet because of the disaster. The disaster in this case is limited to the effects of the El Nino that began in May, 1997. Problems that preexist the disaster or were caused by other factors are not covered by the program.

The fishing industry, as with most industries, changes considerably during a 4 or 5 year period. As reasonably prudent lenders, when considering repayment ability for a business, we must look at the way it has operated in the most recent predisaster period. For example, a continued downtrend in the past few years (predisaster) that leads to questioning of repayment ability may indicate a need for more capital rather than additional debt in the form of a disaster loan.

While the economic injury program cannot cover many areas of need for a fisherman (e.g., refinancing existing debt, upgrading of equipment), the Agency's regular business programs (7(a)) are available through the Anchorage District office.

Question. Administrator Alvarez, the SBA contacted Small Business Development Centers (SBDCs) in August 1998 asking them to submit proposals for what they were told was $6 to $8 million in extra money available in fiscal year 1998. Many SBDCs submitted proposals, and many went out into their communities to raise matching funds for these proposals. The SBA finally told the SBDCs that these funds would not be available one week ago (March 1999). What happened to the $6 to $8 million? Why were the SBDCs told this money was available when it was not going to be made available? Is there a General Counsel's opinion saying that the funds could not be made available? If so, can you furnish the Subcommittee with a copy of these legal opinions?

Answer. In August 1998, SBA believed that there may be additional funds arising from a comprehensive de-obligation process identifying unused funds. To the extent such funds were identified, SBA anticipated the possibility of supplemental grant funding. SBA wanted to provide the SBDCs with as much time as possible to provide proposals if funding became available. In an e-mail to all State SBDC Directors, dated August 20, 1998, the Associate Administrator for SBDCs described a financial reconciliation process of fiscal year 1997 SBDC grant funds underway in SBA's Denver Financial Center, and stated, "It appears that there may be additional funds available for delivery of services by SBDCs * * *." This e-mail communication then requested SBDCs to submit proposals.

Near the end of fiscal year 1998, SBA identified over $5 million in SBDC funding that had not been expended and that SBA believed could be de-obligated and made available for re-obligation in fiscal year 1999. To be sure SBA used the funding in a manner consistent with Section 21 of the Small Business Act and appropriations law, however, we conducted an exhaustive examination of our fiscal records and a careful legal review.

Upon completion of this examination, it was determined that of $5.3 million originally identified and thought to be available, $4.2 million was actually an accumulation of funds from fiscal year 1994 through fiscal year 1996, and thus, was not available for obligation in fiscal year 1998. The remaining $1.1 million is available for expenditures arising out of appropriate fiscal year 1998 obligations. However, we believed until February 1999 that all $5.3 million could be used for new obligations in fiscal year 1999. In our efforts to be prudent before obligating this money, additional SBDC billing and accounting reviews were required before a final decision could be made. SBA determined that funds, which were appropriated in prior funding years, could not legally be made available for supplemental grants. The Office of General Counsel has not issued a formal written legal opinion on this matter.

Notwithstanding these events, all SBDCs were fully funded for their last year's matching grant.

SUBCOMMITTEE RECESS

Senator GREGG. Our next hearing will be on Wednesday, with the Director of the FBI and the DEA Administrator.

Thank you.

[Whereupon, at 10:38 a.m., Monday, March 22, the subcommittee was recessed, to reconvene at 10 a.m., Wednesday, March 24.]

DEPARTMENTS OF COMMERCE, JUSTICE, AND STATE, THE JUDICIARY, AND RELATED AGENCIES APPROPRIATIONS FOR FISCAL YEAR 2000

WEDNESDAY, MARCH 24, 1999

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

The subcommittee met at 10 a.m., in room SD–124, Dirksen Senate Office Building, Hon. Judd Gregg (chairman) presiding.

Present: Senators Gregg, Stevens, and Hollings.

DEPARTMENT OF JUSTICE

DRUG ENFORCEMENT ADMINISTRATION

STATEMENT OF THOMAS A. CONSTANTINE, ADMINISTRATOR

FEDERAL BUREAU OF INVESTIGATION

STATEMENT OF LOUIS J. FREEH, DIRECTOR

OPENING REMARKS

Senator GREGG. We will begin this hearing of the Federal Bureau of Investigation and DEA and rather than doing opening statements we will proceed right to hearing from the witnesses, and it is nice to have both the Director and the Administrator. So why do you not go ahead, Mr. Constantine.

Mr. CONSTANTINE. Well, Senator, thank you very much for this opportunity. Of all the presentations that I make before the House or the Senate, I have always thought the most important one that I make is before this committee. It is an opportunity for me where I can, to act as an advocate for thousands of DEA agents, task force officers, and support personnel who I think sacrifice so much for all of us in this country.

The quality of people that we have been able to bring into law enforcement, with all of your help, continues to amaze me. I have been in law enforcement for almost 39 years now. Virtually every 5 or 6 weeks I meet with 50 young new DEA agents and they are absolutely the epitome of the type of people that you would like to have come into public service. I know many of the FBI agents that are coming in also, and I see the same results. I want to thank you and the members of the committee for all of the help you have provided to us for the last 5 years.

Your efforts to enhance our resources have really improved our ability to pursue and bring to justice the leaders of increasingly powerful drug syndicates and to reduce the violence associated with drugs and crime. We have tried to use these assets as well as we possibly can. We pursue international organized crime syndicates that are responsible for virtually all of the major trafficking within America. And we have in fiscal 1999, as in other years, had a series of substantial results.

DEA SUCCESSES

In targeting these major organizations, it is more than statistics that tell the story because what we do is we arrest the leaders of the organizations, both in the United States, and where we can find them in other countries. We have them apprehended and sent to the United States to bring them to justice. I want to give you a sense of the scope of one of our major investigations and how we coordinate the activities of all of the law enforcement agencies participating in a case. One major case involved the DEA and the FBI, the Texas Department of Public Safety and the Michigan State Police over a substantial period of time. We used Title III wire intercepts, a very sophisticated investigative technique, throughout the United States. Our efforts resulted in the arrest of 41 major principals, seven tons of cocaine seized, and $11 million in cash seized.

To give you another sense of the scope of these operations, a cooperating witness in that investigation had advised us that he had brought 90 tons of cocaine into the United States during an 18 month period of time and had delivered $100 million in cash back to the leaders of the organization in Mexico. The key investigative event that made this so successful was a highway stop by two troopers of the Texas Department of Public Safety, who worked with the FBI and DEA to conduct the investigation.

This Pipeline program, in which state police officers, highway patrol officers, and deputy sheriffs are trained to look out for certain indicia of trafficking, is probably the most successful interdiction program in the United States. In 10 years, these officers have seized 116 tons of cocaine, 872 tons of marijuana, and $510 million in cash and often provided us with the names of the individual responsible for this trafficking.

So statistical accomplishments in and of themselves are not often always the measure of success, but they are significant when the seizures are tied to the leaders of the organization. We have had some dramatic successes over the last 5 years with your help. Our arrests have gone up from 22,000 in 1997 to 39,000 in 1998. Our seizures of cocaine went up 21 percent, heroin 40 percent, methamphetamine 70 percent, and methamphetamine laboratories 78 percent.

But the figure that I think is most impressive is what we have done to reduce the violence associated with drug trafficking. In 1995 we embarked on a strategy of targeting drug trafficking groups that were responsible for the significant amount of violence in communities throughout the United States. With the increased agent positions that you provided us, we have deployed 250 special agents in 24 teams across the country.

Since 1995, we have deployed these teams to 203 cities, towns, and counties throughout America. Often these are the cities and towns that are dealing with violent drug trafficking gangs but at the same time have limited resources to deal with such major operations. As a result of that, we have arrested over 8,000 individuals who are often the most violent traffickers in those local communities. We have done a study of a 6 month pre-deployment and 6 month post-deployment. Unfortunately, because of the rolling dates that occur, we have only studied 126 of the 203 deployments, but the figures I give you I think are very impressive.

We have reduced murders in those communities by 127, robberies by 3,644, and assaults by 3,183. If those figures were to continue for the rest of the deployments, in just the 6 month period of time, it is very possible that over 200 lives would have been saved. And if the communities can continue that type of interest and reduction in crime over a long term, it would be obviously easy to see that those numbers would multiply over a period of time.

MIGRATION OF DRUGS TO SMALL COMMUNITIES

One of the things that we are seeing, and I have talked about with both of you, is a migration of the drug abuse and drug trafficking problem from the major urban centers to the smaller cities, suburban areas, and rural communities throughout the United States. Many people see the drug problem and the violence associated with it as limited to New York, Chicago, and Los Angeles. Nothing could be farther from the truth. This shift now represents a threat to communities that often have limited resources.

On February 23 of this year, we brought together 200 police officials from cities, towns, villages, and counties from throughout the United States and we had a four day symposium of both instruction and workshops in which they told us what their problem looks like. They have told us that over the last 5 years there has been a dramatic increase in drug activity in 70 percent of their communities. And in 50 percent of the communities, there has been a dramatic increase in violent crime associated with it.

They also have told us that 95 percent of the drug trafficking organizations that are selling in their communities come from outside of their community, usually a major city or someplace distant throughout the United States. They also have told us that 70 percent of the people responsible for selling drugs in these mid-sized communities are coming from outside the United States, primarily Colombia and Mexico.

Our strategy in dealing with that has been threefold. One is the congressional resources that you have given us in the new regional enforcement teams, which will be starting up this summer, one in Charlotte, North Carolina and one in Des Moines, Iowa. Second, we are trying to get as many of our agents, new agents and redeployed agents, out to district offices, resident offices, and posts-of-duties that need our services more often than sometimes the major cities, and third, the mobile enforcement teams and task forces.

DEA BUDGET REQUEST

Our budget request this year is fairly simple. It is $9 million for 27 new positions to enhance our Special Operations Division. This

is a coordinated effort on the part of DEA, FBI, Customs, and the Department of Justice. It is the primary coordinator of these major long-term investigations that occur across the United States. Their target is the powerful organized crime systems that control the distribution. Their ability to investigate these syndicates depends to a large degree on our ability to interdict their technology and communication systems.

The new positions along with equipment that we will get with this will allow us to do that better in an area where technology is key and changes rapidly, constantly having to do with new two-way pagers, calling cards, Internet systems, encryption, decryption, all of which tax the technology that we have available to us. We do much of this in concert with the expertise of the FBI. We also will be having positions to enhance the security of that operation, because there are 860 major investigations every year being coordinated by this particular group.

We are asking an additional $13 million for our internal computer systems called the FIREBIRD System. It runs the entire case management and the internal communication system within DEA. It is a worldwide system. Now presently where that is available, a DEA agent can at the end of his tour prepare his investigative report with all of the names, addresses, phone numbers, license plates, and informant information, and within days that will become part of a central data file for all DEA agents who have to access that information.

That is compared to an old paper and word processor system and a central collection, central analysis, central data entry that often takes as long as 100 days to enter and really is not effective. At the end of this year, almost 4,000 of our agents will have the system available to them. We are trying to expedite that as quickly as we can because the remaining 600 agents are often in the smaller district offices. So we have 81 offices that have been completed and we also have 131 more offices that we have to reach. A smaller amount is coming from the drug diversion control fee account to increase our resources and our ability to handle resources for 980,000 registrants that increase by 25,000 every year.

Again, I thank you for the opportunity to testify today, and I look forward to answering any questions. The one thing that I believe with all of my heart is that law enforcement has proven absolutely without a doubt over the last 5 years that we can make a difference. The dramatic drop in violent crime in this country is not accidental. It has happened as a result of effective and aggressive law enforcement strategies often against violent drug gangs. DEA has played a major role in these improvements and we are now trying to focus our assets on those mid-sized suburban rural communities that have become the targets of these same drug organizations and same amount of violence.

PREPARED STATEMENT

I believe that a well staffed and a well supported DEA can continue to reduce crime and improve the quality of life in every community in the United States. Thank you very much, Senator.

Senator GREGG. Thank you, Administrator.

[The statement follows:]

PREPARED STATEMENT OF THOMAS A. CONSTANTINE

Mr. Chairman, Members of the Subcommittee: I appreciate this opportunity to appear before you today to discuss the fiscal year 2000 budget request for the Drug Enforcement Administration. Before providing the committee with the details of this budget, on behalf of the men and women of the DEA, I would like to express our appreciation for the ongoing support of this Subcommittee and the U.S. House of Representatives. Without this support, the difficult job carried out by DEA agents and support staff around the world would be made even more arduous.

In my testimony this morning, I will provide the subcommittee with information on how the resources provided to DEA last year have been used to improve the quality of life in American communities; how DEA sees the threat our nation is facing as a result of the operations of powerful, international drug trafficking organizations; and how DEA's fiscal year 2000 budget request will help us further our goal of targeting and dismantling the major drug trafficking organizations which impact our nation.

DEA'S 1998 ACCOMPLISHMENTS

In fiscal year 1999, the Congress generously provided DEA with a budget of $1.3 billion and the resources to hire 617 additional personnel, including 297 Special Agents. This was the third year that DEA received significant increases in our budget, helping us to become even more effective in carrying out our important mission. DEA's strategy is to target and immobilize trafficking organizations that are operating: first, at the highest level of the drug trade from headquarters overseas; second, through those national drug trafficking and distribution networks responsible for bringing cocaine, heroin, methamphetamine and marijuana to American communities; and third, through the violent drug trafficking organizations that are selling drugs in cities and towns around the nation, and committing acts of violence in furtherance of their goals.

With the resources Congress has provided us, DEA was able, in 1998, to seize more drugs and arrest more traffickers than ever before. We were effective in targeting and arresting traffickers operating overseas, in major U.S. cities, and in smaller communities targeted by drug trafficking organizations. DEA's overall arrests have increased steadily since 1994, with our 1998 arrest figures representing an increase of 11 percent over the previous year. Since 1995, DEA arrest totals have doubled. In 1998, 45 percent of DEA's arrests were for cocaine violations, and almost 21 percent were for methamphetamine violations. It is important to note that the percentage of DEA's methamphetamine arrests has doubled since 1995, keeping pace with the escalation of methamphetamine production, trafficking and abuse across the nation. Later in my testimony, I will provide further detail on the methamphetamine situation, which is critical in too many states and communities across the United States.

During 1998, DEA seizures also reached an all-time high. Methamphetamine seizures increased from 1,503.6 to 2,568.5 kilograms. Cocaine seizures rose from 58,262.8 kilograms in 1997 to 70,440.9 in 1998. DEA seized 624.6 kilograms of heroin in 1998, compared with 446.3 the previous year. Marijuana seizures rose from 359,843.9 kilograms in 1997 to 364,081.1 in 1998. These seizure totals reflect both DEA unilateral seizures, as well as those made in conjunction with our state and local law enforcement partners.

REDUCING VIOLENT CRIME IN AMERICAN COMMUNITIES

Through joint enforcement programs, such as our Mobile Enforcement Team (MET) program, carried out with our state and local law enforcement counterparts, DEA has made a significant contribution to lowering the national crime rate.

Over the course of the past several years, during which the national crime rate has dropped significantly in major urban areas such as New York, Los Angeles, Boston and Houston, the nexus between drugs and crime has become increasingly evident. Through programs such as the Arrestee Drug Abuse Monitoring Program (ADAM) which is administered by the National Institute of Justice (NIJ), the public has learned that 67 percent of the males arrested on various offenses were using drugs at the time they were arrested. We also know that, historically, homicide rates skyrocketed during the crack epidemic which began in the mid-1980's and peaked in 1992. During this time period, violent crime rates increased by 50 percent and murders increased by 31 percent.

DEA's MET's are elite units that, in conjunction with our state and local law enforcement partners, target violent drug trafficking gangs throughout the United States. Since 1995, when the program was established, DEA has arrested over 8,000

individuals in the course of assisting over a hundred communities across America. In order to assess the impact of our Mobile Enforcement Team program, DEA conducted a study to determine whether the work of the MET's resulted in decreased violent crime rates in the cities where deployments were carried out. The results of this study were impressive: 113 less homicides, 3,276 less robberies, and 2,419 fewer assaults took place in the six months after the deployments than in the six months before.

Statistics alone do not tell the whole story of how the MET's have positively affected communities around the nation. The following are just a few examples of how violent drug traffickers have significantly diminished the quality of life in communities, terrorizing neighborhoods as they carry out their narcotics trafficking.

—*Benton Harbor, Michigan*.—Despite the fact that the violent crime rate in Michigan dropped in 1997, Benton Harbor, a city in the Southwestern part of the state, still had a significant crime problem. With a population of 13,500 and a crime rate of 16.5 per 100 residents, Benton Harbor was the most violent city in Michigan. A murder spree left 10 people dead in a twelve-day period. Individuals living in Benton Harbor described it as a Dodge City, where kids were afraid to play in the streets and elderly people couldn't walk their dogs. Residents routinely heard gunshots night after night. But after the intervention of law enforcement officers—from state, local and Federal agencies—Benton Harbor was being brought back to life. Beginning early in 1997, the Michigan State Police sent troopers into Benton Harbor to patrol the streets, train local law enforcement officers and enhance their ability to protect the community. They brought a sense of stability to the area which had become a haven for violent fugitives.

During the period between June and September 1998, DEA sent its Mobile Enforcement Team into Benton Harbor at the invitation of the law enforcement officials there. DEA's team pursued a violent drug trafficking organization directed by Yusef Phillips, whose organization was responsible for distributing multi-kilogram quantities of cocaine and crack in inner city housing projects in Benton Harbor. Eventually, 42 individuals were arrested and a quantity of drugs—including crack and heroin—and $31,000 were seized. After the MET team's investigation was complete, Public Safety Director Milton Agay estimated that the Yusef Phillips group was responsible for 90 percent of the violent crime that had impacted Benton Harbor.

—*Opa-Locka, Florida*.—On January 22, 1998, the DEA Miami Field Division MET concluded a deployment to Opa-Locka, Florida where the primary target was Rickey Brownlee, the head of a violent drug trafficking organization allegedly responsible for several drug-related murders and the distribution of significant amounts of cocaine and heroin in Opa-Locka. During the MET assessment, both police and community civic leaders described Brownlee's organization as extremely violent and known for its daily intimidation of the Opa-Locka citizenry. Through murders, shootings, aggravated assaults and extortion, Brownlee held the Opa-Locka community hostage. The DEA MET deployment culminated with the arrest of Brownlee and key members of his criminal organization. In a letter to the Attorney General of the United States, the Mayor of Opa-Locka thanked DEA for its dedication and expertise in dismantling one of South Florida's most notorious criminal enterprises. To further show their appreciation, the Mayor and the City Commission proclaimed March 19, 1998 as Drug Enforcement Administration/Mobile Enforcement Team Day.

—*Pueblo, Colorado*.—In recent years, the Pueblo Police Department recorded a dramatic increase in drug trafficking and drug-related violence attributed to a local cocaine trafficking organization headed by Martin Acosta-Hernandez. This organization, made up of several brothers, controlled cocaine trafficking in the Pueblo area with violence and intimidation as their signature. The organization had acquired sizeable drug profits and operated freely without concerning themselves with the efforts of local law enforcement. The members of the Acosta-Hernandez organization were also allegedly responsible for the murder of a local drug dealer.

At the invitation of local authorities, the Denver Field Division MET was deployed to Pueblo, Colorado on August 10, 1998. With the assistance of over 100 officers from various state, local and Federal agencies, the MET operation culminated on November 2, 1998, with 55 arrests, which included key members of the Acosta-Hernandez organization, bringing the total arrested during the deployment to 76. Assets seized included 41 vehicles, over $150,000 in U.S. currency, and real property valued in excess of $300,000.

Targeting International Drug Trafficking Organizations Impacting the United States.—All of the cocaine and heroin, and most of the methamphetamine available

in the United States is controlled by drug traffickers whose headquarters are located in Mexico, Colombia and in some Asian nations. These traffickers have a direct impact on the drug and crime situations that plague American communities across the country. As the drug trade grows more sophisticated and powerful every year, it is increasingly difficult for DEA and other law enforcement organizations to bifurcate strategies into domestic and international. The reality of today's drug trade is that despite the fact that the heads of the world's major drug trafficking syndicates are living overseas, their surrogates and employees are working on a daily basis in large U.S. cities and smaller communities, communicating the details of their operations to mafia leaders in Guadalajara and Cali.

It is critical for the DEA to develop and carry out strategies which allow us to effectively target the drug organization bosses, while we investigate and arrest their workers in the United States. The resources provided to DEA have allowed us to increase our presence in U.S. communities and overseas, in essence developing an enforcement model which mirrors the seamless continuum employed by the international drug trafficking organizations operating today. These resources include additional Special Agent positions to investigate major cocaine, heroin and methamphetamine trafficking organizations and additional resources provided to us through the emergency funding that was authorized by the Western Hemisphere Drug Elimination Act.

DEA has been able to enhance our presence in communities along the East Coast of the United States affected by drug trafficking organizations based in the Caribbean; along the Southwest border and in other communities adversely impacted by the increase in methamphetamine production and trafficking; and in locations suffering the effects of high purity, cheap heroin from Colombia and Mexico. Since 1996, DEA has increased overseas staffing in seven source countries—Colombia, Mexico, Bolivia, Peru, Thailand, Pakistan and Burma—allowing us to reach an 88 percent fill rate in overseas Special Agent jobs in these important countries. Resources for programs such as the Vetted Unit program, as well as the overall increase in personnel in these countries are critical because they enhance our ability to work with our law enforcement partners, coordinating investigations against high-level drug traffickers operating abroad and in the United States.

The majority of the international investigations that DEA has conducted traditionally begin with law enforcement information generated within the United States, for instance, as part of a seizure, a traffic stop or from a case investigated by state and local law enforcement. This information frequently leads investigators to higher levels of the drug trade, oftentimes to the leaders of the organizations who are headquartered in foreign countries.

During 1998, DEA's collaborative efforts with our international law enforcement partners resulted in the arrest of Alberto Orlandez-Gamboa "Caracol," the most powerful and ruthless of the Colombian North Coast traffickers, and the CNP's number one target, who was responsible for sending multi-ton loads of cocaine into the U.S. In August 1998, Fernando Florez-Garmendia, one of the remaining associates of the Rodriguez-Orejuela organization, was arrested. He was responsible for coordinating the cocaine trafficking operations of the jailed Cali mafia leaders.

Two major Mexico-based traffickers, who are under indictment in the United States, were arrested by Mexican authorities in 1998. Brothers Luis and Jesus Amezcua-Contreras are major methamphetamine traffickers and are responsible for running an organization which has supplied large amounts of methamphetamine to the U.S. The organization is also involved in cocaine and marijuana trafficking, and securing huge amounts of ephedrine, a necessary ingredient in methamphetamine production. These two traffickers remain in prison in Mexico, and are being held pending consideration of the U.S.'s extradition request.

During 1998, in numerous investigations within the United States, DEA worked with other Federal, state and local law enforcement partners to arrest members of the international drug trafficking syndicates' infrastructure who were operating on U.S. soil. In a series of cooperative investigations which linked trafficking organizations in Mexico, Colombia and the Dominican Republic to their operatives in New York, Los Angeles, Atlanta, and a variety of other U.S. locations, over 1,200 individuals were arrested; almost 13 tons of cocaine, two and a half tons of methamphetamine, 127 pounds of heroin, and almost $60 million in U.S. currency were seized.

Addressing Drug Problems on a Regional Basis.—In fiscal year 1999, Congress provided DEA with the resources to enable the agency to become more effective in addressing the drug threat on a regional basis. We were provided with the resources necessary to establish Regional Drug Enforcement Teams, receiving 32 Special Agent positions, 14 support positions and $13 million for this purpose. It is more and more apparent that drug trafficking organizations are supplying cocaine, methamphetamine and heroin to various regions around the nation, necessitating a re-

gional response capability by DEA as we target the leaders of these organizations. In order to assist communities in the Midwest as they confront the growing problem of methamphetamine production and trafficking, DEA is establishing a regional team of 16 Special Agents based in Des Moines, Iowa. A second team of 16 Special Agents will be based in Charlotte, North Carolina, to provide additional law enforcement capabilities to communities targeted by international cocaine organizations. Both of these teams will have the flexibility to respond to drug trafficking problems which affect jurisdictions nationwide, and they will not be attached to specific DEA Division offices, operating instead under DEA headquarters supervision.

Improvements in Technology and Infrastructure.—Additional resources have allowed DEA to improve our technological edge and address some critical infrastructure needs that support our investigations. With the growing sophistication of today's internationally-based and national drug trafficking organizations, law enforcement, including DEA, relies heavily on investigative tools such as Title III wiretaps to successfully investigate major drug trafficking organizations. DEA has also developed sophisticated methods to compile investigative information which ensures that all leads are properly followed and coordinated through our Special Operations Division (SOD). This mechanism allows all DEA field divisions and foreign offices to capitalize on investigative information from various sources as cases are being developed. Numerous major cases have been developed with the assistance of the SOD, which is increasingly a central player in cocaine, methamphetamine and heroin investigations.

Another tool that is critical to DEA's day-to-day business is our computer system. Over the years, DEA has received generous resources, including enhancements for our FIREBIRD system last year, which have allowed us to provide a state-of-the-art information system to our 8,000 employees. This system combines the tools that are necessary for daily communications (e-mail, word processing and office automation) with the special enforcement requirements of the agency. These requirements include an electronic file room, the Narcotics and Dangerous Drugs Information System (NADDIS) and other specific systems which allow agents, intelligence analysts and other DEA employees to access investigative reports, data bases and other information critical to conducting investigations against high-level drug traffickers.

By the close of fiscal year 1998, Phase I implementation of the FIREBIRD system was complete, with total network access available throughout DEA Headquarters and in all 21 DEA Field Division offices. Additional resources provided to the agency in fiscal year 1999 and 2000 will assist us in accelerating Phase II deployment of the Firebird network to all remaining district, resident and foreign field offices, as well as the El Paso Intelligence Center, DEA Airwing, and forensic laboratories. With the continued support of the President and the Congress, our hope is for the completion of the FIREBIRD project by the close of calendar year 2001.

The Justice Training Center, another major infrastructure project, will be completed later this spring. This long-held dream of the Drug Enforcement Administration would not have been possible without the support that Congress provided to us. It is a modern facility that enables DEA to provide training to Basic Agents, DEA employees and supervisors, law enforcement officers from around the nation, and our international law enforcement partners. For several years, both the DEA and FBI have been unable to meet all of our training needs because we lacked the space and flexibility needed to provide the best possible training to our employees and other law enforcement representatives. As agreed, the Justice Training Center will be used by both agencies, with DEA and the FBI working closely to ensure that both agencies' needs are met now and in the future.

DEA's forensic laboratories provided critical operational and analytical support to drug law enforcement at the Federal, state, local and international levels of operation. A number of DEA's laboratory facilities, which average 21 years length of service, no longer meet the agency's operational requirements and are severely overcrowded. Because of the poor environmental conditions found in these laboratories, DEA is being forced to operate at an unacceptably high risk and liability level. In an effort to rectify this situation, beginning in fiscal year 1997, DEA was provided with the resources necessary to begin replacing a total of five of the agency's aging forensic laboratories. To date, we have begun the design and construction process for each of these laboratories, with actual completion of the facilities taking anywhere from three to five years, to include time for lease acquisition. Upon completion, we anticipate that the new laboratories will yield up to thirty-years of useful life.

DRUG THREAT

Today's international criminal organizations pose a greater challenge to law enforcement than any previous criminal group in our history. While there are numerous characteristics that these international groups have in common with traditional organized crime—their penchant for violence, their reliance on corruption and intimidation as tools of their business—their sheer power, influence and sophistication put them in a category by themselves.

As I stated before, the vast majority of the drugs available in the United States originate overseas. The international drug trade is controlled by a small number of high echelon drug lords, who reside in Colombia and Mexico. Most Americans are unaware of the vast damage that has been caused to their communities by international drug trafficking syndicates, most recently by organized crime groups headquartered in Mexico. At the current time, these traffickers pose the greatest threat to communities around the United States. Their impact is no longer limited to cities and towns along the Southwest Border; traffickers from Mexico are now routinely operating in the Midwest, the Southeast, the Northwest and increasingly, in the Northeastern portion of the United States. Because of the grave threat that these traffickers pose, my comments will focus predominantly on their influence on criminal activities and drug trafficking within our nation.

On any given day in the United States, business transactions are being arranged between the major drug lords headquartered in Mexico and their surrogates, who have established roots within the United States, for the shipment, storage and distribution of tons of cocaine and hundreds of pounds of methamphetamine and heroin to trafficking groups in the United States. In the past, Mexico-based criminal organizations limited their activities to the cultivation of marijuana and opium poppies for subsequent production of marijuana and heroin. The organizations were also relied upon by Colombian drug lords to transport loads of cocaine into the United States, and to pass this cocaine on to other organizations who distributed the product throughout the U.S. However, over the past seven years, Mexico-based organized crime syndicates have gained increasing control over many of the aspects of the cocaine, methamphetamine, heroin and marijuana trade, resulting in increased threats to the well-being of American citizens as well as government institutions and the citizens of their own country.

DEA arrests of Mexican nationals within the United States increased 65 percent between 1993 and 1997. Most of these arrests took place in cities that average Americans would not expect to be targeted by international drug syndicates in Mexico—cities such as Des Moines, Iowa; Greensboro, North Carolina; Yakima, Washington; and New Rochelle, New York.

The damage that these traffickers have caused to the United States is enormous. Cities and rural areas from the East Coast to the West are living with the havoc and erosion of stability that these individuals and organizations have caused. To understand how organized crime groups in Mexico have infiltrated communities here, it is helpful to examine their role in the distribution of cocaine, and in the production, trafficking and distribution of heroin, marijuana and methamphetamine.

Approximately two-thirds of the cocaine available in the United States comes over the U.S.-Mexico border. The remainder is shipped through the Caribbean and other secondary routes. Typically, large cocaine shipments are transported from Colombia, via commercial shipping and "go fast" boats, and off-loaded in Mexican port cities. The cocaine is transported through Mexico, usually by trucks, where it is warehoused in cities like Guadalajara or Juarez, for example, which are operating bases for the major organizations. Cocaine loads are then driven across the U.S.-Mexico border and taken to distribution centers within the U.S., such as Los Angeles, Chicago or Phoenix. Surrogates of the major drug lords wait for instructions, often provided over encrypted communications devices—phones, faxes, pagers or computers—telling them where to warehouse smaller loads, who to contact for transportation services, and where to return the eventual profits. Individuals sent to the United States from Mexico, often here illegally, contract with U.S. trucking establishments to transport loads across the country. Once the loads arrive in an area which is close to the eventual terminal point, safehouses are established for workers who watch over the cocaine shipments and arrange for it to be distributed by wholesale dealers within the vicinity. These distributors have traditionally been Colombian nationals or individuals from the Dominican Republic, but recently, DEA has evidence that Mexican nationals are becoming more directly involved in cocaine distribution throughout the United States.

Methamphetamine trafficking works in a similar fashion, with major organized crime groups in Mexico obtaining the precursor chemicals necessary for methamphetamine production from sources in other countries, such as China and India,

as well as from "rogue" chemical suppliers in the United States. "Super labs," capable of producing hundreds of pounds of methamphetamine on a weekly basis, are established in Mexico and California, where the methamphetamine is provided to traffickers to distribute across the United States. It is now common to find hundreds of traffickers from Mexico, again, most of them illegal aliens, established in communities like Boise, Des Moines, Omaha, Charlotte and Kansas City, distributing multi-pound quantities of methamphetamine.

The impact of methamphetamine trafficking and abuse on numerous communities has been devastating. In Iowa, health experts have expressed grave concerns over the 4,000 infants affected by drugs, 90 percent of which were exposed to methamphetamine. An expert associated with Marshall County Iowa's Juvenile Court Services estimated in 1998, that one-third of the 1,600 students at Marshalltown High School had tried methamphetamine. Nationally, data indicated that in 1997, 17,200 individuals were admitted to emergency rooms for methamphetamine-related problems. By comparison, in 1991, only 4,900 emergency room mentions of methamphetamine were recorded.

The public safety is also affected by methamphetamine production. There have been numerous incidents where children have been injured or killed by explosions and fires resulting from their parents' methamphetamine cooking. In a significant DEA investigation, a working methamphetamine laboratory established by traffickers from Mexico was discovered in an equestrian center where children were taking riding lessons. In another case investigated by the DEA, an operational methamphetamine lab, capable of producing 180 pounds of methamphetamine, was discovered within a thousand feet of a junior high school.

Just a few weeks ago, the DEA office in Fresno, working with the California Bureau of Narcotics Enforcement, discovered working methamphetamine laboratories in Squaw Valley and Fresno. Six Mexican nationals were arrested, only one of whom was in the United States legally. Over 46 pounds of methamphetamine were seized, and we learned that the ultimate destination for the methamphetamine was Oregon, Washington and other states in the Midwest.

The heroin that is available in the United States is now coming predominantly from Colombia and Mexico. In recent years, heroin overdose deaths have increased significantly. Today's heroin mortality figures in the U.S. are the highest ever recorded, exceeding even those of the mid-1970's, when deaths reached a high point of just over 2,000. Close to 4,000 people have died in each of the last four years from heroin-related overdoses across the country.

Heroin from Colombia now represents 74 percent of the heroin seized in the United States. It is highly pure and cheap, and available in most of the cities along the East Coast, particularly New York, Boston and Philadelphia. Colombian heroin comes into the U.S. through small body carries and luggage.

Heroin from Mexico now represents 14 percent of the heroin supply seized in the United States, and it is estimated that organized crime figures in Mexico produced a total six metric tons of the drug last year. A current study being conducted by DEA indicates that as much as 29 percent of the heroin being used in the U.S. is being smuggled in by the Mexico-based organized crime syndicates. Mexican "black tar" heroin is produced in Mexico, and transported over the border in cars and trucks. Like cocaine and methamphetamine, it is trafficked by associates of the organized criminal groups in Mexico, and provided to dealers and users in the Southwest, Northwest and Midwest United States. At one time, it was commonplace for couriers to carry up to two pounds of heroin into the United States; recently, quantities of heroin seized from individuals have increased, as is evidenced by larger seizures in a number of towns in Texas. This heroin is extremely potent, and its use has resulted in a significant number of deaths, including the deaths of 25 individuals in Plano, Texas within the last 18 months.

Mexican "black tar" heroin is also common in the Pacific Northwest. Last January, officers from the California Highway Patrol, working near Sacramento, stopped a speeding car driven by a sixteen year old Mexican national. He and a passenger were from Michoacan, Mexico. A search of the car yielded six kilogram packages of Mexican "black tar" heroin intended for distribution in Yakima, Washington.

Seattle, Washington has suffered from a dramatic increase in heroin overdose deaths. According to health experts, heroin deaths increased in 1998 to a total of 138. This figure is triple the number of heroin deaths in Seattle during the 1980's. Experts also estimate that there are 20,000 heroin addicts in Seattle and the surrounding area. Traffickers from Mexico use the I–5 corridor to bring their product to the cities and suburbs of Washington State.

FUTURE THREAT AND DIRECTION

Over the course of the next several years, I believe it will be imperative for Federal law enforcement agencies to work collaboratively with state and local law enforcement in mid-size communities to help them address the problems of drugs, crime and violence. With a reduction in the crime rate in a number of our major U.S. cities, international drug trafficking organizations have begun to target smaller cities, rural areas and suburban communities, challenging law enforcement organizations that lack the resources and expertise to deal with the vast array of drug-related criminal activities.

In an effort to address this growing problem, on February 23, 1999, DEA hosted a symposium in Herndon, Virginia entitled "Crisis in Middle America: A National Conference on Drugs, Crime and Violence in Mid-Sized Cities." This conference brought together law enforcement officials from more than 80 middle sized cities around the country to discuss the impact that foreign-based drug trafficking organizations from Colombia and Mexico are having on our communities.

Responding to a survey sent to participants before the conference, law enforcement representatives were asked to report on the nature and severity of the drug problems they are currently facing. The most significant drug problems identified were cocaine and methamphetamine trafficking, use and abuse, with a number of cities reporting that heroin was their most serious drug problem. Roughly 68 percent of the law enforcement representatives surveyed reported that the drugs available on their streets were trafficked by drug trafficking organizations controlled by groups outside the United States; 48 percent of the respondents stated that their communities were being impacted by drug traffickers from Mexico; 80 percent indicated that they were experiencing moderate or high levels of violence in their communities; and finally, according to 76 percent of those surveyed, the drug problems their communities are facing have increased, and in many cases, increased significantly compared to the activity level of five years ago.

In response to the concerns voiced by the conference attendees and the clear threat posed to our country by the major international drug trafficking organizations, I am prepared to redouble DEA's efforts to assist smaller communities with programs such as our Mobile Enforcement Teams and Regional Enforcement Teams. These programs are geared to help state and local law enforcement organizations overcome their resource and manpower challenges as they attempt to address the violence and drug trafficking activities of organizations which often have foreign sources of supply. The Mid-Size Cities Conference was the first step in working to broaden our plan of attack, by developing a comprehensive strategy that combines law enforcement, research and prevention to reach out to communities that are currently facing their drug problems the best they can. By working to attack the drug problem from many angles, we can spare our nation's smaller cities and communities the drug-related nightmare that our major urban areas endured for well over a decade.

ADVANCING THE DRUG ENFORCEMENT TRAINING CURRICULUM

Another way in which we work to meet the ongoing threat posed by the major trafficking organizations is to ensure that our employees and our law enforcement counterparts have the highest-quality training and best field preparation available today. In order to meet this goal, DEA conducted an extensive review of the training needs and practices of our basic and in-service training programs. This review resulted in a complete restructuring of DEA training programs, allowing the agency to: implement a structured plan to ensure that entry-level personnel receive on-the-job training after graduation from basic training; provide oversight and evaluation of employees during their probationary period; implement in-service training programs to ensure that all employees receive updated information on integrity, legal issues, internal regulations, and contemporary personnel issues; implement a program to identify the type or quantity of specialized training employees require; and provide additional programs to determine which employees should receive specialized training. These program changes will ensure that we safely meet the challenges of dealing with complex, violent and sophisticated drug trafficking organizations, both now and in the future.

In addition, the need for enhanced training facilities was also identified. I am proud to announce that in April of this year, through the generous assistance of the President and U.S. Congress, DEA will open the doors on a new, expanded training facility in Quantico, Virginia. This state-of-the-art facility features a 250-bed dormitory, a variety of classrooms, office space for the staff, and a cafeteria. Special facilities will include an international classroom with three-language translation ca-

pabilities and a separate building for conducting clandestine laboratory training for DEA and state and local officers involved in this special area of law enforcement.

Through our relationship with the University of Virginia, an enhanced program will also be underway to strengthen the faculty with a new instructor development program and a Master's degree program in adult education for the staff. We will invite instructors from state and local agencies to join the staff for one-to-two years to ensure that the staff reflects all drug law enforcement expertise and needs. In addition, the Drug Unit Commanders Academy will also be conducted at the new center and its graduates will be called upon to participate in annual risk management reviews for drug law enforcement. The new center will produce standardized lesson plans, with state and local input, for use throughout the drug law enforcement community. These plans would cover such areas as drug identification, informant management, raid planning for drug cases and clandestine laboratory training.

Finally, the new training center will be the venue for state-of-the-art drug intelligence-related courses for the law enforcement and intelligence communities. Several years of course development are envisioned. DEA has developed a concept that will provide drug intelligence training for Federal, state, local, and foreign agencies. The opening of the new training center at Quantico affords us the opportunity to forge a unique and innovative program dedicated to improving the quality of drug intelligence training programs in the United States. The curriculum will cover the full spectrum of drug intelligence-related subjects at the basic, intermediate, advanced, specialized, and Master of Science Degree levels. An Advisory Board, drawn from executives in Federal, state, and local government, and from academic institutions, will provide the guidance and support necessary to ensure the program reflects its customers' drug intelligence training needs.

FISCAL 2000 BUDGET REQUEST

In fiscal year 2000, DEA is requesting a total of 9,078 positions (4,535 Special Agents) and $1.469 billion. This request includes program enhancements of 52 positions and $23.1 million. The additional resources we are requesting for fiscal year 2000 are broken into three strategic funding initiatives, including: Domestic Enforcement, Infrastructure and Drug Diversion Control.

Our Domestic Enforcement Initiative includes a total of 27 positions and $9 million to continue the development of key DEA SOD initiatives by providing the program with the assets necessary to enhance Title III support of priority drug investigations. DEA's SOD is a multi-agency program consisting of 170 DEA, FBI and U.S. Customs agents and support personnel. Operating at a classified level, SOD's mission is to provide criminal investigators with the capability to fully exploit Federal law enforcement's investigative authority under Title III of the U.S. Code.

Given the tremendous success of SOD's investigations and the resultant increase in demand for SOD support from Federal drug law enforcement, SOD's operational requirements are expanding rapidly. With the impact of the rapid technological advancements taking place within the telecommunications industry, DEA's base resources for this program are currently insufficient and must be significantly enhanced.

Through this initiative, DEA will establish a Telecommunications Section to organize and consolidate all technical activities related to Title III investigations; ensure that all of DEA's intercept equipment/technology and resources to conduct electronic surveillance are kept current with technological advancements; and support the growing security and administrative demands of DEA's burgeoning Title III Wire Intercept program.

DEA's Infrastructure Initiative, includes a total of $13 million dedicated to continuing Phase II deployment of the agency's FIREBIRD office automation system, therein providing critical support for the agency's drug enforcement operations. Funding for this system would work to provide integrated computer network resources to over 200 DEA district, resident and foreign offices, as well as the El Paso Intelligence Center, the DEA Air Wing, and agency's forensic laboratories.

In tandem with improving our ability to effectively target major drug violators, we have also taken measures to use technology to improve the way DEA does business. As part of our effort to maximize investigative resources and take advantage of current technological advances, DEA began deployment of the FIREBIRD computer network in fiscal year 1995. This project, in its fourth year of deployment, is designed specifically to support our drug enforcement mission. FIREBIRD integrates computer capabilities used by modern businesses, e.g., E-mail, centralized word processing, and file sharing, with DEA investigative resource requirements, e.g., Electronic File Room, Electronic Library, and the Narcotics and Dangerous Drugs Information System (NADDIS). Once fully deployed, FIREBIRD will allow the agen-

cy's components located around the world, to act as one cohesive unit through real-time access to critical law enforcement and intelligence information.

As previously indicated, Phase I implementation, installation of network equipment in DEA Headquarters and 21 Division Offices, was completed in 1998. Phase II, installation to over 200 district, resident and foreign offices, has begun and, pending additional resources in the fiscal year 2000 and 2001 budget requests, is projected to be completed by the close of calendar year 2001. Given the wide range of investigative and communication tools that FIREBIRD provides to DEA investigative personnel, as well as serious concerns over the continued dependability of the agency's Legacy communications equipment (which FIREBIRD replaces), DEA is requesting the funds necessary to accelerate FIREBIRD deployment. Any delay in the installation of this vital equipment clearly diminishes DEA's ability to fulfill its mission by denying field investigative staff with full connectivity and access to FIREBIRD tools and intelligence/information.

Finally, through our Drug Diversion Control Initiative, DEA is requesting an additional 25 positions and $1.1 million through the agency's Drug Diversion Control Fee Account (DDCFA). The requested resources will enable DEA to improve customer service by re-engineering current business processes, using state-of-the-market technology, and ultimately reducing the amount of time it takes to collect and transfer drug registrant information.

The requested resources will allow us to eliminate our current backlog in drug reviews, and complete scheduling actions more promptly with the hiring of additional Drug Science Specialists, Pharmacologists, and support staff. In addition, the resources provided will help us to be more responsive to requests for diversion information from field personnel (especially Diversion Investigators), the general public, Congress, other federal and state agencies, professional associations, and drug industry organizations.

The primary objectives our Diversion Control Initiative are threefold: to reduce formal inquiry response time for DDCFA registrants to under four days and reduce telephonic response time to just a few seconds; to eliminate the backlog of pending drug reviews and cases in the areas of domestic drug scheduling and production quotas; and to conduct targeting and analysis from new and existing sources of information to identify violations of the Controlled Substances Act in order to prepare viable and useful leads and trends for the field.

This concludes DEA's fiscal year 2000 request for additional program resources. I would like, once again, to thank you, the members of the Subcommittee, for both your time and efforts on DEA's behalf and would be happy at this time, to take any questions you may have regarding our portion of the President's budget request.

STATEMENT OF LOUIS J. FREEH

Senator GREGG. Director Freeh.

Mr. FREEH. Thank you, Mr. Chairman, Senator Hollings. It is a pleasure to be before you again and a pleasure to appear with my friend and colleague, Tom Constantine, whose leadership and integrity in law enforcement is a great model for all of us.

Mr. Chairman, you have my submitted statement. What I thought I would do just very briefly is highlight a few of the larger issues facing the FBI, and then, with respect to our budget request, itemize several areas and certainly take up any more detail that you wish after that. We, as you know, just celebrated our 90th anniversary in the FBI. It was a good time to look forward and also to look backward in terms of our mission and the manner in which that mission has changed.

One of the striking aspects of surveying our mission today is how technology but also how the transcending trends in law enforcement have impacted what we do; whether we talk about the globalization of crime; whether we talk about the impact of technology on what we do; whether we talk about the changing mission that not only requires overseas assets and deployments such as we saw in East Africa, but really the routine interchanges that we have with our counterparts around the country and around the world.

We just completed a deployment of some agents to Bosnia where we were asked to provide technical assistance on a bombing of a high government official. We have been asked to make several agents available for an investigation in Northern Ireland of a recent assassination. All of these matters highlight for us the expanding role and the mission that American law enforcement agencies play, not only around the world, but here in the United States.

I was out in Albuquerque yesterday on one of my scheduled field office visits and during the course of the day I met with 12 of the State sheriffs and chiefs of police, and various leaders of the State law enforcement community. It was really gratifying to see how many activities our Albuquerque office is working in tandem with our State and local partners. We have in that division eight separate task forces ranging from hate crimes to domestic terrorism to infrastructure protection to violent gang activity to crimes on Indian reservations to environmental task forces where we combine our resources with our State and local partners to not only assist them but to use the very scarce public safety resources in a coordinated and effective way.

Our agency is being impacted by all of these forces, which is why in the last several budgets this committee has been generous in understanding the significance that technology has in terms of our mission. We have asked, as you know, in several years past and in this continuing budget for assistance and support in infrastructure building, in technology acquisition, in getting the people and tools we need on board to operate in technical areas of law enforcement, whether those be computer crimes, pedophiles on the Internet, or preservation of our ability to enforce court orders for telecommunications access. All of these things go to the central but very changing mission of law enforcement. I want to again thank you, Mr. Chairman, for your leadership, Senator Hollings, the other members of this committee for really helping the FBI move into the 21st century with respect to competence, technology and the resources that we need to do a job which is still in its essence a fairly simply defined one: the protection of the people that we serve and the protection of our Constitution.

But the means by which we carry out that mission have become exceedingly complex, which is why we ask for assistance in information technology, in the deployment of FBI resources around the world to places where they can assist not so much our foreign counterparts, although they do that also, but to help investigations in the United States that impact directly on our citizens and the people that we protect. Having that line of defense as an early warning system, so to speak, enables us to deal with forces such as Eurasian organized crime, which is very different from the traditional organized crime problems that we have had here in the United States.

All of these things will prepare us to do our mission in the coming years where, I think, technology will impact more directly on law enforcement than perhaps most sectors of our government because we are in the business of acquiring lawfully information, evidence, and the technology changes which are occurring at an ever faster pace. We are not talking about technology cycles of 5 years. We are talking about technology cycles, in some cases involving

software, of 18 months to 24 months, which impacts our systems, whether they be NCIC 2000 or IAFIS, both of which will be up and running in July of this year. We do not just build them, pull the switch on, and then operate them. The changes that will be necessary to further improve and keep efficient those systems will require upgrades and revisiting areas of technology control and acquisition.

And I very much appreciate not only the time but the attention and the comprehension which has been shown, particularly by this committee and your counterpart in the House, to recognize that we do not just need people. Of course, we need agents. We need scientists. We need people who understand computer codes. We need CART examiners, agents and technicians who can investigate forensically a whole new venue of criminal activity which is the computer. Now, agents return to the grand jury, in the process of serving a search warrant, not just boxes of records and ledgers as I did as a young agent, they also bring back hard drives and disks. There is a whole new technology involving forensics which has to be perfected if we are to have the competence to operate in a very different venue.

So a lot of the highlights of our budget, particularly the increase requests for 2000, have to do with technology, have to do with infrastructure, have to do with the basic tools that we need to perform our operation. The other thing I want to highlight, which again was emphasized in my meeting with the chiefs and sheriffs yesterday, this is not just technology which resides in the FBI. If the requests have to do, as they do again in the 2000 budget, with CALEA, with encryption technology, with CART examiners, that technology goes not only to the FBI but also to the entire law enforcement community.

When we make the request, as the Attorney General has in her budget, for resources to be used for spectrum and radio capability, enabling the law enforcement and public safety telecommunications networks to prevail after 2006 when we are all required to move to half the megahertz, that is technology and assistance which ultimately goes to every law enforcement and, actually, every public safety department in the country. Requests that have to do with training and equipment for the preparation of first responders to deal with an incident involving a chemical toxin or a biological agent will be distributed to public safety agencies in the United States. CALEA, although, the FBI has taken the leadership in terms of coordinating the distribution of this technology, as well as the legislative authority that we need, this goes to every district attorney, every police department in the country.

Some of the questions I was getting at lunch yesterday from the chiefs and the sheriffs were questions like: can we get assistance in examining computer evidence and hard drives and forensics? What will your laboratory be able to provide to us in terms of fiber and hair analyses? What will the new interface between our CODIS profiles and the expected Federal data base provide to us in terms of enhanced investigative ability? What is going to happen if we do not fix the telecommunications access issue with respect to CALEA? Will encryption make it impossible for a small sheriff

to deal with a kidnapping situation where they cannot get a "trap or trace" to find the location of the victim?

So many of these technologies, much of the assistance, although in the Department of Justice budget, and in the FBI budget in particular, will go far afield beyond us and benefit, as our counterterrorism resources have benefitted, we believe, not only people in this country, but people all over the world.

Rather than highlight all of the individual items, which are well known to the committee and, of course, are very detailed in my opening statement, I would just close by thanking the committee once more for its assistance, for its support. We believe that the changing technologies, the changing burdens, the changing challenges will not deter either the FBI or the law enforcement community from carrying out its functions. But those functions will be markedly different several years from now as they are today, just as they are very different today, than when I was a very young agent back in 1975.

PREPARED STATEMENT

And I want to thank you for your support and for addressing the issues of technology and infrastructure which are very complex. In some cases, you have to appropriate with a little bit of confidence and perhaps a little bit of risk that those resources will be used appropriately in the years to come. And I will do everything I can, as the Attorney General will, to ensure that we use those resources properly to preserve our mission and also assist our State and local partners, which is a central part of our mission. Thank you very much.

[The statement follows:]

PREPARED STATEMENT OF LOUIS J. FREEH

Good morning, Mr. Chairman and members of the Subcommittee. I welcome this opportunity to appear before the Subcommittee to discuss the President's fiscal year 2000 budget request for the Federal Bureau of Investigation (FBI). I am also pleased to be joined by my colleague, Administrator Tom Constantine of the Drug Enforcement Administration.

I am most appreciative of the support the Subcommittee has provided the FBI over the past several years. That support, in terms of the additional staffing and resources provided, allows us to do what the FBI does best: catch criminals, drug traffickers, terrorists, and spies; provide training, investigative assistance, and forensic and identification services to our law enforcement partners; and develop new crime-fighting technologies and techniques.

This past year, the FBI celebrated its 90th anniversary. We acknowledged that occasion by reflecting upon the successes of our past and by dedicating ourselves to carrying the FBI's proud heritage into the future. Having reached the mid-point in my tenure as Director of the FBI, I want to be sure that the Bureau of the 21st Century is rooted solidly upon our successful past and that our mission and priorities, as well as our core values and competencies, prepare us for the challenges of today and the years to come.

CHALLENGES FACING THE FBI

Before discussing our fiscal year 2000 budget request, I would like to highlight for the Subcommittee several of the challenges facing the FBI, and the strategic planning and management initiatives that we are undertaking to prepare the FBI to enter the 21st Century. These initiatives are especially important given the challenges and changes facing the FBI.

Increasingly, the crime problems and national security threats facing the FBI are transcending the traditional investigative programs under which the FBI operated. For example, the Southwest Border and East Caribbean crime plans are based upon

a coordinated attack against drug traffickers (organized crime/drugs program), violent crimes and gangs (violent crimes program), and public corruption (white-collar crime program). Emerging criminal enterprises from Eastern Europe and Eurasia tend to be involved not only in "traditional" organized crime activities, such as extortion, loan sharking, and street crime, but also complex money laundering, tax evasion schemes, medical fraud, and other "white-collar" offenses.

We are also facing a growing internationalization of crime. Increasingly, cases being worked by FBI Agents on the streets of America are developing leads that take us to foreign lands for resolution. Recent events, such as the abductions and brutal murders of Americans in Uganda and Colombia, required the FBI to exercise its statutory extraterritorial jurisdiction and deploy investigative teams overseas. Organized criminal enterprises are often involved in related illegal activities on several continents. Communications networks allow criminals in foreign countries to commit thefts in the United States without leaving their homelands.

To respond to these types of emerging crime problems and national security issues more quickly, the FBI must focus its efforts and resources along broader investigative strategies.

Another challenge facing the FBI is the changing demographics of our workforce. With respect to agents, nearly 31 percent of all FBI Special Agents have been on the job for less than five years—nearly double the rate in 1993.

—In October 1995, 9 percent of the 8,410 on-board field investigative agents were at the GS–10 entry level; by February 1999, the percentage of GS–10 entry level agents has nearly doubled to 17 percent of the 9,477 on-board field investigative agents.

—At the same time, we are also experiencing a significant loss in investigative experience. In October 1995, 74 percent of the 8,410 on-board field investigative agents were at the GS–13 journeyman level; by February 1999, the percentage of experienced, journeyman agents had decreased to 61 percent of the 9,477 on-board field investigative agents.

Keeping current with the fast pace of technology and more complex crime problems and issues requires a more technically trained and competent workforce. This applies not only in terms of our investigators, but also with respect to the scientists, engineers, analysts, and other support staff who help our agents do their jobs. We are also recognizing that technically trained specialists are becoming an increasingly important part of our investigative teams. For example, this year we are requesting 79 forensic computer examiners to assist agents with computer evidence identification, collection, and analysis. I want to acknowledge the Subcommittee's assistance in providing us with the special authority to recruit, hire, and compensate persons for select critical skill positions. We will use that authority to bring on board the specialists and technical staff needed to support our investigations.

Emerging technologies present both a challenge and an opportunity for the FBI to develop new methods and capabilities for preventing and investigating crime and protecting the national security. We must be able to upgrade existing investigative techniques and technologies and to take advantage of emerging technologies to develop new capabilities to keep abreast of changing criminal problems and national security issues.

The infrastructure necessary to support the FBI also presents challenges. The FBI employs nearly 28,000 employees, located in 56 major field offices, approximately 400 smaller resident agencies, four information technology centers, a fingerprint identification and criminal justice information complex, a training academy, an engineering research facility, and FBI Headquarters. We also operate legal attache offices in 37 foreign countries. Tying these offices together are large, complex radio communications and telecommunications networks. In addition, we also operate and maintain nationwide systems and services, such as the National Crime Information Center, the Combined DNA Identification System, and fingerprint identification systems, that provide connectivity with state and local law enforcement.

FBI STRATEGIC PLAN, 1998–2003

This past May, I issued the FBI Strategic Plan, 1998–2003. This plan represents the culmination of work performed over a year's time by a strategic planning task force under the personal direction of Deputy Director Robert M. Bryant. This group conducted strategy sessions with every FBI investigative program, both criminal and national security, and met with FBI Special Agents in Charge and other field office representatives. In doing so, the task force not only identified the strategic direction and national priorities for the FBI, but it also performed a self-assessment of the FBI's capacity to achieve these goals. This self-assessment identified deficiencies and performance gaps that must be improved or completely eliminated if

we are to be successful in dealing with emerging crime problems and more challenging threats and issues related to protecting the national security. Some of these deficiencies and performance gaps can be corrected by reengineering processes and implementing policy decisions, while others will require funding and resources to mitigate.

Guiding the implementation of our national priorities is a statement of core values for performing the mission of the FBI, which I personally wrote. Briefly, the core values that I have established for FBI employees can be summarized as follows: rigorous obedience to the Constitution; respect for the dignity of all those we protect; compassion; fairness; and uncompromising personal and institutional integrity.

To accomplish the mission of the FBI, we must follow these core values. The public expects the FBI to do its utmost to protect people and their rights. As I have told FBI employees, observance of these core values is our guarantee of excellence and propriety in meeting the Bureau's national security and criminal investigative responsibilities.

The FBI Strategic Plan, 1998–2003 identifies three major functional areas that define the FBI's strategic priorities. These three national priorities are: national and economic security; criminal enterprises and public integrity; and individuals and property. Within these three functional areas, the FBI has identified nine strategic goals emphasizing the FBI's need to position itself to prevent crimes and counterintelligence activities, rather than just reacting to such acts after they occur.

National and Economic Security.—Our highest national priority is the investigation of foreign intelligence, terrorist, and criminal activities that directly threaten the national or economic security of the United States. We have established four strategic goals for this area: Identify, prevent, and defeat intelligence operations conducted by any foreign power within the United States, or against certain U.S. interests abroad, that constitute a threat to U.S. national security; Prevent, disrupt, and defeat terrorist operations before they occur; Create an effective and ongoing deterrent to prevent criminal conspiracies from defrauding major U.S. industries and the U.S. Government; and Deter the unlawful exploitation of emerging technologies by foreign powers, terrorists, and criminal elements.

Criminal Enterprises and Public Integrity.—Our second national priority is crimes that affect the public safety or which undermine the integrity of American society. These investigations are often targeted at criminal organizations, such as the La Cosa Nostra, cartels and drug trafficking organizations, Asian criminal enterprises, and Russian organized crime groups, that exploit social, economic, or political circumstances. Another focus within this area is public corruption and civil rights. For this area, we have established four strategic objectives: Identify, disrupt, and dismantle existing and emerging organized criminal enterprises whose activities affect the United States; Identify, disrupt, and dismantle targeted international and national drug-trafficking organizations; Reduce public corruption at all levels of government with special emphasis on law enforcement operations; and Deter civil rights violations through aggressive investigative and proactive measures.

Individuals and Property.—Our third national priority is crimes that affect individuals and property. Within this area, we will develop investigative strategies that reflect the public's expectation that the FBI will respond to and investigate serious criminal acts that affect the community and bring those responsible to justice. Our strategic goal for this area is: Reduce the impact of the most significant crimes that affect individuals and property.

To achieve these strategic objectives, we have developed five operational support strategies that are designed to build enhanced investigative capabilities. These operational support strategies are: intelligence; information technology; applied science and engineering; management; and assistance to support our state, local, and international law enforcement partners. With respect to FBI management strategies, we were recently notified that the FBI was afforded an "unqualified" rating for the Department's Inspector General financial audit of fiscal year 1998. An "unqualified" is the highest rating an agency can receive.

For the fiscal year 2000 budget, FBI program managers used the Strategic Plan, 1998–2003, and the five operational support strategies as guides for developing their resource requirements. Through an integrated strategic planning and budget framework, the FBI has significantly sharpened its focus for allocating resources based upon national priorities and strategic objectives that concentrate on the most significant crime problems and threats to the Nation.

OVERVIEW OF FISCAL YEAR 2000 BUDGET REQUEST

For fiscal year 2000, the FBI is requesting a total of $3,293,664,000 in direct budget authority, 26,519 permanent positions (11,339 agents), and 25,576 direct

workyears for its Salaries and Expenses/Violent Crime Reduction Program and Construction appropriations. This request includes direct program increases totaling 268 permanent positions (60 agents) and $109,159,000 in five budget initiatives: Information Collection and Analysis; Counterterrorism; Technology and Cyber Crimes; Law Enforcement Services; and Infrastructure.

In addition to direct funded resources, the FBI proposes a total of 2,646 reimbursable positions (454 agents) and 2,454 reimbursable workyears for fiscal year 2000. This represents increases of 89 positions for the National Instant Criminal Background Check System (NICS) and 77 positions (35 agents) for health care fraud enforcement. The fiscal year 2000 budget reflects the transfer of FBI resources previously funded under the Interagency Crime and Drug Enforcement appropriation to Salaries and Expenses.

INFORMATION COLLECTION AND ANALYSIS

The Information Collection and Analysis budget initiative focuses upon one of the most critical needs identified by FBI program managers, namely, the ability to collect, process, analyze, and disseminate information obtained during investigations, from other agencies, and from public sources. For fiscal year 2000, the FBI is requesting an increase of 56 positions and $48,917,000 for information collection and analysis activities in three areas: Information Sharing, Collection Management, and Investigative Information Services.

Information Sharing.—Last year, the Committee supported funding for the Information Sharing program which is a critical cornerstone to all of the operational strategies identified by the FBI in its Strategic Plan, 1998–2003. What the FBI needs most is to move away from its current collection of "stove-pipe" databases and stand-alone case management systems that cannot talk to each other and implement an enterprise-wide case management system. The Information Sharing project will break down those information and case management stove-pipes.

We are taking a measured approach to implementing the Information Sharing project. This multi-year information technology investment is comprised of three sequential phases, each builds upon the preceding phase. The first phase would upgrade the existing information technology architecture to support electronic case management in all FBI locations. The second phase would introduce analytical tools that will allow FBI agents, analysts, and specialists to perform high-level analysis of the information contained in electronic case files. The third phase envisions the capability of securely sharing FBI electronic case information with other members of the law enforcement and intelligence communities.

Each major phase of the project represents a separate set of functionalities and capabilities so that if funding is not available for the subsequent phases, the investment provides benefit to the FBI. While the overall cost of all three phases will require a substantial investment over several years, our future requests will be dependent upon satisfactory progress being realized in the phases funded to date.

In response to the Committee's direction, we have prepared a five-year plan for the Information Sharing project. That plan is being reviewed within the Administration for clearance and will be submitted to the Congress upon approval from the Office of Management and Budget. Until we receive your concurrence to this plan, the FBI is unable to expend any funding in 1999 to implement the Information Sharing project.

With funding made available for fiscal year 1999, including $20,000,000 of direct appropriation and $40,000,000 from the Department's Working Capital Fund, the FBI would begin Phase I of the plan.

For fiscal year 2000, the FBI requests a total of $58,800,000 to continue implementation of the Information Sharing project, including a program increase of $38,800,000. This funding would allow us to complete Phase I, which permits electronic case file capabilities with access from all FBI locations. Additionally, work would begin on Phase II of the plan to provide a common set of analytical tools to all FBI locations that would provide the electronic capability to analyze case information on a single-case basis. The availability of these analytical tools would allow FBI agents, analysts, and specialists to perform link analysis, telephone toll analysis, visual investigative analysis, geographic analysis, and the ability to analyze large volumes of data related to a single case at a single location. The Phase II ability to perform analysis on investigative case information represents a significant first step toward achieving the type of analytical capabilities needed to support the operational objectives identified in the Strategic Plan for 1998–2003.

Collection Management.—During the development of the FBI's Strategic Plan for 1998–2003, virtually every program manager acknowledged that FBI intelligence analysis capabilities, across all investigative and national security programs, were

deficient. Principal deficiencies most commonly cited were the absence of systematic intelligence collection requirements from Headquarters program managers to field offices, the lack of a systematic validation of sources and their information, the absence of a mechanism for sharing of information internally within the FBI across programs, and the absence of a mechanism for sharing information outside the FBI with other law enforcement and intelligence community partners based on agreed upon policies and guidelines.

The FBI Strategic Plan identifies a number of near-term actions that are already taking place to begin building an effective collection management capability. Among the steps already taken are the designation of a staff at FBI Headquarters with the responsibility for developing and implementing an organization-wide intelligence strategy. This staff is also working with the Criminal Investigative and National Security Divisions at FBI Headquarters to develop collection management protocols and policies, a training curriculum and promotion standards for FBI analysts, and to ensure available analytical technologies are fully exploited by the FBI.

This year, we also initiated a pilot program in our Washington Field Office to develop procedures and protocols for sharing intelligence information between two programs, national security and Russian organized crime.

To further implement an effective collection management capability that will service all FBI investigative and national security programs, the fiscal year 2000 budget requests an enhancement of $3,682,000 to hire 56 new Intelligence Operations Specialists to serve as collection management officers in FBI field offices. The establishment of these positions is a critical element of our overall intelligence strategy. In each field office, these individuals will serve as the focal point for intelligence reporting and dissemination for criminal and national security programs and be responsible for validating the reliability of sources and their information. Also requested is $2,110,000 to build upon a prototype data analysis capability we are beginning this year that supports FBI Russian organized crime and counterterrorism programs. This effort would be adapted later to include other FBI investigative programs and crime problems and is compatible with the Information Sharing project.

Investigative Information Services.—The FBI subscribes to various commercial online databases, such as Lexis/Nexis, Dun & Bradstreet, and others, to obtain public source information regarding individuals, businesses, and organizations that are subjects of investigations. Information obtained includes credit records, real property and tax records; boat, plane, and motor vehicle registration records; business records, including filings with the Securities and Exchange Commission and bankruptcy filings; articles of incorporation; financial information; rental records; news articles; concealed weapons permits; and hunting/fishing licenses. In 1998, more than 53,000 inquiries were made of these databases. Information from these inquiries assisted in the arrests of 393 fugitives wanted by the FBI, the identification of more than $37 million in seizable assets, the locating of 1,966 individuals wanted by law enforcement, and the locating of 3,209 witnesses wanted for questioning. Over 97 percent of the inquiries made produced new investigative information for follow-up action by agents and investigators.

Subscription to these databases allows FBI investigative personnel to perform searches from computer workstations and eliminates the need to perform more time consuming manual searches of federal, state, and local records systems, libraries, and other information sources. Information obtained is used to support all categories of FBI investigations, from terrorism to violent crimes, and from health care fraud to organized crime. To meet increased subscription costs associated with accessing these public source databases, an increase of $4,325,000 is required for fiscal year 2000.

COUNTERTERRORISM

The bombings of the World Trade Center in 1993, the Murrah Federal Building in 1995, U.S. military facilities in Saudi Arabia in 1995 and 1996, the Atlanta Olympic Games, clinics, and bars in the Southeast United States in 1996, 1997 and 1998, and, most recently, U.S. embassies in Tanzania and Kenya, are dramatic reminders of the devastation and toll in human lives that can result when terrorists and criminals use improvised explosive devices. Bombs—either conventional or unconventional—are considered the most likely threat to United States' citizens and interests from either international or domestic terrorists.

Since 1981, the FBI has operated the Hazardous Devices School, the only formal, domestic training program where state and local bomb technicians can learn to locate, identify, render safe, and dispose of improvised explosive devices, as well as learn to use specialized equipment and protective clothing needed for the safe disposal of explosive materials. With your support, the FBI has adjusted its training

program at the Hazardous Devices School to meet the challenge of today's terrorist and criminal threat, to include devices containing materials classified as weapons of mass destruction, and to train enhanced levels of bomb technicians.

During fiscal year 1998, we trained 838 state and local students through the Hazardous Devices School, including 247 in basic bomb technician courses, 152 in recertification courses, 386 in weapons of mass destruction courses, and 53 in executive management courses. We also provided basic or recertification courses for 125 FBI Special Agent bomb technicians.

For fiscal year 2000, the FBI requests $9,000,000 for the modernization of facilities at the Hazardous Devices School, which is located at Redstone Arsenal, Alabama. This funding will be used to construct improvements related to practical exercise areas, several mock villages, and required infrastructure. These improvements and mock villages will permit bomb technician trainees the opportunity to apply techniques and training learned in the classroom in a realistic training environment. Improved facilities at the Hazardous Devices School is one of the strategies identified under the Attorney General's Five-year Counterterrorism and Technology Crime Plan that was submitted to the Congress in December 1998.

TECHNOLOGY AND CYBER-CRIME

The growing use of technology by criminals, terrorists, and foreign intelligence agents to commit acts or to thwart the efforts of law enforcement investigating illegal activities is one of the serious challenges facing the FBI now and in the future. The Technology and Cyber-crime budget initiative focuses upon the resources needed to meet this challenge. For fiscal year 2000, the FBI is requesting an increase of 207 positions (60 agents) and $36,742,000 to enhance its capabilities for preventing, detecting, and investigating computer crime and protecting the critical infrastructure of the United States.

National Infrastructure Protection Center (NIPC).—The NIPC serves as a national resource for critical infrastructure protection. Critical infrastructures are those physical and cyber-based systems essential to the minimal operations of the U.S. economy and government. The national security of the United States depends largely on cyber-based systems and the rapid, consistent, secure, and reliable movement and storage of data which they provide. Presidential Decision Directive (PDD)–63 assigns to the FBI and the Department of Justice the responsibility for the Emergency Law Enforcement services sector and lead agency responsibility for law enforcement and internal security.

The FBI supports these responsibilities through the activities of the NIPC. The mission of the NIPC is to identify and investigate threats and unlawful acts targeting the critical infrastructures of the United States and prevent illegal intrusions into government computer networks, protected civilian computers, and the national information infrastructure, consistent with PDD–63 and federal statutes. Under PDD–63, all Executive Departments and agencies are instructed to share information about threats and warnings of attacks, as well as actual attacks, on critical government and private sector infrastructures with the NIPC. The NIPC is directed to process law enforcement and intelligence information for inclusion into analyses and reports which the NIPC provides in appropriate format to other federal, state, local government agencies and private sector agencies.

The NIPC is staffed by FBI employees, as well as representatives from the United States Secret Service, the United States Postal Service, Department of Defense, Department of Energy, Oregon State Police, and others. Efforts are underway to include private sector participation in NIPC.

For fiscal year 2000, an increase of $1,656,000 is requested for the NIPC to support training, liaison, and outreach initiatives.

Field computer crime and intrusion squads.—Computers, the Internet, and other new information technologies are an integral element of how we conduct business, perform research and development, engage in personal communications, and educate and entertain ourselves. However, as society has moved on-line, so have criminals. Crimes facilitated by the use of computers and the Internet include the defrauding of senior citizens, dissemination of child pornography, theft of credit card numbers, money laundering, insurance fraud, stock market manipulation, and theft of bank funds. On-line larceny has become a lucrative business due to the Internet's widespread availability and the growing popularity of electronic commerce.

Computers and computer networks are also the target of hackers and others who illegally gain access in an effort to deny or disrupt service, steal data, alter computer code, and plant destructive viruses and Trojan horses. A 1998 Computer Security Institute study reported that 64 percent of its survey respondents experienced

a computer security breach and that losses associated with computer intrusions totaled $136 million.

By 2000, the FBI will have established and equipped specialized computer crime and intrusion squads in 10 FBI field offices: Washington, D.C., New York City, San Francisco, Chicago, Dallas, Los Angeles, Atlanta, Charlotte, Boston, and Seattle. The FBI needs this capability in each of its field offices. To provide that capability, the fiscal year 2000 budget request includes 108 new positions (60 agents) and $11,390,000. When combined with existing positions, it will allow us to staff and equip 18 additional computer crime and intrusion squads and to provide equipment to establish a baseline computer crime and intrusion capability in 28 smaller field offices. This request will enable the FBI to have a computer crime capability in each of its 56 field offices.

Computer Analysis Response Teams.—Crucial evidence is increasingly being found in electronic form. The use of computers and computer storage media by criminals, terrorists, and foreign intelligence agents, is very well documented. The FBI and law enforcement must have the capability of recovering evidence and data from computers and computer storage media. This is becoming a very time-consuming and resource intensive process due to the growth in both the availability of computers and the size and capacity of computer storage media.

The FBI established the Computer Analysis Response Team (CART) program under the FBI Laboratory to provide data forensic services. We currently have trained and equipped 95 field CART examiners and 26 Headquarters examiners. Last year, in fiscal year 1998, these examiners conducted over 2,600 examinations. We project the demand for examinations to more than double by 2000.

The FBI is working with state and local law enforcement to share data forensic laboratory techniques and expertise. For example, we are establishing a pilot regional computer forensic laboratory capability in the FBI's San Diego field office. The multi-agency laboratory will be staffed by examiners and technicians from the FBI and state and local agencies and serve as a resource for that region. We have also developed the Automated Computer Examination System (ACES), which is an automated forensic search capability for locating computer evidence on seized computers and computer storage media. We hope to make ACES available to other law enforcement agencies.

For fiscal year 2000, the FBI is requesting $9,861,000 to hire and train 79 new computer forensic examiners, 17 for the FBI Laboratory and 62 for assignment directly to FBI field offices and computer crime and intrusion squads, and for CART program equipment, supplies, and training. Unless we increase our capacity for performing data forensic examinations, investigators and prosecutors will be denied timely access to valuable evidence that will solve crimes and support the successful prosecution of child pornographers, drug traffickers, corrupt officials, persons committing fraud, terrorists, and other criminals.

Technical support for investigations.—The widespread use of digital telecommunications technologies and the incorporation of privacy features/capabilities through the use of cryptography pose a serious technical challenge to the continued ability of the FBI and law enforcement to access and process information obtained pursuant to court-authorized electronic surveillance. In today's telecommunications environment, the FBI must contend with layers of protocols, formatting, compression, and proprietary encoding applications that can have the effect of masking or hiding the content of lawfully intercepted communications. For example, the expansion of electronic commerce and concerns for privacy have brought about new concepts and deployments in affordable and robust encryption products for private sector use.

Terrorists, both abroad and at home, are using technology to protect their operations from being discovered and to thwart the efforts of law enforcement to detect, prevent, and investigate such acts. Ramzi Yousef, convicted for his role in the World Trade Center bombing and for conspiracy to destroy numerous United States airliners, used encryption to protect his computer files. Convicted spy Aldrich Ames was told by his Russian handlers to encrypt his computer files. International drug traffickers and child pornographers are using encryption to avoid detection by law enforcement.

For fiscal year 2000, increases totaling 20 positions and $13,835,000 are requested for technical support to investigations. To handle a growing workload of requests from FBI field offices for protocol analysis and processing support for court-approved Title III and Foreign Intelligence Surveillance Act intercepts, $6,835,000 is needed to hire and train 20 technicians, acquire technical equipment, and develop signal processing and network intercept tools to assist technicians and investigators. Additionally, $7,000,000 is requested to develop and enhance FBI counter-encryption technology and support services that will allow law enforcement access to the plain

text of encrypted communications and computer files lawfully seized pursuant to court-authorization and search warrants.

LAW ENFORCEMENT SERVICES

Later this summer, the FBI will bring on line the new National Crime Information Center (NCIC) 2000 and the Integrated Automated Fingerprint Identification System (IAFIS). Both of these systems will offer state and local law enforcement an array of new, long-awaited features and capabilities. For example, NCIC 2000 will offer the capability of transmitting a single fingerprint from a squad car to help verify the identification of a person stopped for a traffic violation. One of the features of IAFIS is a latent search capacity that will allow state and local agencies to directly submit fingerprints for matching against the FBI's database. Another key IAFIS feature is the two-hour response time to criminal fingerprint cards submitted electronically. These two systems will help us catch wanted persons and prevent the release of fugitives before their true identities can be learned. Yet, the real success of these systems depends upon state and local law enforcement possessing the equipment that will allow them to take advantage of these tools. I am hopeful that state and local governments will make these investments now that our systems are coming on line.

The Law Enforcement Services budget initiative encompasses three critical requests totaling 94 positions (5 direct and 89 reimbursable) and $9,500,000 that will allow the FBI to provide better forensic and information services to federal, state, and local law enforcement. These items are: the implementation of the Federal Convicted Offender DNA database; improved telecommunications network connectivity between the FBI and other federal, state, and local forensic laboratories that support users of the Combined DNA Information System (CODIS) and the National Integrated Ballistics Information Network; and the National Instant Criminal Background Check System. These requests directly support the state and local assistance strategy of the FBI Strategic Plan, 1998–2003.

Federal Convicted Offenders DNA database.—The Anti-Terrorism and Effective Death Penalty Act of 1996 authorized the FBI to "expand the CODIS to include Federal crimes and crimes committed in the District of Columbia." No other federal agency or crime laboratory is authorized to establish such a capability. In December 1998, the FBI submitted to the Congress a plan, requested in the 1998 Justice Appropriations Act, to support the implementation of a program that requires a federal prisoner convicted of a federal offense involving a victim who is a minor or a sexually violent offense to provide a DNA sample for inclusion in a law enforcement DNA database prior to the prisoner's release from incarceration. That report included draft legislation which requires Congressional enactment for the FBI to implement the plan. The draft legislation also clarifies the authority for implementing the Federal Convicted Offender DNA database authorized by Congress in 1996.

The FBI requires 5 positions and $5,336,000 in fiscal year 2000 to implement the Federal Convicted Offenders DNA database. This database would include DNA samples from offenders convicted in federal, military, and District of Columbia courts. While all 50 states have enacted laws allowing the collection of DNA samples from persons convicted in state court for qualifying offenses, there is no collection of DNA samples from persons convicted in federal, military, or District of Columbia courts. Consequently, when state and local law enforcement check DNA evidence recovered from a violent sexual assault, murder, or child molestation, there are no profiles in CODIS of convicted federal offenders who may have been released and are now residing in that community. The proposed legislation and the Federal Convicted Offenders DNA database would close this gap resulting from the lack of a federal DNA collection program.

Forensic laboratory connectivity.—One of my goals for the FBI Laboratory is the development and transition of new and improved forensic examination capabilities and crime-fighting tools to state and local forensic laboratories and law enforcement agencies. Two such tools are the National Integrated Ballistics Information Network (NIBIN) and CODIS.

NIBIN is a computer database system which allows forensic examiners within a region or large metropolitan area to exchange and match cartridge casings and bullets, thereby linking serial shootings incidents and recovered firearms. CODIS is the national DNA database system containing indices of DNA profiles from convicted offenders and unsolved crimes. CODIS permits state and local crime laboratories to exchange and compare DNA profiles electronically, thereby linking serial violent crimes, especially rapes, and identifying suspects by matching DNA from crime scenes to profiles from convicted offenders.

Growth in the number of user locations, database records, and queries is outstripping the existing capabilities of the FBI telecommunications network supporting NIBIN and CODIS. We have developed a plan to consolidate these separate networks and provide secure communications, path redundancy, and improved access to NIBIN and CODIS users. Under this plan, the FBI would migrate NIBIN and CODIS telecommunications services to the wide area network established for the Criminal Justice Information Services Division. To facilitate consolidation, an increase of $4,164,000 is requested in fiscal year 2000.

National Instant Criminal Background Check System (NICS).—The Brady Handgun Violence Prevention Act required the Attorney General to establish a NICS that any federal firearms licensee may contact for immediate verification on whether the receipt of a firearm would violate federal or state law. The NICS system became operational on November 30, 1998. Since starting operations, the FBI NICS operations center has processed more than 2 million background checks. More than 22,000 gun purchases have been denied to convicted felons and other ineligible persons. NICS has been successful in keeping guns out of the hands of criminals, while facilitating the sale of firearms to those who are not prohibited by law from purchasing a gun.

Presently, 15 states and territories serve as full points of contact for the NICS system. As such, these states and territories perform NICS checks for the purchase of both handguns and long guns. Another 11 states serve as partial points of contact for the purchase of handguns only. For the remaining 27 states and territories who are not serving as points of contact and for long-gun checks in partial point of contact states, the FBI performs NICS checks. For fiscal year 2000, the FBI estimates it will perform approximately 6.6 million NICS checks for non-point of contact states and territories, while state points of contact will perform approximately 5 million checks.

An additional 89 reimbursable positions will be required by the FBI in fiscal year 2000 to process the projected NICS workload. The FBI's workload for NICS in fiscal year 2000 could be affected by decisions made by states serving as points of contact to cease performing that service.

For fiscal year 2000, the Administration is proposing to fund the cost of FBI NICS operations through the collection of user fees that would be paid by persons desiring to establish their eligibility to purchase a firearm. At this time, we estimate the fee will be between $11.00 and $13.00. We anticipate that a Notice of Proposed Rulemaking for the fee will be published in the Federal Register in either April or May. The Final Rule must be published prior to September 1, 1999, so that the fee can be implemented effective with the beginning of fiscal year 2000 on October 1, 1999.

Most recently, on March 3, 1999, the Department of Justice published a proposed rule in the Federal Register to shorten the NICS records retention period from its current six months to 90 days. This represents the minimum time period that would be needed to detect prohibited felons who assume the identity of a qualified person to buy guns illegally and to identify individuals who misuse the NICS system to perform background checks unrelated to gun purchases. Retention of records for this limited time period will allow the FBI to conduct audits that protect against invasions of privacy that could result from misuse and abuse of the NICS system. These audits are essential to safeguard the security and privacy of personal information, such as criminal and arrest histories, mental health information, and military service background information, that is part of NICS. I want to state unequivocally that the Department is not using this information to establish a national gun registry and that records of eligible purchasers will be destroyed after 90 days.

INFRASTRUCTURE

The FBI anticipates awarding a contract for the construction of its new Laboratory facility at the FBI Academy in Quantico, Virginia, by mid-April. While occupation of the new FBI Laboratory will not occur until late 2001, it will be necessary to begin acquiring specialized scientific and laboratory equipment, cabling, and furnishings for the new facility in fiscal year 2000 so that these items can be installed prior to occupancy. Some specialized equipment that will be needed for the FBI Laboratory is not made on a production line; rather, it is produced on an application basis. Manufacturers require a substantial lead time to produce, test, validate, and calibrate new instruments before shipping for installation. To begin the acquisition of specialized equipment for the new FBI Laboratory, an increase of $5,000,000 is requested.

RELATED DEPARTMENTAL FUNDING REQUESTS

I would like to comment briefly on several related Department funding requests that directly affect the FBI in 2000, including: the Telecommunications Carrier Compliance Fund (TCCF), the Narrowband Communications Fund, and state and local bomb technician equipment funding.

TCCF.—Within the General Administration appropriation, a total of $15,000,000 is requested under the TCCF to continue reimbursements to telecommunications carriers and service providers as authorized by the Communications Assistance for Law Enforcement Act (CALEA).

Narrowband communications.—Also within the General Administration appropriation, an enhancement of $45,979,000 is requested for Departmental narrowband radio equipment and services. Of this amount, approximately $32,435,000 would be made available to the FBI for acquiring replacement hand-held, mobile, and other radio communications equipment that complies with narrowband requirements issued by the National Telecommunications and Information Administration. Under these requirements, the FBI must replace its existing VHF radio communications equipment and system with new technology that operates on one-half the current bandwidth.

The FBI has nearly 12,400 hand-held radios and over 11,000 mobile radios that are not compatible with narrowband technology and which must be replaced. Our field offices have identified a need for nearly 3,400 hand-held radios and 3,100 mobile radios above current inventory to support FBI and task force operations. We also operate the largest, civilian land-based mobile radio communications infrastructure in the United States that will also need to be replaced to accommodate the new narrowband radio technology.

State and local bomb technician equipment.—Finally, within the Office of Justice Programs, a total of $45,000,000 is requested for the FBI to continue a program of providing chemical and biological detection technology and other equipment to state and local bomb technicians and bomb squads. This funding builds upon initiatives supported in prior years by the Subcommittee to enhance training for the bomb technician community and to train and equip these technicians and squads for dealing with large, improvised explosive devices, including devices involving chemical toxins and biological agents.

LEGISLATIVE PROPOSALS

Mr. Chairman, the fiscal 2000 budget request includes several legislative items proposed for the FBI, including: danger pay authority, foreign cooperative agreement authority, extension of the Title 5 demonstration project, and a new demonstration project for the defensive arming of a limited number of non-agent surveillance specialists.

—Section 114 would extend to me the same authority that DEA Administrator Constantine currently enjoys for authorizing danger pay for personnel assigned to high risk overseas locations. For the FBI, this is both a pay equity issue for FBI Agents assigned to DEA Country Offices and a recognition of the increased threat facing FBI personnel performing extraterritorial investigations in foreign locations due to our counterterrorism efforts. At times, FBI personnel are deployed to overseas locations where they face a threat or danger that does not always extend to all members of the United States diplomatic team in a particular country. This authority would allow me to recognize those situations.

—Section 115 would extend from three years to five years the duration of the limited exemption from Title 5 for critical skill positions. That limited exemption was granted by the Congress in 1998. An extension is needed so the operating plan for the demonstration project, which was approved by the Subcommittee in January 1999, can run for the full three years originally envisioned.

—Section 116 would allow the FBI to credit to its appropriation, funding that is received from friendly foreign governments for that country's share of joint, cooperative projects.

—Finally, Section 123 proposes a demonstration project to evaluate the feasibility of arming, for defensive purposes only, up to 50 members of FBI Special Surveillance Group teams, that provide surveillance support in counterintelligence and counterterrorism investigations. This is a safety issue. Our surveillance teams are operating in more dangerous and hostile environments and against individuals who are more unpredictable in their behavior. I am concerned for the safety of these highly trained specialists who are finding themselves in harm's way as they perform their duties in support of our counterterrorism and counterintelligence programs. The proposal includes specific safeguards with re-

spect to qualifications, selection, training in firearms proficiency and deadly force policy for individuals selected for the demonstration project.

Last year, the Committee was supportive of several legislative provisions, including an emergency procurement authority for the Attorney General and authority to extend payments for relocation expenses for Department of Justice personnel transferred to Puerto Rico and other territories. I would like to extend my sincere thanks for your assistance on these issues, and particularly for helping us address one of the quality of life issues that we believe will help attract and retain fluent Spanish-speaking agents for our San Juan Field Office.

SUMMARY

I am especially proud of the work being performed every day by the men and women of the FBI. Their ability to do that work is a reflection of the strong support given to the FBI by this Subcommittee. I believe our strategic vision and plan of action will position the FBI to deal with the challenges we face from increasingly complex and changing crime problems and national security threats. The budget initiatives proposed for fiscal year 2000 will help us implement our Strategic Plan and give us the opportunity to achieve the strategic objectives that we have identified for ourselves. I believe our priorities and objectives reflect the expectations for the FBI that are held by the American public, as well as the Congress.

Again, I thank you for this opportunity to appear before the Subcommittee.

MANAGEMENT OF CHINESE ESPIONAGE INVESTIGATION

Senator GREGG. Thank you, Director. And let me say that this committee has great admiration for both your departments and we have tried to support you aggressively and make sure that you have in the context of a balanced budget the resources you need to do the job because we know you do a good job with the dollars that we give you. That is just a general statement of the way I view your activities, and I am sure Senator Hollings joins me in that view.

Turning to a couple of specific issues, though, that I would like to take up, and we will go back and forth between myself and Senator Hollings, a salient issue which is not a budget issue, but which interests me, is the Chinese issue involving specifically the investigation relative to Wen Ho Lee and his activities. My question to you, Director Freeh, is do you feel that the management of that espionage event was handled correctly by the Department of Energy and the Security Council?

Mr. FREEH. If I could avoid talking about the specific case, that is the criminal case, because as you know that is an active investigation and I would not want to say anything that might prejudice or jeopardize a prosecution. So I just need to be a little bit careful about the actual specifics of the investigation. With respect to the general issue of counterintelligence in the laboratories and as managed by the Department of Energy, which is a little bit broader, but I think equally a central question, as I testified last week before Chairman Rogers' committee, the counterintelligence vulnerability in the national laboratories managed by the Department of Energy, going back at least 10 years and perhaps longer than that, has been a very serious weakness in our whole national security system.

The inability to have established and then manage an effective counterintelligence program has been well acknowledged, not just by the Department of Energy, but by various committees of the Congress. In fact, Senator Glenn in 1988 held hearings and issued a report documenting and also recommending essential changes that would have to be effected if the Department of Energy man-

agement of its laboratories was to be effective and safe and protected against counterintelligence.

That report was followed by at least eight other reports, some by the FBI, some by the Director of Counterintelligence, some by intelligence committees as well as the General Accounting Office. So this vulnerability, going back many, many years, has been quite severe, quite significant. What has changed in that regard and changed, I might point out, was an initiative by the Senate Select Committee on Intelligence. They commissioned the FBI to do yet another report, which we published in April of 1997, which we gave to the then Secretary of Energy. We then watched a Presidential Decision Directive process take place which resulted, in January of last year, in a historic change in the Department of Energy. For the first time in several years, many, many years, they established an effective counterintelligence program. I sent my top counterintelligence expert, Ed Curran, over there, who now is their director of Counterintelligence.

They started to take control of the laxity in the various laboratories, particularly the weapons laboratories. They have hired new CI directors, most of whom were former FBI agents. They have accountability. They have reporting. They have training. They have things which were never implemented despite many, many recommendations.

So the short answer to your question is, I think the CI issue was managed quite poorly by the department for many, many years. To their credit, and to Secretary Richardson's credit, they have corrected that, and I believe the program in place, although in need of more resources which he is asking his committee to consider, for the first time historically has the capability that it never had before to not only deter espionage, but also assist in the detection and investigation of those cases.

LORAL INVESTIGATION

Senator GREGG. Well, that is good news that we appear to be on top of the problem. However, it has taken awhile to get there, and my question is more about the role of the Chinese government in this event and in other events. Going back to the Loral sale of technology, did the FBI investigate that?

Mr. FREEH. We did not, Mr. Chairman. That was a Customs investigation. We were not involved in that. We did get involved in the part of the investigation which was designed to detect whether some of that technology was heretofore sent, but the actual investigation was and still is a Customs investigation.

Senator GREGG. To the extent you were involved in that investigation, was it your determination that China ended up with the technology?

Mr. FREEH. I cannot make that determination. It is just not my expertise. We had agents who were detailed to Congressmen Dixon and Cox's committee and assisted in the accumulation of facts. But I am not in the position to make that determination. Others, including Department of Defense people, have done so.

CAMPAIGN CONTRIBUTIONS INVESTIGATION

Senator GREGG. Relative to the investigation of Mr. Wong, Mr. Trie, and Mr. Chung, there was a representation that some of the funds that at least one of those individuals was using in their activities originated with Chinese military operatives or members of the Chinese government. Did your agency investigate that?

Mr. FREEH. Yes, sir, we did.

Senator GREGG. And was it your determination that some of these funds did arise from somewhere in China's government structure?

Mr. FREEH. We did make determinations with respect to that and I have testified at length before both of the Intelligence Committees setting forth both the basis and the caveat for that determination. I would be happy to do it with you, but I prefer not to do it in this session because some of it is classified.

LOS ALAMOS INVESTIGATION

Senator GREGG. The information which Mr. Wen Ho Lee at the Los Alamos Lab is believed to have passed on to the Chinese government, that information it is presumed went to the Chinese government; is it not?

Mr. FREEH. That is the presumption which people have made. Again, this is an active criminal investigation that we are conducting, and nobody has been charged with a crime. Nobody has been arrested. That is not to say that the investigation will not progress to certain decisions at that point, at some point. But those allegations, as you define them, have been in the newspapers. It is unfortunate that a lot of this has been in the newspapers because it has, in effect, impaired our investigation in part, and I do not think I can give an opinion as to whether or not information was passed at this point.

Senator GREGG. Well, just as an aside, let me say looking at it from a distance as a citizen versus an expert in this area, it appears to be sort of a triangulation here of activity: Loral, the funds flowing through the operatives like Mr. Wong and Mr. Trie and Mr. Chung, and now this activity at our labs. There does appear to be a source for this, and it does appear to involve China. And it does not appear to be for the purposes of improving our relations with China but rather for the purposes of improving China's capability of penetrating our country's strategic knowledge and using that to benefit their strategic knowledge, which is not necessarily helpful to us. Is that true?

Mr. FREEH. Those are serious concerns and some of those allegations are, in fact, parts of the various investigations I have alluded to, although I know I have not answered your questions directly this morning.

Senator GREGG. Well, I understand that. I understand you are not going to answer my questions directly because you are interested in getting convictions. You are interested in pursuing the espionage, but I do think that there are some areas that can be highlighted and which a layman like myself can reach fairly logical conclusions from. Is it inappropriate of me as a layman to reach those conclusions in light of those facts?

Mr. FREEH. I would not say so, no.

NATIONAL SECURITY COUNCIL

Senator GREGG. Thank you. When did the National Security Council, or maybe this is something you also do not want to talk about—I believe it has been reported publicly—when were they advised, the leader of the National Security Council, Mr. Berger, of the Chinese penetration of the Los Alamos lab?

Mr. FREEH. Again, the reports, and some of it has been confirmed in public statements by people with knowledgeable bases, I think Mr. Berger has talked publicly about being briefed first in 1996 and then more fully in 1997. Some of the briefings that he refers to came from the Department of Energy. In fact, the earlier ones were by the Department of Energy.

DOE EFFORTS TO CORRECT PROBLEMS

Senator GREGG. But the adjustment in the Department of Energy's counterintelligence efforts which you feel now are moving in the right direction did not occur until the last few months; is that not correct?

Mr. FREEH. That is correct. The PDD was signed in February of 1998. The actual changes in implementation were taking place as late as the fall of last year.

Senator GREGG. So it is safe to assume that from the period 1996 until 1998 that even though the National Security Council, the head of the National Security Council, had been advised of the serious penetration that there was no, not no, but that the efforts necessary to correct the problem were not occurring?

Mr. FREEH. Some efforts occurred early on. Some did not occur until later. For instance, in March of 1998, George Tenet and I addressed the laboratory directors of all the national laboratories, particularly the directors of the weapons laboratories, and gave them a very extensive brief as well as guidelines and requests to begin implementation of parts of the PDD at that stage. So some of these things were being done up to and including things in the fall of 1998.

Senator GREGG. But I do think it is safe to assume from your prior statement that the necessary counterintelligence activities really were not up and running until the fall of 1998.

Mr. FREEH. That is correct. Until the fall of 1998, the fully implemented PDD, which was really based on our recommendations from April of 1997, were not put into place.

Senator GREGG. This is not necessarily your bailiwick, but is not espionage occurring at the national labs a significant enough issue so that we should not have a 2-year time lag between when the highest levels of government are informed of it and when we actually take the corrective actions to cause it stop?

Mr. FREEH. Well, I would say as the person responsible for counterintelligence in the United States that the vulnerability of the laboratories should have been addressed in 1988. At that point, there was enough information not very different from some of the information today that put really everyone on notice that this was a huge vulnerability and that things had to be done to correct processes like the visitation of foreign scientists, the residency of for-

eign national scientists in very significant programs, the lack of a centralized counterintelligence program, the lack of maintaining basic records and data on the people working some of these programs. So I think these should have been corrected 10 years ago.

Senator GREGG. Well, that is a fairly considerable lapse; is it not?

Mr. FREEH. Very significant.

Senator GREGG. And we do not know what the damage is?

Mr. FREEH. The DCI in conjunction with some other people are doing that now and we await the results of that study, several studies, two studies.

EXCHANGE PROBLEMS WITH CHINA

Senator GREGG. I notice that there are some initiatives going forward here to have some very in depth exchanges with the People's Liberation Army involving the Pentagon, their plan to go forward in the near future. Do you think that it is wise to pursue that type of exchange in light of—not only what happened at the labs but what has happened with Loral—what has happened with the Johnny Chung situation?

Mr. FREEH. I do not know the extent of those exchanges or the significance of detail or access that they would involve. I think any time we bring over, just to use an example, a foreign national scientist, particularly one connected with a country that, if not on a State Department watchlist, is a country whose interests are adverse to those of the United States, that visit, any exchanges that derive from that, including informational exchanges, ought to be carefully controlled. Maybe they are not prudent given the scope of what is going to be transacted.

And in any case, all of those visits should come within the ambit of a counterintelligence program that works, which means there are debriefings, there is detection, there is follow-up, there are interviews, there are investigations that go with those visits if they are sensitive enough to require that kind of attention.

Senator GREGG. Well, do you know if that structure is in place for these planned——

Mr. FREEH. I do not know, Mr. Chairman.

Senator GREGG. I appreciate the Senator from South Carolina's patience. I took more than my 5 minutes to start things off, but you go ahead and take such time as you want.

Senator HOLLINGS. Well, that is all right. I do not have knowledge about Wen Ho Lee, but it is obvious what the chairman was getting at, Director Freeh. Who was President in 1988?

Mr. FREEH. I believe, well, I guess, no, it was President Reagan.

NATIONAL LABORATORY SECURITY

Senator HOLLINGS. President Reagan in 1988. You see that is what really interests me because the FBI is professional and these other entities, the other departments and agencies couldn't care less. Their primary functions have to do with Energy or with diplomacy as is the case with the Department of State. This subcommittee dealt with the Moscow Embassy situation. They were actually having parties up there with the KGB inside the embassy and the ambassador did not seem to be alarmed, which brings me to the real point of getting something done.

Do you think that maybe the FBI should be responsible for security and take over the security mission of the national labs of the Department of Energy? What do you think of that?

Mr. FREEH. I think——

Senator HOLLINGS. In other words, you have 10 years of weakness and everything else, and, yes, you have Bill Richardson in there now who is right on top of it. How long is that going to last? You know they will come around with their budgets stating that we need so much more for more scientists and other things. I have watched it. You learn something after 32 years up here. Would you test the weakness there that we found for ten—well, excuse me—you said that Senator Glenn gave his report in 1988. So that was the previous 10 years. And so it has gone on for 20 years in the Department of Energy even though we had World War II and so many atomic secrets stolen for the Soviets during that timeframe. Same act, same scene. We are not making any progress.

And I am not too impressed with what they are doing at the Department of Energy right now because certainly they will step it up. The headlines are on to it. And we will really give it a lot of attention for awhile, and then the budget constraints will take over. What about the FBI? It is professional and I agree with the chairman's comment with Constantine and yourself. You all are doing outstanding jobs, and I want to give you every support, but I want to solve problems rather than go around and around in a circle. Could you take over the security requirements? Could the FBI do that?

Mr. FREEH. Yes, sir, we could.

U.S. CUSTOMS SERVICE INVESTIGATION

Senator HOLLINGS. I think we ought to look into it because you do not get Energy people really worried about security, you know. As scientists they are supposed to do studies and they have these visitations and they discuss what it is they are working on so they really are not conscious of security requirements. What about Customs? Are they doing a good job right now? You said—what case is that?

Senator GREGG. Loral.

Mr. FREEH. It's the Hughes-Loral case.

Senator HOLLINGS. Oh, the Loral case. Does Customs do a good job regarding security?

Mr. FREEH. The specific objective of the investigation is to determine whether technology was transferred during the course of consultations between the Chinese scientists on the Long March rocket and the Hughes and Loral scientists. They are doing that investigation. I am not privy to the details of it or whether or not it is moving along as they wish it to be. I just do not know.

Senator HOLLINGS. When that breach was discovered, it was immediately reported to the FBI, wasn't it?

Mr. FREEH. It was actually reported, as I understand it, to State Department and then Customs, though the U.S. Attorney's office commenced the investigation.

Senator HOLLINGS. I see. To Customs then. Well, we ought to look into that because we only have limited resources. You are doing a good job here and I wonder about abroad. What is the pol-

icy? In other words, the chairman and I, we have been handling this budget, and in 10 years, it has gone from $4 billion to $21 billion for the Justice Department. You know we cut spending and cut spending, but this is a growth industry, law enforcement, prisons, U.S. attorneys, judges, marshals, right on down the line. Well, you enjoy a popularity, both departments, and we can get the money for DEA and we can get the money for the FBI. I do not think we will have much difficulty. But then we have to use measured judgment on how much we obtain.

FBI OVERSEAS INVESTIGATIONS

With respect to overseas operations, what is the policy if you receive a call from say Bosnia or Ireland, that some target was blown up. I hope you are not called to provide assistance against the mafia in Russia. You would have to take your whole crowd with you to Moscow. I mean we must have some limits obviously.

Mr. FREEH. We do have limits, Senator. For every one of those that is done, there are probably, you know, a dozen that are not done or are turned down. We get the request from the State Department. The State Department will ask the Attorney General if, in response to a particular country's request, we can furnish assistance usually on a very limited basis and very episodic event. In other words, we send over a couple of technicians to look at a device or a crime scene and we furnish a report back, and then we are removed from that investigation.

But if we get such a request from the State Department, the Attorney General will decide whether or not it should be done and then we will send some resources over. But it is not, I can assure you, that frequently done. There are many times when we do not do it and the resources are fairly small in terms of the serving of those requests.

Senator HOLLINGS. Many times you do not do it and you turn it down as a matter of policy as the director of the FBI?

Mr. FREEH. Yes, sir. That's correct.

Senator HOLLINGS. Because you need to have some judgment there, too, because when you investigate in Ireland, for example, you are going to be taking sides. When you are investigating in Bosnia on who blew up whom, you are going to be taking sides. And even though it might be—probably it is—a successful investigation, you must be careful.

Mr. FREEH. No. You are absolutely right, which is why our investigation assistance would be limited to telling them perhaps what the explosive mixture was in a device based on a forensic examination, not recommending who they ought to investigate.

Senator HOLLINGS. Very good. I have some other questions, but let me yield back to you, Mr. Chairman, and then we can get this other——

Senator GREGG. We do not want to let Mr. Constantine go here. We got to make sure we give him some questions.

Senator HOLLINGS. Well, I have a lot of questions for him. Have you met the Attorney General?

Mr. CONSTANTINE. Yes, I have.

Senator HOLLINGS. You all talk a different language.

IMPACT OF APPREHENSIONS ON CRIME REDUCTION

Senator GREGG. Which brings me to a question I do have for you which follows up on that. I am not sure it is different language, but the language you talk is the language which I agree with, which is you are essentially saying that these numbers you have discussed reflect fairly significant increases in apprehension both in the drugs and in individuals behind the drugs. You see that being a function of people that you have—the fact that you have been able to increase the number of people you have on the street and basically increase law enforcement and the ability to reduce crime. You said murders are down in communities, robberies are down in communities, drugs being sold are down in communities. This is a function of how many DEA agents you can put into a community and the function of a local community's law enforcement capacity to address that. Is that a simplified reaction or is that true?

Mr. CONSTANTINE. There is a direct line correlation between the identification of criminals, apprehending them, incarcerating them and a reduction of crime. I have studied this professionally and academically for 39 years. When you specifically target a group of criminals who were committing a great deal of violence and selling drugs or whatever, and were able to arrest them, indict them, convict them and send them away to prison, you have an immediate impact on that community. I have seen that again and again, especially in my previous job in the New York State Police.

And our agents, just like a trooper or a police officer, are our most important asset because it is the agent who conducts the surveillance, finds the informants, and makes the apprehension.

Senator GREGG. Well, I think looking at it from an anecdotal standpoint, as again just somebody who has been following this on this committee, that that makes sense. You know that you take more bad guys off the street and you reduce the crime, and, in fact, in a few discussions I have had with professionals in this area like yourself, it seems that there are in many instances just a few bad, really bad people who need to be removed. And sometimes in the instances of gangs, for example, if you take the core out of the gang, you reduce the effectiveness of the gang exponentially versus when there may be 100 people in the gang, but if you take five of them out of it, you have reduced their impact by 20 times versus the five that you reduce, removed out of the gang. Is that true?

Mr. CONSTANTINE. That is true. I believe the numbers of people who engage in this activity are finite. I think if the system deals with them aggressively and expeditiously, you can make a difference. If you do not, then the numbers of crimes occur at the exponential rate and the system breaks down and you are unable to solve all of those homicides and murders. The classic example is New York state. I watched that state go from 482 murders when I first started my police career in 1960 to 2,600 murders in 1990 and there was no change in the population. And the armed robberies went from 7,000 to 120,000. There was a decision in the fall of 1990, with the death of that kid from Utah, that we had to do something about crime in that state. There was a hiring of eventually 8,000 more policemen and a very aggressive reaction to it. In 1990, there were 2,252 murders in that city; last year, there were

629 murders. That means, I have told people, in 1 year alone, there are 1,600 people who are alive who would not have been alive if law enforcement had not dealt with criminal activity so aggressively. So I do believe that it works. I always believed it because I witnessed it up front as a detective or a lieutenant or a captain. But it becomes all more obvious to me right now when I look at the results over the last 7 or 8 years in this country and how we have done with violent crime.

We have begun to reduce crime at levels that I never would have believed possible. Everybody can come up with a different idea. You know they say that success has a thousand fathers and failure is an orphan. So there are a thousand fathers claiming credit for the success in reducing crime, but the real success, I believe, is the law enforcement community. There have been no big intervening variables that change the demographics or change the population.

Senator GREGG. So you are referring to the city of New York and when the city decided to significantly increase the number of officers on the street, the crime went down, and when they started to enforce aggressively laws in the city, crime went down.

Mr. CONSTANTINE. I know the numbers. And since 1994, the drug arrests in the city of New York went from 64,000 to 130,000. Since 1994, the index crimes, the crimes that are reported to the FBI in the Uniform Crime Report, I believe there are seven of them now, the most serious crimes in the country, have been reduced from 400,000 to 200,000. And there are cumulative numbers in between 1994 and 1995 that in the aggregate make those things even bigger and the experts tell me that there are 700,000 less crime victims in that city in the last seven years. And anybody who has been there and knew——

Senator GREGG. 700,000 less crime victims?

Mr. CONSTANTINE. 700,000 less crime victims.

Senator GREGG. In New York City in the last how many?

Mr. CONSTANTINE. In the last 7 years.

Senator GREGG. That is a staggering number.

Mr. CONSTANTINE. And that is why when you go there, you can see how the quality of life and everything has improved. I also see that in Los Angeles.

Senator GREGG. Maybe I should go back and visit again.

Mr. CONSTANTINE. I see it in Los Angeles, Chicago, San Antonio, Boston, any number of places and they all have different variations of the strategy. But, the law enforcement community is always the key, whether they are working within a community organization or in a strict law enforcement mode.

DRUG PROBLEM AND MEXICAN INFLUENCE

Senator GREGG. Well, that is pretty impressive testimony. On this point of your problem, however, you mentioned Mexico a couple of times. What percentage do you see of the drug problem that we have on the east coast as being a function of Mexican influence?

Mr. CONSTANTINE. On the east coast probably 25 to 30 percent of the east coast's drug problem is attributed to traffickers from Mexico. Nationally, probably 50 percent of all of the cocaine in the United States today is being somehow organized by criminal mafias based in Mexico. About 90 percent of all of the methamphet-

amine being distributed in the United States is directly connected to these criminal organizations in Mexico.

Senator GREGG. 90 percent?

Mr. CONSTANTINE. About 90 percent. Now that does not affect the northeast quadrant of the United States significantly other than Philadelphia and in some places in New Hampshire where you have the motorcycle rallies in the summertime and gangs that have always been somewhat connected to methamphetamine cooking. We have done a study, what we call a "signature analysis" of drugs. Our original results show—and these were dramatic changes over the last 5 or 6 years—that about 75 percent of all of the heroin in the United States being used today, which is substantial, is coming from Colombia and 15 percent from Mexico.

Now we have had a Harvard group called the ABT Associates go through our data and they have given us preliminary results. Their indications are that 29 percent of all the heroin being used in the United States today is black tar heroin coming from Mexico. So since I have been here as Administrator of DEA, their dominance in the drug trafficking has been amazing to me and has always been of serious concern because I can watch it year by year as they grow increasingly more powerful in the markets in the United States.

Senator GREGG. So you are saying the Mexican influence is significant, has now become dominant and is continuing to grow?

Mr. CONSTANTINE. It dominates the methamphetamine traffic. It is growing in the area of heroin. It looks like about one-third and probably about half of all of the major cocaine distribution in the United States today is controlled by groups from Mexico. That is totally different than when I was sworn in.

Senator GREGG. And it is growing, and are you saying that the Mexican influence is continuing to grow?

Mr. CONSTANTINE. It continues to grow really at a dramatic rate if you look at it over the last 5 years.

NUMBER OF AGENTS INVESTIGATING CASES IN MEXICO

Senator HOLLINGS. Mr. Constantine, how many investigative personnel—I know that we have DEA agents/personnel at each of the embassies for communications coordination, informational material, but with respect to actually the agents out investigating cases in Mexico, abroad, and otherwise, how many agents/personnel of DEA are out there?

Mr. CONSTANTINE. A ballpark figure would be around 400 agents total. Most of them are stationed in what we call source countries: Bolivia, Peru, Mexico, Thailand and the Caribbean.

Senator HOLLINGS. You mentioned Bolivia. I was down there with a fellow from the DEA and the two people standing by him were chewing on pieces of coca plant. Come on. I started with burning the poppy fields in Turkey, breaking up the factories in Marseilles, and going out to the Golden Triangle. We had a big meeting at Chiengmai, and we had the DEA, the Japanese, the Australians, all gathered around, and we were going to discuss the situation and options for action. And I said then let us go out now and see it. I was told oh, no, Senator, you cannot; you will get killed. In Burma, the drug trafficking organizations had total control and you

could not go out into the areas where the plants were grown. They had their own armies and security forces.

Now that is Mexico to me in 1999. The experience in Burma was 20 some years ago, back in the 1970s. So why not bring the 400 back to the United States and use them here. I like this program of sending 24 special agents into the big cities and then going into the mid-size towns. We can let the other countries grow what they want to grow and shoot each other if they want. The government has taken over. That is according to you, and as we have just said, the corruption is unparalleled to anything I have seen in 39 years of law enforcement. That is why I asked you about the Attorney General. The Attorney General comes up here and says everything is just tip-top down in Mexico, we ought to certify they are doing a great job.

But it permeates the government and the people, the defense minister and so forth that we try to rely on, and we give them the information. It just would suit law enforcement better to just get out of there and let us try to control it at the local level like you are doing. I think you are doing a good job. And let us put the money here rather than for agents outside the country who can get killed and injured. They killed the monsignor. I agree with you—corruption is unparalleled to anything that you have seen in 39 years and anything I have seen in 32 years up here. And I have been a member of the Mexican-American Interparliamentary Union.

The United States went down there long ago and we have been through every one of these presidents. The last president—I will never forget the debate, Mr. Chairman, in NAFTA, what a wonderful job he was doing, Salinas. American Enterprise made him the international industrialist of the year that December. We got NAFTA and voted on it in November and December. The Secretary-Treasurer of Mexico came up to the United States and said this was a prototype for emerging trade policy. Salinas is now a fugitive. He is a fugitive in Havana, Cuba, if you are looking for him.

Pull that 400 and let us put them in the mid-size and small towns in New Hampshire. There are no big cities there. You have to get something for the chairman. [Laughter.]

Senator GREGG. You have been very kind to us.

SPECIAL AGENT STRIKE TEAMS

Senator HOLLINGS. Yes, sir. So in all candor, Mr. Constantine, let us see if we cannot get—how much have you asked for to embellish and enlarge upon this 24 teams of special agents that go in and so forth?

Mr. CONSTANTINE. There is none in the budget, sir.

Senator HOLLINGS. There is none in the budget?

Mr. CONSTANTINE. No, sir.

Senator HOLLINGS. Well, I hope we can enlarge that because it gets results. We do not get any results from all this international effort. They just monitor and talk to each other. And I get briefings when I go there, but nothing really happens. The drugs just keep coming in. We might as well put some down on 14th Street here in the District and get better enforcement here in our own hometowns, but let me yield there. I thank you, Mr. Chairman, because

you say those percentages, but according to the seizures of cocaine that is supposed to be from two years ago down 35 percent, the seizures——

Senator GREGG. That is in Mexico.

Senator HOLLINGS. Yes.

Senator GREGG. That is in Mexico.

Senator HOLLINGS. Yes, you are right, sir. The seizures of opium gum down 54 percent, destruction of clandestine labs down one less than the previous year. Of course, that was General McCaffery and the Attorney General that everything was just tip-top coming up modernized in Mexico, just doing a great job. So I am glad that you are here and I hope the public is covering it because it is getting worse and worse. I will just hold there, Mr. Chairman.

Senator GREGG. Well, I agree with your concerns. Did you not ask for any more because you did not want any more of these strike teams or because you did not feel you could fit it within the budget, or did you ask for them and OMB knocked them out?

Mr. CONSTANTINE. It is my understanding that OMB reduced the request. We had put in for I think 400 agents and it eventually came out as a request for 100 agents to go to OMB. The remaining budget that we are dealing with is technology for the Special Operations divisions but no new agent positions.

Senator GREGG. And how many more of these strike teams than the 24 do you feel you can handle?

Mr. CONSTANTINE. Well, from what these police executives from around the country have told us is that as this problem spreads into many of these areas, and we will be producing a report on that shortly, the one asset that they really need in many places is new agents. We just opened an office at Beaufort. They were interested in putting agents there. And we see this continually. Sometimes if you can put two or three agents in an area that may only have total in a geographic area of 150,000 to 200,000 people, those two or three agents can be a tremendous asset. They help local law enforcement to be able to address their drug problems. I think I have told you, almost 90 percent of them tell us that the source of their drugs and the headquarters for the source of their drugs is outside of their local communities. So they really need those DEA or FBI agents to be able to make a connection one to the other for continuity of the investigation.

Senator GREGG. Well, we will see if we cannot address that for sure.

Senator HOLLINGS. Yes.

DIALLO INVESTIGATION

Senator GREGG. Are either of you involved in the investigation of the Diallo situation in New York City?

Mr. FREEH. Yes, sir, we are in the FBI.

Senator GREGG. And how are you folks involved?

Mr. FREEH. We have been asked by the District Attorney, Bronx County District Attorney, as well as the police department to conduct some investigations. We have done forensic examinations. We have actually worked on the crime scene on some trajectory analyses.

Senator GREGG. Have you come to conclusions yet that you can share with us?

Mr. FREEH. We have furnished a lot of forensic results and conclusions back to the District Attorney's Office which is now, as you know, presenting the matter before a grand jury. So I do not think I could comment on the conclusions. But as in many similar cases like, you know, the *Rodney King* case, even the *Crown Heights* case, we opened up our own investigation at the request of the U.S. Attorney. And it does two things. One, we monitor the progress of the case, keeping in mind our civil rights jurisdiction. We also supply forensic assistance when requested. In this case, it has been several requests that I mentioned to you.

REDUCING CRIME IN NEW YORK CITY

Senator GREGG. Do you agree with Administrator Constantine's assessment of the reduction of crime in the New York City area over the last few years and the cause for it?

Mr. FREEH. Yes, sir, I do.

Senator GREGG. So this 700,000 figure that estimates instances of crime that have not occurred, violent crime, over 7 years as a result of more police officers on the street is a reasonable number?

Mr. FREEH. I am not familiar with that particular figure, but I assume if you count assaults and robberies and burglaries, all the potential victims, it probably is that substantial. I just do not know the figures myself, but I do not disagree with them.

Senator GREGG. So somebody is doing something right there?

Mr. FREEH. Well, again, the addition of police officers or DEA agents or FBI agents makes a critical difference. As I said in my opening statement, which was a little bit skewed toward the technology and infrastructure side, none of that makes any difference if there is not shoe leather and feet on the ground where they can make a difference. So I think the conclusions that the Administrator talks about are very sound.

RUDOLPH INVESTIGATION

Senator GREGG. Speaking of shoe leather, do we have any idea how much the Eric Rudolph manhunt has cost us?

Mr. FREEH. The entire investigation going back to inception of the investigation has been—we have totaled an amount of approximately $17 million expended between January of 1998 and the current date. That involves personnel compensation, travel, various services and equipment.

Senator GREGG. I notice you are scaling it back now or there was a report to that effect?

Mr. FREEH. Yes. I testified last week that we are going to modify some of the activity down there, including a reduction in the number of officers present and we are making those determinations now. We want to make sure we leave enough resources there to make the fugitive pursuit effective and also, as I said last week, we believe a lot of the effort, which has been substantial, has probably prevented the commission of further acts, including bombings. We think that as the Ashville newspaper editorial said last month that the pressure engendered by that investigation has probably

prevented some additional bombings by a person who has been charged now with six bombings.

Senator GREGG. Now that $17 million, most of that would be overhead that you would incur anyway; is that not right?

Mr. FREEH. The personnel costs would be, yes, sir.

INFORMATION SHARING INITIATIVE

Senator GREGG. Now, I want to spend a couple seconds on the ISI, the Information Sharing Initiative. This is sort of like IAFIS and NCI 2000. This is a huge undertaking, a lot of money. Conceptually a good idea. I think the point that you have been discussing is that we have been focusing very much on manpower and increasing the manpower in both your agencies, to some degree, I suspect without putting an equal concentration on the technology side, which is critical. So this is an initiative that we need to take forward.

My question is how do we take it forward? First, does the FBI have e-mail? I mean if I am an agent in Pocatello, Idaho, or in Colebrook, New Hampshire, would I have the capacity to get on the local network, to take my notebook with me and write a letter, a note to you saying there is a real crisis in Colebrook, at least across the border?

Mr. FREEH. Yes, sir, we do have e-mail, but only since October, so it is a technology that we have but did not have for a long time.

Senator GREGG. So all your agents now have the capacity to communicate by e-mail, and is it a secured e-mail? How do you manage that issue?

Mr. FREEH. It is secure, all of it. I was not sure if there was a component, but it is all secure, I am told.

Senator GREGG. But everybody has that capacity within the agency?

Mr. FREEH. Yes, sir.

Senator GREGG. OK. So on the ISI initiative, which as I understand it, would essentially give an agent the ability to have much more information at hand instantaneously which I presume would require that they also have the capacity to run a computer.

Mr. FREEH. Yes.

Senator GREGG. The complexity of this seems to be pretty high. Our view is, and you know this, is that we should start out slow and see if it works before we do the whole package. You folks want to do the whole package rather than doing a pilot approach. I want to hear your thoughts on your position versus our position.

Mr. FREEH. Well, thank you very much. We understand your position and your concerns. They are quite valid given the history of other projects that we have managed ultimately successfully, but in the two cases you mention, with a great degree of setbacks and running over our budget.

What is distinguishable about this system is that we are not inventing a system. We are not creating new software. We are not writing a new system as we were with IAFIS and NCIC 2000, which were very complex precisely because we were inventing, or our contractors were inventing, a whole new technology. What this does is it gives the agents, as you mentioned, the ability to access

on a broad enterprise basis information relating to a particular case which relates perhaps to several different cases.

Our information systems right now are stovepiped not only between cases, but even between the programs. So someone working a Russian organized crime case in San Francisco and New York City will only know exactly what is coming up in terms of subjects and bank accounts and phone numbers by speaking to each other almost on an informal basis, exchanging LHMs or teletypes or briefings or conferences. This system would give us the ability to breach that stovepipe and have all of that relevant information on a wide enterprise basis accessible. We are doing and have done some pilot programs. For instance, the campaign contributions case, which is a good example, uses the technology and the format which would be used on the ISI implementation, and the significance of that is there are about 1.8 million documents in the CAMPCON database.

If we were managing that system under our current capacities, only several hundred thousand of the 1.8 million records would be entered in there because we can only enter in the records we create. All the other information would have to reside someplace else. That case management, which has been very successful, has actually tested out what would be done on a broader basis with the ISI.

We have it in three stages with 14 separate modules. Each stage has great value in itself so if we were not to go beyond that stage, we still would be far advanced beyond our current capacity. Both the OMB advisory board, the Justice Management board, have suggested that we proceed in these increments, these three phases so we can, one, make sure that the system——

Senator GREGG. Has GAO taken a look at that?

Mr. FREEH. No.

Senator GREGG. Have you had an outside consultant take a look at that as the approach?

Mr. FREEH. Yes, we have had——

Senator GREGG. And who was that?

Mr. FREEH. Could I ask Carolyn Morris to answer that? She is our assistant director for the division.

Mrs. MORRIS. We have a company called HBTI that did the technical architecture definition which is the very foundation for all of the concepts in ISI.

Senator GREGG. But has anybody taken a look at what they did? I mean they designed it.

Mrs. MORRIS. Yes, sir.

Senator GREGG. Has somebody like Arthur Andersen or Pete Marwick taken a look at it?

Mrs. MORRIS. We have two sets of contractors supporting the project management office for ISI who have already reviewed the original ISI concept and concur with that. The vendors that bid it, the ISI proposal, also confirmed that the approach that we were using was very doable and realistic.

Senator GREGG. Well, I am sure they would because they got the bid or they are bidding. I am not sure the director is finished on this point.

Senator HOLLINGS. Yes, go right ahead.

Senator GREGG. Had you finished on your point?

Mr. FREEH. Senator, we are going to proceed very, very carefully. We learned a lot of lessons, painful in some cases, with the IAFIS and the NCIC 2000. But I think what should give us some confidence here is that this technology is available, it is on the shelf, not all the interconnectivity, but all the component pieces. If I go to my friends' office in the private sector, they already have this system. Unfortunately, they have had it for many, many years. And it is not that we are inventing it or creating a brand new system, which is problematic. I mean this is technology that is there. We just do not have it and we think this is a planned and phased acquisition where we can proceed carefully and make a mid-course correction if we have to without wasting money.

Senator GREGG. So you are saying you could buy it today?

Mr. FREEH. The component parts are available, yes.

Senator GREGG. So why do you not just buy it?

Mr. FREEH. Well, that is what the money from the 1999 budget and the 2000 budget would do. But it also gives us a contractor who would provide the services of the connectivity that we are not able to do that ourselves.

Senator GREGG. And the contractor is Novell?

Mr. FREEH. There are three bidders now. We have not awarded the bid yet because we are awaiting approval.

Senator HOLLINGS. Thank you, Mr. Chairman. Mr. Constantine, once again to complete the thought on this drug problem. I am absolutely persuaded that you are going to have to go to the user end to get results rather than the source. I know the tendency, for example, back years ago in higher education, I learned that the quality of higher education comes from the top. If I can pay the outstanding professor even more than the governor, which we did for 9 months, then the associates and assistants were even perhaps a little less paid, want to teach under him. Smart students that come in want to study under him, and as a result, of course, this last year, you can see the outstanding international business school is not at Stanford or at Harvard, but at the University of South Carolina.

Now, how do we solve this drug problem? There is no question in my mind I have got to go not to the source but to the use and to the result. You are doing a great job with respect to the use and result. The dramatic figures you give where they just in one city put 8,000 more personnel on and that saved 1,600 murders plus other crimes and everything else. You had 8,000. Why do we not give you 16,000? Just forget about those overseas because it is going to come in one way or the other. We have tried it every way in the Lord's world to stop it and it just does not do us any good. We act like we are doing something down in Mexico, but let us stop the act and get into the action that you have going and at least give the committee, if you do not mind, these special teams that have gone into the big cities, now going into the medium-size, see what you could really absorb and get done, give us a figure on that if you do not mind.

Mr. CONSTANTINE. Yes, sir.

CYBER CRIME INITIATIVE

Senator HOLLINGS. The other part of the use, of course, is education. In the past I came to these meetings with the ashtrays and the smoke in the room. Now we have learned that tobacco kills you and we need to learn the same thing about drugs. We need educational programs starting in the primary grades. The only way we are going to get on top of the drug problem is with your work and us beefing up education.

Director Freeh, with respect to this cyber crime initiative, as I understand it, you propose 12 computer intrusion squads. Now last year, I do not know where that figure was, but I think they had 250,000 attacks on Department of Defense computers. I take it they have their own system working as much as it possibly can. Is this realistic and how do we stay on top of that kind of volume of attack? There are smart kids just sitting around and putting words in the computer until something works.

They really do not want to get in and find out the secrets of the Department of Defense, but it is a challenge. And the American mind-set is to play the game and whatever it is. Are the laws sufficient with respect to these attacks in cyberspace and do you have enough when you say 12 squads to attack this problem? This is just in the defense side of 250,000 attacks according to GAO. I am thinking of the banks and other institutions on the civilian side.

Mr. FREEH. It is, as you point out, Senator, a huge and exponentially increasing problem. We do a lot of the investigations on referral by the Department of Defense, by universities, by companies. We have now approximately 10 of these squads around the country. The budget request for 2000 asks, as you mention, for some additional resources. We think that within a year, the number of computer cases that we look at including intrusion cases will double from 2,500 to 5,000, which is also why we are asking for the CART examiners, the computer forensic expert examinations.

[The information follows:]

CLARIFICATION ON COMPUTER INTRUSION WORKLOAD

The FBI projects that the number of computer intrusions reported to the National Infrastructure Protection Center (NIPC) and field National Infrastructure Protection and Computer Intrusion (NIPCI) squads will increase from 2,500 in 1998 to 5,000 in 1999 and 12,000 in 2000.

Mr. FREEH. There are two answers to the very serious problem that you have identified. One is a hardening of structures and systems. In other words, defensive mechanisms to protect particularly national security systems, Department of Defense systems, law enforcement systems, health records, companies' trade secrets. Another part is the enforcement part which this request attempts to address.

Another point is an educational function that we perform around the country with the private industry. For instance, in Albuquerque where I was yesterday, we have an INFRAGARD program, we call it, and we have FBI agents who are trained in this particular program out talking to the banks, the power companies, the transportation companies, all the sectors that have informational systems that are very vulnerable. So we can make sure we respond if we are notified when they have an intrusion of some significance.

But it is a problem that the country, not only the FBI—but all of us will need to dedicate many more resources in the years to come to because this is, as you said, not just people committing crimes or terrorists trying to commit destruction, but people just entertaining themselves and becoming very, very dangerously involved in these things.

Senator HOLLINGS. And the $36.7 million, that is for 60 agents for 12 of these national infrastructure protection and computer intrusion squads? Is that what it is?

Mr. FREEH. Part of it is for that, Senator. Part of it is for what we call senior reports officers, people for each of our divisions.

Senator HOLLINGS. Well, is that non-defense? I mean you are not duplicating what the Department of Defense does?

Mr. FREEH. We are not duplicating what the Department does. In fact, they refer matters to us that we investigate.

[The information follows:]

CLARIFICATION ON TECHNOLOGY/CYBER-CRIMES INITIATIVE

The FBI's fiscal year 2000 budget request includes a Technology/Cyber-crimes initiative for which an increase of 207 positions and $36,742,000 is requested. This initiative consists of the following: National Infrastructure and Computer Intrusion (NIPCI) squads, 108 positions (60 agents) and $11,390,000; Computer Analysis and Response Teams (CART), 79 positions and $9,861,000; National Infrastructure Protection Center (NIPC), $1,656,000; and technical support for investigations (cryptanalysis and network intercept), 20 positions and $13,835,000. The request for NIPCI squads would allow the FBI to staff and equip 18 additional field squads using both new and existing positions, and provide equipment to establish a baseline computer crime investigative capacity in 28 other FBI field offices.

The FBI's fiscal year 2000 budget also requests for 56 senior intelligence analysts, referred to by Director Freeh as senior reports officers. These positions are included in the Information Collection and Analysis initiative, for which a total increase of 56 positions and $48,917,000 is requested.

SALE OF DRIVERS' LICENSE PHOTOGRAPHS

Senator HOLLINGS. And if the distinguished chairman will permit me, we have a New Hampshire-South Carolina problem, and there is nothing wrong with New Hampshire. It is the state policy in South Carolina. They passed a law to sell—and this is why I am asking you, Director Freeh—to sell the drivers' licenses to an entity up in New Hampshire that was working with the Secret Service. The Secret Service apparently provided money to help them get this compendium of names and identification with pictures so that in the department store if somebody came and presented the credit card, you could immediately look at the computer to get a picture and find out whether that was the individual.

That was how it has been explained generally in the press. I have not been briefed on it. I am not trying to find fault except I am trying to learn whether or not there is a duplication. We have cut it out or at least broken the contract—the governor did recently—when they found that children's pictures were being sent, not just driver's licenses. What kind of effort for identification nationally is going on with the FBI and with the Secret Service? Where does the Secret Service come in and where do you come in and is there duplication or are you getting everybody's picture, too? Are you all in a foot race?

Mr. FREEH. No, Senator, we are not. We are not acquiring that. We have not acquired that. That is not a database that we are interested in.

Senator HOLLINGS. Why is the Secret Service in it? What are they doing in it?

Mr. FREEH. I cannot speak for the Secret Service.

Senator HOLLINGS. Oh, yeah, you could tell us. [Laughter.]

Mr. FREEH. I am actually not familiar with it. I mean I have heard about the matter and read about it, but I do not understand it. I am not in a position to give you my two cents on it.

Senator HOLLINGS. But you do not have that kind of effort?

Mr. FREEH. We do not, sir.

Senator HOLLINGS. So there is no duplication?

Mr. FREEH. No. I mean we have photo image databases, but they are based on convicted felons. They are part of NCIC.

Senator HOLLINGS. Not just drivers in America with driver's licenses?

Mr. FREEH. No, no such database.

Senator HOLLINGS. And the children, I guess—I do not know where they got the children in.

Mr. FREEH. No, we do not have anything like that and do not need anything like that.

Senator HOLLINGS. Thank you very much.

CRITICAL SKILL HIRING IN FBI

Senator GREGG. On this issue of cyber and specifically terrorism, where do you stand in your ability to hire people who have the capacity to address the various technology threats which we have?

Mr. FREEH. Senator, thanks to the pilot program that was approved by the Congress and particularly worked on by you and your colleagues, your staff, and your counterparts in the House, we have begun hiring individuals outside of the Title V strictures and requirements which gives us the ability to bring into the FBI what we had represented to be the case, and which now is turning out to be the case, outstanding scientists and technicians who cannot only run some of these very complex systems but give us the guidance and the confidence to ensure that we are working them efficiently, ensuring that we progress along with the technology.

We have two individuals just recently hired, the first of many in the next few weeks. Many individuals are in background, not yet having come aboard the FBI. But two of the individuals—if I could just generally describe them to you, one has a Ph.D. in computer science; another one is a Ph.D. in forensic chemistry—coming from, in one case a very large corporation; in the other case, I believe a very large university. We could never have gotten either of these individuals into the FBI without the Title V exemptions, which we are now using thanks to your support.

So we are extremely confident that not only will we fill more and more of these positions as our hiring progresses, but that they will add to our ability and our technology and scientific base in a way that we could never have done. If we were hiring them as a GS–9 chemist, for instance, we could never in a million years attract some of these people. And I have a list of some of the resumes of people both on board and in background investigations. I will be

happy to furnish those to you. I think you will be extremely impressed with the talent and the caliber of people who we will get in thanks to this program.

CALEA

Senator GREGG. How do we stand with CALEA? Are we going to reach an understanding?

Mr. FREEH. I can report for the first time in many years some very good news in that regard. The status of the CALEA situation, let me summarize it very briefly. We have signed a letter of intent just within the last few weeks with a major manufacturer where we will purchase the software CALEA solution. Once we do that, we can furnish that to all the carriers who use that particular switching base.

This is a watershed development in the implementation of the 1994 CALEA statute. It is the first time we have reached an agreement with a major manufacturer who will furnish a solution which will be distributed free of charge to any carrier using that platform. We also have been talking, and are talking, to other manufacturers. The carriers are extremely interested in pursuing additional contracts. We are going to use the $100 million-plus appropriation for the specific purchase that I have just described. We are also going to phase in the CALEA solution in a manner that will do several things. First, we will protect the small rural carriers because in many cases they do not have enough business with the Federal or local law enforcement agencies to require a significant upgrade and a major cost, so we are going to defer that by a number of different mechanisms, one by addressing the high priority switches and platforms first, which would result in about 85 to 95 percent of the historical traffic that is required for access.

We are also going to flexibly describe "significant upgrade" so it will minimize the cost to companies of complying with the solution by the 2000 date. We are also going to use the exemption, the reasonably achievable exemption, again liberally, to protect the small carriers. So I think for the first time, we are making tremendous progress and we will be able to report more once the implementation goes forward.

Senator GREGG. Do you know how much that is going to cost us?

Mr. FREEH. We still believe that the cost of the implementation will be under the $500 million authorization. Of course, we have not received that appropriation and we have in the 2000 budget a request for $15 million, which I believe is inadequate, particularly at a time when we have other manufacturers and carriers who are anxious to achieve the solution.

But leaving that aside, I believe that the implementation will be done in a cost efficient manner. All of the agreements, in terms of the purchasing of the solution, that occur will be in themselves greatly beneficial and will start by including the 14 main platforms where we have to operate and where our State and local counterparts have to operate.

CRISIS RESPONSE AIRCRAFT

Senator GREGG. Senator Stevens, nice to have you join us.

Senator STEVENS. Thank you. I was just talking to Jim [the clerk of the subcommittee] about the aircraft that we thought we had provided, and I understand, Mr. Freeh, there is some problem. Could you tell us about that?

Mr. FREEH. We have hit some problems with it, Senator. I spoke to Secretary Cohen [of the Department of Defense] actually Monday in an attempt to resolve this. We cannot agree with the Department of Defense on the specifications that the FBI believes it needs with respect to that aircraft.

Senator STEVENS. Well, let me tell you it is your aircraft. We made it very plain to them it is not their aircraft. They are just to fly it. So if you have any problems about their specifications, just tell them I would like to have the meeting in my office as soon as possible.

Senator GREGG. That should settle it.

Mr. FREEH. I would like to do that, Senator, because we do not have that capacity right now, and they were talking last week about beginning a purchase that would get the aircraft in 18 months and we just cannot do that.

Senator STEVENS. Well, and I think you could, we will be pleased to put something in the supplemental as it comes out. We will give you the authority to lease until there is one available to buy, if you like. The only thing we wanted was to have a unit there at Andrews AFB that could maintain and fly those aircraft for you and for the others who are going to have aircraft in that pool, so that they would be sort of fungible.

You might need two at once and someone else might need one. But that is an Air National Guard operation to fly aircraft for you. The Department of Defense, we are going to use their field, and we are going to use their National Guard people, but it is your airplane and if you tell us you want different specifications, I will be glad to tell the Secretary it is your airplane. It is not for their use at all. It is not even going to be available to members of Congress or anyone else. It is for the three designated agencies and that is the only way we can do it and save money and accomplish the goals. So I think the committee agrees with me.

Senator GREGG. Absolutely.

Senator STEVENS. I hope they do.

Senator HOLLINGS. I do.

Senator STEVENS. And we will be glad to see to it that we can work together to eliminate that difficulty.

Mr. FREEH. Well, thank you, Senator.

Senator STEVENS. There are planes available for lease right now, and I do not know if the specifications you have are so permanent a change in the structural interior that would lead to them not being able to lease them. But we will talk about that because I think you can lease most airplanes today and the interior is just like a sleeve. You just put it in there and that is all. We can help you work on that. But you certainly ought to be able to get an airplane within this fiscal year.

Mr. FREEH. Thank you, Senator.

Senator STEVENS. Thank you, Mr. Chairman.

Senator GREGG. Any other questions?

Senator STEVENS. No. I hope that works. I think you need those airplanes.

Mr. FREEH. I think it will work.

Senator STEVENS. In view of what is going on now you are probably going to need it sooner than the end of the fiscal year, unfortunately.

Mr. FREEH. Thank you very much, Senator.

Senator GREGG. It would be nice to straighten that out.

Senator STEVENS. Thank you very much.

Senator GREGG. Thank you, Mr. Chairman, for coming by and offering to do that. Did you have anything else?

ADDITIONAL COMMITTEE QUESTIONS

Senator HOLLINGS. No. I think we will just submit some questions for the record, and I do appreciate it, Mr. Chairman, and let the record show that President Reagan was in in 1988.

Senator GREGG. Well, it has been a long time and there have been a lot of people who have had the responsibility for this who failed. It is inexcusable.

Senator HOLLINGS. It is congenital. I have seen it in government for a long period of time, and they just will not pay attention. And you cannot get good personnel on the security side when we got the best of the best in the FBI and DEA. And I really am persuaded that the bureau ought to really take over the security particularly for Energy.

Senator GREGG. I think maybe we should have a hearing on that specific issue.

Senator HOLLINGS. That is for sure. Yes.

Senator GREGG. Some sort of evidentiary event. We also want to thank Mr. Houk who I understand is going to be moving on and enjoying life after so many years of keeping us well informed and doing such a good job for the bureau. We thank him for his public service. It has been exceptional, and we very much appreciate it.

Mr. FREEH. Thank you, Mr. Chairman. Yes, he has been outstanding.

Senator GREGG. Thank you, gentlemen.

Mr. CONSTANTINE. Thank you, Senator.

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

DRUG ENFORCEMENT ADMINISTRATION

QUESTIONS SUBMITTED BY SENATOR PETE V. DOMENICI

METHAMPHETAMINE TRAFFICKING

Question. Director Constantine, we've had a chance to meet recently to discuss an issue of great concern to me. That issue is the serious "black tar" heroin problem that is plaguing several northern New Mexico counties. I appreciate your willingness to look into this matter for me.

I remain deeply concerned, as do many members of this Congress, over the rapid increase in the production and trafficking of methamphetamine. In fiscal year 1998, the Congress approved the $11.05 million and 54 Special Agents DEA requested to target this serious problem. In the Fiscal Year 1999 Omnibus Consolidated and Emergency Supplemental Appropriations Act, Congress provided $24.5 million and 223 positions (including 100 Special Agents) for anti-methamphetamine trafficking

activities. I appreciate the Subcommittee's strong action to combat this serious problem, but it is an uphill battle.

Would you please give the Subcommittee a progress report on the use of these resources to combat methamphetamine production and use?

Are these resources being targeted at those states that are the most significantly impacted by methamphetamine? I would count New Mexico among those states, and I would like, for my information, a detailed report of the resources targeted to New Mexico both in fiscal year 1998 and fiscal year 1999 and how this compares to estimated expenditures in other states.

Answer. In fiscal year 1998, DEA received a total of 74 positions (60 Special Agents) and $11.046 million for the agency's Methamphetamine Initiative. Special Agent positions provided to DEA through this initiative were allocated as follows:

Atlanta Division	4
Chicago Division	1
Dallas Division	3
Denver Division	2
Detroit Division	4
Headquarters	10
Los Angeles Division	3
Newark Division	2
New Orleans Division	4
New York Division	1
Philadelphia Division	3
Phoenix Division	2
San Diego Division	3
San Francisco Division	4
Seattle Division	4
St. Louis Division	8
Washington Division	2

Funding for DEA's fiscal year 1998 Methamphetamine Initiative included a total of $8.766 million for the modular personnel-related expenses for 60 Special Agent positions dedicated to targeting major methamphetamine trafficking organizations operating in the United States and abroad and $2.27 million for the modular personnel-related expenses for 12 chemist and 2 Diversion Investigator positions to be used to address critical health, safety and hazardous material removal issues relating to the production of methamphetamine. No new methamphetamine-related position enhancements were provided for New Mexico in fiscal year 1998.

In fiscal year 1999, DEA received a total of 223 positions (100 Special Agents) and $24.5 million for the agency's Methamphetamine Initiative. Special Agent positions provided to DEA through the fiscal year 1999 Methamphetamine Initiative have been allocated as follows:

Atlanta Division	11
Chicago Division	6
Dallas Division	5
Denver Division	10
Detroit Division	3
El Paso Division	3
Houston Division	1
Los Angeles Division	11
Miami Division	2
New Orleans Division	7
Philadelphia Division	1
Phoenix Division	5
San Diego Division	4
San Francisco Division	8
Seattle Division	9
St. Louis Division	10
Washington Division	4

The majority of funding for DEA's Methamphetamine Initiative ($20.3 million) has been used for personnel-related expenses. Remaining funds have been used for the purchase of clandestine laboratory vehicles ($1.0 million); continued development of the EPIC Clandestine Laboratory Database ($392,000); and the cleanup of clandestine methamphetamine laboratories ($4.1 million).

In fiscal year 1999, DEA's newly instituted El Paso field division assumed operational responsibility for the State of New Mexico. This change in DEA's Table of Organization was undertaken specifically to address the significant growth of drug

trafficking, including methamphetamine trafficking, in the Southwestern United States. In 1999, the El Paso division received a total of three positions through the agency's Methamphetamine Strategy program enhancement, one of which was specifically directed at fighting the growth of methamphetamine trafficking, use and abuse in New Mexico.

DEA also has increased its enforcement efforts directed at methamphetamine trafficking in New Mexico by assigning a unit in the DEA Albuquerque district office to address this problem. This unit is comprised of two special agents and four state and local task force officers, each of which will add years of experience in the investigation of clandestine laboratories.

Since the beginning of fiscal year 1998, DEA has also been provided a total of $10.5 million ($4.5 million in fiscal year 1998 and $6.0 million in fiscal year 1999) in Community Oriented Police Services (COPS) funding, to be used to provide state and local law enforcement across the United States with necessary methamphetamine related clandestine laboratory training and equipment.

Funding for COPS training in fiscal year 1998 was limited to the Midwest and East Coast Methamphetamine initiatives; therefore, no state and local law enforcement officials have been trained in New Mexico. DEA will begin training students from New Mexico with its fiscal year 1999 COPS training resources beginning in July, and anticipates training a total of 10 state and local officers from New Mexico by the close of CY 1999. Each state and local law enforcement officer trained through COPS resources receives safety attire and equipment at the completion of the training course valued at approximately $2,000.

Since 1998, DEA also has been provided with a total of $10.0 million ($5.0 million in both fiscal year 1998/99) through the COPS program to assist state and local law enforcement nationwide with the cleanup of clandestine laboratory sites. Funding provided to DEA for this purpose has been used by the agency to pay certified hazardous waste contractors to undertake the cleanup of the dangerous and oftentimes environmentally lethal substances found at clandestine laboratory sites. Since fiscal year 1998, DEA has cleaned-up a total of 75 clandestine laboratories in the State of New Mexico (27 in fiscal year 1998 and 48 through the second quarter of fiscal year 1999) at a total cost of $264,000.

The following includes other programs which have been developed by DEA's New Mexico offices to specifically target the growing threat posed by regional methamphetamine trafficking:

Chemical Watch Program

DEA's New Mexico Offices are addressing the methamphetamine problem in state through the development of a Precursor Chemical Watch Program. This program includes the identification of drug sources and chemical suppliers in addition to standard drug targeting and interdiction operations. During fiscal year 1998, the Precursor Chemical Watch Program helped DEA agents and intelligence analysts identify over 100 suspected methamphetamine laboratory operators, which resulted in the seizure of 22 methamphetamine laboratories. This program continues to operate in fiscal year 1999, with DEA's New Mexico Offices opening a total of 59 new methamphetamine-related cases, to date. In addition, a total of 135 methamphetamine cases in state are currently in an active status.

Identification of Methamphetamine Manufacturers

DEA's New Mexico offices are continuing to work in concert with state and local law enforcement statewide, to identify organizations manufacturing and trafficking methamphetamine in New Mexico.

Over the past several years, DEA has aggressively worked, in support of the National Drug Control Strategy and the National Methamphetamine Strategy, in the Southwest, and other regions of the country, to thwart the growing specter of methamphetamine trafficking, use and abuse. In doing so, DEA has focused its intelligence and enforcement efforts against the Mexican drug trafficking organizations, independent domestic methamphetamine traffickers and rogue chemical companies responsible for the smuggling, production, and distribution of methamphetamine throughout the United States. Through our demand reduction efforts, training of state and local law enforcement officers and major investigative efforts, DEA is committed to ensuring that methamphetamine does not become the "crack" cocaine of the 1990s.

Question. The Administration request for fiscal year 2000 appears to me to be refocused. The Administration highlights requests of a little more than $11.0 million through DEA for drug law enforcement initiatives relating to telecommunications and other investigative support operations. What does DEA hope to accomplish with

these additional resources, if approved? How will these resources generally be targeted to build upon the resources being utilized this year and in the past year?

Answer. DEA is committed to combating the real and dangerous threats posed by drug trafficking and production in the United States, including that posed by methamphetamine. Overall increases in methamphetamine use and the amount of clandestine laboratory activity in the United States, particularly in the Southwest, are a major concern.

DEA is an acknowledged leader in methamphetamine drug enforcement and has taken many steps, such as Mobile Enforcement Team deployments, clan lab training programs, increased investigative activities, etc., to combat the threat posed by this drug at the national level. These efforts, thanks to strong Congressional support, have been expanded through the allocation of additional resources for methamphetamine enforcement.

Certainly, DEA feels strongly that additional resources are necessary to combat the rising threat of methamphetamine in the United States. In fiscal year 2000, the Department's approach is to fully implement DEA's fiscal year 1999 personnel resources through full hiring and implementation of fiscal year 1999 enhancements. This would be augmented in the Congressional budget process through the expansion of DEA's Special Operations Division (SOD) and FIREBIRD programs. Through both of these initiatives, DEA hopes to provide its agents and partners in drug law enforcement with the enhanced capabilities necessary to keep pace with the major drug traffickers.

The SOD program, which focuses on coordination, information exchange and intelligence dissemination, is designed to act specifically as a force multiplier in drug enforcement by allowing agencies to act collectively and cohesively against specific targets. Providing SOD with the additional technical, operational and administrative support resources requested in DEA's fiscal year 2000 budget (totaling $9.0 million) are essential to the program's ability to keep pace with rapid changes in communications technology, and foster a heightened level of investigative cooperation and integration in America's overall approach to drug law enforcement.

SOD is actively participating and supporting numerous methamphetamine investigations, particularly against organizations based in Mexico and major domestic targets. Through its access to the latest, real time intelligence, this unique and innovative program will allow the federal government to maximize its existing investigative resources against the methamphetamine threat.

DEA is also requesting additional resources for the FIREBIRD computer network, a project that also expands DEA's investigative and communications capabilities. The $13.0 million request will help DEA to accelerate deployment of the project, which will ultimately link all DEA field offices world-wide into one global communications network. This network will serve as a conduit for providing DEA special agents with access to the latest case information and intelligence, and support additional communication services such as e-mail and instant messaging. This heightened level of communication and information exchange is already allowing DEA to better coordinate regional and national investigations, as well as significantly easing the administrative burdens of managing DEA's global enforcement efforts.

Both SOD and FIREBIRD fully support DEA and the mission of drug law enforcement by serving as invaluable tools for maximizing limited investigative resources. DEA urges strong consideration for these initiatives for the agency's fiscal year 2000 appropriation.

Question. Do you see any success in slowing the spread of this dangerous drug? What are the developing trends in the manufacture of methamphetamine within the United States and how does that compare with estimates of the drug coming into the United States illegally?

Answer. The majority of the United States methamphetamine production and distribution is controlled by criminal organizations based in Mexico utilizing large-scale laboratories in Mexico and California. The illicit manufacturing of methamphetamine can occur anywhere an operator can set up laboratory equipment to synthesize the product (e.g., motel rooms, apartment complexes, industrial areas, farms, mobile homes, etc.), but most clandestine laboratory operators prefer to utilize remote rural areas because the seclusion and privacy of these settings make it less likely that the smell of the chemical products and activities involved in the cooking of the product will be detected.

In recent years, the rural Midwest, Rocky Mountain, and Southeast regions of the United States have seen a spiraling increase in the number of small scale, non-Mexican methamphetamine laboratories. Some areas of the Midwest (Missouri, Arkansas, Oklahoma, Kansas, and Iowa) have seen especially dramatic increases in methamphetamine laboratory seizures.

In 1992, only two clandestine lab seizures in Missouri were reported to DEA. In 1998, 679 clandestine lab seizures were reported. Although the quantities of production were relatively small in comparison to the Mexican-national methamphetamine production operations in California and Mexico, it is noted that in terms of numbers only—more clandestine laboratories were seized in Missouri in 1997 (on a per capita basis) than in any other state. In 1998, Nevada ranked number one and Utah and Missouri were tied for second in per capita clandestine laboratory seizures. In addition, the States of Arkansas, Iowa, Oklahoma, Oregon, Kansas and Arizona each seized in excess of 200 methamphetamine laboratories in 1998.

In some respects, the methamphetamine problem is synonymous with the clandestine laboratory problem (over 98 percent of clandestine labs seized are now methamphetamine labs) and this issue has been the focus of much media attention in recent months. Although the methamphetamine problem and the clandestine lab problem are both part of the same drug abuse mosaic, in reality, they are somewhat different issues which may require a different law enforcement response in order to successfully combat the spiraling increases in both arenas.

In 1998, only 71 (4.4 percent) of the 1,623 clandestine drug labs seizures in which DEA participated, involved methamphetamine labs which we classify as "super labs". A "super lab" is a clandestine laboratory operation which is capable of producing 10 pounds or more of methamphetamine in a single production cycle, which is indicative of operations by a structured organization. In 1998, 71 of these "super labs" were seized nationwide, and 57 of these "super labs" were seized in the State of California alone.

Increased law enforcement efforts have achieved many successes in combating the "methamphetamine problem" in relation to the Mexican organized crime groups operating "super labs" in California and Mexico. As a federal law enforcement agency, DEA's primary focus is the investigation of the large methamphetamine trafficking organizations who operate these "super labs." In recent months, several DEA offices in the Midwest and California have reported that the purity of Mexican methamphetamine has significantly dropped in the majority of controlled purchases and seizures. Many law enforcement agencies in the Midwest and California are now reporting that the previous high purity (80 percent+ range) of Mexican methamphetamine has now dropped to less than 30 percent. We are cautiously optimistic that our chemical control efforts, combined with aggressive anti-methamphetamine law enforcement efforts in the local police arena, have been the catalyst for this decrease.

Success in combating the smaller lab-based methamphetamine problem may be much more difficult to achieve. The dawn of the Internet has released a plethora of methamphetamine formulas for the public to choose from, and everything that is needed to manufacture methamphetamine can be purchased at your local department store.

The organized crime groups' distribution of significant quantities of methamphetamine created an ever increasing methamphetamine addict population, many of which are now attempting to manufacture their own methamphetamine in "mom and pop," small-scale production labs across the country. Although chemical interdiction efforts may achieve successes in the interdiction of the large quantities of precursor chemicals utilized in "super labs," these numerous small "mom and pop" labs utilize such small quantities of improvised and/or converted chemicals and glassware that law enforcement agencies will have a much more difficult time in achieving success in this arena.

Combating the small scale production, "mom and pop" lab problem is a public safety issue as well as a unique challenge to local, state, and federal law enforcement. Some local jurisdictions have experienced limited success in interdicting "mom and pop" lab production through undercover enforcement programs which have targeted the department and convenience stores in their region which violate the law by providing ephedrine/pseudo-ephedrine products in excess of the 24 gram threshold mandated by the Methamphetamine Control Act of 1996.

In sum, the methamphetamine problem that our nation currently faces has many facets and poses unique problems for drug law enforcement that do not mirror the trafficking and distribution patterns of the other major drugs we have struggled with in the past. DEA and its federal, state and local law enforcement counterparts will continue to work to slow the spread of this dangerous drug, before the nation is engulfed in an epidemic the likes of which have not been witnessed since the crack cocaine plague of the 1980's. Continued resources to assist law enforcement in this endeavor are critical to the long-term success of the nation's methamphetamine strategy.

Question. How would you characterize the collaboration of U.S. law enforcement agencies and their Mexican counterparts on this difficult problem? Have there been any improvements in this area?

Answer. I would not limit the issue to just methamphetamine, instead I would prefer to comment on the full spectrum of cooperation between DEA and our Mexican counterparts.

During the past year, the DEA and the GOM equivalent to the DEA, the Fiscalia Especializada Para la Atencion de Delitos Contra la Salud (FEADS), have conducted joint investigative endeavors throughout Mexico. These joint investigations were conducted with the two primary investigative components of the FEADS Vetted Units, which are the Sensitive Investigative Units (SIUs) and the Base Intelligence Units (BIUs).

Despite these efforts, the threat posed by Mexican trafficking organizations has continued to escalate. We have identified the leadership of the major Mexican drug trafficking organizations, as well as in most cases, the key members of their command and control structure. The combined investigations of DEA, FBI, the U.S. Customs Service, and members of state and local police departments have resulted in the seizure of tons of drugs, millions of dollars in drug proceeds and most importantly, the indictment of virtually every one of the leading drug lords. Despite this evidence of the crimes they have committed within the United States, and the notoriety these traffickers have gained, they have been able to continually evade arrest and prosecution and operate with impunity from Mexico.

Based on the absence of any sustained enforcement action against the major drug traffickers by the GOM, and the recent discovery that corrupt relationships existed between trusted high-level Mexican law enforcement officials and the syndicate leaders, I have serious concerns about our future ability to operate effectively with the Mexican units that were created to dismantle these drug trafficking organizations.

SUBCOMMITTEE RECESS

Senator GREGG. Appreciate your time. We are going to have another hearing on Thursday. It will involve the FCC and the SEC.

[Whereupon, at 11:35 a.m., Wednesday, March 24, the subcommittee was recessed, to reconvene at 10 a.m., Thursday, March 25.]

DEPARTMENTS OF COMMERCE, JUSTICE, AND STATE, THE JUDICIARY, AND RELATED AGENCIES APPROPRIATIONS FOR FISCAL YEAR 2000

THURSDAY, MARCH 25, 1999

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

The subcommittee met at 10 a.m., in room S–126, the Capitol, Hon. Judd Gregg (chairman) presiding.

Present: Senators Gregg and Stevens.

SECURITIES AND EXCHANGE COMMISSION

STATEMENT OF ARTHUR LEVITT, CHAIRMAN

ACCOMPANIED BY JAMES McCONNELL, EXECUTIVE DIRECTOR

OPENING REMARKS

Senator GREGG. Well, we will get started because I understand Senator Hollings is not going to be here for a few minutes, and I know that you folks have important things to do to keep the markets under control and keep the airwaves under control.

So Mr. Chairman, I will not have any opening statement. Why don't you tell us what you want to tell us and then we will have some questions.

Mr. LEVITT. I have about 5 minutes of prepared statement for you, but I think I will send that in separately.

BUDGET REQUEST

We are asking for $360.8 million for fiscal year 2000. I must say as I begin this that I want to thank you and Senator Hollings and the other members of the subcommittee for the support that we have gotten. One of the aspects of the agency that we are most proud of is the fact that we are totally nonpartisan. In our dealings with the legislative branch, we have been treated as such, and the issues—since I have been there at least, and my predecessors tell me the same—never break down in terms of partisan considerations.

The money that we are asking for creates 42 new staff positions. As I look at the magnitude of what we are faced with in terms of enforcement issues, the Internet, accounting problems, microcap fraud, and other issues, I have to say this is an absolute drop in the bucket.

Before I came here I met with our Director of Enforcement and talked to him about his needs, and he said we have no trouble finding cases. We are desperately short-handed of people in terms of bringing those cases. The types of cases are also new and more complex than ever before because of electronic trading and electronic access.

PREPARED STATEMENT

But I recognize the reality of where we are, and I think the budget proposal that we have made is fair and reasonable, and I hope you do, as well.

[The statement follows:]

PREPARED STATEMENT OF ARTHUR LEVITT

Chairman Gregg, Ranking Member Hollings, and Members of the Subcommittee: I appreciate this opportunity to testify in support of the Securities and Exchange Commission's (SEC or Commission) fiscal year 2000 budget. The current market environment can best be characterized by precedent-setting trading volume, tremendous growth, increasing complexity and volatility, and globalization. In addition, the nation's capital markets are undergoing major changes as a result of technological innovations. The Internet is already having a profound impact on both individual investors and institutions. Alternative trading systems using on-line technology are changing the structure of our trading markets. Expanded trading hours to meet the demands of a global marketplace are also nearly upon us.

Technological innovations have lowered transactions costs and increased the ease and speed of trading, encouraging an influx of new investors into the markets. Moreover, on-line trading—despite its popularity—is not without its problems, and the number of complaints from investors about on-line brokerage services received by the SEC increased 330 percent in the past year alone. There are also an enormous number of messages sent to the Commission about potential frauds conducted through the Internet. The Commission has been creative and diligent in leveraging its existing resources to continue working to protect investors and promote the integrity and efficiency of our markets. It is abundantly clear, however, that the Commission needs additional staff and funding to keep pace with market changes.

These challenges come at a time when other areas of SEC responsibility require an increased commitment of our resources as well. For example, in the past year we have focused on the erosion in the quality of financial reporting, which directly impacts the success of our disclosure-based system. In addition, we continue to expend a significant amount of resources promoting the Y2K readiness of the securities industry and the SEC as the year 2000 approaches.

The challenges facing the SEC are enormous and underscore the agency's need for sufficient resources to promote the continued integrity, efficiency, liquidity, and resiliency of U.S. capital markets. Accordingly, the President's fiscal year 2000 request seeks an appropriation for the SEC of $360.8 million, $19.5 million, or 5.7 percent, above the Commission's fiscal 1999 spending level of $341.3 million. The $360.8 million will fund 2,899 staff years, an increase of 55 staff years (1.9 percent) over our current staffing level.

CURRENT CHALLENGES FACING THE SEC

Extraordinary Market Growth and Technological Change

More Americans than ever before invest in the securities markets, and today many are investing through the Internet. The Internet has given individual investors the ability to trade stocks unheard of only a few years ago, encouraging many new and inexperienced investors to enter the markets. Whether through tuition funds or retirement accounts, our collective stake in U.S. markets continues to grow, and we are increasingly dependent on the success and integrity of those markets. Consider the following statistics:

—Approximately 5 million people trade on-line on a typical day, accounting for approximately 25 percent to 30 percent of all retail stock trades.
—More than 100 firms now offer on-line brokerage services, with approximately 7.5 million on-line brokerage accounts, up from only 1.5 million in 1996.
—Approximately 37 percent of all households invest in mutual funds today, up from 6 percent in 1980.

—Assets in mutual funds increased 24 percent in calendar year 1998, reaching a record $5.5 trillion.

—Issuers registered a record $2.55 trillion in securities with the Commission in 1998, a 77 percent increase over the $1.44 trillion registered in 1997.

Technological innovation has resulted in market developments that were unknown just a few years ago, including on-line brokerages, day trading, and alternative trading systems, among others. The Internet has not only become a medium for investors to send orders to their brokers, but also a source of information for investors, placing at investors' fingertips a tremendous amount of investment information. For example, the Internet links investors to a growing number of services that provide immediate access to market information, as well as company press releases, SEC filings, and research reports. In addition, investors are using the Internet to communicate with other investors—more than 30,000 messages are posted to the four largest stock message boards on a typical day. While the SEC has been adept at staying abreast of these developments, we are concerned about our ability to continue to adequately oversee their impact on investors.

Combatting Fraud

The Commission's enforcement staff conducts investigations into possible violations of the federal securities laws, and prosecutes civil suits in the federal courts as well as in administrative proceedings. The Commission continues to be vigilant in prosecuting violations of the federal securities laws and to look for ways to leverage existing resources. For example, in 1998, the staff began to focus on important areas such as Internet and accounting fraud in an attempt to maximize the impact of the Commission's enforcement activities. The SEC continues to try to adapt its enforcement program to respond to these dynamically changing market conditions.

Internet Fraud.—Much of the remarkable expansion and momentum of the markets is a reflection of the current, ongoing technological revolution. By providing a medium for cheap, quick, and relatively anonymous access to vast numbers of potential investors, the Internet has breathed new life into old schemes to defraud investors, including offering frauds, market manipulations, and touting. The Commission has been active in addressing these challenges. For example:

—We created an Internet Enforcement Unit in July 1998 to centralize enforcement activities relating to the Internet.

—The Commission stepped up its efforts to combat fraud committed over the Internet by forming the "cyberforce," a specially trained nationwide group of approximately 125 staff attorneys, accountants, and analysts who spend a portion of their time monitoring the Internet for fraudulent activities.

—The enforcement staff has used a "sweep" approach to Internet fraud, in which multiple investigations are coordinated and culminate in the filing and announcement of numerous cases on the same day, thereby achieving a potent deterrent effect. We announced the first sweep in October 1998, when we filed 23 enforcement actions against 44 defendants. A follow-up sweep was announced last month, in which we brought 4 enforcement actions against 13 individuals and companies.

—The Commission has brought approximately 66 Internet-related enforcement actions to date.

—The Commission has coordinated its efforts with other law enforcement authorities, including the Department of Justice, the Federal Bureau of Investigation, the Federal Trade Commission, the U.S. Secret Service, and a range of other civil and criminal law enforcement authorities.

These efforts show that the Commission is well aware of the potential use of the Internet to perpetrate frauds, and that it has been vigilant in developing proactive and flexible responses to those abuses. Our greatest problem in fighting Internet fraud is one of resources, as staff size has remained relatively constant in the face of the phenomenal growth of the Internet.

Accounting Fraud.—The integrity of financial reporting is a fundamental building block of the full and fair disclosure that gives investors confidence and trust in our markets. To promote the continued integrity of financial reporting, pursuit of accounting fraud is one of the Commission's top enforcement priorities. Financial fraud cases are generally complex and resource intensive. Among other things, the SEC has been focusing on the professionals involved, especially the auditors, who stand as the watchdog of the integrity of the reporting process.

Microcap Fraud.—The market shows signs of continued abuses in low-priced or "microcap" stocks. Microcap stocks are issued by companies with lower capitalizations and are usually quoted on the National Association of Securities Dealers Over-the-Counter Bulletin Board, the pink sheets operated by the National Quotation Bureau, and the Nasdaq SmallCap Market. This part of the market provides legitimate

opportunities for small and new businesses to raise capital. However, it can also provide opportunities for criminals using small, unknown stocks to prey on innocent investors. Microcap fraud often is accomplished using abusive sales practices such as high-pressure cold calling, unauthorized trading in customer accounts, and stock manipulation schemes that enable the manipulator to reap profits while investors suffer losses after the manipulation stops. The Commission has been active in this area as well. For example:

—This past year, the Commission filed 5 enforcement actions against 58 defendants as a result of an undercover investigation into bribery and illegal manipulation of microcap securities.

—Our examination staff intensified its examinations of broker-dealers and performed a "sweep" of brokers trading in microcap securities.

—We increased our coordination of enforcement efforts with criminal authorities, the states, and self-regulatory organizations.

—The Commission implemented a number of trading suspensions in stocks for which there was suspicious activity.

—The Commission is considering additional regulatory steps to strengthen disclosure requirements to reduce opportunities for microcap fraud.

Insider Trading.—The torrid pace of mergers and acquisitions activity continues to present opportunities for insider trading. The agency brought 49 insider-trading cases in fiscal 1998, 27 of which involved mergers, acquisitions, or corporate reorganizations.

International Fraud.—An increasing number of the SEC's enforcement cases have substantial international dimensions, such as securities transactions initiated outside U.S. borders. The Commission continues to negotiate information sharing agreements with foreign regulators to minimize the extent to which borders are used to escape detection and prosecution of fraudulent securities activities. These information sharing agreements and less formal arrangements provide a framework for the SEC to seek and provide assistance to foreign jurisdictions.

Preventing Fraud through Investor Education.—With the proliferation of on-line trading and Internet and microcap fraud, the number of investor complaints has been increasing. Our Electronic Enforcement Complaint Center now receives between 200 and 300 complaints each day, many related to possible instances of Internet and other types of fraud. Many of the complaints are also related to problems with on-line brokerage services.

The best defense to any securities scam is an informed and alert investing public. The Commission has several initiatives to help investors detect and avoid potential fraudulent schemes.

—The staff publishes an Internet Advisor Alert on our website that contains an analysis and discussion of on-line investment fraud and abuse together with suggestions for investors on how to avoid becoming the next victim.

—Our guide, "Microcap Stocks: A Guide for Investors," informs investors about microcap stocks, how to find information about them before investing, and what "red flags" investors should watch out for.

—The Commission posts relevant information on Internet forums where such information may reach actual and potential investors of a specific security. For example, the Commission posted press releases concerning recent trading suspensions and copies of the actual suspension orders in discussion forums dedicated to discussing the stocks subject to suspension.

—The SEC has held 28 Investors' Town Meetings to date. Last year alone, we organized 6 investors' town meetings and 32 educational seminars on investing wisely.

Promoting Fair and Successful Markets

Technological innovations and globalization are changing and increasing competition in U.S. securities markets. We continue to see increasingly complex financial instruments, greater trading volume and volatility, and new trading mechanisms that present new and demanding challenges to the SEC. For example, electronic communication networks (ECN's) continue to proliferate, growing from one a few years ago to nine currently. ECN's represent an increasing proportion of trading volume. For example, the nine ECN's accounted for approximately 26 percent of Amazon.com's January trading volume. In addition, the globalization of capital markets is leading to an expansion of trading hours here in the United States and possible ties between foreign markets and U.S. markets. The New York Stock Exchange has proposed to expand its trading day beginning in 2000 in an attempt to remain competitive with markets in Europe and Asia for foreign company listings. It would be logical to surmise that 24-hour trading is not far behind. The Commission will need

to devote an increasing amount of resources to respond to these and other changes in U.S. securities markets.

The SEC seeks to be flexible in adapting its regulations to encourage innovative products and services, consistent with investor protection. The Commission has several initiatives to promote improvements and competition in market structures and operations and respond to technological advances. The implementation of these new measures will require significant staff hours over the next few years, as our market structure continues to evolve. The Commission has adopted:

—a new regulatory framework for alternative trading systems, allowing these systems significant regulatory flexibility, including the choice to register as exchanges instead of as broker-dealers,

—several measures designed to help registered exchanges better compete with alternative trading systems and foreign markets, including allowing them to operate as for-profit entities, and

—rules that implement an alternative regulatory structure for over-the-counter derivatives dealers that will allow these entities to compete more effectively in global over-the-counter markets while remaining subject to U.S. regulatory oversight.

The Commission also continues to address soft dollar issues, as well as pay-to-play both in the municipal securities market and in the public pension fund arena. In addition, the Commission has identified improved investment company governance as one of its top priorities.

Proposals to invest a portion of the Social Security Trust Fund in the markets, either directly by the government or through individual Social Security accounts, would pose additional challenges to the Commission. Although the Commission has not yet expressed an opinion on any particular Social Security reform proposal, we will continue to work with Congress to address the market integrity, investor protection, and corporate governance issues in the reform debates and any reform legislation.

Improving Financial and Non-Financial Disclosure

An important facet of investors' confidence in our markets is their access to reliable information about investments. The Commission continually strives to promote fair, equal, complete, and quick access to useful information. Towards that end, the Commission: overhauled the prospectus disclosure requirements for mutual funds to provide investors with clearer and more understandable information about funds; permitted mutual funds to offer investors a new disclosure document (the profile) that summarizes key information about the fund; implemented plain English disclosure rules to improve the readability of the prospectuses of public companies, including mutual funds; and awarded a three-year contract to modernize EDGAR, our electronic filing and dissemination system.

Additionally, the Commission recognizes that the securities offering system needs to be flexible enough to adapt to changes in the capital markets of today and the future. In November 1998, we published proposals to modernize the regulation of capital formation and provide significant benefits to public investors, issuers of securities, and securities professionals. The process of refining and revising this proposal will also consume significant staff time.

In the past year I have expressed my deep concern about the erosion in the quality of financial reporting. We will devote significant resources in the coming year to the promotion of high quality accounting standards and transparency by focusing on inappropriate earnings management, auditor independence, and the role of audit committees. The staff has established an Earnings Management Task Force to coordinate and focus efforts on detecting and challenging deterioration in financial reporting practices. The efforts of the Task Force will focus on public companies that announce restructurings and major write-offs, as well as provide interpretive guidance on revenue recognition. We are also working together with the financial community on these issues. For example, a "blue ribbon" panel organized by the New York Stock Exchange and the National Association of Securities Dealers announced a ten-point plan in February to strengthen the role of audit committees in overseeing the corporate financial reporting process.

Year 2000

Overseeing and reviewing the industry's preparations for the year 2000 is one of our highest priorities. To accomplish this role, we:

—issued staff guidance to the public and industry on disclosure obligations arising from year 2000 conversion,

—required broker-dealers, investment advisers, mutual funds, and non-bank transfer agents to provide detailed reporting on their progress,

—brought enforcement actions against entities that failed to report or that reported inadequately,
—conducted on-site reviews of the year 2000 plans and activities of regulated entities,
—worked closely with the securities industry to promote their year 2000 readiness, and
—are now focusing our efforts in working with industry participants on developing contingency plans.

Globalization

The SEC operates in a global marketplace. It works bilaterally and multilaterally in the international arena to promote cooperation and to encourage the development of high standards of securities regulation. The international financial crises of the past year continue to underscore the connections among markets around the world. Many of the SEC's international regulatory activities have focused on responses to these crises and ways to strengthen the international financial architecture. The SEC also is active in global regulatory initiatives in many other areas. In the past year, the SEC's international activities included developing a set of core principles for regulation of securities markets, addressing issues related to year 2000 preparedness, developing international disclosure standards, and commenting on the development of international accounting standards.

We believe that the Commission has been successful in carrying out its broad mandate, and investor confidence in our markets is high. Investor confidence must remain high if our markets are to continue to grow. Limited resources, however, may pose a threat to investor protection and market integrity. In recent years, the Commission has targeted its existing resources carefully to maintain effective performance levels. The Commission's request for additional funds is necessary for it to continue to protect investors and promote market integrity and fairness.

PRIORITIES AND ALLOCATION OF ADDITIONAL RESOURCES

The SEC currently operates with 2,844 staff years. The agency is able to accomplish its objectives by regulating, to a large extent, through a public-private partnership. This system of shared regulation among the SEC, state regulators, self-regulatory organizations, and the industry is markedly different from the approach taken by other federal regulators. It enables the Commission to leverage its resources with the efforts of state regulators and the private sector. Even so, additional resources are urgently needed to keep up with market developments.

Just in the last few years, industry growth has far surpassed our growth in resources. Between 1995 and 1998, the number of SEC authorized positions remained flat at 3,039 positions. For the same period, assets under management of investment companies and investment advisers increased 70 percent and 42 percent, respectively. If you look at the change over a longer period of time, SEC positions increased 45 percent between 1980 and 1998, but investment company assets increased over 2,000 percent and investment adviser assets increased over 3,300 percent.

We were able to maintain a vigorous program at the SEC with flat staffing between 1995 and 1998 through fiscal restraint, conservative management, and the reallocation of existing resources. The 2 percent increase in staffing we received in 1999, while appreciated, will not be enough for us to keep pace with market expansion. Additional resources will allow us to continue to address existing priorities and enable us to meet new challenges.

Law Enforcement

Combatting Fraud.—As discussed above, changing markets present new challenges for the Commission. Use of the Internet to commit securities fraud is but one example of the challenges. Additional staffing for our law enforcement activities will better enable us to detect and take action against fraudulent securities activity on the Internet and other on-line information services, as well as respond to continued growth and change in electronic forms of communication. Additional staffing will also enable us to commit more resources to investigate a broad range of potential misconduct, including accounting fraud, microcap fraud, and insider trading. We will further our efforts to help investors avoid problems by using the Internet to quickly and widely disseminate investor alerts on potential fraudulent schemes.

Additional personnel are also needed to litigate the cases that the Commission brings. Our increased litigation also requires increased funding for expert witnesses, electronic document management, and other litigation support services. These costs have increased significantly in recent years due, in part, to the effects of the Securities Enforcement Remedies and Penny Stock Reform Act of 1990. As more defend-

ants choose to litigate rather than face these stiffer penalties, it is crucial that the agency devote sufficient resources to continue the SEC's outstanding law enforcement record.

Inspections and Examinations.—The SEC expects to meet its inspection goals in 2000. These goals include inspecting each of the large investment advisers that are qualified for federal registration and investment company complexes at least once every five years. A portion of the additional funding request for automation initiatives will be used to continue a multi-year effort to develop and implement important new automated examination tools to help us meet these goals. We will expand a recently developed tracking system to include examination data from self-regulatory organizations. These automated examination tools will leverage our existing resources by helping us better target examinations of broker-dealers and investment advisers.

We will also continue to work on improving our efficiency by concentrating on the areas of greatest risk in our examinations of self-regulatory organizations, broker-dealers, transfer agents, and investment companies and advisers. Examiners will continue to identify areas to be covered in examinations as well as the most appropriate examination techniques by considering the unique characteristics of each registrant and the presence or lack of effective internal controls and compliance procedures. In addition, we will further enhance cooperation with foreign, federal, and state regulators and self-regulatory organizations.

Disclosure and Promoting Honest and Efficient Markets

With additional staffing in 2000, we will initiate integrated reviews of selected disclosure filings of mutual funds. These reviews will focus on whether a fund is investing in accordance with its stated objectives and policies. The staff also will continue developing an electronic filing and dissemination system for investment advisers.

New staff will support the supervision and regulation of securities markets by monitoring the industry's final preparations for the year 2000, fostering competition in the new electronic trading environment, and further responding to ongoing changes in the markets' structure.

Improved Technology

We will continue to rely on outside contractors with technical expertise to enable us to better address the challenges presented by the fast pace of technological change and the pressure to quickly deliver computer products and services. Outsourcing allows the Commission to leverage private sector expertise and shift staff focus from day-to-day operations to contract and project management, as well as oversight and strategic planning.

Additional funding ($5.9 million) is requested to support the SEC's automation efforts to improve efficiency and productivity through the use of automated PC-based computer applications. The funding will enable the SEC to conduct the final year 2000 testing and respond to any problems experienced, continue the multi-year effort to develop and implement important new tools for the inspections and examinations activity, develop an electronic filing and dissemination system for investment advisers, and maintain an adequate infrastructure replacement program. Priority initiatives include improving the capital planning process, researching hardware leasing alternatives, exploring solutions for document and electronic records management, matching information technology application development with Government Performance and Results Act goals, and finding better ways to access and manage the vast amounts of data filed with the Commission.

FUNDING STRUCTURE

The President's fiscal 2000 budget proposes total funding for the SEC of $360.8 million, from two funding sources: $230 million from fiscal 2000 offsetting fee collections and $130.8 million in carryover from fiscal 1998 offsetting fee collections. The proposed budget is consistent with the declining fee rates established in NSMIA. However, this approach continues the SEC's reliance on a combination of excess fee collections from prior years and new collections, thereby continuing to postpone the shift to a full appropriation.

CONCLUSION

The SEC plays a vital role in protecting U.S. securities markets from fraud, manipulation, and other practices that continually threaten to undermine the integrity of our markets. The Commission has requested additional resources to enable us to target those areas of market growth and change where our efforts can have the greatest impact. This request recognizes that important work lies ahead of us. The

challenges we face over the coming year include: aggressively combatting fraud both on and off the Internet and maintaining public confidence in the markets; maintaining the integrity of financial reporting; and maintaining vigilant oversight of traditional and alternative trading systems, as well as developments in on-line brokerage and day trading.

As the 21st century approaches, the U.S. must be ready to meet the challenges presented by a changing marketplace in order to maintain the leadership of its markets. To take on new challenges and to continue the Commission's excellent record of effective investor protection, law enforcement, and market oversight, the Commission needs the increased resources requested today.

I do not expect that the resources we are requesting for fiscal 2000 will be sufficient to deal with all the challenges facing the agency. For the next several years, I envision staffing requests with increases in excess of that identified for this year. We recognize the constraints faced by this Subcommittee and the competing demands for funding, and I can assure you we do not make this request casually. You can be certain that requested increases will be supported by both our achievements and a compelling justification.

The Commission looks forward to working with the Subcommittee in its continuing efforts to promote the effectiveness of the SEC and the strength of our markets.

ADEQUACY OF BUDGET REQUEST

Senator GREGG. Well, I do and we will certainly fund your budget at the requested amount. My concern is this, though. Have you asked for enough?

Mr. LEVITT. No, we have not.

Senator GREGG. And that is what I need to know because my concern is that your agency represents the integrity of the American capital markets, which is the essence of our prosperity. You do a superb job but you are confronting an exponential rate of growth in electronic transactions and the Internet and 24-hour-a-day trading and scams that result from Internet activity.

It just seems to me that you are going to be asked to do things you have never even thought of doing and at levels of intensity that you have never thought of doing. Are you ready to do that with the dollars and the people you have, or do you really need to reorganize and retool and significantly expand your activities?

Mr. LEVITT. We are always looking at ways to reorganize. We have already rethought the responsibilities that have changed so dramatically with different kinds of markets, different kinds of fraud.

As you know, we are constrained by the administration's budget proposal.

Senator GREGG. Well, we are not.

Mr. LEVITT. Right.

Senator GREGG. So what we would like to get from you is what you need in an optimum world to address the new problems that are created by Internet trading and the electronic transactions. How much more in the way of staffing do you need and how much more in the way of support do you need in order to make sure that our capital markets are maintaining the integrity which they are famous for, which is why worldwide capital flows here? Can you give us a number on that?

Mr. LEVITT. I think the number that we have here is probably realistic until I can try to persuade OMB and OPM that our needs are different today than they have ever been before. I intend to try to do that in the course of the coming weeks.

Senator GREGG. Well, we would like to have a number. I recognize you are constrained by OMB, but we are an independent branch, and I do not want to end up unilaterally putting money into your account to add people if you do not want it, but my view would be that that is where it should go if you do need it.

Mr. LEVITT. Let me think about that, if you will allow me to, and decide whether we should go beyond the $361 million.

ELECTRONIC COMMERCE

Senator GREGG. Is it possible for you to manage the Internet under the present structure?

Mr. LEVITT. I do not think it is possible for us ever to be totally confident in our ability to deal with electronic commerce, but I think it is possible for us to do more and to do it better. It is not just dollars. It is the way we use those dollars.

But clearly, we need more people to deal with the increasing number of cases that we are finding. We are getting as many as 300 complaints a day, many of which develop into cases. And the Enforcement Division desperately needs more people.

Senator GREGG. Well, tell us what you need. This is a priority for myself, and, hopefully, I can convince the rest of the committee of it.

We also have this Section 31 issue. I read your testimony before Senator Gramm's committee [the Senate Committee on Banking, Housing, and Urban Affairs]. I am sympathetic to your viewpoint, as you know.

I guess my question is the way this works, as I understand it, because of scoring vagaries, 70 percent of this revenue is pay-go, which means we would have to find $9 billion to replace it, so that is unlikely. But 30 percent is not pay-go and in that 30 percent is the most contentious part, which is the trader-to-trader trading activities of NASDAQ, which I guess is running about, by our estimates, $560 million above what you use to operate. Is that correct?

SEC FEE COLLECTIONS

Mr. LEVITT. Yes, I think so. Is that the number, Jim?

Mr. MCCONNELL. Our estimate for this year is $416 million in discretionary collections.

Senator GREGG. $416 million? I thought it was 560.

Mr. MCCONNELL. Fiscal year 2000?

Senator GREGG. Yes. What is your estimate of how much you are taking in in excess of what your operating costs are in the discretionary part of Section 31?

Mr. MCCONNELL. According to CBO estimates for the year 2000 budget, it is $416 million in discretionary collections available for the offset and $140 million in excess of operating costs.

Senator GREGG. My staff tells me this number is moving so fast because the number of transactions is changing and going up so fast that we estimate that the projected discretionary collections would be decreased by $565 million in the next 7 years if they were to be brought in line with what the annual funding levels are.

Mr. MCCONNELL. That is correct. That is a multi-year decrease, with the fees going down. The current mechanism, the single amount——

Senator GREGG. That is what we would lose? That is what we would have to replace?

Mr. MCCONNELL. That is correct.

Senator GREGG. Well, that seems to me to be the issue from an appropriating standpoint.

So once again my question is, and I know you have dealt with this extensively and talked about it yesterday. What resolution do you suggest we take on this?

Mr. LEVITT. It is a terribly complex issue because there are so many parties involved. I am sympathetic to the notion that there is an obvious excess. I do not believe that excess has distorted the markets or works a particular hardship on investors. Investors pay less than a penny or so per transaction for this, and I do not think that is a meaningful factor in making investment decisions.

ALTERNATIVE FEE STRUCTURES

I guess one of the better ways that I can think of to address the issue might be some sort of flexible cap. The problem with a cap, however, is that if it lacks flexibility; and, if the market activity declines, as it most certainly will one of these days, I do not want to face the situation that I faced in 1995. I had to meet my staff on a Friday afternoon and tell them that it was questionable whether they could come to work on Monday. That is enormously demoralizing.

So, my priority obviously is seeing to it that a funding mechanism is devised that assures the predictability and continuity of staff being paid. That is my first priority. If that can be done and we can rationalize the overage, that is great, and I will try to work with you. We have come up with some suggestions, and indeed we will already be saving about $15 million a year in discontinuing NASDAQ's double-counting fees, and we will work on some more.

But the key issue here is how do we harmonize the interests of the six committees that play a role in this?

Senator GREGG. Well, I would be interested. If you have language on this flexible cap, get it to us.

I guess another question to that is assuming we adjust it in a way that reduces the fee to be more reflective of what it is paying for, which is the operation of the SEC, do you expect that the money that will be saved will flow back to the investors or is it just going to stay at the trader level?

That $15 million you have saved so far in double-counting, how much of that do you think flows back to the investors and how much of it went to bonuses?

Mr. LEVITT. Jim, how much of the $15 million comes back? I don't think any of it does, does it?

Mr. MCCONNELL. It has not actually happened yet. It just passed yesterday. It will be implemented in a month. Investors probably will not see much of that.

Senator GREGG. The investors will not see that savings.

Mr. LEVITT. It is the transaction charges that would flow back to investors, and that is the argument proponents have made. Specialists have a different interest.

Senator GREGG. Well, I would hope that any proposal that you come forward with would somehow substantiate the fact that the consumer, the investor, would get the benefit of this reduction.

Mr. LEVITT. I would certainly hope that we could do something that would make them a major beneficiary. I think that is where it should go, even though whatever we do would be modest in terms of each transaction.

Senator GREGG. Have you considered, rather than being tied into a flexible cap, some sort of contingency fund, a fund that you could have these fees paid into that would be like a sinking fund that would be available if the market went down, so we would have cash in reserve?

Mr. LEVITT. I do not think we have worked with that idea. I will certainly look into it.

RESOURCES NEEDED FOR ELECTRONIC COMMERCE

Senator GREGG. You might have CBO scoring problems.

I would like to get from you a reestimate of how much you need in order to meet electronic threats. That may be the wrong word. Actually, it is the wrong word. The electronic activity which expanded the market to so many more people.

Mr. LEVITT. It encompasses not just the fact that the Internet is being used for good and bad purposes, but it also encompasses the array of new markets. The competition between electronic markets and existing markets raises whole new areas of issues for our Division of Market Regulation and our Enforcement Division. How do you inspect those markets? What are their responsibilities? What is a level of fair competition between electronic markets and existing markets?

Senator GREGG. Well, my view is that maintaining the integrity of the financial markets and the capital structure of this country is one of the primary responsibilities of Congress, and, obviously, you are charged with it and your budget is minuscule compared to what you represent relative to the prosperity of this Nation. So do not hesitate to tell us how much you need.

CONCLUSION

Mr. LEVITT. I really appreciate your understanding of this, and I will get back to you shortly.

Senator GREGG. Great. Thank you very much. We appreciate your time.

FEDERAL COMMUNICATIONS COMMISSION

STATEMENT OF WILLIAM E. KENNARD, CHAIRMAN

ACCOMPANIED BY ANDREW FISHEL, MANAGING DIRECTOR

SUMMARY STATEMENT

Senator GREGG. We will proceed the same way. Tell us what you think.

Mr. KENNARD. Thank you very much for this opportunity, Mr. Chairman. I have, of course, full testimony which I would like to submit for the record.

It seems like just yesterday that I was here appearing before you in my first hearing before this subcommittee and in the year since, I believe we have accomplished a lot at the FCC, and I wanted to thank you for the support that you and this committee have given us at the FCC to continue our mission.

As you know, we are involved in a very important time at the FCC as we are trying to transition our law and regulation from an era of monopoly to an era of competition. And as we make that transition, not only are the markets changing, I think in positive ways, but also the FCC is changing in positive ways. We are in the process of restructuring and refocusing the agency's mission so that it is more relevant to a competitive market. Last week I unveiled a five-year plan for the agency which I would ask to be submitted with this hearing record.

In order to continue our mission we are requesting a fiscal year 2000 budget of $230 million. That will allow us to continue at our current staffing level of 1,930 funded full-time equivalents. That is, we are not requesting any additional staff.

The increase does represent over a $38 million increase over last year's budget, but no increase in staffing. And, of that $38 million, most of it is related to our relocation to the new headquarters building for the FCC in Southwest Washington. About $20.3 million is directly related to that relocation.

The balance is related to increases for mandatory salary and benefit increases and CPI increases.

The total amount to be collected from regulatory fees would increase from $172.5 million in fiscal year 1999 to $185.7 in fiscal year 2000.

In addition, we are asking that this committee give us the tools to continue our efforts to restructure the agency. We are asking for buy-out authority so that we can become more efficient and redeploy and retool some of our human resources.

We are also asking that the committee support our efforts to amend the bankruptcy code to allow us to have a more effective auction program so that we can pull licenses that have been mired in bankruptcy litigation and reauction them. In fact, as we speak we are having a reauction of C block PCS licenses.

Senator GREGG. Have you sent us up language?

Mr. KENNARD. I believe so, yes.

Overall, I think we have a very encouraging story to report about what is happening in the telecommunications marketplace. All the economic indicators are up. Job growth is up. Revenues are up. Stock values are up. Revenues in the communications sector of the economy have grown by over $140 billion since the Telecom Act was passed.

And there are a lot of really exciting things happening out there. We are just on the verge of seeing the deployment of high-speed Internet access services to residential consumers in the country, and it is our view that this will open up a whole new horizon for electronic commerce for the country.

You have heard earlier that that poses some problems with the SEC in particular with on-line trading for example, but overall these are very positive developments for the economy. We very much want to work with you to transition the marketplace to a more competitive environment while preserving our fundamental bedrock commitment to universal service and making sure that no Americans are left behind as we move to a more competitive environment.

Finally, Mr. Chairman and Senator Stevens, I wanted to update you on our efforts on Y2K compliance. Internally, we are on track to make sure that all of our internal systems are compliant by October. Externally, we have been working very aggressively with the industry to make sure that those systems are compliant.

My colleague, Michael Powell at the Commission, has headed up a very successful task force in that area. So I think in the Y2K area we are in pretty good shape.

PREPARED STATEMENT

We have a very busy agenda for the coming year and I am hopeful that with your support and your continued guidance, we will be able to accomplish a lot.

[The statement follows:]

PREPARED STATEMENT OF WILLIAM E. KENNARD

Mr. Chairman, Ranking Member, and Members of the Subcommittee, thank you for the opportunity to discuss with you today the fiscal year 2000 Budget Estimates of the Federal Communications Commission.

This morning I would like to: summarize our fiscal year 2000 Budget Estimates; highlight the growing impact of the Telecommunications Act of 1996, and what remains to be done to achieve competition now that the Supreme Court has affirmed the FCC's authority to implement the core local competition provisions of the Act; note some of our other accomplishments; discuss our plans to assist the Congress as it considers reauthorization of the FCC later this year; report to you on the progress we have made in our Year 2000 remediation program; and share with you my agenda for the rest of 1999.

A 21st Century Vision

Before I address the major points of my testimony, however, I want to note that this is the final appearance before you this century of an FCC Chairman seeking your support and funding. Therefore, I want to describe for you my vision of an FCC for the 21st century.

We are standing at the threshold of a new century, a century that promises to be as revolutionary in the technology that affects our daily lives and the future of our country as the inventions and innovations that so profoundly shaped the past 100 years. Just as the internal combustion engine, the telephone, and the railroad

brought about our country's transformation from an agricultural to industrial society, the microchip, fiber optic cables, and satellites are fueling our transition from an industrial to an information-age society.

With the passage of the Telecommunications Act of 1996, we began the process of updating the rules for this New Economy, an economy centered on skilled workers, broad access to technology, and entrepreneurial markets. By opening up the marketplace to more competitors, we have a communications industry that is the envy of the world. Every major economic indicator in every sector of the communications industry is up: job growth, revenue, investment, and stock values are all at record levels. This growth has enriched the nation, and Americans are beginning to reap the benefits of competition with more choices and lower prices.

In the opening years of the next century, the telecommunications marketplace will change dramatically. Phone wires will deliver movies, cable lines will carry telephone calls, and the airwaves will carry both. This convergence of technologies will transform how we live, work, shop, and play. It will blur traditional industry lines. It will reshape our society.

As the marketplace changes, so must the Federal Communications Commission. The top-down regulatory model of the Industrial Age is as out of place in the New Economy as the rotary telephone. As competition and convergence develop, the FCC must streamline its operations and continue to eliminate regulatory burdens. Technology is no longer a barrier, but old ways of thinking are.

As we re-direct the FCC's focus for a competitive age, the Commission must reform itself. Already, we have taken some initial steps on the road towards re-engineering the FCC. We are re-focusing and consolidating our enforcement and consumer information functions, as well as automating and streamlining our licensing processes across the entire agency. But these steps are only the beginning.

Congress' review this year of the FCC presents an important opportunity to continue the discussion on how the FCC should respond to this transformation and what its role should be in the 21st century marketplace.

Our primary role must be to continue opening markets to competitors to bring more choices at affordable prices to all Americans. The Telecom Act requires that telecommunications monopolies open up their networks to allow new entrants to compete with them. With the recent Supreme Court decision affirming the FCC's role in implementing these provisions, we will continue working with the states and industry to accomplish this task. In addition, we must continue to ensure that all Americans have access to the wonders of the communications revolution.

As competition develops, we must re-focus our efforts on those functions that are appropriate for a competitive age. For example, we will take strong action against those who would rather cheat than compete for consumers. We will work to ensure that Americans are provided with clear information so that they can make sense of these new technologies and services and choose the ones best for them. We will enforce the law, resolve industry disputes, manage the spectrum, and work on international coordination. And finally, we will monitor the competitive landscape on behalf of the public interest, implementing important policies such as universal service in ways compatible with competition.

Just as the telecommunications industry and other sectors of our economy are constantly adapting to change and competition, so must we. We look forward to working with Congress—as well as industry, consumers, state and local governments, and others—on a critical assessment of what the "new" FCC should look like, and how we can get there.

A new century and new economy demand a new FCC. We must plan for the future, while continuing to work on the challenges we face today to promote competition, foster innovation, and help bring the benefits of 21st century telecommunications to all Americans.

Overview of Fiscal Year 2000 Budget Estimates

To help the FCC begin to realize this 21st century vision, the Commission proposes a fiscal year 2000 budget of $230,887,000, and a staff of 1,930 funded full-time equivalents (FTEs). This represents an increase of $38,887,000 over the FCC's fiscal year 1999 funding level, but no increase in staffing.

Of the $38.8 million increase, $20.3 million is directly related to the FCC's relocation to the Portals Building. This includes $9.6 million for higher rent, $.5 million for increased Federal Protective Service charges, $1.5 million for extended guard services due to the lease requirement to allow the public to enter the building at all five entrances, and $8.7 million to reimburse the General Services Administration for the costs it incurred to relocate the FCC to the Portals.

The remaining increase covers $6.8 million for mandatory salary and benefit increases, $.7 million for Consumer Price Index adjustments in contract services and

$11.3 million for automation enhancements. Without adequate automation funding, the Commission will be unable to carry out our basic functions of awarding licenses to applicants for communications services, overseeing the implementation of new services for the public, and reviewing and updating existing rules and regulations. In view of the importance of these services to the economy of the United States, this investment in technology is critical. Since the automation enhancements will directly benefit the Commission's licensees, we propose that all of this increase be paid for by an increase in regulatory fees.

The total amount to be collected from regulatory fees would increase from $172,523,000 in fiscal year 1999 to $185,754,000 in fiscal year 2000.

The Growing Impact of the Telecommunications Act of 1996

Turning now to the growing impact of the Telecom Act, I am very pleased to report that the Act is working: consumers are beginning to see competitive choices in local telecommunications services, competitive deployment of advanced broadband services is well underway and the stage is therefore set for less regulation as competition expands.

I also note that by every measure, the telecommunications industry is thriving. Since the passage of the Telecom Act, revenues of the communications sector of our economy have grown by over $140 billion. Stock values of the companies in the telecommunications sector are up, indicating that Wall Street sees a future of a rapidly enlarging pie that is big enough for all, not a zero sum game.

One-fourth of our country's economic growth has come from the information technology sector. For 1998, it is estimated that the communications sector of our economy will have revenues in excess of $500 billion. This growth has touched the lives of almost every American. Now, a growing number of American families across this nation have a choice of a vast array of high-tech communications services, services that now cost less.

This growth comes not only from established providers but, since the passage of the Telecom Act, we can now clearly see benefits flowing from the new competitors. The revenues of new local service providers more than doubled in 1997, and they increased substantially again in 1998. And this growth has meant new jobs for thousands of Americans.

In the wireless industry, capital investment in 1998 has more than tripled since 1993, with more than $50 billion of cumulative investment through 1998. Similarly, the wireless industry generated almost three times as many jobs as in 1993. All this while the cost of service to the consumer has dropped. A cell phone is no longer a luxury for the privileged, for with the advances in cellular service and the advent of digital, personal communications services, mobile phones are now a common communications tool for over 60 million people every day.

AT&T, BellSouth, MCI Worldcom, Ameritech, Sprint, SBC, Bell Atlantic and US West are all among the top 20 telecommunications companies, by revenue, worldwide. Similarly, GE Americom, Hughes, Loral and Panamsat are among the top 20 satellite service providers, by revenue, worldwide. And U.S. satellite manufacturers such as Hughes, Lockheed Martin, Loral, Motorola and Orbital Sciences, maintain a strong lead in contracting and subcontracting satellite systems worldwide.

These are just a few examples of how the telecommunications economy and market are thriving, and are doing so in an increasingly competitive environment engendered by the Telecom Act.

From Courts to Cooperation and Competition

In recent months, the FCC's implementation of the Telecom Act also has been upheld repeatedly by the courts. Most recently, in January 1999, the United States Supreme Court affirmed the FCC's landmark decision implementing the core local competition provisions of the Telecom Act. In *AT&T* v. *Iowa Utilities Board*, the Supreme Court specifically: affirmed the FCC's fundamental jurisdiction to issue uniform national rules to facilitate competition for local telephone service; affirmed the FCC's interpretation concerning new competitors' rights to share parts of the incumbent carriers' networks without having to provide their own facilities; affirmed the FCC's rule that incumbent carriers may not dismantle their existing networks in ways that disadvantage new entrants and raise entry costs; affirmed the FCC's ruling that the Telecom Act enables new entrants to avail themselves of all or portions of existing interconnection contracts between incumbents and other competitors; affirmed the FCC's identification of a number of network elements designed to facilitate entry by new competitors; and directed the FCC to revisit its rule designating specific network elements that must be unbundled pursuant to the Telecom Act.

The FCC's legal victories at the appellate court level also have been significant over the past 14 months. For example, the Commission worked closely with the De-

partment of Justice to defend successfully the integrity of the core market-opening provisions of the Telecom Act against repeated constitutional attacks. Thus, two different federal courts of appeal in the past year have issued three separate decisions upholding the constitutionality of specific provisions of the Telecom Act governing the Bell Operating Companies. In December 1998, the D.C. Circuit rejected contentions that Section 271 of the Act—a key provision that governs Bell Company participation in the long distance market—was an unconstitutional "bill of attainder" or punishment. The Supreme Court also declined to review a similar decision from the Fifth Circuit.

The Commission has had other court victories as well. In January 1998, the D.C. Circuit affirmed the FCC's interpretation of two key provisions of Section 271 which will help achieve Congress' goals to ensure local markets are opened to competition and enhance competition in the long distance market. In August 1998, the Eighth Circuit Court of Appeals affirmed a Commission decision reforming interstate "access charges"—the rates that local telephone companies charge long distance companies for the right to originate and terminate all long distance calls. Finally, in January 1999, the D.C. Circuit affirmed the FCC's rules establishing benchmarks for rates that U.S. carriers pay to foreign carriers to complete international calls, a decision which should reduce the prices consumers have to pay for international calls.

Now that the courts have upheld most aspects of the FCC's implementation of the Telecom Act, we must ensure that the Supreme Court's decision in *AT&T* v. *Iowa* produces momentum behind the market-opening mandates of the Telecom Act instead of more delay and confusion. First and foremost, that means making sure that each of the three pathways to competition spelled out in the Telecom Act are open: facilities-based competition, resale, and unbundled network elements.

We know that the Supreme Court's decision requires the FCC to revisit one of these pathways: the FCC's interpretation of which network elements must be made available to competitors. We must not allow uncertainty on this point to slow the momentum toward competition.

This is why the Commission was pleased to learn last month that each of the regional Bell operating companies and GTE have agreed to fulfill their current obligations, as set forth in existing interconnection agreements, to provide unbundled network elements while the FCC revisits its interpretation of this key provision of the Telecom Act.

The law requires all of the stakeholders to cooperate. It requires parties to negotiate on interconnection and collocation. It requires state and federal regulators to collaborate. So the irony of the Telecom Act is that cooperation is the prerequisite to competition. I welcome these good faith gestures of the incumbent carriers. This pie is big enough for everyone to have a slice.

Now that the Supreme Court has given us greater clarity on these major outstanding issues, we must move forward immediately to settle any remaining ambiguities. I am committed to finalizing the standard for the network elements by early summer. We must put this matter to rest. The marketplace needs stability.

I will continue to link arms with my colleagues in the states to implement the Telecom Act in a fair, clear, and pro-competitive way. We now have three years of experience on which to build the future. It is a strong foundation, and together, we are going to complete the job that Congress gave us. And, we can now move quickly.

Other FCC Accomplishments

I would like to turn now to other areas of accomplishment since I became Chairman of the FCC in November 1997. Throughout my tenure, I have sought to: transform the agency to assure that all Americans will benefit from the communications revolution and the opportunities it brings; stress the importance of promoting competition while making sure it is not at the expense of the disadvantaged and those who need extra help; advocate eliminating unnecessary regulation where sufficient competition exists; and take a market-based, common sense approach to telecommunications policy that promotes deregulation where possible while at the same time ensuring that rules are in place and are enforced to protect consumers.

I believe that during my Chairmanship, the Commission has stood for promoting competition, fostering new technology and creating opportunity while streamlining the agency and getting rid of unnecessary regulation. The Commission is also dedicated to making sure that the burgeoning digital revolution does not become a digital divide. This is evident in many of our efforts since I became Chairman: for example, in the Broadband Task Force, my "opportunity agenda," my views on universal service, my advocacy of the E-rate, the FCC's outreach to the disabled community, overseeing implementation of DTV, promoting low power FM, my views on implementation of Section 271, the FCC's efforts to protect consumers against cram-

ming and slamming, greater inclusion of state regulators, and the FCC's holding field hearings around the country with different groups.

Recognizing that access to technology is essential for future jobs and an important step necessary to eradicate the digital divide, I have also consistently advocated the Congressionally-created universal service support for service to classrooms and libraries—the so-called E-rate. Under my tenure, the Commission finalized implementation of the E-rate and prioritized assistance so that the most needy would receive the biggest benefit. Moreover, the Commission ensured that strong program controls were in place. No funding commitment letters were permitted to be sent until the program was reviewed both by an independent auditor and the General Accounting Office. I am pleased to report today that funding commitment letters totaling $1.66 billion now have been sent to over 30,000 school and library applicants, which completes the funding commitment process for the first year of the program. In addition, the Universal Service Administrative Company has begun accepting applications for the second year of the program. The FCC also is continuing to work to simplify the application process to make it both simpler and faster for schools and libraries.

Central to our first year achievements is the creation of a Bandwidth Task Force, a pro-active, cross-bureau, cross-disciplinary group whose responsibility is to identify for the Commission issues of bandwidth constraint within the nation's telecommunications infrastructure. I have highlighted the current bandwidth constraints as one of the most important issues to be addressed in the field of telecommunications policy and regulation. Current bandwidth constraints include: access to the information superhighway for the mass market, (the "last mile" issue); connectivity to high bandwidth backbone by the nation's small-to-medium size towns and communities; and inside wiring issues (the "last 100 feet"). The Bandwidth Task Force also has the responsibility of prioritizing achievable means to facilitate the deployment of competitive alternative high-bandwidth technologies and the ability of all consumers to obtain broadband interconnections and assisting the different areas of the agency in realizing these goals.

We have also created a cross-agency task force to assess how to stay ahead of the rapid consolidation of industry in the telecommunications area. I began the Technology Advisory Committee, another intra-agency group headed up by the Chief of the FCC Office of Engineering and Technology and comprised of engineers, economists, scientists and technologists. During my tenure, the DTV task force, headed by Commissioner Ness, was established to address tower siting issues for DTV. The FCC also launched a vigorous effort, led by Commissioner Powell, to educate communications industries about Year 2000 compliance issues and to monitor industry efforts to address Y2K compliance. Finally, we established the Opportunity Working Group, a cross-agency task force charged with ensuring that all Americans receive the benefits of the communications revolution.

Similarly, I have sought to strengthen the cross-agency Disabilities Issues Task Force to highlight, among other things, the importance of making technology available to everyone. For example, we have: strengthened closed captioning rules so that persons who are deaf or hard-of-hearing will have access to more programs on television; proposed new rules for telecommunications relay services and proposed to require the provision of speech to speech relay service; advocated that industry provide solutions to the problem of compatibility between digital wireless phones and TTYs; and proposed rules to make telecommunications services and equipment accessible to persons with disabilities. Moreover, I have tried to raise the profile of the needs of persons with disabilities in the telecommunications area through speeches, statements, and demonstrations at the FCC of equipment and how persons with disabilities would benefit from it. We have also sought to ensure that the voices of people with disabilities and their advocates are heard at the FCC.

Over the past 14 months, the Commission has also focused on ways to increase competition in the telecommunications area. Toward this end, some of the Commission's achievements include: beginning a rulemaking to establish a pro-competitive, pro-innovative framework for advanced telecommunications services offered by incumbent local telephone companies and by new entrants; adopting a competitively neutral mechanism for long-term number portability cost recovery; lowering barriers to non-U.S. licensed satellites providing service within the U.S.; implementing the WTO Agreement on Basic Telecommunications Services, lowering barriers to entry by foreign carries in the United States; adopting rules requiring set top boxes, cable modems and other navigation devices be available "over the counter" as well as from cable companies; conducting 800 MHz, LMDS and 220 MHz auctions, and issuing 1,608 licenses; reopening review of access charges; and issuing a bandplan for the 18 Ghz band, segmenting the band to allow new satellite services to operate without interfering with terrestrial operations.

I have also sought to refocus the Commission on the importance of community and empowering people and the public safety community. For example, we have: issued technical standards for implementation of the "V-Chip" and approved industry-developed plans for a television rating system; allocated and adopted service and licensing rules for 24 MHz of spectrum for use by public safety entities, such as police, fire and ambulance services; and adopted an Order extending the deadline for compliance with electronic surveillance assistance requirements of CALEA to allow enough time to develop the technologies necessary to provide law enforcement officials with the tools they need to perform authorized wiretaps.

In the area of consumer protection, the Commission: proposed more than $13 million in fines for "slamming," including the first slamming fine of over $1 million; for the first time ever, revoked a carrier's license to provide interstate services because of slamming abuses; brokered and endorsed industry-developed guidelines to stop "cramming;" issued rules empowering consumers to protect themselves against outrageous payphone long distance charges; and issued rules to protect consumer privacy concerning the use and disclosure of personal information to marketers.

As Chairman, I have also emphasized the importance of strengthening agency enforcement as essential to protect consumers and enhance competition. As a result, the FCC since I became Chairman has: investigated and shut down or fined hundreds of companies that engaged in "slamming;" shut down 261 unlicensed "pirate" radio operations, including five which were interfering with air traffic control or were otherwise endangering human life; established a "fast-track" complaint process for resolution of complaints that are important to maintaining fair rules of competition; promptly adjudicated and stopped long distance marketing arrangements that violated and attempted to evade the market-opening long distance provisions of the Telecom Act; and issued the first-ever Temporary Restraining Order halting alleged violations of the pro-competition provisions of the Communications Act.

Finally, over the past 14 months, I have stressed the importance of removing unnecessary, burdensome regulations. Our efforts to streamline regulations include: adopting rules to auction mutually exclusive applications for broadcast licenses; streamlining the broadcast application processes to reduce the number and length of forms; simplifying the equipment authorization process; implementing electronic filing for authorization requests for common carrier tariffs and comments and pleadings in most notice and comment rulemakings; and, as part of the 1998 biennial regulatory review, proposing specific streamlining initiatives in over two dozen areas.

FCC Reauthorization

This year the House and Senate Commerce Committees have announced their intentions to consider legislation to reauthorize the Commission. The FCC's last authorization legislation was signed into law in September 1990 and authorized the FCC through September 30, 1992. See Public Law 101–396 (H.R. 3265), the "Federal Communications Commission Authorization Act of 1990."

As a result, since 1992, the FCC has been technically a "non-authorized" agency, dependent for its congressional policy guidance on annual appropriations legislation and other major legislation such as the Cable Act of 1992, the Omnibus Budget Reconciliation Act of 1993, the Telecommunications Act of 1996, and the Balanced Budget Act of 1997.

To assist Congress in its current FCC reauthorization effort, the Commission has already begun re-engineering itself for the new century. Our actions to date and plans for the future will be detailed in a comprehensive report we plan to submit this summer to you, to our authorizing committees, and to other Members of Congress as well as to the public.

Over the next few months, we intend to undertake a comprehensive self-assessment of our core mission and goals, what steps we must take to achieve our goals, how to better measure our performance and effectiveness, and how to use that information to make fundamental improvements in the way we operate. We want to involve both our staff and our many stakeholders in this self-assessment, including you and other Members of Congress, companies, industry associations, consumer groups, academics, state and local governments, and the public. The result of this effort will be a draft Strategic Plan covering a five year period which we will release in July 1999, and on which we will seek additional public comment.

The FCC is viewing this reauthorization process as an excellent opportunity to assess and reform the goals, structure and processes of the agency as we plan for a new FCC that fits the telecommunications marketplace of the future.

Moreover, a restructured and streamlined FCC must be in place once competition arrives so that we can focus on providing consumers information and protection, resolving industry disputes and enforcing the law, allocating spectrum and other scarce resources, working with other nations to open their markets, and protecting

universal service and other public interest objectives that may not be met by normal market forces.

In sum, we will seek to be structured to react quickly to market developments, to work more efficiently in a competitive environment, and to focus on bottom-line results for consumers. As competition increases, we must place greater reliance on marketplace solutions, rather than on traditional regulation of entry, exit and prices; and on surgical intervention rather than complex rules in the case of marketplace failure.

We Also Need the Right Tools

As I testified in June 1998 before the Senate Commerce Committee, we cannot create a "leaner and smarter" FCC by ourselves. We need Congress to give us the full range of tools necessary to reshape the Commission and its staff.

This is why we were all pleased to read in the Congressional Record of February 23, 1999, the following statement by Senate Majority Leader Lott (R-MS) which he made as part of longer remarks on the third anniversary of enactment of the Telecom Act of 1996:

"During this continued period of transition, it will be important for Congress to make sure that the Federal Communications Commission is properly structured. That it has the right tools to foster and further the ongoing evolution. Chairman Kennard's analogy—old regulatory models are a thing of the past, much like the old, black rotary phones—rings true. The FCC indeed must change, and Congress should start empowering the FCC rather than criticizing its individual decisions." (Emphasis added.)

One such empowering tool is buyout authority for which we have proposed legislative authority in our fiscal year 2000 draft appropriations language. We need this authority to buyout permanent employees and to replace them with employees who have the appropriate mix of skills to handle our changing workload demands.

We also need legislation as again presented in our fiscal year 2000 appropriations language to ensure that the goals of Section 309(j) of the Communications Act are met, and that our auctions/licensing process is not completely undermined by the bankruptcy courts.

Year 2000 Compliance

I am pleased to report to you today that the FCC has made substantial progress in alleviating Year 2000 (Y2K) problems for our internal application software systems, networks, and hardware. The Commission is on schedule to achieve 93 percent compliance by April 30, 1999 and has achieved 73 percent compliance to date. The Commission's ongoing relocation to the new Portals office facility has had some minimal adverse impact on FCC Y2K remediation efforts. However, the Portals move has also resulted in major progress on our achieving Y2K compliance for the FCC's headquarters infrastructure.

I have continued to stress the great importance of achieving Y2K compliance for both the FCC and telecommunications industry systems. I also want to commend Commissioner Michael Powell, who as a member of the President's Council on Year 2000 Conversion, has lead the Commission's internal Y2K compliance program while carrying out his important leadership role in the FCC's industry outreach effort.

1999 Agenda

The transition from monopoly regulation to open markets, from today's technologies to tomorrow's breakthroughs, is not yet complete. Therefore, as we look forward to the upcoming new century, the challenge before this Commission is clear: to promote competition, to foster new technologies, to protect consumers, and to ensure that all Americans have access to the wonders of the communications revolution. These goals are the will of the American people and of Congress, set forth in the Telecom Act. And we at the FCC will continue to work hard to bring these benefits to every American.

These goals will guide us as we review the major mergers now before this Commission. They will be in our minds as we continue our work in opening local phone markets to competition, so Americans have choice in local phone service. They will guide us as we work to make our communications network accessible to all Americans, especially the 54 million Americans with disabilities.

Our agenda for this year which I have attached to my testimony is a full one. It is also an important one, fully justifying the resources we have requested from you in our fiscal year 2000 budget submission.

Conclusion

The agenda for this year continues on the foundation laid last year—competition, community, common sense. We have a lot of work to do, and we have the will to do it well. With your support of our fiscal year 2000 budget request, we will succeed:

—We will promote competition in all sectors of the marketplace. We will reform access charges, and ensure that proposed mergers are pro-competitive and benefit consumers.

—We will continue to deregulate as competition develops, eliminating any unnecessary regulatory burdens, reducing reporting requirements, streamlining rules and our own internal functions.

—We will continue to protect consumers from unscrupulous competitors, and give customers the information they need to make wise choices in a robust and competitive marketplace. We will continue our policy of "zero tolerance" for those competitors who would rather cheat than compete.

—We will work to ensure that the Act's provisions on RBOC entry into the long distance marketplace are implemented in a manner that promotes competition and consumer welfare and that is fair to all of the parties.

—We will ensure broad access to communications services and technologies for all Americans, no matter where they live. We will complete universal service reforms, continue oversight of the schools and libraries and rural health care universal service programs, encourage accessibility of emergency information via closed-captioning and video description, and ensure that the 54 million Americans with disabilities can use and have access to the communications network.

—We will foster innovation, working to ensure that America remains the world's leader in innovation. We will continue to promote the development and deployment of high speed Internet access, promote compatibility of digital video technologies with existing equipment and services, and promote competitive alternatives to cable and broadcast TV.

—Finally, we will advance these concepts worldwide, serving as an example and advocate of telecommunications competition worldwide. We will work to encourage the development of international standards for global interconnectivity, work to promote the fair use of spectrum through the WRC 2000, and aggressively work on the worldwide adoption of the WTO Agreement for Basic Telecommunications. We will continue to assist other nations in establishing conditions for deregulation, competition, and increased private investment in their telecommunications infrastructure so that they too, can share in the promise of the Information Age, and become our trading partners.

During this time the ground rules we set now will structure competition and the telecommunications industry for years to come. Decisions we make today will determine whether or not all Americans—irrespective of where they live, their race, their age, or their special needs—can share in the promise of the Information Age.

This concludes my testimony. I'd be pleased to answer your questions.

CHAIRMAN KENNARD'S AGENDA FOR 1999

Promote Competition

We will promote competition throughout the communications marketplace.

—Ensure all communications markets are open.

—Reform access charges mechanisms to promote the development of competition and preserve affordable rates.

—Scrutinize merger proposals to ensure that they are pro-competitive and benefit consumers.

—Allow the Regional Bell Operating Companies into the long-distance market when they have opened their own local markets to competition, as required by law.

—Promote competition and choice in the video marketplace.

—Promote alternatives to wire line technology in the local telephone market.

Deregulate As Competition Develops

We will adapt the Commission, its rules, and procedures to the competitive future.

—Aggressively continue our efforts to eliminate any unnecessary regulatory burdens.

—Reduce burden of reporting and accounting requirements where no longer necessary to further the public interest.

—Allow access pricing flexibility where competition has developed.

—Streamline rules for the certification of telephones and other equipment.

—Streamline our internal functioning so that we can issue licenses faster, resolve complaints quicker, and be more responsive to the competitors and consumers in the marketplace.

Protect Consumers

We will protect customers from unscrupulous competitors, and give customers the information they need to make wise choices in a robust and competitive marketplace.

—Ensure consumer bills are truthful, clear and understandable.
—Show zero tolerance for perpetrators of consumer fraud such as slamming and cramming.
—Simplify the process for consumers to file complaints by phone or over the Internet.
—Cut our complaint resolution time in half.
—Remain vigilant in protecting customer privacy.

Ensure Broad Access to Communications Services and Technology

We will ensure that all Americans—no matter where they live, what they look like, what their age, or what special needs they have—have access to new technologies to take advantage of the enormous opportunity created by the communications revolution.

—Complete Universal Service Reform to ensure affordable, available communications services nationwide.
—Ensure that the 54 million Americans with disabilities can use and have access to the communications network.
—Encourage the accessibility of emergency information via closed-captioning and video description.
—Assure reliable wireless compatibility with E911.
—Continue oversight of the Schools and Libraries and Rural Health Care universal service programs to ensure their efficient operation.
—Preserve free, over-the-air broadcast services and ensure satellite coverage in underserved areas.
—Open low-power radio frequencies for local use.
—Promote the participation of people of all backgrounds in broadcasting and other communications media.

Foster Innovation

We will work to ensure that America remains the world's leader in innovation.

—Promote the development and deployment of high-speed Internet connections to all Americans.
—Promote compatibility of digital video technologies with existing equipment and services.
—Promote competitive alternatives to cable and broadcast TV.
—Clear regulatory hurdles so that innovations, and markets for them, can flourish.

Advance Competitive Goals Worldwide

We will serve as an example and advocate of telecommunications competition worldwide.

—Encourage the development of international standards for global interconnectivity.
—Promote fair spectrum use through the WRC 2000.
—Aggressively work for the worldwide adoption of the WTO Agreement of Basic Telecommunications.
—Assist other nations in establishing conditions for deregulation, competition, and increased private investment in their telecommunications infrastructure so that they can share in the promise of the Information Age and become our trading partners.

A NEW FEDERAL COMMUNICATIONS COMMISSION FOR THE 21ST CENTURY

THE FEDERAL COMMUNICATIONS COMMISSION AND THE CHANGING COMMUNICATIONS MARKETPLACE

Introduction

Congress enacted the Communications Act of 1934 to provide for the widest dissemination of communications services to the public. Section 1 of the Communications Act states that the purpose of the Act is to "make available * * * to all the

people of the United States, without discrimination * * * a rapid, efficient, Nationwide, and world-wide wire and radio communication service * * * at reasonable charges."

This goal remains vibrant today. What has changed since 1934 is the means to get to this goal. With the passage of the Telecommunications Act of 1996 (Telecom Act), Congress recognized that competition should be the organizing principle of our communications law and policy and should replace micromanagement and monopoly regulation. The wisdom of this approach has been proven in the long distance, wireless, and customer premises equipment markets, where competition took hold and flourished, and consumers receive the benefit of lower prices, greater choices, and better service.

The imperative to make the transition to fully competitive communications markets to promote the widest deployment of communications services is more important today than ever before. In 1934, electronic communications for most Americans meant AM radio and a telephone, and sending the occasional Western Union telegram. Today, it means AM and FM radio, broadcast and cable TV, wireline and wireless telephones, faxes, pagers, satellite technology, and the Internet—services and technologies that are central to our daily lives. Communications technology is increasingly defining how Americans individually, and collectively as a nation, will be competitive into the next century. It is increasingly defining the potential of every American child. So the goal of bringing communications services quickly to all Americans, without discrimination, at reasonable charges, continues to be of paramount importance. Competition is the best way to achieve this goal, while continuing to preserve and protect universal service and consumer protection goals.

To accomplish this goal, our vision for the future of communications must be a bold one. We must expect that in five years, there can be fully competitive domestic communications markets with minimal or no regulation, including total deregulation of all rate regulation in competitive telephone services. In such a vibrant, competitive communications marketplace, the Federal Communications Commission (FCC) would focus only on those core functions that cannot be accomplished by normal market forces. We believe those core functions would revolve around universal service, consumer protection and information; enforcement and promotion of pro-competition goals domestically and internationally; and spectrum management. As a result, the traditional boundaries separating the FCC's current operating bureaus should no longer be relevant. In five years, the FCC should be dramatically changed.

We are working to transition the FCC to that model—based on core functions in a competitive communications market—now. We are writing the blueprint for it, beginning with this report describing the steps we are already taking. After receiving input from our key stakeholders, we plan to develop this report into a five-year Strategic Plan which will outline precisely our objectives and timetable year by year for achieving our restructuring, streamlining, and deregulatory objectives. We must work with Congress, state and local governments, industry, consumer groups, and others to ensure that we are on the right track, and that we have the right tools to achieve our vision of a fully competitive communications marketplace.

The State of the Industry

In the Telecom Act, Congress directed the FCC to play a key role in creating and implementing fair rules for this new era of competition. Over the course of the past three years, the FCC has worked closely with Congress, the states, industry, and consumers on numerous proceedings to fulfill the mandates of the Telecom Act.

By many accounts, the Telecom Act is working. Many of the fundamental prerequisites for a fully competitive communications industry are now in place, competitive deployment of advanced broadband services is underway, and the stage is set for continued deregulation as competition expands.

Furthermore, by many measures, the communications industry is thriving. Since the passage of the Telecom Act, revenues of the communications sector of our economy have grown by over $100 billion. This growth comes not only from established providers, but also from new competitors, spurred by the market-opening provisions of the Telecom Act. (See Appendix A, Charts 1 and 2) This growth has meant new jobs for thousands of Americans.

In the wireless industry, capital investment has more than tripled since 1993, with more than $50 billion of cumulative investment through 1998. Mobile phones are now a common tool for over 60 million people every day, and the wireless industry has generated almost three times as many jobs as in 1993. (See Appendix A, Chart 3)

Consumers are beginning to benefit from the thriving communications sector through price reductions not only of wireless calls, but also of long distance and

international calls. (See Appendix A, Charts 4 and 5) Consumers are also beginning to enjoy more video entertainment choices through direct broadcast satellites, which are becoming viable alternatives to cable. We are also at the dawn of digital TV, which offers exciting new benefits for consumers in terms of higher quality pictures and sound and innovative services. (See Appendix A, Charts 6 and 7) As we enter this digital age, broadcast TV and radio is still healthy, ubiquitous, and providing free, local news, entertainment, and information to millions of Americans across the country.

Beyond the traditional communications industries, the Internet has truly revolutionized all of our lives. According to a recent study, at least 38 percent of American adults (79.4 million) already are online and another 18.8 million are expect to go online in the next year. In 1998, 26 percent of retailers had a website, over three times the number in 1996, and it is estimated that they generated over $10 billion in sales. On-line sales for 1999 are projected to be anywhere from $12 to $18 billion.

Communications markets are also becoming increasingly globalized as the Telecom Act's procompetitive policies are being emulated around the world. Other countries are modeling their new telecommunications authorities after the FCC. As other countries open their communications markets and increase their productivity, new services and business opportunities are created for U.S. consumers and companies, as well as for consumers and companies worldwide.

Communications in the 21st Century

Even more change is expected in the telecommunications marketplace of tomorrow. In the new millennium, millions of consumers and businesses will be able to choose from a range of services and technologies vastly different from those available today. Packet-switched networks, running on advanced fiber optics and using open Internet Protocols to support seamless interconnection to transport immense amounts of information, will be ubiquitous. Millions of homes and businesses will be linked to this "network of networks" through "always on" broadband connections. Outside the wired confines of the home or office, "third generation" wireless technologies will provide high-speed access wherever a consumer may be. Satellite technology will increase the ability to transfer data and voice around the world and into every home.

Electronic commerce will play an even more central role in the economy of the 21st Century. Americans in the next century will be connected throughout the day and evening, relying on advanced technologies not only to communicate with others, but also as a vital tool for performing daily tasks (such as shopping or banking), for interacting with government and other institutions (such as voting, tax filing, health, and education), and for entertainment (such as video, audio, and interactive games).

In the marketplace of tomorrow, it is expected that traditional industry structures will cease to exist. The "local exchange" and "long distance" telephone markets will no longer be distinct industry segments. Video and audio programming will be delivered by many different transmission media. In a world of "always on" broadband telecommunications, narrow-band applications—such as our everyday phone calls—will represent just a tiny fraction of daily traffic. Cable operators, satellite companies, and even broadcast television stations will compete with today's phone companies in the race to provide consumers a vast array of communications services. In addition, telephone and utility companies may be offering video and audio programming on a wide-scale basis. As cross-industry mergers, joint ventures, and promotional agreements are formed to meet users' demand, the traditional distinctions between these industry segments will blur and erode.

Impact of Industry Convergence

Convergence across communications industries is already taking place, and is likely to accelerate as competition develops further. Thus, in addition to refocusing our resources on our core functions for a world of fully competitive communications markets, the FCC must also assess, with the help of Congress and others, how to streamline and consolidate our policymaking functions for a future where convergence has blurred traditional regulatory definitions and jurisdictional boundaries.

The issues involved in thinking about convergence and consolidation are complex. Prior to the Telecom Act, the core of the Communications Act was actually three separate statutes: it incorporated portions of the 1887 Interstate Commerce Act (governing telephony), the 1927 Federal Radio Act (governing broadcasting), and the 1984 Cable Communications Policy Act (governing cable television). Telephony is regulated one way, cable a second, terrestrial broadcast a third, satellite broadcast a fourth. As the historical, technological, and market boundaries distinguishing these industries blur, the statutory differences make less and less sense. Maintain-

ing them will likely result in inefficient rules that stifle promising innovation and increase opportunities for regulatory arbitrage.

Some argue for developing regulatory principles that cut across traditional industry boundaries. For example, the policies of interconnection, equal access, and open architecture have served consumers well in the wireline context, a traditionally regulated industry. Similarly, concepts of connectivity, interoperability, and openness are the lifeblood of the Internet, an unregulated industry. While these similar principles appear to cut across these different media, it is unclear whether and how the government should be involved, if at all, in applying these principles in a world where competition will largely replace regulation.

At the very least, as competition develops across what had been distinct industries, we should level the regulatory playing field by leveling regulation down to the least burdensome level necessary to protect the public interest. Our guiding principle should be to presume that new entrants and competitors should not be subjected to legacy regulation. This is not to say that different media, with different technologies, must be regulated identically. Rather, we need to make sure that the rules for different forms of media delivery, while respecting differences in technology, reflect a coherent and sensible overall approach. To the extent we cannot do that within the confines of the existing statute, we need to work with Congress and others to reform the statute.

THE 21ST CENTURY: A NEW ROLE FOR THE FCC

The Transition Period

As history has shown, markets that have been highly monopolistic do not naturally become competitive. Strong incumbents still retain significant power in their traditional markets and have significant financial incentives to delay the arrival of competition. Strong and enforceable rules are needed initially so that new entrants have a chance to compete. At the same time, historical subsidy mechanisms for telecommunications services must be reformed to eliminate arbitrage opportunities by both incumbents and new entrants.

The technologies needed for the telecommunications marketplace of the future are still evolving, and developing them fully requires significant time and investment. Moreover, there is no guarantee that market forces will dictate that these new technologies will be universally deployed. The massive fixed-cost investments required in some industries will mean that new technologies initially will be targeted primarily at businesses and higher-income households. Even as deployment expands, the economics of these new networks may favor heavy users over lighter users, and in some areas of the country deployment may lag behind.

At the same time, consumer preferences will not change overnight. The expansion of communications choices is already leading to greater consumer confusion. Especially in a world of robust competition, consumers will need clear and accurate information about their choices, guarantees of basic privacy, and swift action if any company cheats rather than competes for their business.

While the opportunities for the United States and the world of a global village are enormous, they can only be realized if other countries follow our lead in fostering competition in national and world markets. People all over the world benefit as more countries enter the Information Age and become trading partners. Thus, as we continue on our own course of bringing competition to former domestic monopoly markets, we must also continue to promote open and competitive markets worldwide.

In sum, although the long-term future of the telecommunications marketplace looks bright, the length and difficulty of the transition to that future is far from certain. To achieve the goal of fully competitive communications markets in five years, we must continue to work to ensure that all consumers have a choice of local telephone carriers and broadband service providers, and that companies are effectively deterred from unscrupulous behavior. We must also continue to promote competition between different media, promote the transition to digital technology, and continue to ensure that all Americans have a wide and robust variety of entertainment and information sources.

The FCC's Role During the Transition to Competition

During the transition to fully competitive communications markets, the FCC, working in conjunction with the states, Congress, other federal agencies, industry, and consumer groups, has six critical goals, all derived from the Communications Act and other applicable statutes:

Promote Competition.—Goal number one is to promote competition throughout the communications industry, particularly in the area of local telephony. The benefits

of competition are well documented in many communications sectors—long distance, wireless, customer-premises equipment, and information services. The benefits of local telephone competition are accruing at this time to large and small companies, but not, for the most part, to residential consumers. We must work to ensure that all communications markets are open, so that all consumers can enjoy the benefits of competition.

To meet this goal, we must continue our efforts to clarify the provisions of the Telecom Act relating to interconnection and unbundled network elements, work with the Bell Operating Companies (BOCs), their competitors, states and consumer groups on meeting the requirements of the statute related to BOC entry into the long distance market, reform access charges, and, as required by Sections 214 and 310(d) of the Communications Act and section 7 of the Clayton Act, continue to review mergers of telecommunications companies that raise significant public interest issues related to competition and consumers.

In the mass media area, we must continue the pro-competitive deployment of new technologies, such as digital television and direct broadcast satellites, and the maintenance of robust competition in the marketplace of ideas. To meet these goals, we must continue rapid deployment of new technologies and services and regular oversight of the structure of local markets to ensure multiple voices, all the while updating our rules to keep pace with the ever-changing mass media marketplace.

Deregulate.—Our second goal is to deregulate as competition develops. Consumers ultimately pay the cost of unnecessary regulation, and we are committed to aggressively eliminating unnecessarily regulatory burdens or delays. We want to eliminate reporting and accounting requirements that no longer are necessary to serve the public interest. Also, where competition is thriving, we intend to increase flexibility in the pricing of access services. We have already deregulated the domestic, long distance market as a result of increased competition, and we stand ready to do so for other communications markets as competition develops. We have also streamlined our rules and privatized some of the functions involved in the certification of telephones and other equipment. We are currently streamlining and automating our processes to issue licenses faster, resolve complaints quicker, and be more responsive to competitors and consumers in the marketplace.

Protect Consumers.—Our third goal is to empower consumers with the information they need to make wise choices in a robust and competitive marketplace, and to protect them from unscrupulous competitors. Consumer bills must be truthful, clear, and understandable. We will have "zero tolerance" for perpetrators of consumer fraud such as slamming and cramming. We will make it easier for consumers to file complaints by phone or over the Internet, and reduce by 50 percent the time needed to process complaints. Further, we will remain vigilant in protecting consumer privacy. We will also continue to carry out our statutory mandates aimed at protecting the welfare of children, such as the laws governing obscene and indecent programming.

Bring Communications Services and Technology to Every American.—Our fourth goal is to ensure that all Americans—no matter where they live, what they look like, what their age, or what special needs they have—should have access to new technologies created by the communications revolution. Toward this end, we must complete universal service reform to ensure that communications services in high-cost areas of the nation are both available and affordable. We must also ensure that our support mechanisms and other tools to achieve universal service are compatible and consistent with competition. We must evaluate—and if necessary, improve—our support mechanisms for low-income consumers, and in particular Native Americans, whose telephone penetration rates are some of the lowest in the country. We must make certain that the support mechanisms for schools, libraries, and rural health care providers operate efficiently and effectively. We must make sure that the 54 million Americans with disabilities have access to communications networks, new technologies and services, and news and entertainment programming.

Foster Innovation.—Our fifth goal is to foster innovation. We will promote the development and deployment of high-speed Internet connections to all Americans. That means clearing regulatory hurdles so that innovation—and new markets—can flourish. We must continue to promote the compatibility of digital video technologies with existing equipment and services. Further, we will continue to encourage the more efficient use of the radio spectrum so that new and expanding uses can be accommodated within this limited resource. More generally, we will continue to promote competitive alternatives in all communications markets.

Advance Competitive Goals Worldwide.—Our sixth goal is to advance global competition in communications markets. The pro-competitive regulatory framework Congress set forth in the Telecom Act is being emulated around the world through the World Trade Organization Agreement. We will continue to assist other nations

in establishing conditions for deregulation, competition, and increased private investment in their communications infrastructure so that they can share in the promise of the Information Age and become our trading partners. We must continue to intensify competition at home and create growth opportunities for U.S. companies abroad. We will continue to promote fair spectrum use by all countries.

The FCC's Core Functions in a Competitive Environment

As we accomplish our transition goals, we set the stage for a competitive environment in which communications markets look and function like other competitive industries. At that point, the FCC must refocus our efforts on those functions that are appropriate for an age of competition and convergence. In particular, we must refocus our efforts from managing monopolies to addressing issues that will not be solved by normal market forces. In a competitive environment, the FCC's core functions would focus on:

Universal Service, Consumer Protection and Information.—The FCC will continue to have a critical responsibility, as dictated by our governing statutes, to support and promote universal service and other public interest policies. The shared aspirations and values of the American people are not entirely met by market forces. Equal access to opportunity as well as to the public sphere are quintessential American values upon which the communications sector will have an increasingly large impact. We will be expected to continue to monitor the competitive landscape on behalf of the public interest and implement important policies such as universal service in ways compatible with competition.

In addition, as communications markets become more competitive and take on attributes of other competitive markets, the need for increased information to consumers and strong consumer protection will increase. We must work to ensure that Americans are provided with clear information so that they can make sense of new technologies and services and choose the ones best for them. We must also continue to monitor the marketplace for illegal or questionable market practices.

Enforcement and Promotion of Pro-Competition Communications Goals Domestically and Worldwide.—As markets become more competitive, the focus of industry regulation will shift from protecting buyers of monopoly services to resolving disputes among competitors, whether over interconnection terms and conditions, program access, equipment compatibility, or technical interference. In the fast-paced world of competition, we must be able to respond swiftly and effectively to such disputes to ensure that companies do not take advantage of other companies or consumers.

The FCC is a model for other countries of a transparent and independent government body establishing and enforcing fair, pro-competitive rules. This model is critical for continuing to foster fair competition domestically as well as to open markets in other countries, to the benefit of U.S. consumers and firms and consumers and firms worldwide. There always will be government-to-government relations and the need to coordinate among nations as communications systems become increasingly global. As other nations continue to move from government-owned monopolies to competitive, privately-owned communications firms, they will increasingly look to the FCC's experience for guidance.

Spectrum Management.—The need for setting ground rules for how people use the radio spectrum will not disappear. We need to make sure adequate spectrum exists to accommodate the rapid growth in existing services as well as new applications of this national and international resource. Even with new technologies such as software-defined radios and ultra-wideband microwave transmission, concerns about interference will continue (and perhaps grow) and the need for defining licensees and other users' rights will continue to be a critical function of the government. We will thus continue to conduct auctions of available spectrum to speed introduction of new services. In order to protect the safety of life and property, we must also continue to consider public safety needs as new spectrum-consuming technologies and techniques are deployed.

Coordination with State and Local Governments and other Federal Agencies

In order to fulfill our vision of a fully competitive communications marketplace in five years, we need a national, pro-competitive, pro-consumer communications policy, supplemented by state and local government involvement aimed at achieving the same goal. The Telecom Act set the groundwork for this goal, and the Commission is fulfilling its role of establishing the rules for opening communications markets across the country, in partnership with state regulators. The Commission must continue to work with state and local governments to promote competition and protect consumers. Toward this end, we have instituted a Local and State Government

Advisory Committee to share information and views on many critical communications issues.

The importance of working and coordinating our efforts in the communications arena with other federal agencies will also continue. We work particularly closely with the Federal Trade Commission on consumer and enforcement issues, and with the Department of Justice on competition issues. We also work with other federal agencies on public safety, disability, Y2K, reliability, and spectrum issues, just to name a few. We see our role vis-a-vis other federal agencies as cooperative and reinforcing, where appropriate.

THE 21ST CENTURY: A NEW STRUCTURE FOR THE FCC

The FCC's Evolving Structure

The FCC must change its structure to match the fast-paced world of competition and to meet our evolving goals and functions, as derived from our authorizing statutes. Our transition goals must be accomplished with minimal regulation or no regulation where appropriate in a competitive marketplace. Moreover, a restructured and streamlined FCC must be in place once full competition arrives, so that we can focus on providing consumers information and protection, enforcing competition laws, and spectrum management.

In sum, we must be structured to react quickly to market developments, to work more efficiently in a competitive environment, and to focus on bottom-line results for consumers. As competition increases, we must place greater reliance on marketplace solutions, rather than the traditional regulation of entry, exit, and prices; and on surgical intervention rather than complex rules in the case of marketplace failure. We must encourage private sector solutions and cooperation where appropriate. But we also must quickly and effectively take necessary enforcement action to prevent abuses by communications companies who would rather cheat than compete for consumers. Ultimately, throughout the agency, we must be structured to render decisions quickly, predictably, and without imposing unnecessary costs on industry or consumers.

Current Restructuring Efforts

The FCC is currently structured along the technology lines of wire, wireless, satellite, broadcast, and cable communications. As the lines between these industries merge and blur as a result of technological convergence and the removal of artificial barriers to entry, the FCC needs to reorganize itself in a way that recognizes these changes and prepares for the future. A reorganization of the agency, over time, along functional rather than technology lines will put the FCC in a better position to carry out its core responsibilities more productively and efficiently.

As the first step in this process, in October 1998, Chairman Kennard announced plans to consolidate currently dispersed enforcement functions into a new Enforcement Bureau and currently dispersed public information functions into a Public Information Bureau. The consolidation of these two key functions that are now spread across the agency will improve efficiency and enhance the delivery of these services to the general public and to industry. The consolidation of these functions will also encourage and foster cooperation between the two new bureaus, other bureaus and offices, and state and local governments and law enforcement agencies. The end result will be improvements in performance of both these functions through an improved outreach program, a better educated communications consumer, and a more efficient, coherent enforcement program.

The new Enforcement Bureau will replace the current Compliance and Information Bureau and, likewise, the new Public Information Bureau will include the current Office of Public Affairs. Therefore, the total number of bureaus and offices at the Commission will remain the same.

The Commission is also investing in new technology to process applications and licenses faster, cheaper, and in a more consumer friendly way through electronic filing and universal licensing. Our goal is to move to a "paperless FCC" that will result in improved service to the public. Examples of these efforts include universal licensing, streamlined application processes, revised and simplified licensing forms, blanket authorizations, authorization for unlicensed services, and electronic filing of license applications and certifications.

Enforcement Bureau

Since the Telecom Act was passed, telephone-related complaints have increased by almost 100 percent. In 1996, the Common Carrier Bureau received over 28,000 complaints; in 1998, that number increased to over 53,000 complaints. With the increase in competition, we expect even more complaints to be filed as consumers grapple with changes in both service options and providers. While we have been im-

plementing streamlined, electronic processes to address this burgeoning workload, we have also determined that the consolidation of the Commission's currently dispersed enforcement functions into one Enforcement Bureau is a necessary and important step to providing better service to the public.

The Commission currently has four organizational units dedicated principally or significantly to enforcement—the Compliance and Information Bureau, the Mass Media Bureau Enforcement Division, the Common Carrier Bureau Enforcement Division and the Wireless Telecommunications Bureau Enforcement and Consumer Information Division. Consolidating most enforcement responsibilities of these organizations into a unified Enforcement Bureau will result in more effective and efficient enforcement. The Enforcement Bureau will coordinate enforcement priorities and efforts in a way that best uses limited Commission resources to ensure compliance with the important responsibilities assigned to the FCC by Congress.

The consolidation of various FCC enforcement functions also responds to the fact that the need for effective enforcement of the Communications Act and related requirements is becoming even more important as competition and deregulation increase. As communications markets become increasingly competitive, the pace of deregulation will intensify. Those statutory and rule provisions that remain in an increasingly competitive, deregulatory environment will be those that Congress and the Commission have determined remain of central importance to furthering key statutory goals—e.g., providing a structure for competition to flourish, assisting customers and users of communications services in being able to benefit from competitive communications services, ensuring that spectrum is used in an efficient manner that does not create harmful interference, and promoting public safety.

As unnecessary regulation is eliminated and the demands of the marketplace increase, the Commission must focus its resources on effective and swift enforcement of the statutory and regulatory requirements that remain. The consolidation of our enforcement activities will allow us to do just that in a streamlined, centralized, and more effective way.

Public Information Bureau

Consumer inquiries at the Commission have increased dramatically since 1996. In 1998, we received over 460,000 phone calls to telephone service representatives, and over 600,000 calls to our automated response system. There were on average over 266,000 hits on the FCC's web site a day, totalling over 97 million in 1998 (up over 400 percent from 21 million in 1996). We expect these numbers to increase as more consumers seek information regarding the ever growing array of services and providers in the communications marketplace.

Currently, consumer inquiries are handled by several different offices and bureaus throughout the Commission and the methods used to handle these inquiries vary widely. While each office has a small contingent of staff handling inquiries, they have had varying degrees of success in meeting the ever increasing volume. Although the Commission established a National Call Center in June 1996, current processes still require a great number of consumers seeking information to contact other offices and bureaus directly to get their questions answered.

The creation of the Public Information Bureau allows the Commission to better serve the public by establishing a single source organization as a "one-stop" shop or "FCC General Store" for handling all inquiries and the general expression of views to the Commission, thereby better meeting the public's information needs. Merging the resources of the Office of Public Affairs, which includes public service and inquiry staffs, public notice distribution, and the management of the FCC web site, with the FCC Call Center will provide a streamlined, more efficient, and consolidated information source for the public. Consumers would only have to contact one source, whether by telephone (1–888–CALLFCC) or by E-mail or the Internet (FCCINFO@FCC.GOV). The Public Information Bureau also plans to establish one source for mailing inquiries to the FCC (for example, P.O. FCC).

The creation of the Public Information Bureau will encourage more public participation in the work of the Commission. The staff of the Public Information Bureau will conduct consumer forums across the country to inform and solicit feedback from consumers about the Commission's policies, goals, and objectives. This feedback will be shared with other bureaus to help ensure that Commission rules are fair, effective, and sensible, and that they support competition while responding to consumer concerns. The Public Information Bureau also plans to share its databases with state and local governments as appropriate, to coordinate our respective abilities to respond to consumer complaints and track and address industry abuses.

The creation of the Public Information Bureau supports the Commission's efforts to foster a pro-competitive, deregulatory, and pro-consumer approach to communications services. The staff of the Public Information Bureau will provide consumers

with information so that consumers can make informed decisions regarding their communications needs. The staff of the Public Information Bureau will also work with other bureaus to issue consumer alerts and public service announcements to give consumers information about their rights and information to protect themselves from unscrupulous individuals and firms. Finally, the Public Information Bureau will provide easy public access to FCC information as well as a convenient way for the public to make its views known, thus supporting the Commission's efforts to assist communities across America in dealing with complex communications issues and to provide opportunities for a wide range of voices to be expressed publicly.

Streamlining and Automating the FCC Licensing Process

The Commission's "authorization of service" activities cover the licensing and authorization through certification, and unlicensed approval, of radio stations and devices, telecommunications equipment and radio operators, as well as the authorization of common carrier and other services and facilities. The Commission has already begun automating and reengineering our authorization of service processes across the agency by reengineering and integrating our licensing databases and through the implementation of electronic filing.

The Universal Licensing System (ULS) project is fundamentally changing the way the Commission receives and processes wireless applications. ULS will combine all licensing and spectrum auctions systems into a single, integrated system. It collapses 40 forms into four; allows licensees to modify online only those portions of the license that need to be modified without resubmitting a new application; and advises filers when they have filled out an application improperly by providing immediate electronic notification of the error. During the month of February 1999, 75 percent of receipts (916 applications) filed under the currently implemented portions of ULS were processed in one day.

Universal licensing is an example of how we are working to change the relationship between the Commission, spectrum licensees, and the public by increasing the accessibility of information and speeding the licensing process, and thus competitive entry, dramatically. Universal licensing is becoming the model for automated licensing for the entire agency.

In the Wireless Telecommunications Bureau, electronic filing has been fully implemented throughout the Land Mobile Radio services, antenna registration, and amateur radio filings. More than 50 percent of the Wireless Telecommunications Bureau's filings are now accomplished electronically. Significant service improvements are evidenced by the fact that 99 percent of Amateur Radio service filings are now processed in less than five days, with most electronically filed applications being granted overnight. The Wireless Bureau also has an initiative to transfer the knowledge used by license examiners in manually reviewing applications to computer programs so that applications can be received, processed, and licenses granted in even less time.

The Mass Media Bureau is implementing a similar electronic filing initiative. In October, the FCC issued rules that substantially revise the application process in 15 key areas, including sales and license renewals, in order to effectuate mandatory electronic filing for broadcasters. When fully implemented, the new electronic filing system will reduce the resources required to process authorizations, accelerate the grant of authorizations, and improve public access to information about broadcast licensees.

The Common Carrier Bureau has also implemented electronic filing of tariffs and associated documents via the Internet. The Electronic Tariff Filing System enables interested parties to access and download documents over the Internet, and to file petitions to reject, or suspend and investigate tariff filings electronically. Since July 1, 1998, over 10,000 electronic tariff filings have been received, replacing approximately 750,000 pages of information.

The results of all these streamlining efforts include a more economical use of FCC personnel resources, improvement in processing times, the ability of our customers to file via the Internet or through other electronic filing mechanisms, and the ability to provide our customers with immediate status reports on their applications as well as real time access to on-line documents. It is estimated that our move toward a "paperless FCC" will save the public approximately 700,000 hours of paperwork in this fiscal year alone.

Budget and Workforce Impact

In anticipation of the expected increased efficiencies our restructuring plans and other streamlining and automation improvements will produce, the FCC is confronting the issue of how it should look and operate in fiscal year 2000 and beyond. We expect that our re-engineering and restructuring efforts will yield increased effi-

ciencies and streamlining opportunities, particularly in the area of authorization of service, due to automation and regulatory changes. However, these efforts will also result in the potential displacement of staff in certain locations and a need to retrain and reassign other staff.

Buyout authority is a tool that will enhance the Commission's ability to alter the skills mix of its workforce to carry out its changing mission more effectively. Targeted buyouts for staff would facilitate our restructuring efforts in a cost-effective manner. The Commission has requested buyout authority in its budget request for fiscal year 2000.

The Commission is dedicated to keeping staff informed and involved in our restructuring and streamlining efforts, and to minimizing workplace disruption that may result from these efforts through staff retraining, reassignment, and other methods. It is critical, as we consider ways to restructure and streamline Commission operations, that we continue to recognize and respect the hard work of our employees, many of whom have been with the Commission for many years. Change is always difficult, and it is imperative that our staff understands and supports the necessary changes that are taking place—and will continue to take place—at the Commission. Accordingly, we are working closely with the National Treasury Employees Union (NTEU) to ensure that staff is involved in all these issues and that their views are incorporated into the Commission's planning process.

Restructuring Process and Timeline

Planning for the Public Information Bureau began in late November 1998 and for the Enforcement Bureau in mid-December 1998. A Task Force comprised of both managers and staff from relevant Bureaus and Offices, as well as NTEU representatives, has been meeting regularly since early January to consider such issues as the appropriate functions of each of the Bureaus and their organization. Efforts have also been made on an informal basis both inside and outside the Commission to ensure that a wide range of ideas are considered during the planning process. A proposed reorganization plan should be formally submitted to the Commission for its consideration in Spring, 1999. Upon approval by the Commission, it will be formally submitted to the NTEU and appropriate congressional committees.

Restructuring to Reflect Industry Convergence

As the traditional lines dividing communications industries blur and eventually erode, the traditional ways of regulating or monitoring these industries will also have to change. The FCC must think about the complex issues resulting from converging communications markets from both a policy and structural perspective. How the FCC should be structured to address issues arising from a more competitive, converged communications marketplace is inextricably tied up with the policy choices that will be made on how to address the blurring of regulatory distinctions.

From a structural perspective, as noted in our fiscal year 2000 budget submitted to Congress, there are a number of steps we are committed to take. We will continue to evaluate whether certain regulations are no longer necessary in the public interest and should be repealed or modified as required by Section 11 of the Communications Act. We will continue to use our forbearance authority where appropriate. We will continue our efforts to reduce reporting requirements and eliminate unnecessary rules, and to level regulation to the least burdensome possible, consistent with the public interest. In addition, in our fiscal year 2000 budget, we have committed to reviewing our cable services and mass media functions.

We recognize that much additional analysis is needed to consider the impact of industry convergence on the FCC's policies and rules and on our structure. We will continue to meet with Congress, our state regulatory partners, industry, consumer groups, and others to solicit input and feedback on our restructuring, streamlining and policy initiatives and the impact of industry convergence.

SUBSTANTIVE DEREGULATION EFFORTS

As telecommunications markets become more competitive, we must eliminate regulatory requirements that are no longer useful. We are already engaged in an ongoing process of reviewing our entire regulatory framework to see which rules should be eliminated or streamlined.

FCC Biennial Review of Regulations

In November 1997, the Commission initiated a review of the Commission's regulations, as required by Section 11 of the Telecom Act. Beginning in 1998 and in every even-numbered year thereafter, the FCC must conduct a review of its regulations regarding the provision of telecommunications service and the Commission's broadcast ownership rules. The Telecom Act charges the Commission with determining

whether, because of increased competition, any regulation no longer serves the public interest.

Chairman Kennard announced in November 1997 that the Commission's 1998 Biennial Review would be even broader than mandated by the Telecom Act. In addition, at the Chairman's direction, the Commission accelerated the Congressionally-mandated biennial review requirement by beginning in 1997 rather than in 1998. As part of the 1998 Biennial Review, each of the operating bureaus, together with the Office of General Counsel, hosted a series of public forums and participated in practice group sessions with the Federal Communications Bar Association to solicit informal input from the public. The Commission also hosted a web site on the biennial review and asked for additional suggestions via e-mail.

After input from the public, the Commission initiated 32 separate biennial review rulemaking proceedings, covering multiple rule parts, aimed at deregulating or streamlining Commission regulations. The Commission devoted substantial attention and resources to the biennial review. Roughly two-thirds of the proceedings involved common carrier deregulation or streamlining. The Commission also instituted a broad review of its broadcast ownership rules. To date, the Commission has adopted orders in ten of the 1998 biennial review proceedings, with others to be forthcoming. (See Appendix B)

From the outset, the focus of the Biennial Review has been on regulating in a common sense manner and relying on competition as much as possible. The Chairman and the other Commissioners have worked together to make the biennial review a meaningful force for deregulation and streamlining. The 1998 review was the Commission's first biennial review, and was being conducted while the Commission was still in the process of implementing the Telecom Act. The Chairman and the Commission intend to build on the 1998 review so that the 2000 review and future reviews will produce even more deregulatory actions.

Continued FCC Deregulation Efforts

As we move toward our goal of fully competitive communications markets, our efforts to streamline and eliminate unnecessary rules must be increased and expanded. Accordingly, the 2000 Biennial Review will be a top priority for the Commission.

As we did with the 1998 review, we plan to start the 2000 review early, by putting a team in place in 1999 to work with the Commissioners and the Bureaus and Offices on planning and structuring the review. We will also continue to keep our review broad in focus. The team would evaluate the success of the 1998 review and consider whether changes are necessary for the 2000 review. The team would also consider whether any changes are needed in the methodology we have used to review our regulations. The team would again solicit input and recommendations from state regulators, industry, consumer groups, and others, to ensure that the 2000 review is a major force for deregulation.

In short, we will be guided by one principle: the elimination of rules that impede competition and innovation and do not promote consumer welfare.

STRATEGIC PLANNING EFFORTS

Background

The Government Performance and Results Act of 1993 (Results Act) provides a useful framework for a federal agency to develop a strategic plan. The Results Act recommends including as part of such a plan: a comprehensive mission statement; a description of the general goals the agency wants to achieve and how they will be achieved; a discussion of the means, strategies and resources required to achieve our goals; a discussion of the external factors that could affect achievement of our goals; and a discussion of the consultations that took place with customers and stakeholders in the development of the plan.

The Results Act also recommends that an agency establish measurable objectives and a timeline to achieve the goals specified in the strategic plan. The agency would consult with Congress and solicit input from its customers and stakeholders. The purpose of the Results Act is to bring private sector management techniques to public sector programs.

FCC Implementation of the Results Act

When the Results Act was passed, the FCC was already hard at work implementing similar management initiatives. In 1993, we began the work of reinventing ourselves, streamlining and restructuring the agency to meet the challenges of the Information Age. In the process we created the Wireless Telecommunications and the International Bureaus. In 1995, we issued a report—"Creating a Federal Communications Commission for the Information Age"—that included numerous rec-

ommendations for administrative and legislative changes, many of which were subsequently adopted.

Each of our bureaus and offices developed their own mission statement, identified their customers and surveyed them on their needs. Benchmark customer service standards were established for each of their policy and rulemaking, authorization of service, enforcement and public information service activities. These standards were published on their websites and customers were periodically surveyed to determine whether their service goals were being met.

We also volunteered to participate in Results Act implementation pilot projects, naming the Wireless Telecommunications Bureau's Land Mobile radio and the Office of Engineering and Technology's Equipment Authorization activities as the agency's two participants. We organized a Steering Committee with an ambitious schedule for completing the requirements of the Results Act.

Impact of the Telecom Act

Enactment of the Telecom Act in February 1996 had a profound impact on the FCC. Pursuant to the Telecom Act, the FCC was required to initiate numerous rulemakings, many with statutorily mandated and expedited notice and comment period. The impact of implementing the Telecom Act affected every aspect of the FCC—its resource allocations, its schedule for rulemakings, and its very organizational structure—for more than two years.

Enactment of the Telecom Act also changed the scope and level of our Results Act planning effort. We had to reformulate our mission and performance goals in light of the Telecom Act. We decided for the first three years after passage of the Telecom Act to marry the major goal of the Act—to "promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of telecommunications technologies"—with the FCC's four major budget activities of policy and rulemaking, authorization of service, compliance, and public information services.

This approach worked well during the major period that the FCC was implementing the Telecom Act. Under this approach, however, the performance goals for each of the individual Bureaus remained a somewhat disconnected patchwork of objectives reflecting a collection of individual Bureaus' efforts to implement the Telecom Act. Since passage of the Telecom Act, with the traditional distinctions between over-the-air broadcasting, cable, wireless, wireline and satellite becoming less distinct, it is becoming clear that the FCC must conceive a new approach to our mission and our structure.

New FCC Strategic Plan

The FCC has determined that we need a new regulatory model and a new Strategic Plan that will serve as the Commission's blueprint as we enter the 21st Century. We need a new Strategic Plan to point the way to where we want to be and the means and resources by which we will get there.

We are generally structuring our Strategic Plan based on our future core functions: universal service, consumer protection and information; enforcement and promotion of pro-competition communications goals domestically and internationally; and spectrum management. Our strategic planning efforts are thus tied into the restructuring and streamlining efforts that are already on-going. In addition, as noted above, we must take a hard look at how to organize ourselves for the New Media age. The convergence of technologies and industries require that we examine and change our stovepipe bureau structure, and we plan to address those issues in our Strategic Plan as well.

Key senior managers will be responsible for developing the strategic objectives and performance goals for the Strategic Plan. As our work on restructuring proceeds, we will convene strategic objective planning sessions to develop a planning document for each of our core activities. We will also develop a schedule, based on fiscal years, on how we will achieve our objectives.

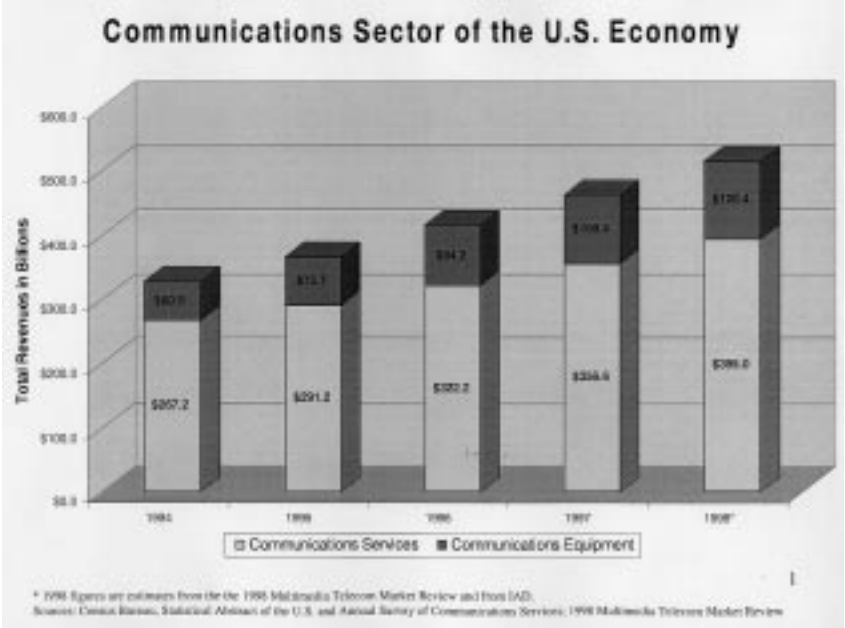
The Strategic Plan will represent the cooperative work of the entire FCC, reflecting input from the Commissioners, Bureau management, agency staff, and others affected by or interested in the FCC's activities. In developing our Strategic Plan, we have already started to seek input from a wide variety of FCC stakeholders and intend to intensify our efforts in the next few months. These include other Commissioners, Commission staff, Members of Congress and their staff, the Office of Management and Budget (OMB), industry groups, consumer groups, academia and others. Suggestions will be gathered on both the draft Strategic Plan and on the steps to implement it—including deregulatory actions, restructuring and realignment of FCC functions and management. In addition, we plan to incorporate comments on this document, "A New FCC for the 21st Century," into the draft Strategic Plan.

Our draft Strategic Plan, along with any implementation proposals, will be made public and we will actively solicit comment. We will issue a Public Notice encouraging the public to comment on our draft plan, which will be displayed on our Internet Home Page by July 1999. We will hold a series of meetings with interested groups to gain their insight into how we can better serve the public interest. We will make particular efforts to discuss the draft plan with Congress, the states, industry, and with consumers and small companies affected by our work. We plan to submit a more final plan to Congress and OMB in September 1999.

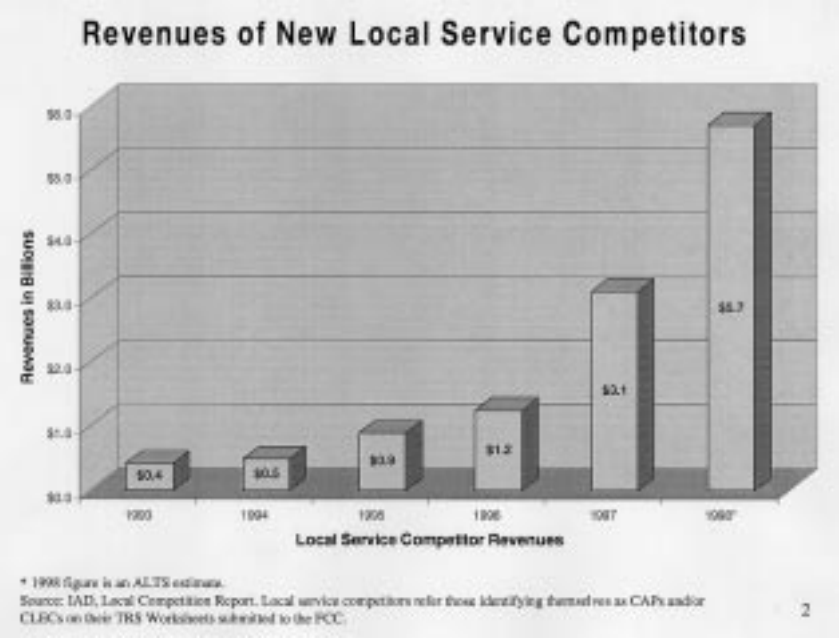
CONCLUSION

Just as the communications industry and other sectors of our economy are constantly adapting to change and competition, so must the FCC. A new century and new economy demand a new FCC. We must plan for the future, while continuing to work on the challenges we face today to promote competition, foster innovation, and help bring the benefits of the 21st century to all Americans. We look forward to working with Congress, industry, consumers, state and local governments, and others on a critical assessment of what the "New FCC" should look like, and how we can get there.

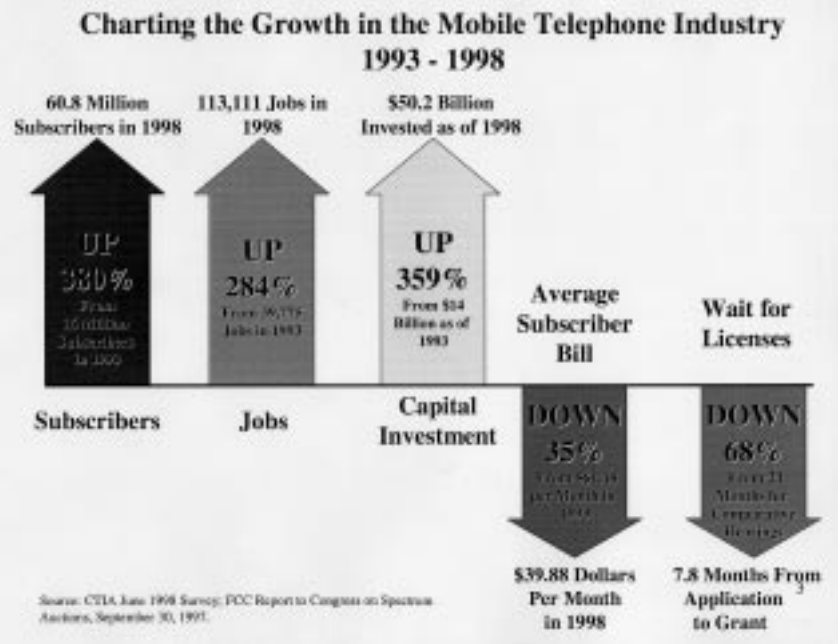
APPENDIX A



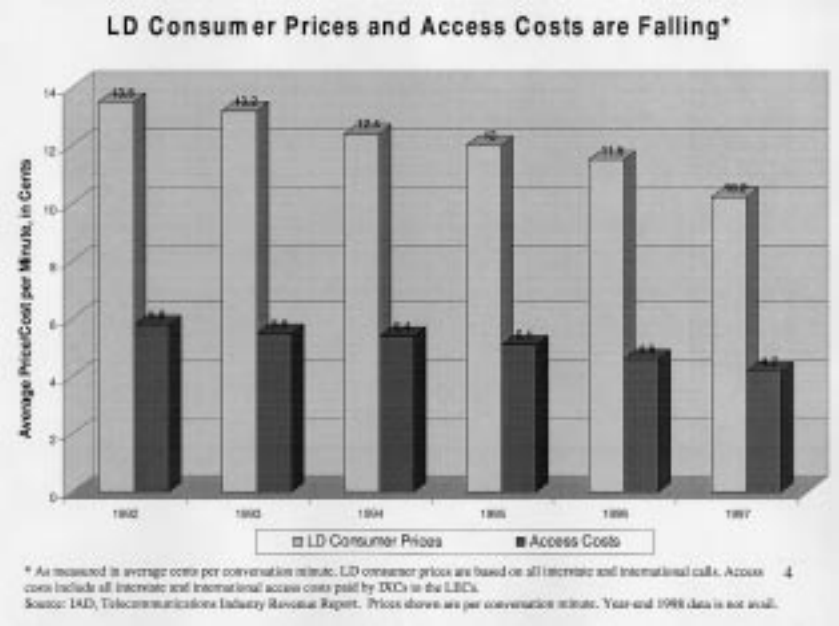
[Chart 1]



[Chart 2]

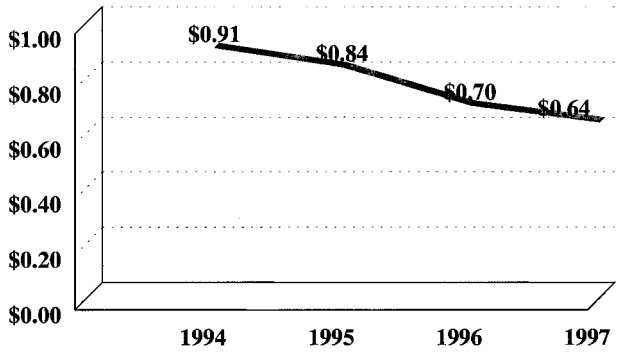


[Chart 3]



[Chart 4]

Average Rate per Minute* for an International Call 1994-1997



*** Consumers can obtain even lower per minute rates under some rate plans**

Source: FCC Section 43.61 data (excluding reorigination and country direct and beyond). Full-year 1998 data is not yet available.

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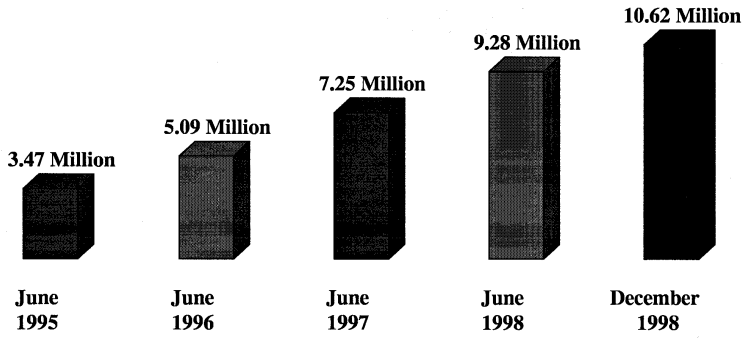
[Chart 5]

DTH/DBS/C-Band GROWTH

From June, 1995 to December, 1998 satellite home subscribers grew 206% and now exceed 10.5 million .

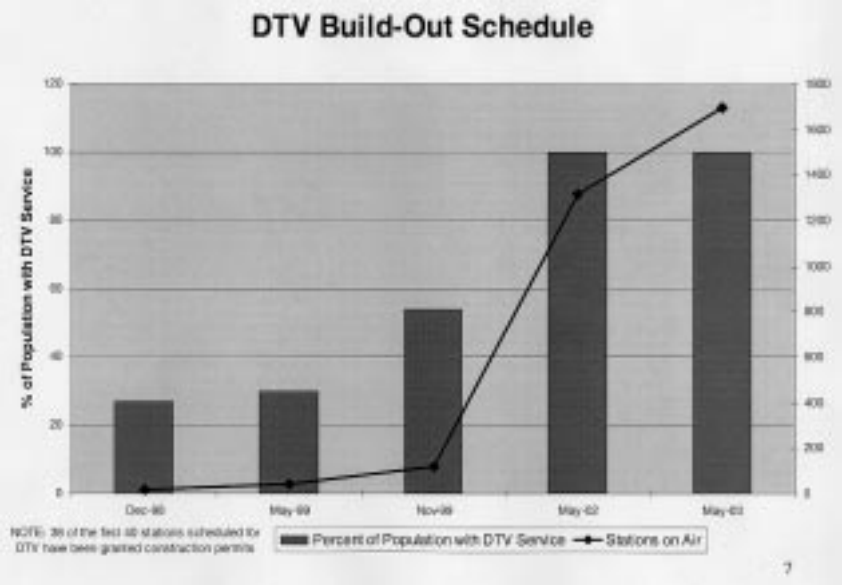
(# of Subscribers)



Source: DBS Investor

6

[Chart 6]



[Chart 7]

APPENDIX B

1998 BIENNIAL REGULATORY REVIEW

PROCEEDINGS INITIATED/COMPLETED—ORDERS ISSUED

Telecommunications Providers (Common Carriers)

Streamline and consolidate rules governing application procedures for wireless services to facilitate introduction of electronic filing via the Universal Licensing System. 1998 Biennial Regulatory Review—Amendment of Parts 0, 1, 13, 22, 24, 26, 27, 80, 87, 90, 95, 97, and 101 of the Commission's Rules to Facilitate the Development and Use of the Universal Licensing System in the Wireless Telecommunications Services, WT Dkt No. 98–20, NPRM, FCC 98–25 (rel. March 19, 1998), R&O, FCC 98–234 (rel. Oct. 21, 1998).

Streamline the equipment authorization program by implementing the recent mutual recognition agreement with Europe and providing for private equipment certification. 1998 Biennial Regulatory Review—Amendment of Parts 2, 25 and 68 of the Commission's Rules to Further Streamline the Equipment Authorization Process for Radio Frequency Equipment, Modify the Equipment Authorization Process for Telephone Terminal Equipment, Implement Mutual Recognition Agreements and Begin Implementation of the Global Mobile Personal Communications by Satellite (GMPCS) Arrangements, GEN Dkt No. 98–68, NPRM, FCC 98–92 (rel. May 18, 1998), R&O, FCC 98–338 (rel. Dec. 23, 1998).

Eliminate rules concerning the provision of telegraph and telephone franks. 1998 Biennial Regulatory Review—Elimination of Part 41 Telegraph and Telephone Franks, CC Dkt No. 98–119, NPRM, FCC 98–152 (rel. July 21, 1998), R&O, FCC 98–344 (rel. Feb. 3, 1999).

In addition to addressing issues remanded by the Ninth Circuit, reexamine the nonstructural safeguards regime governing the provision of enhanced services by the Bell Operating Companies (BOCs) and eliminate the requirement that BOCs receive pre-approval from the FCC on their Comparably Efficient Interconnection (CEI) plans. Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services; 1998 Biennial Regulatory Review—Review of Computer III and ONA Safeguards and Requirements, CC Dkt Nos. 95–20 and 98–10, FNPRM, FCC 98–8 (rel. Jan. 30, 1998), R&O, FCC 99–36 (rel. March 10, 1999).

Other

Amend cable and broadcast annual employment report due dates to streamline and simplify filing. 1998 Biennial Regulatory Review—Amendment of Sections 73.3612 and 76.77 of the Commission's Rules Concerning Filing Dates for the Commission's Equal Employment Opportunity Annual Employment Reports, MO&O, FCC 98–39 (rel. Mar. 16, 1998).

Streamline broadcast filing and licensing procedures. 1998 Biennial Regulatory Review—Streamlining of Mass Media Applications, Rules and Processes, MM Dkt No. 98–43, NPRM, FCC 98–57 (rel. Apr. 3, 1998), R&O, FCC 98–281 (rel. Nov. 25, 1998).

Provide for electronic filing for assignment and change of radio and TV call signs. 1998 Biennial Regulatory Review—Amendment of Part 73 and Part 74 Relating to Call Sign Assignments for Broadcast Stations, MM Dkt No. 98–98, NPRM, FCC 98–130 (rel. June 30, 1998), R&O, FCC 98–324 (rel. Dec. 16, 1998).

Simplify and unify Part 76 cable pleading and complaint process rules. 1998 Biennial Regulatory Review—Part 76—Cable Television Service Pleading and Complaint Rules, CS Dkt No. 98–54, NPRM, FCC 98–68 (rel. Apr. 22, 1998), R&O, FCC 98–348 (rel. Jan. 8, 1999).

Modify or eliminate Form 325, annual cable television system report. 1998 Biennial Regulatory Review—"Annual Report of Cable Television System," Form 325, Filed Pursuant to Section 76.403 of the Commission's Rules, CS Dkt No. 98–61, NPRM, FCC 98–79 (rel. Apr. 30, 1998), R&O, FCC 99–12 (rel. , 1999) [Adopted Feb. 1, 1999].

Streamline and consolidate public file requirements applicable to cable television systems. 1998 Biennial Regulatory Review—Streamlining of Cable Television Services Part 76 Public File and Notice Requirements, CS Dkt No. 98–132, NPRM, FCC 98–159 (rel. July 20, 1998), R&O, FCC 99–13 (rel. , 1999) [Adopted Feb. 1, 1999].

PROCEEDINGS INITIATED/PENDING

Telecommunications Providers (Common Carriers)

Deregulate radio frequency (RF) lighting requirements to foster the development of new, more energy efficient RF lighting technologies. 1998 Biennial Regulatory Re-

view—Amendment of Part 18 of the Commission's Rules to Update Regulations for RF Lighting Devices, ET Dkt No. 98–42, NPRM, FCC 98–53 (rel. Apr. 9, 1998).

Removal or reduction of, or forbearance from enforcing, regulatory burdens on carriers filing for technology testing authorization. 1998 Biennial Regulatory Review—Testing New Technology, CC Dkt No. 98–94, NOI, FCC 98–118 (rel. June 11, 1998).

Modify accounting rules to reduce burdens on carriers. 1998 Biennial Regulatory Review—Review of Accounting and Cost Allocation Requirements, CC Dkt No. 98–81, NPRM, FCC 98–108 (rel. June 17, 1998).

In NPRM portion, considering forbearance from additional requirements regarding telephone operator services applicable to commercial mobile radio service providers (CMRS) and, more generally, forbearance from other statutory and regulatory provisions applicable to CMRS providers. Personal Communications Industry Association's Broadband Personal Communications Services Alliances' Petition for Forbearance For Broadband Personal Communications Services; 1998 Biennial Regulatory Review—Elimination or Streamlining of Unnecessary and Obsolete CMRS Regulations; Forbearance from Applying Provisions of the Communications Act to Wireless Telecommunications Carriers, WT Dkt No. 98–100, NPRM, FCC 98–134 (rel. July 2, 1998).

Provide for a blanket section 214 authorization for international service to destinations where the carrier has no affiliate; eliminate prior review of pro forma transfers of control and assignments of international section 214 authorizations; streamline and simplify rules applicable to international service authorizations and submarine cable landing licenses. 1998 Biennial Regulatory Review—Review of International Common Carrier Regulations, IB Dkt No. 98–118, NPRM, FCC 98–149 (rel. July 14, 1998).

Eliminate duplicative or unnecessary common carrier reporting requirements. 1998 Biennial Regulatory Review—Review of ARMIS Reporting Requirements, CC Dkt No. 98–117, NPRM, FCC 98–147 (rel. July 17, 1998).

Privatize the administration of international accounting settlements in the maritime mobile and maritime satellite radio services. 1998 Biennial Regulatory Review—Review of Accounts Settlement in the Maritime Mobile and Maritime Mobile-Satellite Radio Services and Withdrawal of the Commission as an Accounting Authority in the Maritime Mobile and the Maritime Mobile-Satellite Radio Services Except for Distress and Safety Communications, IB Dkt No. 98–96, NPRM, FCC 98–123 (rel. July 17, 1998).

Simplify Part 61 tariff and price cap rules. Biennial Regulatory Review—Part 61 of the Commission's Rules and Related Tariffing Requirements, CC Dkt No. 98–131, NPRM, FCC 98–164 (rel. July 24, 1998).

Deregulate or streamline policies governing settlement of accounts for exchange of telephone traffic between U.S. and foreign carriers. 1998 Biennial Regulatory Review—Reform of the International Settlements Policy and Associated Filing Requirements, IB Dkt No. 98–148, NPRM, FCC 98–190 (rel. Aug. 6, 1998).

Modify Part 68 rules that limit the power levels at which any device attached to the network can operate to allow use of 56 Kbps modems. 1998 Biennial Regulatory Review—Modifications to Signal Power Limitations Contained in Part 68 of the Commission's Rules, CC Dkt No. 98–163, NPRM, FCC 98–221 (rel. Sept. 16, 1998).

Streamline and rationalize information and payment collection from contributors to Telecommunications Relay Service, North American Numbering Plan Administration, Universal Service, and Local Number Portability Administration funds. 1998 Biennial Regulatory Review—Commission Proposes to Streamline Reporting Requirements for Telecommunications Carriers, CC Dkt No. 98–171, NPRM, FCC 98–233 (rel. Sept. 25, 1998).

Modify or eliminate Part 64 restrictions on bundling of telecommunications service with customer premises equipment. 1998 Biennial Regulatory Review—Policy and Rules Concerning the Interstate, Interexchange Marketplace/implementation of Section 254(g) of the Communications Act of 1934, as Amended/Review of the Customer Premises Equipment and Enhanced Services Unbundling Rules in the Interexchange, Exchange Access and Local Exchange Markets, CC Dkt Nos. 98–183 and 96–61, NPRM, FCC 98–258 (rel. Oct. 9, 1998).

Eliminate or streamline various rules prescribing depreciation rates for common carriers. 1998 Biennial Regulatory Review—Review of Depreciation Requirements for Incumbent Local Exchange Carriers, CC Dkt No. 98–137, NPRM, FCC 98–170 (rel. Oct. 14, 1998).

Repeal Part 62 rules regarding interlocking directorates among carriers. 1998 Biennial Regulatory Review—Repeal of Part 62 of the Commission's Rules, CC Dkt No. 98–195, NPRM, FCC 98–294 (rel. Nov. 17, 1998).

Seek comment on various deregulatory proposals of SBC Communications, Inc. not already subject to other biennial review proceedings. 1998 Biennial Regulatory

Review—Petition for Section 11 Biennial Review filed by SBC Communications, Inc., Southwestern Bell Telephone Company, Pacific Bell, and Nevada Bell, CC Dkt No. 98–177, NPRM, FCC 98–238 (rel. Nov. 24, 1998).

Consider modifications or alternatives to the 45 MHz CMRS spectrum cap and other CMRS aggregation limits and cross-ownership rules. 1998 Biennial Regulatory Review—Review of CMRS Spectrum Cap and Other CMRS Aggregation Limits and Cross-Ownership Rules, WT Dkt No. 98–205, NPRM, FCC 98–308 (rel. Dec. 18, 1998).

Broadcast Ownership

Conduct broad inquiry into broadcast ownership rules not the subject of other pending proceedings. 1998 Biennial Regulatory Review—Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, MM Dkt No. 98–35, NOI, FCC 98–37 (rel. Mar. 13, 1998).

Other

Review current Part 15 and Part 18 power line conducted emissions limits and consider whether the limits may be relaxed to reduce the cost of compliance for a wide variety of electronic equipment. 1998 Biennial Regulatory Review—Conducted Emissions Limits Below 30 MHz for Equipment Regulated Under Parts 15 and 18 of the Commission's Rules, ET Dkt No. 98–80, NOI, FCC 98–102 (rel. June 8, 1998).

Streamline AM/FM radio technical rules and policies. 1998 Biennial Regulatory Review—Streamlining of Radio Technical Rules in Parts 73 and 74 of the Commission's Rules, MM Dkt No. 98–93, NPRM, FCC 98–117 (rel. June 15, 1998).

Streamline application of Part 97 amateur service rules. 1998 Biennial Regulatory Review—Amendment of Part 97 of the Commission's Amateur Service Rules, WT Dkt No. 98–143, NPRM, FCC 98–1831 (rel. Aug. 10, 1998).

Streamline the Gettysburg reference facilities so that electronic filing and electronic access can substitute for the current method of written filings/access. 1998 Biennial Regulatory Review—Amendment of Part 0 of the Commission's Rules to Close the Wireless Telecommunications Bureau's Gettysburg Reference Facility, WT Dkt No. 98–160, NPRM, FCC 98–217 (rel. Sept.18, 1998).

Streamline Part 90 private land mobile services rules. 1998 Biennial Regulatory Review—47 C.F.R. Part 90—Private Land Mobile Radio Services, WT Dkt No. 98–182, NPRM, FCC 98–251 (rel. Oct. 20, 1998).

RATE INTEGRATION

Senator GREGG. Mr. Chairman, do you have any questions?

Senator STEVENS. I do, and I thank you.

I am pleased to hear you, Mr. Chairman. I think sometimes these hearings get a little bit edgy, but we have noticed with great interest, Senator Inouye and I, who have really fought for rate integration, that you and the commissioners are giving a defense to rate integration in the court challenge. I would hope that you would pursue that as vigorously as it was pursued getting it into law, and I would like to know if there is anything we could do to help you in that defense. I do thank you very much.

Mr. KENNARD. Thank you.

UNIVERSAL SERVICE

Senator STEVENS. Those of us who were involved in the universal service concepts in the 1996 act are getting a little concerned about the pressures on universal service from all sides. The new line items on bills really came out of the schools and libraries hook-up, rather than the universal service itself. Geographic rate deaveraging, concerns over the accuracy of the proxy cost model and the drive to make explicit all implicit costs.

I told a group this morning, it is like requiring McDonald's to list on the price of a hamburger the cost of the mayonnaise, the pickles, the lettuce, and tomatoes, and everything else that goes along

with the bun and the hamburger. It does not make sense to us. We sought really to have the cost of universal service understood by the carriers, but we did not seek to get to the point where all implicit costs of the system would be explicit on every bill. But now we are concerned that our farm team really is discussing that. It looks like universal service, because of all of these pressures, is really sort of being set up for a fall; that there are people who are really designing these attacks to make certain that the political battle and the next go-around of legislation is not to fine-tune universal service but to save it.

Are you aware of this total attack on universal service from the industry coming out of some of the concepts that the FCC has decided that it must pursue?

Mr. KENNARD. I think that, as I am sure you are aware, Mr. Chairman, it is a multi-faceted industry and there are many elements of the industry that are very supportive of universal service, I want to assure you that this Commission is very committed to universal service.

The last time I was here I remember you raised some concerns about the so-called 75–25 jurisdictional split and this Commission has voted unanimously twice not to impose a 75–25 split. I think that action and several others by this Commission evinces its determination to make sure that universal service remains viable in a more competitive environment.

I agree with you. I think that we have a lot of challenges ahead with universal service. We are in the middle of a very important proceeding to design cost models for universal service. But you have my commitment to make sure that universal service survives as a fundamental safety net for people in high-cost and rural areas and I know that my colleagues share that commitment.

Senator STEVENS. When we faced similar problems with the Postal Service years ago, we created the Postal Rate Commission. It is concerned solely with rates and not with delivery of service or with type of service or management or anything, just with the concepts of the cost of service, and it is the one that approves increasing the postage stamp rate, for instance.

I really see that with so many new concepts coming into telecommunications that it is hard for us to maintain the universal service concept unless there is some real defense of it across the board, as with the postage stamp itself. The postage stamp was under attack years ago. The concept that you have to pay the same amount to send a letter to California as you would have to pay to just send it across town in an eastern city was really subject to great attack. I see the same thing coming now, and if we lose this battle, I think we will lose universality of the system itself. We will have a creaming of the system and there will be people who will be haves and people who are have-nots. I hope you will vigorously defend universal service.

MICRORADIO

Let me also, though, commend you for your efforts to bring about diversity in broadcasting. We think that is the way the country should go. But I have one reservation, and that is in terms of microradio: how can that be established without interference with

the signals of the established stations? Won't it bring about an overcrowding of the spectrum in those areas where there is already just a division of even a single point on the spectrum?

Mr. KENNARD. Not necessarily. We are going to move ahead very carefully with microradio. In fact, I would not have been comfortable proposing microradio service if I thought that it would create interference over the airwaves.

The public airwaves are, as you know, a very precious national resource, and we have to do everything we can to maximize its use. That is really what microradio is about, it is finding ways to allow more people to use the airwaves without causing harmful interference to those incumbents.

We are the guardian of the spectrum. Our job that you gave us in the Congress is to make sure that this spectrum is used efficiently and effectively, and we are not going to do anything that is going to degrade service from the existing broadcasters. But we do have to find ways to use it more effectively. Part of microradio is ensuring that we can have as many people using the airwaves as possible and bringing new voices to the airwaves.

Senator STEVENS. I hope you succeed. I think the spectrum—as you know, it was my suggestion to auction spectrum—has become a very valuable commodity. And if it is divided into microsections, I am not sure what the commodity value may be in the long run, but it could be harmed if we are not very careful because of the potential of interference. In rural areas, such as Alaska's, I gather there can be microradio without any interference at all, but, of course, I am not sure that it might not just destroy the value of what we have to sell to support the system.

Mr. KENNARD. Well, you make a good point. Clearly there would be more spectrum available for microradio in the less congested areas of the country.

DATA LATA

Senator STEVENS. One last question if I may, Mr. Chairman. Tell me about this data LATA concept, how it would affect Section 271 of the act. My people tell me that while they do believe that the Bells need some incentives to provide advanced services, that they are not certain that the authority for data LATA exists to free them from Section 271. Have you made that determination?

Mr. KENNARD. We have. Last year some of the regional Bell operating companies came to the FCC and petitioned the FCC to create a national data LATA. We took a hard look at that proposal but in December the FCC voted unanimously to reject it because we felt that we just did not have statutory authority to create a data LATA under the Communications Act.

Now I do think that we have authority under Section 3 of the act to make more minor modifications of LATA boundaries. In fact, I think that it would be appropriate particularly in rural areas, where you might have a narrow, targeted exception from the LATA boundaries, to get service to a rural area that may not otherwise get it.

But the Commission voted in December in the Section 706 proceeding that they would not create a national data LATA.

Senator STEVENS. I am glad to hear that. Thank you very much. Again, I wish you well in the defense of universal service.

Mr. KENNARD. Thank you, Mr. Chairman.

Senator STEVENS. Thank you very much.

INTERNET REGULATION

Senator GREGG. Thank you, Mr. Chairman.

Let us start with a small issue. What do you see as the FCC's role with the Internet?

Mr. KENNARD. Well, it is interesting because from time to time rumors get started on the Internet that the FCC is poised to start regulating the Internet. When this happens I typically get 500 or 600 e-mail messages a day from people saying, "Keep your hands off the Internet." These messages are not delicate. I will not repeat the exact language that I get in some of these e-mails, but they are not delicate.

So I have said repeatedly and very publicly that the FCC has no intention of regulating the Internet. One of the great things about the Internet is that it has grown in an unregulated environment, as you know. It has grown fast and for most Americans, using the Internet is like making a local call. It is a flat rate and they can use it for an unlimited period of time. That has been great for the growth of the Internet and will be great for e-commerce.

So I spend a fair amount of my time sort of tamping down these rumors that the FCC is going to start imposing long distance charges on Internet use. We are going to be vigilant and do everything we can to prevent that from happening.

Senator GREGG. Do you see your role as being passive?

Mr. KENNARD. I really don't see it as being passive. I see it as actively protecting the Internet from efforts to impose regulation on it at either the state or federal level.

PORTALS RELOCATION

Senator GREGG. Where do we stand with the Portals and especially with the computer system that you were supposed to have when you moved in?

Mr. KENNARD. I will ask Andrew Fishel, who is our Managing Director and here with me today to give you an update on where we are on that.

Mr. FISHEL. The agency has about three-quarters of its staff currently located in the Portals. The remaining staff will be located there between now and the middle of May. We have been moving the computer systems from Northwest Washington over to Southwest Washington. There have been from time to time internal obstructions to that. They have been minor and of short duration and we are confident that once all the staff is located in one place we will be able to stabilize and have——

GSA REIMBURSEMENT

Senator GREGG. And what is the status of GSA's debits to you and your financial relationship with GSA?

Mr. KENNARD. I can answer that one. As you know, Mr. Chairman, GSA ordered us to make the move to the Portals and we did

make that move. We do not have any binding assurances that GSA will cover our moving costs. In fact, the understanding was we would request in our appropriations that GSA be reimbursed for the cost of moving the FCC to the Portals, so that request is included in our budget request.

Senator GREGG. Of course, if we do not fund your move, you are not obligated to pay GSA.

Mr. KENNARD. That is right. If the Congress does not appropriate money for paying for the Portals move, then we will not be able to make those payments. But our understanding with GSA is that we will request appropriated funding to make those payments.

ANALOG SPECTRUM FEE

Senator GREGG. On the fee issue, who came up with this idea of analog spectrum fee? Is that an OMB fee? They have put a lot of fees into this bill. Is that one of theirs?

Mr. KENNARD. Yes, that was in the OMB budget request.

Senator GREGG. That was not in your request to OMB?

Mr. KENNARD. No, it is not an FCC proposal.

DTV FEES

Senator GREGG. On the DTV fees, which I guess you started collecting recently, what do you expect from them?

Mr. KENNARD. Well, we issued an order setting forth the formula for collecting them but it is based on 5 percent of subscription revenues for the use of DTV. Thus far the broadcast industry is just in the process of converting to digital, so they have not started rolling out any subscription businesses.

Once they do, then our rules will kick in and we will collect 5 percent of their subscription revenues.

Senator GREGG. Do you have any projections on what you think you will be collecting?

Mr. KENNARD. It is hard to say. The broadcast industry began converting to digital last year. Fifty-one broadcast stations turned on digital broadcasts in 26 markets, but they have not yet rolled out business plans for using the spectrum for subscription uses. It is hard for me to tell when that is going to happen.

I was at a meeting of broadcast executives just yesterday, and I got a distinct sense that most of them are still grappling with exactly what the business plan for digital is going to be, and they have not made a whole lot of progress on looking at subscription businesses yet.

WIRELESS VERSUS WIRED DATA TRAFFIC

Senator GREGG. How much of the communications do you think is going to be wireless versus wired as you go forward?

Mr. KENNARD. I think over the near term most of it will be wired, but the real fundamental shift that we are seeing is a huge increase in data traffic on the wireless network. I recently saw an analyst's report that said the increase in voice traffic in our nation, wired voice traffic, is about 5 percent a year; data traffic is increasing at 300 percent a year, fueled in large part by the growth of the Internet.

We are working hard at the FCC to put more spectrum out in the marketplace so that the wireless industry can roll out high-speed wireless data services, and there are some companies doing some interesting things, but I think that that time horizon is a little bit farther out from the wired world.

We are seeing real encouraging developments on the cable side. The cable industry is starting to roll out their high-speed Internet access product with the cable modems. That will probably be accelerated with the recent acquisition of TCI by AT&T.

So the data world is just exploding out there, but it is primarily a wired world right now.

Senator GREGG. I heard an interesting presentation—this is probably off the subject—by one of the folks who runs one of the major companies for networking and his view was that voice would end up being a free commodity within 10 years. Do you think that is reasonable?

Mr. KENNARD. I think that is a very realistic projection. If you look at the rise of data traffic on these networks, it would not be unreasonable to predict that that could happen.

We are already seeing that on the long distance side. Long distance rates have dropped dramatically in the last few years. Even if you do not study this area closely, if you just watch what is happening in the advertising world, the various packages that consumers are able to get, long distance prices are now at the point—they are the lowest they have ever been in history and we are seeing some of these packages really becoming very, very inexpensive for consumers.

Senator GREGG. It is a fascinating thing to think about.

GAO REPORT ON SCHOOLS AND LIBRARIES PROGRAM

On a more mundane issue, GAO recently did a report on your library and school program in which they said that the goals were not well defined and performance target measurement standards were not very well defined, either. Have you got a proposal for addressing the GAO report?

Mr. KENNARD. We do. Actually, overall I was encouraged by the GAO report because it did find that the FCC had satisfied all of their recommendations except the one that you mentioned, which is to come up with some concrete performance measures. And we are working with the administrator of that program and the Department of Education to address those recommendations as well.

Senator GREGG. Can we get a copy of whatever you are going to put together as your performance standards as you design them?

Mr. KENNARD. Absolutely.

CALEA

Senator GREGG. I know you are working trying to settle the CALEA issue. Of course I want to thank you. Progress appears to be happening and that is great.

Mr. KENNARD. Yes.

Senator GREGG. It has been a real headache but something that has to be resolved, so the more progress you make on that, the better.

Mr. KENNARD. We hope to complete our report and order in that proceeding by spring.

FCC REORGANIZATION

Senator GREGG. You have your reorganization plan together?

Mr. KENNARD. Yes. I outlined what will become a five-year plan for reorganizing the FCC, and I would be happy to make that available to you.

FCC—NTIA MERGER

Senator GREGG. As part of that plan, wouldn't it make sense to move the National Telecommunications and Information Administration (NTIA) over to FCC, since you are basically in charge of communications and this is a technology involved in communications?

Mr. KENNARD. That is an interesting proposal. There is sort of a fundamental tension between our job of managing the commercial spectrum and trying to get as much spectrum out there working in the economy as possible and the NTIA goals for spectrum management, which is to manage the government spectrum, a huge chunk of which is Defense Department-related.

And I think it might be somewhat awkward to merge those two spectrum management functions together. I think probably the net result would be that there would be less commercial spectrum available. But I would give it some additional thought.

Senator GREGG. It might be interesting, your thoughts on that. We do have jurisdiction over both so this committee is in a position to merge if it makes sense. We do not want to do it if it does not make sense, but if it would make sense from an administrative standpoint, we would want to take a look at it.

ALARM MONITORING SYSTEM ISSUE

About a year ago, I think, there was a petition to you folks relative to the alarm monitoring system issue and it arose out of a lawsuit that the alarm monitoring industry won against the petitioner. It is my understanding that if you do not act on that petition by May 13, then basically that will reverse the lawsuit.

Do you expect to act on that petition? Are you familiar with that?

Mr. KENNARD. Oh, yes, I am familiar with the issue. Actually, what happened is initially the Commission voted to allow one regional Bell operation company to retain its alarm monitoring assets. That decision was reversed in the D.C. Circuit. It came back to the Commission and the company petitioned to have the Commission forbear from requiring them to divest their alarm monitoring assets.

That is a forbearance petition under Section 10 of the Communications Act, so there is a mandatory statutory deadline. I am sure you have the date right, May 13, I believe. So we will act by that period of time. We will have a timely action.

OMB CHANGES TO THE BUDGET REQUEST

Senator GREGG. When you sent your request to OMB, was there anything significant in your request that either OMB dropped or

that you did not ask for that OMB put in, such as the fee proposal on analog?

Mr. KENNARD. There is nothing large that sticks out in my mind but I will ask Andy Fishel. He was closer to the process.

Do you recall anything?

Mr. FISHEL. The only major difference between what we have before you and our OMB request is we asked for additional increments of funds for automation and reorganization for fiscal year 2000.

Senator GREGG. Do you know how much that is?

Mr. FISHEL. About another $7 million.

Senator GREGG. For automation?

Mr. FISHEL. $5.4 million for automation and $1.5 million to assist the Commission in the Chairman's proposed reorganization.

Senator GREGG. Can you get that information to my staff?

Mr. FISHEL. Sure.

[The information follows:]

In the FCC's fiscal year 2000 Budget Request to OMB there were two areas totaling approximately $7 million that were denied or decreased that are of particular importance in supporting the Commission's efforts to consolidate enforcement and public information service activities and continue deployment of the agency's automation technology infrastructure.

In connection with the FCC's proposed reorganization, the Commission requested $1.5 million to employ the services of a business process reengineering contractor to examine and make recommendations on reconfiguring personnel needs in response to changing workload demands. If the contractor recommends that jobs be changed or eliminated, the request included funds for outside contractor support to re-train some employees and provide outside placement services to others.

A variety of items totaling $5.5 million in information technology initiatives were deleted from the fiscal year 2000 Congressional budget request that were originally included in our OMB request. These items involved either development of new productivity enhancing systems, or extensions to existing systems that would also result in staff productivity gains and improved public service. The latter class of enhancements would allow us to gain additional benefits from the funding that we have already invested in our information technology systems. For example, modules would be added to the new Cable Operators and Licensing System that would permit the same type of electronic filing currently available in many of our other licensing systems. Some of the proposed new systems would allow agency managers to track fees, other outstanding debts and agency equipment in a more effective manner. This would allow the agency to conform with acceptable accounting practices and would reduce time consuming, manual based reviews and assessments. In summary, the requested funds would allow the agency to operate in a more cost effective manner while providing a better level of service to the public.

OMB notified the FCC that the President's fiscal year 2000 Budget would include legislative proposals for analog fees, spectrum auction bankruptcy protection and an accelerated schedule in fiscal year 2000 instead of fiscal year 2001 for the auction of spectrum between 746–806 megahertz. These were not initiated by the FCC in the original budget request to OMB.

Senator GREGG. I think you are doing an excellent job, Mr. Chairman.

Mr. KENNARD. Thank you.

FREE AIR TIME

Senator GREGG. I especially appreciate the fact that you have been sensitive to this committee's concerns when we have expressed them, for example, relative to free time for campaigns last year. And you have a big tiger by the tail.

So this committee, like with the SEC, wants to make sure you are very successful because that is critical to the commerce of this nation.

Mr. KENNARD. Thank you.

Senator GREGG. So tell us what you need and we will try to take care of it.

On the Portals issue, as I said last year, we will protect you on that.

Mr. KENNARD. Thank you very much.

Senator GREGG. But we do feel that GSA has messed this up and they should take some of the pain.

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

ADDITIONAL COMMITTEE QUESTIONS

Senator GREGG. Any other things you want to bring to the attention of the committee?

Mr. KENNARD. No, just again I appreciate the support that you have given the FCC, and we look forward to continuing to work with you in tackling this agenda together.

Senator GREGG. Great. Thank you.

[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 PETE V. DOMENICI

RURAL TELECOMMUNICATIONS

Question. Chairman Kennard, the FCC has many proceedings underway to implement the Telecommunications Act of 1996, and to reform telecommunications policies across the board to fit with the new competitive environment.

One of the most important challenges is to ensure that the rural telephone companies serving customers in states with sparsely-populated areas like New Mexico are not prevented from providing basic services or access to new information and technologies or paying higher rates than those charged by companies serving urban areas.

I think how the FCC deals with rural markets is one of the most complex and difficult issues you face in the coming years. With that in mind:

How can the FCC ensure that when all of the reforms take place under the 1996 Act, there will be enough high-cost support, interstate access revenues, and a source of revenues to pay for the multitude of new regulatory requirements like number portability, without driving up prices for rural customers?

Answer. Ensuring universal service for rural areas has been a part of Commission policy for decades. The codification of this policy in the Telecommunications Act of 1996 (1996 Act) has merely strengthened the Commission's resolve and ability to accomplish these objectives. Section 254 states that consumers in "rural, insular, and high cost areas, should have access to telecommunications and information services * * * that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas." The Commission is committed to ensuring that this goal is reached.

The Commission has consistently considered the needs of rural customers in crafting the regulatory reforms undertaken since the 1996 Act. In the universal service proceeding, the Commission is taking extensive steps to ensure that rural telephone companies' high-cost support remains sufficient. To this end, the Commission has established separate plans and implementation schedules for reforming high cost support for rural carriers, which ensures that support for service to rural customers will not be affected, at least until 2001. Also, the Federal-State Joint Board on Universal Service has appointed a Rural Task Force to study the details of how reform of high-cost support should be structured and implemented for rural carriers. The Rural Task Force will report to the Joint Board, which will then provide recommendations to the Commission. Only after receiving the Joint Board's

recommendation, informed by the Rural Task Force's findings, will the Commission implement broad reform of rural carriers' high cost support mechanisms. With respect to non-rural carriers, many of which serve customers in rural areas, the Commission is moving forward with reform to make universal service support mechanisms sustainable as competition develops in the local exchange market. Based on recommendations from the Joint Board, we will provide support for non-rural carriers that serve high cost areas based on forward-looking costs, to ensure that support levels are appropriate for a competitive environment.

Our proceedings to reform access charges have focused on price cap-regulated carriers. Rural telephone companies, which tend to be under rate-of-return regulation, thus have not been affected by these changes. The Commission recently initiated a proceeding to consider reform of the interstate access charge system for rural carriers. I intend to consider carefully the competitive effects that such reform may have on rural customers.

In the 1996 Act, Congress mandated that all local telephone companies provide local number portability in accordance with requirements to be established by the Commission. Congress recognized two fundamental points. First, Congress recognized that consumers are less likely to take service from competing local phone companies if they are required to change their phone numbers each time they switch providers. Second, Congress recognized that implementation of number portability would lower barriers to entry and promote competition in the local exchange marketplace.

Although telecommunications carriers must incur costs to implement number portability, and some portion of those costs may be passed on to consumers, there are numerous long-term benefits of number portability. For example, number portability gives consumers more competitive options, which should have the effect of lowering local telephone prices. Lower local telephone rates, in turn, should stimulate demand for telecommunications service and increase economic growth.

When we implemented local number portability, we provided for a cost-recovery mechanism that affects equally all carriers required to provide number portability, as directed in the 1996 Act. Thus, cost recovery for local number portability is just as unlikely to cause significant increases in costs or surcharges for rural customers as for urban customers. Moreover, carriers outside the country's 100 largest Metropolitan Statistical Areas are not required to implement number portability until six months after a request for portability by another telecommunications carrier, so many rural carriers may not experience any number portability costs for some time. But if, and when, rural carriers incur number portability costs, we will explore all opportunities to minimize any adverse impacts on rural customers.

I assure you that the Commission is committed to ensuring that the regulatory reforms mandated by the 1996 Act, including universal service and number portability, are implemented in a way that furthers the Act's goal of affordable, reasonably comparable rates for rural customers.

Question. What is the FCC doing to ensure that the Commission coordinates the timing and order of the changes it is considering to minimize the uncertainty and risk for small telephone companies?

Answer. The Commission established a plan to move high-cost support mechanisms for non-rural carriers toward forward-looking costs to prepare for a competitive environment and placed small telephone companies on a different schedule for implementation of universal service reform than the schedule for non-rural carriers. The Commission determined, however, that reform of the high-cost support mechanism for small telephone companies should be undertaken in consultation with the Federal-State Joint Board in a separate, later proceeding. The Joint Board and its Rural Task Force will focus specifically on the needs of rural carriers. The Commission guaranteed that no potential reductions in high-cost support would occur in study areas served by small telephone companies, until after the Joint Board-appointed Rural Task Force delivers its report to the Joint Board, and after the Joint Board has made recommendations to the Commission, but no sooner than 2001. Although some small rural carriers have voiced concern about the regulatory uncertainty created by the pro-competitive changes of the 1996 Act, I assure you that the Commission does not intend to make any significant changes for rural carriers absent careful consideration of all the issues and the recommendations of the Joint Board and its Rural Task Force.

Question. Will the FCC work to ensure that small telephone companies have access to the capital they need and sufficient confidence to recover their investment costs after all of the regulatory changes are in place? How can the FCC provide incentives to rural companies to encourage them to continue to upgrade their networks and provide first class service in remote areas?

Answer. The 1996 Act provides that universal service should be sufficient, and the Commission is committed to implementing the letter and spirit of the law. By consistently ensuring that high-cost universal service flows remain adequate and that access revenue streams do not change suddenly or unexpectedly, the Commission has maintained a degree of stability in the regulatory environment for small, rural telephone companies. Also, a significant source of capital for small, rural telephone companies remains in the Department of Agriculture's small telephone company loan program, which has not been affected by the Commission's implementation of the 1996 Act. These factors should ensure a regulatory environment that should give companies and investors ample confidence to ensure that small, rural carriers remain able to serve their customers in remote areas with state-of-the-art networks.

Question. What is the FCC doing to ensure that small rural companies do not suffocate under the weight of costly new requirements (such as mandated separate subsidiaries for their advanced services or interexchange activities or heavy new interconnection requirements) that Congress intended to restrict to the largest incumbent carriers until real competition exists in these thinner rural markets?

Answer. The Federal Communications Commission is committed to fostering local competition in rural America in accordance with the provisions for small and rural companies that Congress made into law in the 1996 Act. In its proceedings implementing the 1996 Act, the Commission has focused on regulatory relief for rural telephone companies, not on imposing new burdens.

In its Local Competition proceeding, for instance, the Commission implemented the exemption for rural telephone companies from certain interconnection requirements in accordance with section 251(f) of the 1996 Act.

—Section 251(f)(1) grants rural telephone companies an exemption from the requirements of section 251(c) until the rural telephone company has received a bona fide request for interconnection, resale services, or network elements, and the state determines that the exemption should be terminated.

—Section 251(f)(2) provides that small local exchange carriers (LECs) may petition a state commission for a suspension or modification of any requirements of section 251(b) and 251(c).

Similarly, the Commission implemented special rules for the provision of commercial mobile radio services (CMRS) by small and rural incumbent LECs in the LEC CMRS Order. Rural telephone companies are exempt from the separate affiliate requirements imposed on larger companies, and mid-sized LECs (fewer than two percent of the nation's subscriber lines) can petition the Commission for suspension or modification of the separate affiliate requirement.

The Commission has never required, or proposed to require, small or rural telephone companies to comply with separation requirements for provision of advanced services. In the Advanced Services Notice of Proposed Rulemaking adopted in August 1998, the Commission proposed offering incumbent LECs the option of providing advanced services through a separate affiliate, as a way of relieving the affiliate of regulations that otherwise would apply under the Act. If the Commission adopts this proposal, incumbent LECs may still elect to offer advanced services on an integrated basis. The Commission is committed to ensuring that incumbent LECs, including small and rural LECs, make their decisions to invest in and deploy advanced telecommunications services based on the market and their business plans, rather than regulation. The proposals in the Notice of Proposed Rulemaking were intended to create more competition, more services, more choices, and to allow for more expeditious deployment of advanced services offered by a variety of carriers.

Nor has the Commission imposed new separation requirements on small or rural telephone companies for the provision of interexchange services. Pursuant to the LEC Classification Order issued by the Commission in April 1997, incumbent LECs, including small and rural LECs, may provide interexchange services in accordance with the same set of separation requirements under which most of these companies elected to provide such services prior to the Act. A number of parties have petitioned the Commission to relax these separation requirements for small and rural LECs. Please be assured that the Commission intends to act soon to resolve this issue.

RURAL ACCESS TO PUBLIC BROADCASTING

Question. Chairman Kennard, I have long been a supporter of pubic broadcasting because it brings enhanced educational, cultural and public affairs programming to underserved populations, particularly rural communities. In rural states like New Mexico, this service is most often provided via a translator, for both public radio and television.

Last year, Congress directed the Corporation for Public Broadcasting to increase funding for rural service, and CPB has done so in New Mexico by over sixty percent.

But constituents tell me that the problem is not necessarily enhancing rural service, as much as maintaining present access to existing services in rural areas. Absent a re-examination of FCC policies and rules related to translators, I am afraid isolated rural communities will lose access to services they now enjoy.

I am told that public radio stations are losing rural translators to station applications by distant national, non-commercial, non-public radio entities—some with dozens of licenses and dozens more applications pending. In New Mexico, two stations have lost their translator to the same national entity.

Am I correct in understanding that translators are vulnerable to any station application proposing overlapping coverage and must cease operation when the station is approved and on the air?

Answer. Yes. Since the FM translator service was established in 1970, these stations have been authorized on a secondary basis; that is, translators may not cause interference to and must accept interference from the signals of existing and future FM radio stations. FM stations are subject to FCC rules that are not applicable to translator stations; for example, minimum hours of operation, signal coverage requirements, operation of a main studio and maintenance of a public inspection file. These stations are also accountable for providing responsive programming to significant community issues. Accordingly, FM radio stations are full-service stations, which are afforded "primary" protected status.

The FCC will not accept an application for an FM translator station if an "interfering" signal contour of the proposed translator would overlap the protected contour of an authorized primary FM station. FM translators must protect FM stations that operate on the same frequency and three pairs of adjacent frequencies. While the contour overlap standards are processing criteria, operating translators are governed by the provision that they must not cause actual interference to the reception of primary FM radio stations. Depending on geographical proximity and the frequency relationship, an existing translator may be vulnerable to an application proposing a new FM radio station. If the proposed station were authorized, the translator would not be permitted to interfere with the reception of its signal. If the interference could not be promptly eliminated, the translator would be required to cease operating.

It is important to note that FM radio stations are granted construction permits allowing 3 years to complete station construction. At a minimum, most new stations require a year or more to acquire the necessary equipment and commence operations. Thus, potentially displaced FM Translators are usually afforded sufficient time to locate a new frequency, where possible, and to acquire a modified construction permit from the FCC for use of that frequency.

Question. What is the FCC doing to stem the current flood of non-commercial entity-FM applications?

Answer. During the past few years, the number of noncommercial educational FM new station construction permit applications has increased significantly, from less than 200 to more than 500 applications filed each year. Promoting viewpoint and ownership diversity remain core statutory goals of the Commission. Thus, the agency generally supports the addition of new noncommercial educational (NCE) FM service. Arguments seeking the denial of new NCE FM station proposals on the grounds that there already is "too much" NCE FM service in a particular area are not persuasive. The Commission has taken no steps either to slow the new NCE FM station application review process or to limit the opportunity for filing new NCE FM station applications. Disposition of those applications that are mutually exclusive with other applications must await the outcome of an FCC rulemaking proceeding in which the Commission has proposed new procedures for selecting among competing applicants. (MM Docket No. 95–31, Reexamination of Comparative Standards for Noncommercial Educational Applicants, October, 1998). The current freeze on mutually exclusive applications substantially limits the number of new station applications actually granted. We estimate that the Commission is currently granting fewer than 100 new station licenses per year, and thus increasing the number of NCE FM stations nationally by less than 5 percent each year.

Question. What can the FCC do to ensure continued in-state service to communities enjoying public radio service by translators?

Answer. The Commission recognizes the important role played by FM translators in this regard. Translators may continue to operate indefinitely provided they do not cause interference. Should a translator station desire to eliminate the potential of being displaced because of its secondary status, it may apply to become a primary FM non-commercial station in the reserved band, provided it can satisfy the eligibility and technical requirements. Alternatively, in some situations, it can also re-

quest a waiver of the Commission's main studio rules to allow it to operate as a satellite of the public radio station it desires to rebroadcast. In so doing, the satellite station must demonstrate that it is attuned to and will reflect the needs and interests of that local community in its programming.

Question. With respect to public television, what has the FCC done to prepare for digital television translators? If there are no plans for digital television translators, how does the FCC propose that isolated rural communities be served?

Answer. First, in its digital television (DTV) proceeding, the FCC adopted numerous measures to mitigate the impact of the DTV roll out on existing TV translator and low power television service. For example, the FCC provided opportunities for displaced or potentially displaced stations to seek replacement channels at any time on a noncompetitive "first-come" basis; so far, nearly 500 TV translator stations have done so. The FCC also relaxed interference protections where it could, permitted station operators to negotiate interference agreements among themselves, expanded the role of terrain shielding in the application process, and increased the power limits in the low power television service. All of these measures are intended to preserve as many stations as possible, recognizing, in part, that translator stations will play an important role in delivering digital TV signals. The FCC also stated in the DTV proceeding that it would initiate a separate rulemaking proceeding to address issues related to the authorization of digital transmissions for TV translator and low power TV stations. The FCC intends to commence this proceeding this summer.

C-BLOCK SPECTRUM AUCTION BANKRUPTCY

Question. For the past few years, I have been interested in the developments in the cases involving the spectrum licenses taken into bankruptcy by bidders who refused to pay their bids in the C-block auction. Could you please give me an update of where the FCC stands currently in the key court cases and comment on the advisability of enacting legislation clarifying that spectrum licenses are not eligible to be drawn into bankruptcy court.

Answer.

The Status of Key C-block Bankruptcy Cases

Five C-block licensees are currently in bankruptcy: DCR PCS, Inc. (Bankr. D.Md.); GWI PCS 1 et al. (Bankr. N.D. Tex.); NextWave Personal Communications, Inc. (Bankr. S.D.N.Y.); Magnacom Wireless, LLC (Bankr. W.D. Wash.); and UrbanComm-North Carolina, Inc. (Bankr. S.D.N.Y.).

Together these licensees owe approximately $7 billion in debt to the United States for licenses bid at the C-block PCS auction in May 1996.

The bankruptcy problem is not limited only to the "C-block" PCS licensees. Bankruptcy proceedings also have been initiated by license winners in the Commission's auctions for Interactive Video and Data Services (IVDS), Multipoint Distribution Services (MDS), and 900 MHZ Specialized Mobile Radio (SMR) services. In the C-block bankruptcies, several licensees have sought to retain their licenses without paying the full bid amount, notwithstanding the Commission's stated policy that licenses are granted on condition of payment in full and will be automatically canceled upon a payment default. The status of the C-block cases is as follows:

GWI.—In the GWI case, the licensee filed an adversary complaint alleging that the grant of the licenses was a "fraudulent conveyance" under Section 548 of the Bankruptcy Code because the licenses granted by the Commission were not worth the amount that GWI bid for the licenses at the C-block auction. After a week-long trial, the bankruptcy court agreed with GWI and reduced the amount of debt owed to the United States from $954 million to $60 million (a loss of nearly $900 million to the American taxpayer in this one case).[1] The bankruptcy court rejected the FCC's arguments that FCC regulations, and the face of the license itself, conditioned the grant and retention of the license on payment in full of the bid price. Indeed, the bankruptcy judge refused to give any deference to the FCC's administrative rulings in the C-block restructuring proceedings, nor any deference to the FCC's authority to determine the fair and efficient allocation of spectrum under the Communications Act. The United States has appealed the GWI ruling, but the case is still pending. As a result, the GWI licenses have been tied up in bankruptcy since October 1997 and the FCC was not able to include them in the C-block re-auction

[1] To put that amount lost to the taxpayer in perspective, the Washington Post recently reported that a $908 million judgment against the United States was the "second-largest judgment ever leveled against the government." See "Thrift Wins $908 Million From U.S. in Dispute From S&L Crisis," The Washington Post, A–6, April 1, 1999, 1999 WL 2210235.

that began on March 23, 1999 for licenses that were returned to the FCC under the FCC's C-block restructuring orders.

NextWave.—The enormous debt reduction granted by the bankruptcy court in GWI, encouraged other C-block companies to seek similar relief, rather than comply with the FCC's C-block restructuring orders. On June 8, 1998, the day that C-block licensees were required to elect restructuring options under the FCC's regulations, NextWave Personal Communications, Inc. ("NPCI") instead filed a bankruptcy case based on the same "fraudulent conveyance" theories as GWI. The trial of the NPCI case was heard in mid-April of this year, but at the writing of this answer we do not yet have an opinion from the bankruptcy court. Although the FCC moved to have the case dismissed as an improper collateral attack on the FCC's administrative orders, the bankruptcy court refused to dismiss the case, and declared that the FCC should be treated as merely a commercial lender, not having any special expertise or discretion in dealing with federal spectrum licenses. At the trial, NPCI is seeking a debt reduction from $4.2 billion to approximately $330 million—nearly a $4 billion reduction of its debt to the federal Treasury. Alternatively, NPCI is seeking return of its down payment of $474 million from the Treasury in exchange for relinquishing the licenses.

UrbanComm.—The licensee in UrbanComm filed for bankruptcy rather than make an installment payment due on its licenses on October 29, 1998. Following the route of GWI and NPCI, the licensee in the UrbanComm case has also filed a "fraudulent conveyance" complaint against the FCC seeking massive reduction of its debt amount. The FCC recently moved to have the case dismissed, but we do not yet have a ruling on that motion. Because of the pending bankruptcy case, the UrbanComm licenses were not included in the recent C-block re-auction.

Magnacom.—The licensee in Magnacom also filed the day before its October 29, 1998 installment payment was due. Magnacom has not filed a "fraudulent conveyance" complaint against the FCC. Nevertheless, because of the bankruptcy filing, the FCC was not able to include Magnacom's licenses in the recent C-block re-auction. The FCC has moved to recover the licenses in the bankruptcy court but the court has not yet ruled on that motion.

DCR PCS.—In the DCR PCS case, the licensee made an election under the C-block restructuring order and returned many of its licenses (including the large markets of Chicago, Dallas, Detroit, St. Louis, and New Orleans) to the FCC for inclusion in the current C-block re-auction. However, other investors in DCR PCS have filed a "fraudulent conveyance" complaint against the FCC seeking recovery of the $150 million in down payments DCR PCS had made to the FCC for the original licenses. The bankruptcy court has said that the secured lenders could prosecute a case for such "rescissionary" type relief, and has set a trial date in November, 1999 to determine what amount, if any, must be returned from the Treasury to the secured lenders.

The Need for Bankruptcy Legislation

The result obtained in the GWI case, and sought in other cases, is entirely inconsistent with the federal auction licensing scheme established in Section 309(j) of the Communications Act. Allowing a high bidder to win a license but then reduce the amount it will pay for the licenses by a court decision:

—prevents the FCC from establishing a fair and efficient allocation of scarce public spectrum based on competitive bidding at an auction;

—encourages speculative bidding at future auctions if the bidders believe that they can avoid the consequences of over bidding by bankruptcy litigation;

—unfairly deprives other bidders the opportunity to receive the license in a new auction if the original high bidder is unable to meet its payment obligations;

—ties up the licenses in bankruptcy court for years, while the public is deprived of service, in direct contravention of the statutory goal of allocating spectrum through auctions in order to achieve rapid service to the public "without administrative and judicial delays."

The FCC has been seeking legislation since 1997 that would clarify that the Bankruptcy Code cannot be used to reduce the amount of debt owed by FCC licensees for the licenses they obtain through FCC auctions. The Administration's fiscal year 2000 Budget proposes legislation that amends Section 309(j) of the Communications Act to clarify that the Bankruptcy Code (1) is not applicable to relieve a licensee of any debt obligation or payment made to the Treasury arising from the grant of a spectrum license issued by the Commission under Section 309(j) of the Communications Act, and (2) does not affect the Commission's authority to revoke, cancel, transfer or assign those licenses. The proposed legislation would be retroactive, so as to affect all cases pending in the judiciary at the time of passage, con-

sistent with the principles for retroactive legislation established by the Supreme Court.

The effect of the proposed legislation is to allow the FCC to enforce the payment obligations incurred by winning bidders and allows the FCC to quickly recover and re-auction licenses in case of a payment default. The proposed legislation does not give new regulatory powers to the Commission, but only assures that existing regulations will be applied fairly to all licensees. Moreover, the proposed legislation addresses only payments or debts to the Commission arising from auctions under Section 309(j), and does not involve any other types of FCC licenses such as broadcast licenses.

Congress has provided exemptions from the Bankruptcy Code for other important governmental lending and licensing programs. For example, there are specific exceptions to the automatic stay to allow the government to foreclose HUD mortgages,[2] to allow the government to foreclose ship mortgages held by the Secretary of Commerce or Secretary of Transportation under the Merchant Marine Act,[3] and to allow a state licensing body to take action with respect to the licensure of the debtor as an educational institution.[4] In addition, the Bankruptcy Code generally exempts from the automatic stay governmental exercise of police and regulatory powers.[5] Special exceptions to the automatic stay have also been inserted into the Bankruptcy Code to protect the financial concerns of various private industries, such as lessors non-residential real estate,[6] various financial transactions,[7] and interests relating to hydrocarbons.[8]

The FCC believes that the fair and efficient operation of the federal spectrum licensing program is equally important and should be give a similar exemption from the Bankruptcy Code.

CONCLUSION OF HEARINGS

Senator GREGG. The hearing is recessed.

[Whereupon, at 10:46 a.m., Thursday, March 25, the hearings were concluded, and the subcommittee was recessed, to reconvene subject to the call of the Chair.]

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[2] 11 U.S.C § 362(b)(8).

[3] 11 U.S.C. §§ 362(b)(12) & (13). The Ship Mortgage provisions were added to the Bankruptcy Code in the Omnibus Budget Reconciliation Act of 1986. See Pub. L. No. 99–509 (1986). See also Hearing Before Subcomm. on Merchant Marine and the Comm. of Commerce, Science and Transportation on S. 1992 and S. 1993, 99th Cong., 2d Sess. (March 21, 1986).

[4] 11 U.S.C. § 362(b)(15).

[5] 11 U.S.C. § 362(b)(4).

[6] 11 U.S.C. § 362(b)(10).

[7] 11 U.S.C. § 362(b)(6),(17).

[8] 11 U.S.C. § 541(b)(4).

DEPARTMENTS OF COMMERCE, JUSTICE, AND STATE, THE JUDICIARY, AND RELATED AGENCIES APPROPRIATIONS FOR FISCAL YEAR 2000

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

NONDEPARTMENTAL WITNESSES

The following testimonies were received by the Subcommittee on Commerce, Justice, and State, the Judiciary, and Related Agencies for inclusion in the record. The submitted materials relate to the fiscal year 2000 budget request for programs within the subcommittee's jurisdiction.

DEPARTMENT OF COMMERCE

PREPARED STATEMENT OF CAPT. FRED R. BECKER, JR., JAGC, USN (RET.), DIRECTOR, NAVAL AFFAIRS, RESERVE OFFICERS ASSOCIATION OF THE UNITED STATES (ROA)

Mr. Chairman and members of the Committee: It is my pleasure to address this committee concerning the fiscal year 2000 budget request for the United States Coast Guard. First and foremost, the Reserve Officers Association would like to express its profound gratitude to this subcommittee, and to the Congress, for their strong and vigorous support of the Coast Guard and Coast Guard Reserve during the fiscal year 1998 and 1999 authorization and appropriations process. ROA's testimony during the 105th Congress addressed a number of concerns regarding the Coast Guard Reserve, particularly with regard to funding and recruiting. In recognition of the vital support provided to the nation by today's Coast Guard Reserve, this subcommittee and the Congress responded. On behalf of Coast Guard Reservists serving around the globe we thank you.

COAST GUARD BUDGET REQUEST

The Coast Guard has streamlined and reduced resource requirements to the breaking point. At the same time, responsibilities and work of the Coast Guard have continued to increase. As the Coast Guard has streamlined, funding less than that required—to absorb increases from pay raises and other required cost of living adjustments, as well as to recapitalize, replacing vessels and aircraft that are nearly worn-out—will result in the reduction of vital public services. Accordingly, to avoid any adverse impact on future service, any further cost reductions must be achieved through investment in new, more efficient capital equipment and technology and increased use of the Reserves.

The Coast Guard's fiscal year 2000 budget request would allow the Coast Guard to sustain basic services. As the subcommittee is aware the Acquisitions, Construction and Improvements (AC&I) account provides for the vital acquisition, construction and improvement of vessels, aircraft, information management resources, shore facilities and aids to navigation required to execute the Coast Guard's mission and achieve its performance goal. In particular, we believe that this account must be fully funded in fiscal year 2000 at a level of least $34 million. Funding of at least $34 million for the Deepwater Program is required because, at present the Coast

Guard operates ships with high personnel and maintenance costs. The average age of the Coast Guard's deepwater cutters is 25 years. The Coast Guard's fleet of high and medium endurance cutters is older than 37 of the 41 naval fleets worldwide. Some of the Coast Guard's vessels have been in service for more than 50 years. In short, the continued protection of the public, at a lower cost, requires appropriate investment in the AC&I account—to enable the Coast Guard to design more capable and less labor-intensive ships and aircraft.

SELECTED RESERVE STRENGTH

The fiscal year 2000 administration request is to maintain the Coast Guard Selected Reserve's authorized end-strength at the 8,000-level, whereas the appropriation's request is for 7,600. As the Coast Guard Reserve's appropriated end-strength for fiscal year 1999 is 8,000 and the Coast Guard Reserve end-strength continues to increase to meet the Congress' mandate of 8,000 Coast Guard Reservists, we have very serious concerns regarding the administration's proposal for an appropriated end-strength of only 7,600. We also have concerns regarding an authorized end-strength of only 8,000, in view of the fact that the Commandant has conducted an in-depth study that clearly indicates and justifies a requirement nearly 12,300 Coast Guard Reservists.

In recent years, the Coast Guard Reserve has clearly become a value-added resource for peacetime day-to-day operations, as well as a highly cost-effective source of needed, trained personnel to meet military contingency and other surge requirements. For example, as noted by the House Transportation Appropriations Subcommittee, Coast Guard Reservists provided 25 percent of the total surge needed for the very successful anti-drug initiative Frontier Shield.

In view of the foregoing, a request to fund only 7,600 Reservists simply makes no sense at a time when the Coast Guard is making significant strides in correcting the end-strength shortfall that has existed over the past several years. The Coast Guard has increased its recruiting capabilities and put into place a multi-year plan to get the Coast Guard Reserve back to strength. As of January 25, 1999 Coast Guard Reserve end-strength was at 7,579, having increased from a 2-year low of 7,243 in April 1998. Of further note, as of January 25, 1999, there were 176 Reservists, on extended active duty and long-term active duty for special work, filling active duty shortfalls. The number of Reservists on active duty is the direct result of the Coast Guard's solicitation of volunteers from the Selected Reserve to serve on extended active duty to fill full-time active duty billets for periods of 2 to 4 years.

It should also be noted that the value of the Reserve has been highlighted by Rear Admiral Fred L. Ames, Assistant Commandant for Human Resources, in Flag Voice 5, dated September 4, 1998, which states, "Reservists aren't just a part time resource. More than 130 Reservists are answering the call to extended active duty during our current shortage of 'regulars.' More than 187 reservists are currently on * * * (active duty) assisting units in various special projects. Still more Reservists perform their annual two-week duty during peak operational periods. We benefit daily from these members' availability."

In addition, the impact of the shortage of Reservists has been highlighted by Rear Admiral Thomas J. Barrett, Director, Reserve and Training, in letters to the Atlantic and Pacific Maintenance Logistic Commanders dated August 5, 1998, which state: "Reserve personnel shortages coupled with active-duty shortfalls have deeply impacted Coast Guard missions * * *. The absence of these personnel (Reservists) hampers the Coast Guard's ability to execute our missions and leaves a greater burden on those already in service. Despite our best efforts, personnel shortages in both the Reserve and active components are deeply impacting Coast Guard missions. * * * we were unable to fully staff the Ninth District's Operation Summerstock (Great Lakes) from the Coast Guard Reserve alone. * * * more calls for Reserve support are coming up short * * *."

In summary, the Congress and the Coast Guard have made the substantial financial and manpower commitment to rectify the Reserve end-strength problem that has deeply impacted the Coast Guard. As a result, significant progress has been, and will continue to me made. It, therefore, makes little sense at this juncture to reverse course and force the Coast Guard Reserve end-strength downward.

RESERVE FUNDING

The administration has requested $72 million for the Reserve Training (RT) appropriation for fiscal year 2000, with $24.427 million in reimbursement to operating expenses. Given the present procedures for reimbursement for operating expenses and direct payments by the Coast Guard Reserve, this is the minimum needed to fund a full training program for 7,600 personnel. The funding required to support

the full 8,000-level authorized is approximately $78 million. It should, however, be noted that the fiscal year 1999 appropriations bill, in appropriating $69 million for the Coast Guard Reserve, limited the amount of Reserve training funds that may be transferred to operating expenses to $20 million. The House committee report notes that this limitation is included because, "Given the small size of the reserve training appropriation, and the declining size of the selected reserve, the Committee wants to ensure that reserves are not assessed excessive charge-backs to the Coast Guard operating budget. The Committee continues to believe that, absent this provision, the proposed level of reimbursement would be too high, especially given the substantial amount of reserve augmentation workhours provided by the reserves in direct support of Coast Guard missions."

ROA thanks the Congress for its recognition of the support provided by the Coast Guard Reserve and the provision of this additional funding through the limitation in reimbursement for operating expenses.

The Coast Guard is reviewing its procedures for reimbursement with a view toward modification in fiscal year 2000 and we have only just been briefed on their proposal. Accordingly, we are unable at this time to give an opinion on this change in procedures. We would, however, note, that the bottom line is that the Coast Guard Reserve must have sufficient funding for 8,000 Reservists and that the reimbursement cap has over the past 2 years provided approximately $2.5 million of this much needed funding. Accordingly, we would ask that any proposed change in procedures be closely examined and meticulously monitored—to ensure that the Coast Guard Reserve is fully funded at a level of 8,000 ($78 million).

TEAM COAST GUARD

We continue to support the goals and objectives of Team Coast Guard. The Coast Guard Reserve has become the "bench-strength" of the active duty force. In this regard, a strength of 8,000 Coast Guard Reservists equates to only 506 full-time equivalent positions. Of further note, the Coast Guard Reserve provides the ability to surge the Coast Guard by an additional 23 percent, at a cost of just 2 percent of the Coast Guard's total budget. In this respect, the Coast Guard Reserve is extremely cost-effective. Furthermore, the Reserve component provides double benefit because Reservists are only paid when on duty and because Reservists obtain their training for emergency response by assisting the Coast Guard in its peacetime functions.

Simply stated, and as noted in the quotations of Admirals Ames and Barrett cited above, the Reserve leverages the entire organization and stands ready to go in response to both domestic and national emergencies. As a result, the Coast Guard is readily able to surge its forces to meet domestic emergencies in an extremely cost-effective manner, as well as to respond to national emergencies, including vital harbor security for the Department of Defense with the Coast Guard Reserve Port Security Units. At the same time, as also noted by Rear Admirals Ames and Barrett, the failure to meet Reserve end-strength requirements adversely affects the Coast Guard and therefore adversely affects the safety of those operating on the nation's rivers and waterways and off the shoreline of the United States.

In an effort to assess the progress of Team Coast Guard and its impact on Reservists, we canvassed our membership in December 1999, asking for their views. Of the many responses we received, several issues emerged. These issues are as follows:

—*Travel reimbursement*.—Many Reservists, including enlisted Reservists, must travel long distances to drill. The following quotation from a drilling Reservist's provide additional insight into this issue. "I have an E–3 who pays more for his transportation to monthly drill than he gets paid. In other words, he is paying cash in order to be able to drill."

—*Meaningful billets and lack of flexibility upon advancement*.—This issue was addressed in the 1997 Coast Guard Reserve Policy Board report that was approved by the Secretary of Transportation on December 1999. The report states, "When most Reserve command cadre billets were eliminated by integration, senior Reserve officers and senior enlisted lost their traditional management roles * * *. The force structure and roles for senior Reserve personnel need to be reviewed * * *. [This issue] * * * is about appropriately using personnel in whom taxpayers have invested heavily. Furthermore, it is about ensuring that Reserve personnel perceive they can engage in fully satisfying and challenging work throughout a full career in the Reserve Component."

The following quotation from a drilling Reservist provides additional insight into this issue. "With very few senior billets and minimum flexibility (allowing senior people to fill lower ranking billets), many see no real career path. We have seen at least two first class petty officers that have refused to take the examination for

chief petty officer because there is not a chief's billet available. In their cases, they had well in excess of 10 years of service and were concerned that they would not be able to maintain a billet long enough to finish 20 years if they were selected as chief petty officers."

The 1997 Coast Guard Reserve Policy Board report, approved by the Secretary of Transportation on December 9, 1999, also provides further insight into this issue. It states as follows: "Reserve force employment is not consistent throughout the Coast Guard. It has evolved over the years based upon the personalities and interests of commands, and the personalities and capabilities of individual Reservists. The current Reserve Personnel Allowance List (RPAL) was developed in 1996–97 largely upon then-existing Reserve assignments. As a result, one unit may have a dozen RPAL billets while a similar unit may have no billets. Even when Reserve billet structures are consistent between or among similar commands, units often have different philosophies on employing Reservists. Some commands use Reservists interchangeably with Active duty personnel. Other commands use Reservists primarily to replace Active duty personnel when billets are vacant during the transfer season or leave periods. Some assign Reservists to work independently on special projects. We recognize that field units need flexibility in employing Reserve forces. Yet headquarters, areas, and districts need to identify program requirements for Reserve employment, and to provide guidance to field units on employing Reserves. Based on these program requirements and guidance, the RPAL then can be revised to better reflect service needs. When the workforce structure has been redefined by a revised RPAL, Reserve personnel can be recruited, trained, and assigned to meet established requirements. * * * Reserve personnel will have more meaningful assignments; they will not have to create their own niches at each command."

—*Difficulty in meeting Reserve-unique administrative and training needs*.—The following quotation from a drilling Reservist provides additional insight into this issue. "* * * for enlisted reservists * * * many of their Reserve-unique administrative and training needs are not being as adequately addressed as * * * in the past. * * * Ultimately, junior enlisted personnel do not seem to be receiving the same level of attention and direction needed for retention and advancement."

LEGISLATIVE ISSUES

Prior to concluding, there is one legislative issue that we would appreciate the Congress examining. This issue relates to the Director of the Coast Guard Reserve. Presently, the flag, or general rank, of the Reserve Chiefs of all the armed services, except for the Coast Guard is codified into law. In this regard, Title 10, section 10203, subsection (d) states that, "The Secretary of Transportation may designate a flag officer of the Coast Guard to be directly responsible for reserve affairs to the Commandant of the Coast Guard." There is, however, no parallel provision establishing an office, and Director of Coast Guard Reserve, as exists for the other services (see Title 10, section 3038 in the case of the Army Reserve, Title 10, section 5143 in the case of the Naval Reserve, Title 10, section 5144 in the case of the Marine Corps Reserve, Title 10, section 8038 in the case of the Air force Reserve, and Title 10, section 10506 in the case of the Army National Guard). We believe that a provision establishing a Director of the Coast Guard Reserve, headed by an officer in the grade above captain, should be placed into Title 10. At the same time, we also believe that the Office of the Coast Guard Reserve and the Director of Coast Guard Reserve may have such other functions as may be determined by the Commandant of the Coast Guard. The primary responsibility of the Director of Coast Guard Reserve should, however, be to oversee the functions and activities of the Coast Guards' Reserve component. Accordingly, to clarify the intent of Congress, establish consistency with the provisions of the other armed services, and to conform to current Coast Guard practice, it is recommended that a new section be added to Chapter 1007 of Title 10, to establish an Office of Director, Coast Guard Reserve, with an officer of flag rank serving as the director.

CONCLUSION

In conclusion, this committee's support of the Coast Guard has been vital to maintaining its military capability. Your continued support is essential. Thank you for this opportunity to present the position of the Reserve Officers Association to this committee.

PREPARED STATEMENT OF DR. LYNNE BROWN, VICE PRESIDENT FOR GOVERNMENT AND COMMUNITY RELATIONS, NEW YORK UNIVERSITY

New York University respectfully seeks the Subcommittee's support for a project of scientific research which is not only an important priority for the University, but which we believe will advance national interests through enhanced scientific understanding of normal brain development as well as the many disabilities, disorders and diseases that erode our ability to think and learn.

The University proposes to establish a Center for Cognition, Learning, Emotion and Memory. This Center will draw on the University's strengths in the fields of neural science, biology, chemistry, psychology, computer science, and linguistics to push the frontiers of our understanding of how the brain develops, function malfunctions, matures, and ages. In addition, as a major training institute, the Center will help prepare the next generation of interdisciplinary brain scientists.

Our project addresses the research and programmatic priorities of this subcommittee and the Congress. We thank the Congress for taking the time to consider and give its support to the important research being conducted in this area. We at New York University firmly believe that in the coming decades, a federal investment in mind and brain studies will repay itself many times over.

To establish this Center, New York University is seeking $10.5 million over five years to support and expand the research programs of existing faculty, attract additional faculty and graduate and postgraduate trainees, and provide the technical resources and personnel support that will allow us to create a premier, world class scientific enterprise. Individual researchers in the science programs at NYU compete for investigational support through traditional routes, quite effectively. However, these traditional funding sources do not address the specific need for establishment of a new cross-disciplinary area of scientific study, particularly one that transcends biomedicine, psychology, education, computer science, cognitive science, and linguistics. Nor do they provide the extensive funding necessary for faculty and student support and personnel and technical resources.

Exploration into the fundamental neurobiological mechanisms of the nervous system can help educators, scientists, health care providers, policy makers, work force managers, and the general public by enhancing our understanding of normal brain development and function in both children and adults, thereby helping us to detect and correct impediments that affect our ability to learn, to think, and remember, and to mature as productive members of family and society. Research in this area will ultimately contribute to a better understanding of how children learn at different stages; how childhood and adult learning is shaped by different cognitive styles; how aging affects memory; and how diseases alter memory.

New York University is well poised to make important contributions in this area. Founded in 1831, the University today is the largest private university in the United States, with over 49,000 students representing a broad range of backgrounds and coming from every state and over 120 foreign countries. NYU comprises thirteen schools, colleges, and divisions and is known for the excellence of its schools of law, medicine, film, and business; the Institute of Fine Arts; the Courant Institute of Mathematical Sciences; and departments in the Faculty of Arts and Science, notably neural science, chemistry, biology, psychology, French, English, philosophy, anthropology and economics. Located in the heart of the world's most cosmopolitan and diverse city, New York University is a leading national—and in many fields, international—center of scholarship, teaching and research. It is one of twenty-nine private institutions constituting the distinguished Association of American Universities, and is consistently among the top U.S. universities in funds received from federal sources and from private foundations.

The Center for Cognition, Learning, Emotion, and Memory will be an interschool, interdisciplinary unit linking faculty, students, programs and resources from several schools of New York University. These are the Faculty of Arts and Science, Courant Institute of Mathematical Sciences, School of Medicine, School of Education, and Center for Digital Multimedia. CLEM, to be housed at the University's Washington Square campus within the Faculty of Arts and Science, will be the locus for laboratory research and training in fundamental neurobiological, psychological and computational studies of the nervous system. In addition, CLEM will be a point of convergence for faculty and students seeking to incorporate these research perspectives into their own work in education, medicine, and technology, and seeking as well to enrich laboratory research with interdisciplinary collaboration and conceptual bridges. The new Center will be administratively housed within the NYU Department of Neural Science. This department includes affiliated investigators from biology, chemistry, psychology, physics, computer science, medicine, and mathematics. It is a national center of research and teaching, encompassing a pre-eminent faculty,

and generating substantial external funding from federal and state agencies as well as the private sector. The department holds world-class stature in the study of the nervous system as a sensory communications system, as a controller of motor activity and as a neural network that generates the emotional foundation of voluntary behavior. The neural sciences at NYU have attracted millions of dollars in generous support from, for example, the NIH, NSF, and EPA, the Howard Hughes Medical Institute, the W.M. Keck Foundation, and the Alfred M. Sloan Foundation. Its faculty have won prestigious awards, being named National Institutes of Health (NIH) Merit Awardee, Howard Hughes Medical Institute Investigator, National Science Foundation (NSF) Presidential Faculty Fellow, McKnight Foundation Scholar in Neuroscience, and MacArthur "Genius" Fellow. The department cultivates productive linkages with investigators from other disciplines, educational institutions, and research sectors. Thus, linkages between neural scientists, and educators in the NYU School of Education, clinicians in the NYU School of Medicine, and software designers, computer scientists, and graphic artists in the NYU Center for Digital Multimedia facilitate the application of scientific discoveries in the classroom, in the clinic, and in new technologies.

The new Center for Cognition, Learning, Emotion, and Memory Studies will bring the University's many strengths in these areas more fully to bear on the challenges and opportunities that multidisciplinary studies present. The Center will provide an organizational identity, core resources, and common focus for the university's efforts. For students, it will provide an educational forum to apply knowledge gained in one discipline to problems in other disciplines. For researchers, the Center's synergistic linkages between basic science departments, biomedical departments, and mathematical and computational units will encourage intellectual cross fertilization and will permit the consolidation of individual efforts in multidisciplinary but in conceptually coordinated efforts. For colleagues in the fields of education, medicine, and technology, the Center will facilitate connections with laboratory scientists and enhance the translation of research knowledge into health care, educational, and commercial applications. The enhanced research and training that will be possible at the Center will attract public and private funding above and beyond the substantial funds, honors and recognition already awarded to the University's researchers, and will support the Center's continued growth and development.

The Case for the New Center at New York University

New York University has the resources necessary for the successful creation and operation of a major multidisciplinary research and training center. There is top-level administrative leadership, a commitment to science, intellectual and administrative resources, established frameworks for interdisciplinary and interschool collaboration, strengths in neuro-biological, psychological and computational sciences, and standing in the international scientific community. The Faculty of Arts and Science, which encompasses the College and the Graduate School, has a preeminent faculty of 560, an annual operating budget of $197 million, a student population of approximately 9,200, and over 450,000 square feet of dedicated space apart from shared University facilities, making it a vital center of teaching and research. The science enterprise is especially vigorous, the result of a decade-long multi-million dollar development plan to renovate research and teaching laboratories and recruit distinguished junior and senior faculty, a pioneering science curriculum for undergraduate non-science majors, extensive research experiences for undergraduate science students, and an enhanced graduate student training program of supervised research and teaching assistantships. New York University has, as part of its multi-year science development plan, created a world-class and widely recognized neuroscience program. Neural science at NYU is particularly well known for research in visual processing and perception, theoretical neurobiology, molecular and developmental neurobiology, and cognitive neuroscience. It has outstanding researchers and well-established strengths in visual neuroscience, auditory neuroscience, cognitive science, neuromagnetism, neurochemistry, neurobiology, behavioral neuroscience, mathematical modeling, and computer simulation. Recently, these faculty have begun to unravel the biological mechanisms underlying cognition, learning and memory. As an example, NYU scientists have made important contributions to visual processing, deriving the most successful methods available for studying non-linear interactions in neuronal information processing; emotion, giving the first real glimpse into the neuroanatomy of fear; neural development, with landmark work on the vision system; and the neural bases for auditory function, including neural sensitivity to auditory motion stimuli. With these strengths, New York University is strategically placed to create a new and distinctive center that will produce a new understanding of the brain, and new ways of using that knowledge for improving human health and welfare. The Center for Cognition, Learning, Emotion, and Mem-

ory will capitalize on our expertise in physiology, neuroanatomy, and behavioral studies, and will build on active studies that range from the molecular foundations of development and learning to the mental coding and representations of memory. The Center will encompass diverse research approaches, including mathematical and computational modeling, human subject psychological testing, use of experimental models, and electrophysiological, histological, and neuroanatomical techniques. Examples of the kinds of research that will be conducted are taken from our current research efforts, which are now dispersed in the departments of biology, chemistry, neural science, psychology, and computer science: Neural scientists are investigating the anatomical and physiological pathways by which memory can be enhanced; the conditions that facilitate long-term and short-term memory; and the brain sites where all these memories are processed and stored.

Neural scientists, working with computational scientists, are using digital imaging to characterize normal and pathological mental processes in humans. Developmental biologists are studying the molecular basis of development and learning. Vision scientists are studying form, color and depth perception; visual identification; the varieties of visual memory; and the relationship of vision and perception to decision and action. Neural scientists are studying the neuroanatomy and physiology of emotion. Physicists are taking magnetic measurements of brain function that trace the decay of memories. Behavioral scientists are studying learning and motivation, acquisition of language, memory and aging. Neurobiologist and psychiatrists are conducting clinical studies of patients with nervous system disorders, especially memory disorders. These existing researchers are well recognized by their peers and have a solid track record of sustained research funding from federal agencies and private foundations.

As we move through the last years of the "Decade of the Brain," NYU, through this new Center, is strategically positioned to lead and contribute to accomplishment of the goals of this important initiative. Establishment of this Center requires support to bring together investigators in the different disciplines that address cognition, learning, and memory. Centralized core resources are required to facilitate collaboration and add efficiency to the research and training functions. New faculty who specifically bridge the disparate areas of knowledge and expertise need to be hired and "set up." Support must be provided to attract students to this new area and to promote work in this area, especially for those from groups traditionally under represented in the sciences. While other academic institution are also conducting research into brain studies, New York University has special strengths in important emerging research directions that are central to this Subcommittee's priority areas. To elaborate, vision studies at NYU follow an integrated systems approach that has been shown to be the only successful approach to unraveling this complex system, and that has established NYU as an internationally known center for neuroscience studies in vision. The interest in vision, a key input to learning, is associated with focused studies on the learning process, particularly, the interaction with memory and behavior. These researchers are exploring hard and exciting questions: How does vision develop in infancy and childhood? How does the brain encode and analyze visual scenes? What are the neural mechanisms that lead to the visual perception of objects and patterns? How do we recognize letters and numbers? How do perceive spaces, depth, and color? How we does the brain move from vision and perception to planning and action? How does the brain process what we see?

Advances in Biomedical and Behavioral Research.—Research conducted in our Center will by its nature address the loss of memory through aging or disease (including Alzheimer's), as well as disorders of emotional systems that commonly characterize psychiatric disorders. Many of the most common psychiatric disorders that afflict humans are emotional disorders—malfunctions in the way emotional systems learn and remember—and many of these are related to the brain's fear system. Neurobiological studies of emotion and emotional memory in the brain will generate important information about the brain systems that malfunction in, for example, anxiety, phobias, panic attacks, and post-traumatic stress disorders. Research into the brain mechanisms of fear will help us understand where our emotions come from, why these emotional conditions are so hard to control, and what goes wrong in emotional disorders. Ultimately, the research will generate clues for prevention and treatment of emotional disorders, focusing perhaps on the ways in which unconscious neural circuitry can in effect, be altered or inhibited.

We are seeking $10 million for the advancement of this initiative. We believe that this project would be a very beneficial economic development initiative and we seek the support of the Subcommittee. Thank you for the opportunity to submit this testimony for the hearing record.

PREPARED STATEMENT OF DR. RAYMOND E. BYE, JR., INTERIM VICE PRESIDENT FOR RESEARCH, FLORIDA STATE UNIVERSITY

Mr. Chairman, thank you and the Members of the Subcommittee for this opportunity to present testimony. I would like to take a moment to acquaint you with Florida State University. Located in the state capitol of Tallahassee, we have been a university since 1950; prior to that, we had a long and proud history as a seminary, a college, and a women's college. While widely known for our athletics teams, we have a rapidly emerging reputation as one of the Nation's top public universities. Having been designated as a Carnegie Research I University several years ago, Florida State University currently exceeds $100 million per year in research expenditures. With no agricultural or medical school, few institutions can boast of that kind of success. We are strong in both the sciences and the arts. We have high quality students; we rank in the top 25 among U.S. colleges and universities in attracting National Merit Scholars. Our scientists and engineers do excellent research, and they work closely with industry to commercialize those results. Florida State ranks fourth this year among all U.S. universities in royalties collected from its patents and licenses, and first among individual public universities. In short, Florida State University is an exciting and rapidly changing institution.

Mr. Chairman, let me describe three projects that we are pursuing this year—two through the Department of Commerce's National Telecommunications and Information Administration and one through the Economic Development Administration. Let me briefly describe these efforts.

U.S. Department of Commerce: National Telecommunications and Information Administration

Over the past several years, Florida State University has become a leader in distance learning options for students and adults. Many institutions across the nation are utilizing new distance learning courses and technologies. They are utilizing a variety of software and building infrastructure to provide materials to students who may or may not be physically located on that campus. FSU, however, has emerged as not simply an institution that utilizes these emerging technologies and models, but is at the forefront in developing and pioneering new approaches for us and others to employ.

Because of this increasingly recognized expertise in this area, FSU is planning to submit a proposal to become a nationally designated demonstration site for distance learning and financial aid under the Department of Education's initiative. That initiative would call for the designation of 15 colleges or universities that would be challenged to explore ways to allow distance learning students to have access to financial aid. There is no funding for this project, but such designation would provide FSU with an additional avenue of support for our distance learning students.

In addition to seeking the national designation discussed above, Florida State University will be involved in the upcoming Telecommunications and Information Infrastructure Assistance Program (TIIAP). This project would support the building of infrastructure to support distance or distributed learning. Our plan is to enhance public libraries throughout North Florida as sites for delivering computer literacy, continuing education, and academic course work as well as serving as a secure test site for distance courses. We would propose to partner with the Panhandle Library Access Network (PLAN) to take advantage of the computer linkages already in place between the nearly 50 public libraries in the 14 northern Florida counties. We are seeking $825,000 for this effort in fiscal year 2000.

Our second activity with the NTIA is our Digital Emergency Information Project. Florida State University (FSU) operates a number of radio and television services throughout the Florida Panhandle region. WFSU–FM and WFSQ–FM are both 100,000-watt public radio stations based in Tallahassee. WFSW–FM, also 100,000 watts, is the University's radio outlet in Panama City, Florida. WFSU–TV in Tallahassee and WFSG–TV in Panama City are the University's PBS affiliated television stations in those two markets. In addition, FSU also operates a cable channel on the Comcast Cable system in Tallahassee and Leon County. Broadcast Center staff also operate three satellite uplinks owned by the State as well as managing the State's satellite transponder. Through these stations, FSU serves nearly 600,000 households in North Florida as well as portions of southeast Alabama and southwest Georgia.

Since 1995, FSU has attempted to deliver emergency information to these citizens as they have endured floods, hurricanes, tornadoes and wildfires. These experiences have not only enhanced our awareness of the need to pass on accurate information to the general public but has also strengthened the ties between the stations and Florida's Department of Emergency Management and their Emergency Operations

Center (EOC). Because of the success of our broadcasts, the FSU stations have recently entered into an agreement to act as the television production entity for the EOC during emergencies.

Like all television stations in the United States, the FSU broadcasting stations will be converting to digital broadcasting in the next few years. Switching from analog to digital broadcasting will be an exciting endeavor with great possibilities. The post-conversion ability of stations to broadcast High Definition Television (HDTV) pictures as well as six-channel CD quality sound will provide great advances such as the transmission of multiple Standard Definition Television signals at one time and the ability to broadcast data at very high rates of speed directly to computers. We believe this last aspect of DTV broadcasting holds enormous potential for enhancing public safety.

FSU and their broadcasting stations recognize a genuine need for additional emergency services and propose a partnership with the Federal Emergency Management Agency (FEMA) to explore the possibility of broadcasting emergency information to FEMA field personnel and/or to the general public during emergencies in the stations' coverage area using this new technology. We believe that there can be great advantages in the ability to broadcast the latest information available directly to PC's using DTV at times when other telecommunications infrastructure may be inoperative. With FEMA's investment into this initiative, a partnership could be formed with the FSU stations and Florida's Department of Emergency Management to better serve the citizens of the North Florida area during a disaster, which could eventually be duplicated nationwide. This is a worthwhile project will save lives in the areas where implemented.

We are requesting $600,000 in fiscal year 2000 for basic infrastructure costs for this initiative. The FSU stations are working with other Public Broadcasting entities in Florida to obtain funding from the Florida Legislature, as well as other entities, to meet the federally mandated DTV conversion.

U.S. Department of Commerce: Economic Development Administration

The third project I would like to discuss involves a joint initiative with Florida State University and the City of Tallahassee, Florida to develop a Economic Development Initiative with the Arts.

Florida State University and the City of Tallahassee, FL propose to jointly seek funding to stimulate economic development in an area of Tallahassee that is adjacent to the FSU campus. The Frenchtown community, a redevelopment priority for the City of Tallahassee, is part of the City's urban revitalization effort.

The vehicle for providing this boost to the economic revitalization of this area will be a performing arts center that will be housed on the edge of the FSU campus adjacent to the Frenchtown area. That area, once a thriving resource to the Tallahassee area has, in recent years, become a high crime area consisting of deteriorating buildings, empty lots and abandoned housing. Such a new facility would provide a location that would allow for over 400 performances a year with audiences drawn from the surrounding communities throughout the Panhandle region of Florida, and including portions of southern Georgia and western Alabama. Audiences for the Center's performances will be drawn to commercial establishments created as part of the Frenchtown Revitalization Project. Small shops and restaurants, immerging as part of this revitalization effort, would be the catalyst for further development and enhanced opportunities for residents.

The City of Tallahassee and Florida State University will jointly seek funding for this economic development project with funding going toward site preparation, the necessary infrastructure including storm water facilities, and associated construction costs of such a Center. Private funds would be available to match the federal portion several times over. We will be requesting $3 million in fiscal year 2000 for this effort.

Mr. Chairman, these activities discussed today are only a few of many at Florida State University that will make important contributions to solving some key problems and concerns our Nation faces today. Your support would be appreciated, and, again, thank you for an opportunity to present these views for your consideration.

PREPARED STATEMENT OF HON. SHARPE JAMES, MAYOR, CITY OF NEWARK, NJ

NEWARK SPORTS AND ENTERTAINMENT PROJECT

Mr. Chairman and members of the Subcommittee, thank you for giving us the opportunity to submit testimony about a project under your jurisdiction that is critical to the people of Newark, New Jersey. Newark is truly at a crossroads: we are a City with all of the problems of many major urban centers, but we are also a City with

vast potential. We have begun to turn the corner—there is a renewed vitality and sense of optimism in Newark.

A major economic development initiative that will create a professional sports and entertainment complex in downtown Newark is being planned by a consortium of private businesses, nonprofit representatives and the City administration. As this new economic development initiative is evolving from preliminary to concrete plans, there is a unique opportunity for an important downtown facility linked to a key transit hub. The synergy of a major occupant that is committed to investment in community development and opportunities for upgrading the center city retail and economic environment makes this an attractive and singular proposal.

This project will use the attraction of a major league sports franchise to locate a state-of-the-art arena as a key cornerstone for development. The mission of this project is to harness the momentum initiated by the successful opening of the acclaimed New Jersey Performing Arts Center (NJPAC) in 1997, and create a vibrant, state of the art sports and entertainment district in downtown Newark. It will be a catalyst to the evolving creation of a vibrant downtown corridor—as development continues with strong anchors, integrating several elements. These include NJPAC, the Gateway complex of modern office buildings, the refurbished Newark Penn Station, a waterfront development along the Passaic River which is scheduled to begin construction by the U.S. Army Corps of Engineers later this year, and a minor league baseball stadium where the Newark Bears will begin to play this summer. A new light rail system is in final design, and will ultimately be the spine along which these projects are arrayed.

The Newark Sports and Entertainment Center master plan includes development of approximately 1.4 million square feet of office space. The preliminary plan consists of a covered multi-purpose sports arena with 19,000 seats, ancillary parking, a new television production and broadcast complex, up to 2 million square feet of new commercial and retail space, including hospitality facilities. The sports and entertainment center will provide superior access to a broad customer base, create sizable, measurable, bankable fiscal benefits for the taxpayers of New Jersey, and will, consistent with the commitment of the New Jersey State Plan, "steer development from environmentally sensitive zones and back into urban areas." As the project creates a destination location—which will create new incremental spending—it will help to revitalize New Jersey's oldest and largest city and establish a new sports paradigm linking professional athletes to the youth of the state.

The Newark Sports and Entertainment Center is expected to draw nearly two million people to the city each year. The estimate includes those attending sporting events, family entertainment shows like the circus, concerts and other attractions. In addition, the development of the Newark Sports and Entertainment Center will act as a catalyst to the increased demand for and opening of restaurants, shops, hotels and small service businesses that meet the needs of patrons. Local corporations, small businesses, city residents, and local employees are expected to benefit from the Newark Sports and Entertainment Center through improved quality of life, better entertainment and retail options for its current workforce, and improved job opportunities. Although the direct and indirect employment to be gained from this project is still the subject of further analysis, it can safely be estimated that at least 5,000 jobs in construction, ancillary services and direct employment will be created.

A unique aspect and public benefit of this project is the establishment of a foundation to benefit inner-city youth in New Jersey. Community Youth Organization (CYO) has been formed by the largest investor in the ownership group of the NJ Nets. CYO will be a partner in the profits of the team, and is committed to investing its profits in children, people and businesses in Newark. This significant contribution responds to a documented need for activities that help at risk youth. The NJ Nets already sponsor a wide variety of community programs, including the Sprite Junior Nets League, Kids Stuff, basketball-court renovation programs, and a host of other charitable and holiday events. The proposed sports and entertainment center will likely include educational forums as well as television studios available for youth tours and programs.

The total population of the region in a 25-mile radius of Newark—excluding New York—is 5,088,656, and includes New Jersey's five most populous cities. In an approximate 10 mile radius of Newark, the population is 2.1 million with a median family income of $54,683. This contrasts with Newark's population of 265,000 and median income of half that of residents in the 10 mile radius.

Currently approximately 100,000 workers are located in Newark. A recent survey of Newark's mid-day population found 266,000 local residents, 52,000 non-resident workers and 24,000 non-resident students. The six colleges and universities in the city have over 45,000 students and faculty. Newark is also home to major corporations, including Prudential Insurance, Continental Airlines, Blue Cross/Blue Shield

of NJ and Public Service Electric and Gas. This concentration of people with discretionary income for entertainment and dining will be encouraged to use this significant purchasing power in the City of Newark.

Fully one-quarter of the population of the country either lives within, or is easily accessible to Newark. We are only 8 miles west of New York City, within 100 miles of Philadelphia, and only a four hour drive or 1 hour flight away from Boston and Washington. Our location is enhanced by ready access to transportation connections, via rail, sea, air and nine major interstate and state highways. Newark's Penn Station, a stop on the Northeast Corridor for Amtrak as well as New Jersey Transit trains and buses from throughout the State, is only a short walk from the proposed sports and entertainment complex. There is an additional rapid and inexpensive rail connection to New York City via the train system known as the PATH. Newark International Airport, the ninth largest airport in the U.S. and one of the fastest growing in the country, serving 31 million passengers each year. It is now extremely close to downtown via automobile or bus, and will soon be directly accessible by a rail connection to the airport monorail system.

Newark, however, also suffers from an unusually high number of tax exempt properties as the host community for the aforementioned large publicly operated facilities including six colleges, public hospitals, a major airport, ocean cargo handling and major water and waste management operations. The dearth of ratables has posed strain and hardship on the residents and homeowners of Newark. The city will immediately benefit by the presence of the Newark Sports and Entertainment Center, as it will pay property taxes on land that is currently city-owned or underutilized.

The ownership group for a major league sports franchise has indicated the ability to contribute approximately $200 million of private funds toward the anticipated $300 million project cost. The gap in financing will be filled with a combination of tax-exempt revenue bonds (subject to debt limits), user fees and grants related to the job generating abilities and economic development potential of the project. The City plans to use proceeds from parking and hotel taxes to subsidize the project.

Public funds are expected to be utilized for site acquisition and off-site infrastructure improvements. The project area includes a large tract of vacant land and underutilized buildings which has been declared an "Area in need of Redevelopment" under the Redevelopment statutes of the State of New Jersey. This Committee's endorsement of an allocation of $15 million in funding through the Economic Development Administration for site acquisition and project construction is respectfully requested.

The consideration of this Subcommittee is deeply appreciated. Newark, New Jersey is looking forward to your support of this exciting project and its innovative partnership.

PREPARED STATEMENT OF HON. PAULA DELANEY, MAYOR, CITY OF GAINESVILLE

The Depot Avenue Project includes the reconstruction of approximately two miles of Depot Avenue from SR 331 to US 441. The project includes the construction of two travel lanes, turn lanes, curbs, sidewalks and landscaped medians. Depot Avenue is located adjacent to the existing Depot Avenue Rail-Trail, which is an 8 inch wide asphalt trail. It alternately connects residential areas, commercial areas, and industrial land uses along its length. The redesign of the road will address these varying conditions and also the involvement of the neighborhood residents it serves.

Depot Avenue traverses Gainesville from west to east, approximately one-half mile south of, and parallel to, SR 26 (University Avenue). Its western terminus is at the eastern edge of the campus of the University of Florida and its associated student housing development, and its eastern terminus is at SR 331 in Southeast Gainesville. It skirts the southern edge of downtown Gainesville at its mid-point, and its intersection with SR 329 (Main Street) is considered to be the southern "gateway" to Downtown.

The Depot Avenue project provides linkages to the Depot Avenue Rail-Trail that links with the Waldo Road Rail-Trail, the proposed Downtown Connector Rail-Trail that links with the Gainesville Hawthorne Rail-Trail, and the proposed 6th Street Rail-Trail. It provides access to the Gainesville Regional Transit System (RTS) Transportation Center as well as the proposed Depot Avenue Stormwater Restoration Park, which is in the planning stages as the centerpiece of a U.S. EPA and Florida DEP-funded Brownfields pilot project.

The City of Gainesville's RTS Transportation Center is located on the north side of Depot Avenue directly south of the core of Downtown Gainesville. The Transportation Center is a multi-modal transportation hub for the Regional Transit System,

Greyhound, Amtrak and the Bicycle Commuter Facility. On the south side of Depot Avenue across from the RTS Center is the Old Gainesville Depot, which has been recently acquired by the City for restoration. The Old Gainesville Depot was built in 1907, and was placed on the National Register of Historic Places in 1996. The City of Gainesville was founded as a rail hub linking Fernandina Beach on the east coast of Florida to Cedar Key on the west coast in the mid-1800's and uses a train symbol as its official seal. The restoration of this building in conjunction with the restoration of the 22-acre Depot Park is expected to provide a major community destination and regional "eco-tourism" attraction for the community.

The City's proposed 22-acre Stormwater Wetlands Restoration Park will serve as the stormwater management facility for the Depot Avenue Project as well as the Central City District portion of the watershed that is located upstream of the facility. The Old Gainesville Depot will be located within the park area and will provide for activities associated with redevelopment in the Depot Area, the Depot Park, the rail-trail system, and the RTS Transportation Center. The enhancement of Depot Avenue will encourage increased utilization of mass transit, bicycle and pedestrian modes of travel and increase accessibility to a major public heritage and recreation destination for the community.

The enhancement of Depot Avenue will also provide infrastructure and improved access from downtown and the University of Florida area to the Porters Community, just west of SR 329 (South Main Street) and Southeast Gainesville. The Porters Community lies within Census Tract 2, which extends north of University Avenue, and Southeast Gainesville lies within Census Tract 7. Census Tract 2 is approximately 37.7 percent African American and Census Tract 7 is approximately 75.6 percent African American (Census, 1990). Approximately 35.1 percent of all families in Census Tract 2 are in poverty and approximately 31.6 percent of all families in Census Tract 7 are in poverty (Census, 1990). The socio-economic conditions of these areas include high crime rates, sub-standard housing, and lack of services and investment. The enhancement of Depot Avenue provides the potential for increasing access to the higher employment areas of Gainesville, including downtown and the University of Florida, improving physical infrastructure, including drainage improvements, lighting and streetscaping, and providing bicycle and pedestrian facilities that connect both east and west Gainesville to Downtown.

Along with the improvement of South Main Street, the Depot Avenue Project will provide for beautification, and encourage redevelopment and infill in the urban core of Gainesville and its adjacent areas. This enhancement will provide a region-based incentive for reducing sprawl development in the Gainesville Metropolitan Area by providing an alternative east-west corridor to SR 26 that allows for maximum use of alternative transportation. As a consequence, this project will increase mobility while minimizing pollution and congestion associated with the use of single occupant vehicles.

The City's Electric Utility is in the process of designing a repowering plan for the historic Kelly Power Plant located adjacent to the Transportation Center, Depot Historic Structure and the Stormwater Wetlands Restoration Park. The planning firm of Dover, Kohl and Partners has recently completed a community-planning process held in conjunction with the repowering project. This community-planning process included the entire Depot Avenue area adjacent to Downtown. The City encourages citizen participation in the community-planning process and actively provides opportunities for participation in the planning of public infrastructure such as the Depot Avenue Project.

The Depot Avenue Project will include property and right-of-way acquisition, design and construction activities at a cost of approximately $18.8 million. The Stormwater Wetlands Restoration Park includes property acquisition, design, remediation and construction activities at a cost of approximately $10 million.

The consideration of this Subcommittee is greatly appreciated. The City of Gainesville looks forward to working with you further on this vital economic development initiative.

PREPARED STATEMENT OF DR. ALLEN SOLTOW, EXECUTIVE DIRECTOR OF RESEARCH, SPONSORED PROGRAMS, AND GOVERNMENTAL RELATIONS, UNIVERSITY OF TULSA

Mr. Chairman and Members of the Subcommittee, thank you for giving us the opportunity to submit testimony about a project under your jurisdiction that is of critical importance to the University of Tulsa.

The University of Tulsa, in partnership with Kendall-Whittier neighborhood groups, the City of Tulsa, Tulsa Public Schools, and the Tulsa Development Authority has worked for over ten years to create a more safe environment and a better

quality of life for residents in the Kendall-Whittier community. These efforts were greatly aided in the early stages by HUD special purpose grants and funds provided from the City of Tulsa. These funds allowed the City of Tulsa through the Tulsa Development Authority to purchase property on which a new neighborhood park and elementary school would eventually be placed. The property is located adjacent to the University of Tulsa campus. The location and design of the site were implemented according to a plan that was developed through a collaborative effort between the community residents and the previously mentioned organizations.

The result of this collaborative effort has been the removal of blighted and deteriorated houses which has served to reduce the crime rate in the area, as well as stabilize and in some cases increase property values in the surrounding neighborhoods. The Kendall-Whittier Elementary School was completed and opened in the Fall of 1998 and children are now attending classes at the facility. However, two apartment complexes remain in the identified park and school site. These apartments continue to be a source of neighborhood safety concerns for children and the surrounding neighborhoods and as long as they remain they prevent the completion of the park and school site.

Increased costs for acquisition and relocation have depleted the original funds for the Park and School site. It is critical that additional funding of approximately $1 million is secured so that the apartments located near the University of Tulsa campus and adjacent to Kendall-Whittier neighborhood park and elementary school can be immediately purchased and removed from the area. The two apartment complexes present immediate safety issues and crime problems for the park and school site as well as to the University.

We thank you Mr. Chairman and Members of the Subcommittee for allowing us the opportunity to submit this testimony for the hearing record and we look forward to your support on this important neighborhood revitalization project.

PREPARED STATEMENT OF TOM LEWIS, DIRECTOR OF NEIGHBORHOOD AND COMMUNITY SERVICES, CITY OF TALLAHASSEE

Mr. Chairman, thank you and the Members of the Subcommittee for this opportunity to present testimony to the Senate Commerce, Justice, State, and Judiciary Subcommittee on a very important economic development initiative in the City of Tallahassee, Florida.

Mr. Chairman, let me describe the project that Tallahassee is pursuing this year. The City of Tallahassee, in a joint public-private economic development initiative with Florida State University, is pursuing a project to stimulate economic growth in the Frenchtown area of Tallahassee, which is also adjacent to the FSU campus. The Frenchtown community, a redevelopment priority for the City of Tallahassee, is part of the City's urban revitalization effort. The vehicle for providing this boost to the economic revitalization of this area will be a performing arts center that will be housed adjacent to the Frenchtown area. That area, once a thriving resource to the Tallahassee area has, in recent years, become a high crime area consisting of deteriorating buildings, empty lots and abandoned housing. Such a new facility would provide a location that would allow for over 400 performances a year with audiences drawn from the surrounding communities throughout the Panhandle region of Florida, and including portions of southern Georgia and western Alabama. Audiences for the Center's performances will be drawn to commercial establishments created as part of the Frenchtown Revitalization Project. Small shops and restaurants, emerging as part this revitalization effort, would be the catalyst for further development and enhanced opportunities for residents.

The City of Tallahassee and Florida State University will jointly seek funding for this economic development project with funding going toward site preparation, the necessary infrastructure including storm water facilities, and other associated construction costs of such a Center. Funding for improvements to enhance transitional access across busy transportation routes will also be included. Private funds would be available to match this federal portion several times over. The City will be requesting $3 million for this effort.

Mr. Chairman, the project described will make an important contribution to solving some key problems and concerns that we face today. Your support would be appreciated. Thank you again for this opportunity to present these views for your consideration.

PREPARED STATEMENT OF THE COUNCILS ON ENGINEERING AND CODES AND STANDARDS OF THE AMERICAN SOCIETY OF MECHANICAL ENGINEERS

Mr. Chairman and Members of the Subcommittee: The National Institute of Standards and Technology (NIST) Task Force of the Council of Engineering, and the Council on Codes and Standards, of the American Society of Mechanical Engineers (ASME International), are pleased to have this opportunity to provide written testimony on the fiscal year 2000 NIST budget request.

Mechanical engineers have a long standing professional interest in the engineering, technology, and public-private partnership processes that influence the economic well-being of the nation. As innovators and designers of many of the systems and equipment used in NIST laboratories and facilities nationwide, the mechanical engineering community is well qualified to comment on the engineering and technology needs of NIST.

ASME is a worldwide engineering society focused on technical, educational, and research issues. It conducts one of the world's largest technical publishing operations, holds some 30 technical conferences and 200 professional development courses each year, and sets many industrial and manufacturing standards. This testimony represents the considered judgment of the NIST Task Force and the Council on Codes and Standards, and is not necessarily a position of ASME as a whole.

ASME has long supported the mission of NIST, which is to promote U.S. economic growth by working with industry to develop and apply technologies across a broad spectrum of areas appropriate for the civilian industrial sector, and to develop and maintain world class capabilities in metrology and standards. NIST's technical programs are unique because they foster government and industry cooperation through cost-sharing partnerships that create long-term investments based on engineering and technology. These programs are aimed at providing the technical support necessary to our nation's future economic health.

Intramural Programs

The fiscal year 2000 budget request would provide almost $285 million for the Measurement and Standards Laboratories, a $9.3 million increase over the current fiscal year. The Task Force supports this increase. The laboratories provide U.S. industry with critical technical information through their work in developing new measurement methods, testing techniques, data evaluation, and standards. NIST laboratories also serve as the U.S. reference point for measurements with counterpart organizations throughout the world.

The laboratories conduct important research and provide measurement services in many areas that are essential to mechanical engineering. These efforts will be enhanced by the $5.5 million proposed to fund three key initiatives: The first initiative aims to reduce standards and measurements-related market barriers that impede expansion of global trade. The second will focus on developing the tools and advanced capabilities necessary to protect critical components of the nation's information technology infrastructure. The third initiative will foster the professional development of science and mathematics teachers, from kindergarten through high school.

For the laboratories to continue developing and providing the state-of-the-art measurements that underpin U.S. industrial performance, NIST requires facilities that will enable it to deliver the best possible measurement system. Unfortunately, many of the laboratory buildings on the NIST campus are obsolete and can no longer support advanced measurement research and services. The Task Force supports the request of $95 million for construction of the Advanced Measurement Laboratory on NIST's Gaithersburg, Maryland campus. Preparing for 21st century competition, our international economic rivals already are investing in upgrades of facilitates at their national measurement institutes.

Extramural Programs

The fiscal year 2000 budget request would provide $339 million for NIST's Extramural programs. These programs are true public/private partnerships that require cost sharing by the private sector and focus on investments that are expected to provide broad-based benefits to the economy. These programs, the Advanced Technology Program (ATP) and the Manufacturing Extension Partnership (MEP), are merit-based, and closely evaluated.

The Task Force believes that the ATP and MEP are good for the nation's economic well being and the health of the U.S. science, engineering, and technology enterprise. The ATP provides cost-shared funding to industry for high-risk research and development projects with potentially broad-based economic benefits for the United States. The Task Force supports the President's request for an additional $41.2 million in fiscal year 2000 for ATP to promote industry's ability to undertake techno-

logically challenging initiatives that have broad economic promise. When combined with anticipated carryover and prior year recoveries, the request will permit approximately $73 million for new awards in fiscal year 2000.

The Task Force also supports the $100 million request for the MEP, which will permit NIST to continue providing the federal share of funding needed to support an existing network of centers serving smaller manufacturers in all 50 states, the District of Columbia, and Puerto Rico. The request includes $1 million to gather, promote, and effectively deploy best practices to all MEP centers. The overall MEP decrease of $7 million from the current fiscal year is due to the natural decline of the federal share of a center's operating costs as that center matures. Furthermore, the number of centers is not expected to change and the program will continue at essentially the same operating level.

Cooperative technology programs such as the ATP and MEP have been powerful catalysts in bringing government, industry, and universities together to enhance the economic competitiveness of the nation. These programs are needed to improve the transfer of new discoveries in science and engineering to innovative technologies, global quality practice, and profitable manufacturing capabilities on the shop floor.

Standards

The Department of Commerce, working through NIST, continues to provide essential support to the private sector's efforts to assist federal agencies in meeting the provisions of The Technology Transfer and Advancement Act of 1996 (Public Law 104–113), which requires the federal government to use private sector voluntary consensus standards. In some cases this has proved to be a challenging enterprise for both the standards development organizations and the federal agencies. Although the process of converting from government standards to voluntary consensus standards is well underway, we continue to look to NIST and the congressional oversight committees to encourage this effort and to monitor the progress made to date.

The ASME continues to support the Department's efforts to elevate U.S. participation in the international standards development process. To this end, we urge approval of the modest amount of funding included in the NIST fiscal year 2000 budget request for Export Promotion. This request, for $2 million, includes funding to assist the American National Standards Institute in meeting its obligations as the sole U.S. representative to the international standards bodies (ISO and IEC). Without adequate representation on these bodies, the nation's trade interests can be severely compromised.

Thank you for your consideration of our views on the fiscal year 2000 NIST budget request.

PREPARED STATEMENT OF THE INTERNATIONAL TRADEMARK ASSOCIATION

Introduction

Chairman Gregg, Ranking Member Hollings, and Members of the Subcommittee: The International Trademark Association (INTA) is pleased to submit a statement in support of the Clinton Administration's proposed appropriation for the United States Patent and Trademark Office (USPTO) in fiscal year 2000. In our opinion, all of the monies contained in the proposed $922 million operating budget are essential for the Agency to carry out its designated functions, meet the needs of its customers (patent and trademark owners), improve the quality of examinations, and plan for a future that is steeped in technology and global competition.

We ask that Congress approve the President's request without amendment or diversion of funds to other government agencies and ensure that the USPTO receives all of the money it requires to satisfy the ambitious, worthwhile, and necessary agenda laid out by the Agency's leadership. In particular, we commend Acting Commissioner of Patents and Trademarks Q. Todd Dickinson and his staff for recognizing the value of America's intellectual property and the need to provide customers of the USPTO with prompt and efficient service of the highest quality.

About INTA

INTA is a 120-year-old not-for-profit membership organization. Since its founding in 1878, membership has grown from 17 New York-based manufacturers to approximately 3,700 members from the United States and 119 additional countries.

Membership in INTA is open to trademark owners and those who serve trademark owners. Its members are corporations, advertising agencies, professional and trade associations, and law firms practicing trademark law. INTA's membership is diverse, crossing all industry lines and spanning a broad range of manufacturing,

retail and service operations. All of INTA's members, regardless of their size or level or international scope, share a common interest in trademarks and a recognition of the importance of trademarks to their owners, to the general public, and to the economy of the United States and the global marketplace.

The USPTO—A Self-Funded Agency

The USPTO is an agency within the Department of Commerce (DoC) which has two statutory functions: (1) processing patent applications and disseminating patent information; and (2) registering trademarks and disseminating trademark information.[1] In carrying out these basic, yet essential, commercial functions, the USPTO promotes economic growth, consumer confidence, product safety, creativity, and innovation. On the world stage, the Agency has been instrumental in helping America secure a leadership role in the global marketplace through trade agreements and international treaties for the protection of intellectual property.

In the discussion concerning monies appropriated to the USPTO, it is important to remember that the Agency attends to its responsibilities without the assistance of a single penny of taxpayer money.[2] This has been true since the passage of the Omnibus Budget Reconciliation Act (OBRA) of 1990.[3] The money used to support operations, policy development, and long-range planning of the USPTO is provided solely by patent and trademark owners seeking the registration and maintenance of their intellectual property. The nature of this funding mechanism requires that the USPTO be operated in the same manner as a private sector business: reinvesting a significant portion of the money it makes in new ideas and technology in order to remain competitive, maintaining a "nest egg" in case of emergencies, and providing customers with quality service—essentially giving them "the most bang for their buck."

Goals for the USPTO—Fiscal Year 2000 and Beyond

Success as a corporate-like entity cannot be achieved unless there are goals established and a plan by which those goals can be realized. Without a blueprint, there is an increased likelihood that funds raised through user-fees will be squandered or carelessly spent. INTA is pleased by the USPTO's development and planned implementation of goals which we believe are essential to furthering the cultivation of America's intellectual property infrastructure and to maintain this Nation's position in the global marketplace.

In particular, we are encouraged by the Agency's renewed commitment to "implement an integrated, agency-wide quality improvement program to satisfy customer needs."[4] For trademarks, the USPTO acknowledges that it will expand its investment in new technology designed to improve searches and work with trademark owners to "set and achieve" new standards of quality for examination of trademark applications.[5] Specific examples of new uses of technology include:

—Submission of trademark applications and all follow-up papers via the Internet.
—Correspondence electronically with trademark attorneys during the prosecution of their applications.
—Timely and accurate reception of information related to changes in policies, processes, fees, etc.[6]

These advances in technology will result in greater speed and more efficient examination of trademark applications, a goal INTA has long advocated. The USPTO has committed to the trademark community to expend significant resources to achieve the following desirable results in fiscal year 2002 or sooner:

—A reduction in the time to mail filing notices to 14 days.
—First action pendency rate of 3.0 months (fiscal year 1998 = 7.2 months, Goal for fiscal year 1999 = 3.9 months).
—Final notice of registration rate of 13 months (fiscal year 1998 = 17.8 months, Goal for fiscal year 1999 =15.5 months).
—Issuance of a Notices of Abandonment within 45 days of the date the file is abandoned.
—Mailing of Certificates of Registration within seven days of registration.

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[1] United States, U.S. Patent and Trademark Office, Setting the Course for the Future: A Patent and Trademark Office Review—Fiscal Year 1995 (Washington, USPTO, 1996) 4.

[2] United States, General Accounting Office, Intellectual Property: Fees Are Not Always Commensurate With the Costs of Services (Washington: GAO, May,1997) 32.

[3] Public Law 101–508, 104 Stat. 1388 (November 5, 1990).

[4] United States, U.S. Patent and Trademark Office, Fiscal Year 2000 Corporate Plan: Briefing for the International Trademark Association (Arlington, VA, February 16, 1999) 11.

[5] USPTO, Fiscal Year 2000 Corporate Plan: Briefing for INTA, 11.

[6] USPTO, Fiscal Year 2000 Corporate Plan: Briefing for INTA, 24.

—Centralization of the change of address functions.[7]

There are other parts of the corporate plan that are worth mentioning. Specifically, the focus on customer/employee relations, another area which has been a cause for concern in the past. USPTO has committed to spend funds to improve trademark examiners' training (with an emphasis on matters of substantive trademark law) and communications with trademark applicants (for example, providing clear and concise answers to applicants and/or their counsel).[8]

INTA believes the above listed goals are not only highly desirable, but also essential. The trademark operations within USPTO have requested $109,312,000 to make these goals a reality.[9] Trademark owners endorse this particular aspect of the Agency's request and urge Congress to allocate those funds.

Carryover Funds

Finally, INTA notes the request that the USPTO be permitted to carryover funds amounting to $159.8 million, in anticipation of unforseen matters that result in higher than expected expenditures or reduced revenue in upcoming budgets. On the one hand, this can be seen as setting aside funds for the future—something which we wholeheartedly support. However, we must deal with the realities of "scoring," the congressional bookkeeping system (mandated by the Budget Enforcement Act) which states that legislated increases in direct spending or reductions in receipts in a functional category must be offset by other legislated reductions in direct spending or increases in receipts in that particular category.[10] What "scoring" means for the USPTO is that as a practical matter "carryover" funds may be inaccessible when the Agency's budget is incorporated into the larger functional category used by Congress.

The resolution to this situation, in our opinion, properly lies with the authorizing committees for the USPTO, that is, the Senate and House Judiciary Committees. During this Congress, we intend to propose legislation that would address this issue (comparable, for example, to the revolving fund designed for the "passenger user fee" used by the U.S. Customs Service, however, subject to this Subcommittee's oversight and appropriation). This would specify that the Agency could deposit and withdraw operating funds as needed (again within the limits set by Congress) without the obstacles created by the "scoring" process.

Conclusion

INTA once again wishes to thank Senators for this opportunity. We reiterate our support for the President's proposed appropriation for the USPTO in fiscal year 2000 and urge that Congress approve it without amendment or diversion of funds.

Put simply, in a time when America's ideas and creativity are competing on a scale never before experienced, the federal agency charged with protecting those assets must be equipped with the necessary resources, financial and otherwise, in order to carry out that very task. INTA will continue to work with the USPTO's leadership to ensure that the Agency meets its stated goals. We welcome Congress' partnership in this important effort.

PREPARED STATEMENT OF THE SONOMA COUNTY WATER AGENCY

Mr. Chairman, thank you for the opportunity to submit testimony to the Subcommittee on an issue of importance to the people of Northern California and the Nation.

The Sonoma County Water Agency (SCWA) supports the inclusion of funds for the "Pacific Coastal Salmon Recovery Fund" in the Commerce, Justice, State and Judiciary Appropriations bill for fiscal year 2000. For the reasons described below, the SCWA urges the Subcommittee to include funding for the initiative at a level of $200 million in fiscal year 2000, to be divided equally among the coastal states of California, Oregon, Washington and Alaska, for critical salmon recovery efforts in the four state region.

As the members of the Subcommittee may know, several salmonid species in the region recently have been listed under the Endangered Species Act as endangered or threatened, thereby committing the federal government to the conservation and

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[7] Department of Commerce, Fiscal Year 2000 Corporate Plan for the United States Patent and Trademark Office: Moving Into the 21st Century, Presidential Submission, February 3, 1999, 51; see also, USPTO, Fiscal Year 2000 Corporate Plan: Briefing for INTA, 27.

[8] DoC, Fiscal Year 2000 Corporate Plan for USPTO, 51–52.

[9] DoC, Fiscal Year 2000 Corporate Plan for USPTO, 53.

[10] The Budget Enforcement Act (BEA) was first enacted in 1990 and extended in 1993 and 1997. The 1997 extension can be found in H.R. 2015, Report #105–217, 105th Congress.

recovery of these species. SCWA is at the forefront of working with state and local interests throughout the four state region to ensure that we all work together to effectively utilize our resources, including state and local resources, to achieve this goal. We are committed to ensuring the proper coordination of federal, state, local, tribal and private resources dedicated to this important national policy of conserving endangered species.

Recently, the governors of the four states wrote to the President in support of an annual $200 million appropriation, to be divided equally among the four coastal states, for each of the next six fiscal years, beginning in fiscal year 2000. The Administration has acknowledged the importance of providing federal funding to the four coastal states by including $100 million in its fiscal year 2000 Budget Request for salmonid protection efforts.

As a water agency serving the people along the coast of California, we strongly support the efforts of the states of California, Oregon, Washington and Alaska to obtain federal funds for the protection of coastal salmonid species. Funding at the governors' requested level of $200 million is critical to create a partnership between state and local governments and the federal government. If appropriated, the federal funds will be used for local, science based salmon recovery projects, including: as a top priority, funding "on the ground" projects that can help achieve immediate results in habitat protection; scientifically sound watershed assessments, and the development of corresponding watershed plans and projects prioritized based upon these assessments; implementing projects consistent with watershed plans; monitoring, evaluation and plan refinement; coordinating local government and community activities, as well as outreach and education in support of salmon protection; researching chronic near shore or estuarine impacts on salmon; and addressing regional biological factors that reduce salmon survival.

We pledge to provide substantial local matching funds in order to make this process a true partnership. We also are committed to providing the innovative ideas and creative approaches to salmon protection which can only be generated at the state and local level by the people most affected by the decision.

In our region, it is our intent to use the federal funds provided by the Pacific Coastal Salmon Recovery Fund for such important purposes as: the purchase of conservation easements to protect and restore vital habitat and improve water quality in salmon-bearing rivers and streams; planting trees and other vegetation, culvert replacement, installation of fish ladders, stabilization of stream banks and other projects to restore salmon habitat and spawning grounds; mapping and assessing watersheds to determine the quality and quantity of existing habitat and to help target restoration activities; and monitoring the success of restoration activities to refine future local activities.

In order to maximize the benefit of funds for fish protection, expending five percent or less of the funds for administrative costs would be optimal, particularly if costs related to in-kind services performed by local agencies are accounted for as part of the local match. Further, we believe accountability mechanisms can be put in place to ensure the effective expenditure of funds without the use of a federal oversight intermediary, such as the National Fish and Wildlife Foundation.

Based on past experience, we believe that local leadership on salmon recovery projects is a critical element of any successful salmon protection program. We urge the Subcommittee to fund the governors' request of $200 million to fund salmon recovery efforts for fiscal year 2000.

Again, thank you for the opportunity to submit comments on this important national issue.

IMMIGRATION AND NATURALIZATION SERVICE

PREPARED STATEMENT OF CHRISTOPHER NUGENT, EXECUTIVE DIRECTOR, FLORENCE IMMIGRANT AND REFUGEE RIGHTS PROJECT, INC.

The Florence Immigrant and Refugee Rights Project welcomes this opportunity to submit testimony to the Senate Subcommittee on Commerce, Justice, State Appropriations on the importance of live prehearing rights presentations to people detained by the Immigration and Naturalization Service (INS) for removal proceedings. With congressional financial support, the Department of Justice (DOJ), the INS and/or the Executive Office for Immigration Review (EOIR-Immigration Court) could fund and institutionalize such prehearing rights presentations to all INS detained respondents. This cost-effective program would ensure detained respondents' due process rights and access to justice in their immigration cases while maximizing efficiency for INS and EOIR.

Founded in 1989, the Florence Immigrant and Refugee Rights Project is a not-for-profit legal service organization assisting immigrants, asylum-seekers and even United States citizens detained by the INS for removal proceedings in the isolated areas of Florence and Eloy, Arizona. Holding an estimated 9 percent of the detained population nationwide at any given time, the INS detention facilities in Florence and Eloy process approximately 1,500 people per month through complex removal proceedings at on-site Immigration Courts. Last year alone, our project provided legal services to thousands of people detained from over 50 countries.

Our project has become known nationally for its "Justice and Efficiency Model," a unique legal service delivery system which ensures detained people's due process in their immigration cases while maximizing efficiency for the INS and EOIR. In Florence, in cooperation with the INS and EOIR, we perform a live, energetic, 45-minute know-your-rights presentation for all detainees before court where we inform them about their rights and remedies from removal; screen them for their relief and bond eligibility; provide legal advice and pro se assistance; and represent or refer detainees with meritorious claims for relief.

It has been our experience that the assistance of counsel is essential for clients to access procedural and substantive justice in removal proceedings. Consider, for example, the case of Mr. G., a 25 year-old Gulf War veteran who was recently in removal proceedings in Florence. His father is an U.S. citizen who served for many years in the U.S. armed forces, and his mother is a native of Mexico and legal permanent resident. Born in Mexico, Mr. G. acquired permanent residence in the United States as an infant but never applied for U.S. citizenship through the naturalization process. Mr. G. lost his green card and, after a brief trip to Mexico, told an INS official at the border that he was a U.S. citizen. He was prosecuted and, misadvised by his federal defender, he pled guilty to the offense of making a false claim to U.S. citizenship. INS then placed him in removal proceedings. Although he had always believed he was a U.S. citizen through his father, Mr. G. had no information as to how to present his claim. Indeed, the proof requires evidence that his father had lived in the U.S. for ten years before Mr. G's birth, a difficult feat since his father had been estranged from the family for many years, and they thought he had died.

Through our assistance, Mr. G. successfully proved his claim to U.S. citizenship through his father, and removal proceedings were terminated. Had it not been for our prehearing rights presentation, screening, and representation, it is highly probable that this United States citizen would have been removed to Mexico. Mr. G's experience is typical of the thousands of detainees we serve who need orientation and assistance in their claims for relief from removal given the complexity of immigration law and removal proceedings.

The U.S. Senate, INS, the immigration courts and other governmental agencies have all recognized the need and utility of basic legal assistance to individuals in INS custody. Evidence of this support includes Senator DeConcini's letter supporting the Florence Project (Nov. 14, 1994); Senate Resolution 284 (Oct. 8, 1994); the U.S. Commission on Immigration Reform Final Report and Recommendations (Sept. 1997); Letter from INS Associate Commissioner Joan Higgins (Mar. 7, 1994); Letter from Officer in Charge, Florence INS Processing Center (May 5, 1998); Letter from Michael Creppy, Chief Immigration Judge (Aug. 5, 1997); Letter from Immigration Court Judges in Florence (May 6, 1998); General Accounting Office 1992 Report (June, 1992).

From September to December, 1998, we implemented a modest one-time pilot grant from the Department of Justice to demonstrate the efficiency and effectiveness of prehearing rights presentations and counseling on reducing time in detention and decreasing detainee anxiety and disturbances.

During the three month period of implementation, the Florence Project conducted a total of 92 rights presentations and prehearing services for a total of 1,012 respondents the day of and before their first hearing. As a measure of efficiency and effectiveness, 793 of 1,012 (78 percent of the total) who heard the rights presentation and were identified by our staff as having no form of relief from removal (besides voluntary departure) accepted removal (or voluntary departure) at their first master calendar hearing. This shows the rights presentation's real impact on respondents in understanding their lack of relief and quickly conceding removability, thereby freeing up precious court and INS time. The breakdown of the remaining 219, 22 percent of the total, who asked for another master calendar hearing so that they could have a confidential individual interview with the Florence Project is further measurable evidence of our contribution to the time-efficient administration of proceedings. A total of 100 had actual or potential claims to relief clearly warranting the scheduling for another hearing and the majority of the remainder were Central

Americans who secured another hearing given the uncertainty over removal to countries adversely affected by hurricane Mitch.

The respondents we ultimately represented reveal an average of only 33.8 days in proceedings from their first hearing to the conclusion of proceedings in detention. This statistic should dispel the myth that representation by counsel unreasonably complicates or protracts the proceedings with needless scheduling of additional hearings.

As measures of effectiveness, the Project entered for and represented 86 individuals at bond redetermination hearings with underlying forms of relief to pursue. This represents 53 percent of the total 163 respondents scheduled for bond hearings without counsel. The Project also identified and counseled 100 respondents with actual or potential relief, the majority of whom bonded out and changed venue to pursue their claims before another immigration court.

Finally, through the rights presentation, we surfaced respondents' eligibility for a wide variety of meritorious claims including U.S. citizenship; asylum and withholding of removal; cancellation of removal; Nicaraguan and Central American Relief Act relief; American Baptist Churches (ABC) relief; naturalization; termination based on when removability/admissibility charges could not be sustained; unconstitutional, illegal race-based border patrol stops; and the applications of time-bars against arriving aliens. During implementation, we represented a total of 15 individuals in their merits hearings in addition to 8 motions to terminate or administratively close proceedings, 28 percent of all respondents' merits hearings in Florence.

Given the successful results from this pilot project, we believe that it is the larger public interest for Congress to consider providing funding to non-profit organizations for rights presentations as a streamlined legal service delivery program at all places where INS detains individuals. Basic prehearing rights presentations and counseling not only render removal proceedings more efficient for the INS and Immigration Court but further ensure due process and access to justice, as constitutionally required. Such assistance protects the integrity of the adjudication process and deters detainees from pursuing meritless claims, appeals and post-removal litigation, thereby saving taxpayer expenditures on INS and Court time and the cost of detention.

EOIR, INS and numerous officials who have visited the Florence Project can attest to the benefits EOIR and INS derive through the Project's rights presentation model, which provides some legal assistance to all detained people in removal proceedings. On a local level, INS has recognized that our particular approach of providing information, counseling and representing detained respondents benefits the INS by decreasing respondents' anxiety and security risks while facilitating their valid claims for relief in the removal process. Additionally, in January, 1999, American Bar Association President Phil Anderson visited the Florence Project and Florence INS detention center and highlighted the Project as a model immigrant rights project setting a national standard for legal service. He also praised the INS detention center as the best in the country as it operates in strict compliance with the Detention Standards. He called for the replication of the Florence Model at other sites.

Federal support for legal rights presentations including follow-up legal counseling services would be timely and consistent with congressional will to make INS processing in detention a cornerstone of U.S. immigration policy. Since 1996, INS has swelled its detained population by nearly 70 percent to some 16,000 detained at any one time nationwide. It is further anticipated that the detained population can grow up to 35,000. Without the right to government-appointed counsel in removal proceedings, an estimated 90 percent of detained respondents ultimately go unrepresented due to poverty and the remote locations of detention sites.

With increased immigration enforcement, expanded INS-police collaboration, and INS' vigorous enforcement of stricter grounds of removal under the Immigration and Nationality Act legal service providers and bar associations' pro bono efforts are underfunded and lacking personnel to adequately serve the growing numbers of detained respondents without additional federal support. It is due time to forge a public-private-non-profit partnership to ensure effective legal service delivery to detained respondents. Federal funding for rights presentations including prehearing service delivery would enable non-profit organizations to use private foundation and other resources to fund representation of respondents in their merits cases.

As many United States citizen family members of respondents can attest, federal support for a minimum level of legal assistance to detained respondents is in the public interest to ensure that people detained by INS are not deprived of their rights to relief as a result of their unfamiliarity with immigration law, the expedited pace of removal proceedings and a lack of access to legal information and counsel. Federal support also would further INS' stated policy to treat all aliens in custody

with dignity and respect. Finally, federal support for rights presentations would contribute to the efficiency and effectiveness of removal proceedings, thereby decreasing costs to INS and EOIR in detention time and numbers of hearings of individual respondents.

We encourage any member of this Subcommittee to visit EOIR and INS detention facility in Florence to see first-hand the benefits of the Florence Justice and Efficiency Model. We thank you for your thoughtful consideration of our comments.

PREPARED STATEMENT OF THE AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL–CIO

Mr. Chairman and members of the Subcommittee: Thank you for the opportunity to present our views. The American Federation of Government Employees, AFL–CIO, represents 600,000 federal workers across the nation, including 20,000 workers in the Immigration and Naturalization Service (INS), and 26,000 workers in 97 federal prison facilities nationwide.

IMMIGRATION AND NATURALIZATION SERVICE

The provision directing the Attorney General to impose disciplinary action, including termination of employment, pursuant to policies and procedures applicable to employees of the Federal Bureau of Investigation, for any INS employee who willfully deceives the Congress or department leadership on any matter is highly problematic. First, this provisions should not be applied to bargaining unit employees, who are covered under the Civil Service Reform Act of 1978. Second, the agency's proposed implementation of this provision for fiscal year 1999 excludes members of the Senior Executive Service (SES). By excluding SES employees and including bargaining unit employees the policy is topsy-turvy. SES employees—the very group of INS management whose misrepresentations about the Miami facility to members of Congress gave rise to the instant language—are exempt from the applicable procedures. Whereas bargaining unit employees—the same group of employees who exposed the sham to Congress—are subject to the more drastic procedures. Moreover, the proposed implementation also defines "department leadership" to include all the members of the SES, including numerous field managers, within the INS.

The proposal to allow the Attorney General to transfer funds between the "Enforcement and Border Affairs" and "Citizenship and Benefits, Immigration Support and Program Direction" programs is ill-advised, and should be eliminated.

Congress has mandated that 1,000 additional Border Patrol Agents be hired. We disagree with the INS's request to not implement that mandate; we support increasing staff for the Border Patrol. We also support the Congress' actions to improve the INS enforcement effectiveness via the establishment of small and geographically dispersed offices to provide greater responsiveness to local law enforcement agencies. We would recommend that the Congress take a similar approach to interior enforcement as it has with the Border Patrol. Specifically, the Congress should mandate the hiring of several hundred additional Special Agents in geographically dispersed offices over the next several years. We also believe the Congress should direct the INS to increase efforts to prevent fraud in the granting of immigration benefits by increasing the numbers of Agents assigned to work fraud cases.

The $48.1 million allocated for construction, repair, and renovation of Border Patrol facilities is inadequate. INS has roughly doubled in size in the past ten years, and much of that growth has occurred in the Border Patrol. Many of the existing facilities, however, were only designed to accommodate a fraction of the currently assigned employees. With regard to effective enforcement strategies, AFGE strongly believes the "prevention through deterrence" Border Control Strategy has been ineffective and no funds should be appropriated to support this strategy (which literally has staff sit in one place as a means of preventing illegal immigration rather than actively patrolling and monitoring our border).

We believe Congress should increase funding for our Immigration Inspections program at ports of entry. While this program must never surrender its sensitivity toward its service function, it has of necessity been effective in the Service's law enforcement efforts. More than 5,000 Immigration Inspectors now perform a full range of law enforcement functions. These effective employees are neither properly compensated in terms of their grades nor in terms of their retirement coverage. We urge the Congress to consider extending the provisions of law enforcement retirement programs (5 U.S.C. § 8336(c) and 5 U.S.C. § 8412(d)) to include Immigration Inspectors.

Key to effective enforcement strategies has been the multi-lingual skills of Border Patrol and other INS enforcement officers. Congress recognized the importance of

foreign language skill when it passed the Federal Law Enforcement Pay Reform Act of 1990 (Public Law 101–105), which authorizes agencies to pay a foreign language differential of up to five percent of basic pay to any law enforcement officer who possesses and makes substantial use of one or more foreign languages in the performance of official duties. Such payments should be included with regular salary payments on a bi-weekly basis in order to ensure that multi-lingual employees are fairly compensated for the skills they bring to the enforcement of immigration laws. The INS has failed to and refuses to compensate its employees who use foreign language fluency in the performance of their official duties. AFGE urges the Congress to include in the agency's budget appropriations for foreign language pay differentials.

The INS continues to ignore the recommendation of the National Performance Review to reduce by half the percentage of its employees who are supervisors. The INS proposed budget would allocate significant amounts of money to promoting large numbers of additional supervisors. This approach decreases considerably the number of personnel available to actually enforce our nation's immigration laws and runs counter to the sound requirement of reducing employee to supervisor ratios. AFGE urges the Subcommittee to take action to ensure that INS uses its resources for increasing front line staff not added levels of management.

FEDERAL PRISON SYSTEM—BUREAU OF PRISONS (BOP)

The Administration requests $3.8 billion for the BOP. AFGE fully supports this budget request. As in previous years, however, we would like to address some important issues facing the employees of the federal Bureau of Prisons.

The fiscal year 1996 appropriations created the first privatized long term federal prison. This prison is a government-owned contractor-operated facility under a five-year pilot project. Since its opening, the true cost of the prison has been underestimated by Wackenhut Corrections and the BOP because many costs are not being factored in. The transportation of inmates, regional and central office support, caps on medical expenses, are all costs and issues that should be carefully scrutinized before the BOP pursues any further privatization efforts of housing long term federal prisoners.

Overcrowding is again on the rise in the federal prison system. Fiscal year 1998 saw an increase in inmate populations to almost 30 percent overcrowding. Although we have continued to build prisons, the level of overcrowding has not subsided due to minimum-mandatory sentences and drug charges. By our own Director's statement, the Bureau of Prisons inmate population has increased at the highest rate since 1990.

The BOP also has the difficult task of absorbing 7,000 District of Columbia Department of Corrections inmates from the Lorton, VA complex. This is being accomplished in accordance with the DC Revitalization Act of 1997. This specific added mission increases BOP's costs and further adds to the overcrowding of federal facilities. We accept this challenge, but must have the resources and flexibility necessary to control this influx of inmates safely.

Our bargaining unit members working in the BOP want to do their jobs to the best of their ability. Working in a hostile environment with inmates, however, requires proper staffing levels. Although Congress funded BOP at a higher appropriations level than the BOP requested, our line staff levels remain inadequate. The BOP has determined that institutions will be funded at 89 percent to 92.5 percent. The Central and Regional offices are holding back funding to institutions that are overcrowded, which can only increase inmate hostility, short-hand staff, and jeopardize the safety and security of federal prisons.

Last year's escapes and riots at the privately prison in Youngstown, Ohio and the debacles of prisoner abuse, escapes and assaults on officers at the privately operated facilities in Texas, New Jersey, Florida and Oklahoma demonstrate that the government run federal prisons provide the public with the best prison system in the world at a reasonable cost. By best, we mean our system houses the most dangerous inmates, does so securely, safely, and humanely and prepares inmates for productive release into public society.

The Clinton Administration continues to make a calculated effort to increase police officers' on the street by 100,000 positions. Similarly, an increase in Border Patrol and other INS agents, which AFGE supports, is resulting in larger inmate populations. In doing so, correctional professionals must also keep pace to deal with the increasing inmate populations resulting from this initiative. It is a questionable practice to decrease correctional staff, while increasing police officers and federal agents who make more apprehensions per year.

AFGE urges this subcommittee to resist riders to bills placing unnecessary and dangerous prison reform in this type of legislation. Full hearings should always be

held on the effects of so called "No Frill's Legislation" which effect staff adversely who work in the most dangerous environment of any occupation.

AFGE appreciates the opportunity to offer these comments. Thank you for your time and attention.

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

PREPARED STATEMENT OF GARY A. GLENN, PRESIDENT, MASSACHUSETTS FOUNDATION FOR EXCELLENCE IN MARINE AND POLYMER SCIENCES

"Marine Electronics" is a term which describes the instruments, devices, machines, and software which are widely used in various oceanic and marine applications: military, petroleum and minerals exploration, recreational, oceanographic, commercial, and environmental. The availability of accurate and reliable marine electronics is essential to the operations of each of these pursuits. However, in the case of environmental operations—research, management, protection and enhancement—major advances are needed in availability of appropriate instruments for tasks such as measuring water quality and determining the level and source of pollutants and toxins.

Need for a Renewed Marine Electronics Agenda

In the 1980's, with strong support from Congress, the National Oceanic and Atmospheric Administration (NOAA) sponsored research on a National Marine Electronics Agenda for the United States. With additional support provided by various states, and utilizing research capacities at notable and respected oceanographic institutions, this NOAA-sponsored effort stimulated substantial growth in the United States marine electronics industry. Specific recommendations for private sector product development, and a clear statement of goals for governmental agencies in terms of research priorities was established. Thus, the marine electronics industry has contributed in major ways to oceanographic research, military supremacy at sea, and more efficient exploration, discovery and retrieval of undersea resources. However, the end of the Cold War has substantially changed the setting for commercial survival and growth in the marine electronics sector: new opportunities exist for utilization of previously classified instruments developed for military use, and similarly, new challenges to U.S. competitive standing have emerged from the European community. Concurrently, environmental applications have become even more important. The need now is for a new and renewed Marine Electronics Agenda with specific attention to environmental issues.

Urgent Problems in Marine Environmental Monitoring, Research and Enhancement

Despite more than two decades of public consciousness of the dangers of marine environmental degradation, the situation in many respects is worse today than it was 20 years ago. We see significant new environmental problems such as the huge "dead zone" in the Gulf of Mexico, the outbreak of pfiesteria epidemics along the mid-Atlantic coast, and newly detected toxicity in Pacific marine waters. Also, the governmentally-mandated reduction in U.S. commercial fishing quotas substantially reduces an essential source of oceanographic environmental information, which has been available because of cooperation from U.S. commercial fishermen. These circumstances underscore the need for more effective monitoring of marine environments, and for instruments and devices that can accurately measure progress toward improvement of water quality and reduction of pollution. The Marine Electronics Agenda for Environmental Applications will help to define instrumentation needs that will exist in the long term, and identify the measures that need to be taken immediately to initiate the process. These guidelines will be appropriate for U.S. government agencies involved in marine activities as well as for the private sector.

Local Community and Educational Needs

Paralleling the determination of long term environmental marine electronics needs is an immediate need on the part of local communities, small towns, counties, and coastal jurisdictions, including school and water districts, for low cost, reliable and resilient marine electronics applications and local environmental monitoring. Traditionally, local entities have relied on centralized agencies for information on local conditions, but research now shows that these conditions are too varied for generalized and centralized analysis. Many local jurisdictions must take on measurement and mitigation tasks themselves, and they require the means to carry out these functions accurately. The Marine Electronics Agenda for Environmental Applications will focus on what kinds of low cost devices can be designed and produced

for these uses and what standardized criteria/parameters should be applied in measurements.

Research Partnership

The design, development, and implementation of the Marine Electronics Agenda for Environmental Applications will be carried out by a team of experts and scholars drawn from research institutions and university centers in Massachusetts and Hawaii. The Massachusetts experts will focus on environmental needs in the Atlantic Ocean and Gulf of Mexico regions, while the Hawaii experts will concentrate on environmental degradation issues relevant to Pacific and island conditions. The Agenda program will be carried out via a collaboration between the Massachusetts Foundation for Excellence in Marine and Polymer Sciences and the Partners in Development of Hawaii.

Costs

Costs for design, planning, and carrying out of targeted research, and writing of the Agenda, including the convening of a broadscale Marine Instrumentation Panel consisting of experts from government and the private sector who will refine the draft Agenda, will be $775,000 in fiscal year 2000.

We request the Committee's assistance in appropriating these funds as part of the fiscal year 2000 NOAA appropriation.

PREPARED STATEMENT OF DR. MICHAEL M. CROW, EXECUTIVE VICE PROVOST, COLUMBIA UNIVERSITY

Mr. Chairman and Members of the Subcommittee, thank you for this opportunity to submit a statement for the hearing record for fiscal year 2000 funding for the Office of Global Programs (OGP) within NOAA of the Department of Commerce.

International Research Institute (IRI)

My statement concerns the International Research Institute for Climate Prediction (IRI), a joint initiative between Lamont-Doherty Earth Observatory of Columbia University and the Scripps Institution of Oceanography at the University of California-San Diego. The IRI will be in the third year of a cooperative agreement with NOAA to develop long-range forecast models and capabilities related to major climate patterns and events on a world-wide scale. The IRI focuses on the following activities: works with an extensive network of existing research centers around the world to provide a multi-national "end-to-end" climate prediction program on seasonal-to-interannual time scales; provides forecasting and regional assessments of changing physical conditions (e.g., temperature and rainfall); and provides the application of forecasts to support practical decision making in critical sectors like water resources, agriculture, fisheries, emergency preparedness and public health and safety.

Recent Funding

This Subcommittee has been at the forefront in providing increases for NOAA's Office of Global Programs (OGP): Columbia and Scripps extend sincere appreciation to this Subcommittee for the fiscal year 1999 resources that fully funded NOAA's OGP request for the first time, plus the additional funding directed toward IRI-related activities. While the IRI will be level funded (at $6 million annually) for the next fiscal year, the efforts of NOAA, the IRI and other cooperating institutions have resulted in greatly improved lead time and capability in understanding Earth's complex climate system.

Our capability could still be improved. The climate-driven events of the past five years have caused tremendous chaos and destruction. This accentuates the need for continued improvement in predictive ability. The back-to-back occurrence of a 100-year El Nino (1997–1998) followed by a 50-year La Nina (1998–1999) demonstrates the volatility of the world's climate, and the vulnerability of humanity to climatic aberrations.

The OGP request of $69.7 million represents NOAA's recognition that additional data is crucial to improved forecasting. The OGP request also addresses the need to understand the role of climate events other than ENSO that affect climate. Columbia University and the IRI strongly support the approval of the OGP budget request.

Support for the NOAA/OGP Budget

Through the funding provided in fiscal year 1999, NOAA and the regional forecasting centers have reached a level of competency that permits the underlying

science to be pushed to the next stage. NOAA's OGP budget request represents a significant component of that next stage. Recognizing that the IRI has a unique role as NOAA's climate forecasting partner, the IRI has developed and is launching a program component complementary to NOAA's. Advanced forecasting, coupled with impact assessment and analysis in specific sectors, is warranted by recent climate events and needed for the near-term future. The IRI initiative can justify and defend an increase of $3 million above the OGP Budget for a total of $72.7 million in fiscal year 2000.

NOAA's Fiscal Year 2000 Budget for OGP

The requested OGP increase of $6.7 million is comprised of two elements: (a) $3.1 million for three projects oriented on decadal-to-centennial time scales: conducting field studies on the North American carbon sink, studying tropospheric ozone in the Northern Hemisphere and its role as a climate forcing agent, and learning about the causes and trends of extreme weather events and their link with climate variability and climate change; and (b) $3.6 million would be used to enhance current seasonal-to-interannual climate predictive capacity in terms of ENSO forecasting and the monitoring of as-yet unstudied climate cycles affecting the U.S. in the North Pacific and North Atlantic oceans. These extramural competitive grants would focus on monsoonal circulation system, and would provide essential date and systemic understanding in order to forecast weather and climate variability at longer lead times and project their impact at regional levels.

Justification for $3 Million Increase to Fiscal Year 2000 OGP Funding

The IRI develops long range forecasts for NOAA on climate change. IRI modeling incorporates international and domestic data and modeling in conducting long range forecasts and the interpretation of impact. As NOAA and other scientific institutions develop greater capacity and understanding, the IRI can provide more accurate, longer range forecasts. The IRI is now developing projects that focus on three applications areas related to long range predictions: Water, Agriculture, and Health. This initiative complements and supports NOAA's planned fiscal year 2000 enhancements: The IRI will support the concurrent NOAA projects through the development of specific applications models that focus on climate variability and impacts in the three areas discussed below.

Water

Water and Air are the two most important compounds for the sustenance of human existence. The IRI's mission focuses on water as a climate agent and water as a resource.

Water availability is determined by weather and climate. Dependence on water, for human use, commerce, and agriculture is predicated on usually reliable annual averages. The reliance on water and its expected availability do not factor extreme climate driven variations into annual planning. As more is learned about the interdependence of extreme climate events and their world-wide effects and implications, we can factor long range predictions on water availability as a function of these events into preparatory and prescriptive actions that will minimize the disruption an otherwise major climate anomaly could cause.

Water use has tremendous applications in society today. Hydroelectric power depends on a stable and predictable source of water at all times. Human use depends on stable supplies of potable drinking water and water for food preparation, hygiene, and for medical purposes. Agriculture, as an industry, depends on the time sensitive supply of water for seeding and growing. Industrial requirements for water range from manufacturing to construction. Transportation needs, apart from barge or river traffic, consume large amounts of water and depend heavily on water availability.

For these reasons, the IRI has developed an application project that concentrates on climate-caused variations in water availability, from the very broad to the very local, or regional, impact. The large database requirements and extremely complex calculations inherent in water modeling require extraordinary computing capability. Of the $3 million increase sought, $1 million would be used to acquire the sophisticated computer capability that enables researchers to develop water modeling to a higher level of accuracy. The benefits of this development will be seen in every aspect of man's interaction with the environment. Long range predictive capability coupled with prescriptive courses of action to accommodate and counteract the destructive impacts of climate events on water availability will result in more efficient use of resources, prevent disruption in major capital markets, and minimize human suffering and death.

Agriculture

U.S. agriculture is the most vulnerable domestic industry to extreme climate variation. Genetically designed food and feed crops (corn, wheat, and soybeans) and fruits and vegetables are so refined that the slightest variation in water supply can destroy a season's product. With advance knowledge of the type and nature of a major climate event, appropriate steps can be taken to protect agricultural products and investment from suffering adverse effects due to extreme climate events. This applies not only to the interrelated water availability model for reservoir and irrigation purposes, but also in the decisions concerning which seed strains to use at planting and when the most advantageous planting time might be in a particular year.

Foreign demand for U.S. agricultural products has a direct impact on commodity prices and farm income. If foreign demand for U.S. agricultural products changes significantly, the U.S. economy will reflect the variation from the commodity futures markets down to the level of the farm gate. Climate events such as drought can reduce foreign agricultural production, thereby increasing dependence on and demand for U.S. agricultural products and causing prices and farm income to rise. Conversely, if the U.S. suffered crop losses due to drought or flooding, major crop failures could increase domestic reliance on imported agricultural products, increasing the U.S. negative balance of trade and a concurrent increase in domestic agricultural prices, but loss of farm income.

The advance knowledge of the probabilities related to foreign and domestic growing conditions would aid governments and planters immeasurably. The expected demand for products from non-domestic purchasing would permit farmers to make rational decisions on which crops to plant and in what volumes. The improved decision making structure for U.S. agriculture would provide more confidence, and less guess work, in the agricultural economy.

The IRI focus on agriculture promises to yield returns exponential to the investment in the capability. The applications program is integrated with the water modeling discussed in the previous section. The two assessments are interdependent on one another.

Health

Climate variation can result in dramatic health-related problems. Studies have shown that in years of above average moisture coupled with above average temperature there has been a much higher incidence of malaria and other water related diseases.

The change in environmental conditions conducive to mosquito proliferation or water borne pathogens can greatly impact animal and human health, particularly when naturally occurring diseases and bacterial agents are permitted to grow in regions where inhabitants have not had to develop natural immunities to new pathogens. The reconstruction of some past plagues and devastating diseases can be traced historically to preceding major climatic events. The more reconstruction that IRI can develop through historical modeling, the more IRI will be capable of minimizing the potential threat to other living organisms (plants and crops as well as animals and humans).

Water sustains all life, including microbiological diseases. The forecast of above normal precipitation for a region could result in an increase in the potential habitat for harmful diseases. The increased medium for disease reproduction could then lead to a greater impact on human lives. If both greater than normal precipitation and greater than normal temperature are forecast for the same region, conditions for new organisms to thrive in that region are greatly enhanced. The new organisms often are harmful to human and animal survival.

The IRI, in conjunction with the water modeling initiative, will integrate regional health modeling and impact assessments in fiscal year 2000. This additional capability will permit public health precautions to be conducted—such as vaccines and preventive water treatment activities—long before the onset of climate-driven health problems begin to occur.

Summary

This statement presents the case for providing the full budget request for NOAA's OGP program at $69.7 million, and further outlines a complementary initiative developed by the IRI that would require an additional $3 million. The total OGP appropriation for fiscal year 2000 required to conduct the activities discussed in this statement is $72.7 million. Columbia University and the IRI request that the Subcommittee carefully consider the request discussed in this short paper and that fiscal year 2000 funding for OGP be provided at $72.7 million, with appropriate clarifying report language.

Thank you for this opportunity to present this plan and this statement for the hearing record.

PREPARED STATEMENT OF DR. RAYMOND E. BYE, JR., INTERIM VICE PRESIDENT FOR RESEARCH, FLORIDA STATE UNIVERSITY

Mr. Chairman, thank you and the Members of the Subcommittee for this opportunity to present testimony. I would like to take a moment to acquaint you with Florida State University. Located in the state capitol of Tallahassee, we have been a university since 1950; prior to that, we had a long and proud history as a seminary, a college, and a women's college. While widely known for our athletics teams, we have a rapidly emerging reputation as one of the Nation's top public universities. Having been designated as a Carnegie Research I University several years ago, Florida State University currently exceeds $100 million per year in research expenditures. With no agricultural or medical school, few institutions can boast of that kind of success. We are strong in both the sciences and the arts. We have high quality students; we rank in the top 25 among U.S. colleges and universities in attracting National Merit Scholars. Our scientists and engineers do excellent research, and they work closely with industry to commercialize those results. Florida State ranks fourth this year among all U.S. universities in royalties collected from its patents and licenses, and first among individual public universities. In short, Florida State University is an exciting and rapidly changing institution.

Mr. Chairman, let me describe a joint project that we are pursuing this year through the National Oceanographic and Atmospheric Agency (NOAA).

U.S. Department of Commerce: NOAA

Florida State University is involved in a major collaborative effort which draws upon the expertise of three outstanding Florida universities. Focusing on climate variability in the State of Florida and the Southeast (SE), the objectives include exploring the value of climate data based on the El Nino-Southern Oscillation (ENSO) and developing practical applications for climate forecasts, particularly for agriculture.

This consortium draws upon the expertise of scientists at FSU, who have the technical capability to deliver detailed climate variability knowledge; the University of Florida, who possess technical expertise in agricultural engineering, modeling, agricultural decision support and information delivery; and the University of Miami, who have expertise in implementing the knowledge into the agricultural community.

Abundant evidence illustrates the economic importance to farmers of early climate forecasts of extreme weather events. The unanticipated January 1997 freeze that cost the winter vegetable industry in South Florida more than $200 million and displaced is just one reminder. Storms, drought and flooding associated with the unusually strong El Nino event of 1982–83 that cost thousands of lives and an estimated $13 million in crops globally is another reminder.

ENSO-based forecasts can now provide useful weather information in many regions at the required lead times. Short- and long-term forecasts could provide the agricultural industry with a range of opportunities for mitigating adverse impacts of bad weather, as well as taking advantage of favorable weather.

During the initial phase of this effort, the FSU team described qualitatively the impact of El Nino (and the other extreme, La Nina) on temperature and precipitation patterns across the SE. Additionally, the team found a geographic shift in tornadic activity associated with El Nino events. A new climate forecast system to provide predictions of seasonal temperatures and precipitation with longer lead times and improved skill now is in the testing phase. Improvements are due in part to the coupled nature (i.e., the linking of the ocean and atmosphere so they respond to each other dynamically) of the forecast system.

Our colleagues at the University of Florida identified several crops in Florida that are vulnerable to shifts in weather patterns associated with El Nino and La Nina, and further noted that the impact is not uniform in nature across the state.

Continuing this collaboration, the consortium hopes to estimate the economic advantages of incorporating information from climate forecasts into farming management systems, and to eventually work with sector representatives in developing guidance products for the agricultural community. The National Oceanic and Atmospheric Administration provided the initial funding.

We are seeking $2.5 million in fiscal year 2000 to continue this worthwhile effort.

Mr. Chairman, this activity is just one of many at Florida State University that will make important contributions to solving some key problems and concerns our

Nation faces today. Your support would be appreciated, and, again, thank you for an opportunity to present these views for your consideration.

PREPARED STATEMENT OF THE AMERICAN ASSOCIATION OF PORT AUTHORITIES

The American Association of Port Authorities (AAPA); Agriculture Ocean Transport Coalition; American Maritime Congress; Coal Exporters Association of the United States; Council of European and Japanese National Shipowners Associations (CENSA); Crowley Maritime; Dominion Terminal Associates; Dredging Contractors of America; International Association of Independent Tanker Owners (INTERTANKO); International Chamber of Shipping (ICS); Lake Carriers' Association; Louis Dreyfus Corp.; Maersk Inc.; Maritime Exchange for the Delaware River and Bay; Maritime Institute for Research & Industrial Development (MIRAID); Matson Navigation Company; Mississippi Valley Coal Trade & Transport Council; National Association of Maritime Organizations; National Industrial Transportation League (NITL); National Mining Association; Passenger Vessel Association; Ruhrkohic Trading Corp.; Saltchuk Resources, Inc.; Sea-Land Service, Inc.; Transportation Institute; U.S. Great Lakes Shipping Association; and West Gulf Maritime Association are writing to stress the importance of adequate funding for the National Oceanic and Atmospheric Administration's (NOAA) nautical charting and navigation services programs. An adequate level of funding for these programs is an essential component of the environmentally friendly, safe and efficient flow of trade. Additionally, the importance of the National Ocean Service's (NOS) navigation programs is evidenced by recent Congressional actions, including the enactment of the Hydrographic Services Improvement Act (Public Law 105–384).

We urge you to appropriate the following funding levels for NOAA's Navigation Services program for fiscal year 2000: $33 million for mapping and charting, $33 million to conduct hydrographic surveys, and $22.5 million for the Tides and Currents account. These budgetary levels reflect those recently passed by Congress in Public Law 105–384 (H.R. 3461), and these funding levels will eliminate the backlog of critical survey areas only in approximately twenty years rather than the 35 years currently proposed in the Administration's fiscal year 2000 budget. We should not wait for the huge expense and environmental damage of a major maritime disaster to call attention to this issue.

These navigation services provided by NOAA are used by a diverse constituency, including fishermen, recreational and scientific interests, flood control and emergency preparedness groups, cruise vessels, ferries, and others, and are part of a national defense navigation system which operates efficiently to protect life and property.

The commercial shipping industry is investing in new technology systems that are likely to significantly improve both safety and efficiency, but their investment will not be fully realized unless the U.S. government fulfills its statutory and treaty responsibilities to provide accurate and up-to-date charts and tide and current predictions.

Investing in accurate charts and real-time water systems is consistent with the Administration's priorities, since it is an extremely cost-effective means for encouraging commerce, enhancing sustainable communities, maintaining safety for human lives, and avoiding oil spills.

PREPARED STATEMENT OF THE CENTER FOR MARINE CONSERVATION

The Center for Marine Conservation appreciates this opportunity to share our views regarding the President's fiscal year 2000 budget request for the marine conservation programs of the National Oceanic and Atmospheric Administration (NOAA).

The Center for Marine Conservation is committed to protecting ocean environments and conserving the global abundance and diversity of marine life. Through science-based advocacy, research and public education, CMC promotes informed citizen participation to reverse the degradation of our oceans. CMC is a nonprofit conservation organization with 120,000 contributing members, headquartered in Washington DC, with field and regional offices in Alaska, California, Florida and Virginia. In addition, we will soon be opening a field office in New England.

We greatly appreciate the funding this Committee has provided for marine conservation over the last several years and urge the Committee to provide for the substantial, but needed, increases for NOAA's ocean stewardship programs the administration is proposing next year. In total, and contained in numerous initiatives, these increases add up to $318 million. These additional funds represent a vital in-

vestment for the future of our Nation's ocean resources and we commend the administration for proposing them. Most of these funds would go to coastal states and communities for important coastal and near shore marine conservation efforts. We also recommend that the Committee provide for some additional increases highlighted below and reject some of the cuts the administration has proposed for important conservation priorities.

While we appreciate the Committee's demonstrated commitment to conserving marine life and protecting coastal and ocean waters, we are extremely concerned with the rescission of $2 million for the states' coastal polluted runoff program contained in the supplemental appropriations bill (S. 544) for the current fiscal year. The Committee's report states that this rescission is due to shifting priorities within the agency, but senior NOAA officials deny any movement away from this vital program. Polluted runoff as you are aware is now the major cause of water quality impairment in our nation's coastal waters. We commend the Committee for providing substantial boost to this program for this year and strongly urge the Committee to remove this damaging rescission from the supplemental appropriations bill before it is enacted.

Regarding funding for next fiscal year, the importance of this Committee to marine conservation cannot be understated. Just as the Interior Appropriations Subcommittee has jurisdiction over funding of stewardship of the nation's public lands, this Subcommittee has jurisdiction over funding for the stewardship of the Nation's public oceans. We refer to coastal waters and the Nation's exclusive economic zone (EEZ), those waters out to 200 miles off our shores. This is an area of approximately 3.4 million square miles, more than the area of the entire contiguous United States. Within this vast realm the National Ocean Service (NOS) and the National Marine Fisheries Service (NMFS) have responsibilities for natural resource management, pollution control and protection of threatened and endangered species and marine mammals.

More than half of the U.S. population now lives and works within 50 miles of the coast and coastal populations are increasing by 3,600 people per day. Over 180 million people visit our nation's coasts each year. Beaches are the number one tourist destination in the country with coastal states earning 85 percent of U.S. tourist dollars. This economic activity depends upon productive habitats, unpolluted waters, abundance and diversity of marine life, and healthy coastal and marine ecosystems.

The living marine resources of our pubic oceans are of extreme importance to our Nation. It is estimated that in 1994 the commercial fishing industry contributed a total $20.2 billion to the U.S. Gross National Product. Limited analysis by NFMS estimates that almost 15 million people made over 66 million marine recreational fishing trips in 1994. It is estimated that marine recreational fishing contributes $7 billion to the economy. The conservation of marine mammals and endangered marine species provide abundant recreational opportunities to millions of Americans annually. In the United States, more than 3 million people annually participate in whale-watching, generating more than $230 million in direct and indirect revenue. Consequently, providing adequate funds today for the conservation and management of living marine resources will have both immediate and long-term benefits for the American people.

NATIONAL OCEAN SERVICE

National Marine Sanctuary Program

We urge the Committee to provide the total $29 million for this important program requested by the administration. The $15 million increase is found within the administration's Lands Legacy Initiative.

Often referred to as our national marine parks, the 12 sanctuaries around the country encompass almost 18,000 square miles of the nation's most significant marine resources. Yet as last May's issue of National Geographic points out: "The entire system has an annual budget of $11.7 million (referring to the fiscal year 1997 budget)—a sum in effect that reduces these sanctuaries to a state of poverty * * *. The typical sanctuary, therefore must take care of an enormous area with a staff that could fit in a broom closet." In 1990, an independent National Marine Sanctuary Program Review Panel recommended annual funding of $30 million, a recommendation that was endorsed by NOAA's public advisory Committee in 1992. Furthermore, NOAA has begun a resource intensive review of each sanctuary's management plan as required by law.

South Florida Interagency Ecosystem Restoration Initiative

CMC recommends that the Committee fully fund NOAA's portion of this vital initiative for the coming fiscal year. The $5.1 million requested by NOAA, a small por-

tion of the overall request for the Initiative, involves $3.2 million in the National Ocean Service budget for monitoring and modeling, and will allow NOAA to fully implement its integrated ecosystem monitoring program in Florida Bay and the Florida Keys National Marine Sanctuary. These waters are the downstream end of the South Florida ecosystem and thus are affected by the activities of other agencies working to restore and protect the Everglades. The monitoring program will help the agency model and assess changes to the marine resources of Florida Bay and the Florida Keys coral reef system. The Administration's request also includes $1.9 million in NMFS' budget for critical fisheries restoration and research.

The Control of Polluted Runoff to Coastal Waters

We urge the Committee to provide $22 million for NOAA's Clean Water Initiative. This initiative includes a $4 million increase to assist states to develop and implement their Coastal Nonpoint Pollution Control Programs, as well as a $1.8 million increase to help address the problem of harmful algal blooms such as Pfiesteria. These funds are a sound investment in the future of our coastal waters. The Administration's request includes $9 million for NOAA to conduct research, monitoring and assessments of harmful algal blooms, Pfiesteria outbreaks, and red tides through funding the Ecology and Oceanography of Harmful Algal Boom program.

Just as important, the Initiative also includes $12 million for the states to complete and implement coastal nonpoint source pollution control programs, authorized under section 6217 of the Coastal Zone Act Reauthorization Amendments of 1990 (CZARA).

Nonpoint source pollution, or polluted runoff, is the nation's largest source of water pollution and is the leading cause of beach and shell fish bed closures, fish consumption warnings, massive fish kills, and the 7,000 square mile Dead Zone in the Gulf of Mexico.

Section 6217 is the only national program to ensure that if voluntary measures taken to reduce polluted runoff are ineffective, states have the necessary backup authority to protect coastal waters. It has now reached a critical stage. NOAA and the Environmental Protection Agency have conditionally approved plans from twenty-nine coastal states and territories. Development grants of $6 million will be used by these states to complete their programs. In addition, four new coastal states will soon join the Coastal Zone Management program and will be developing polluted runoff control program. The remaining $6 million will be made available through the section 306/309 coastal zone management grants program to the states for implementation of their programs.

This program was unfunded in 1996 and 1997 and received only $1 million in 1998. For the current fiscal year you helped to put the program back on its feet by providing the states with $8 million to develop and implement their programs. As we mention above, however, we are extremely concerned about proposed $2 million rescission.

Within the proposed budget for NOS we also urge the Committee to provide for the following increases:

—$32 million in additional funds for the Coastal Zone Management Act to assist states and communities in meeting the rising challenge of increasing populations in coastal areas;

—$14.7 million in additional funding for the National Estuarine Research Reserves Systems. Most of this new funding would go to the state managed reserves to acquire lands as buffers to help protect these critical areas;

—$12 million in new funding for coral reef restoration and protection.

NATIONAL MARINE FISHERIES SERVICE

Fisheries Research Vessel

We strongly endorse the administration request for funds to begin construction of the first of four new fishery research vessels. The agency's current fleet consists of 8 outdated vessels with an average age of 30 years. The $51.6 million request is for a badly needed tool to improvement NMFS's ability to assess our nations marine fish stocks. This vessel, and the three more to follow, will substantially increase days-at-sea for assessments of fish stocks, marine mammals and other threatened or endangered marine wildlife.

Resource Information

CMC does not support the overall cut proposed for the resource information line item and is very concerned about cuts in research for the following specific activities:

—the $150,000 cut in the right whale research line item. With only 300 North Atlantic right whales remaining, and the species' continued existence threat-

ened by entanglement in fishing gear and collisions with vessels, research must be continued to improve our understanding of right whale biology, determine the frequency and location of entanglements and collisions, and allow for the development of technologies to modify fishing to reduce entanglements.

—the $200,000 cut in the Hawaiian monk seal line item. Hawaiian monk seals are the most endangered pinniped in the United States. We must commit the necessary funds to ensure that projects such as health assessments, marine debris assessments and removals, and habitat and foraging studies go forward.

—the cut for the Stellar sea lion recovery plan line item. Since 1994, the number of juvenile and adult Stellers has dropped by 18 percent in the Gulf of Alaska population alone. Pup counts at Alaska's largest rookeries fell by 40 percent between 1991–1994. Using current population models, fisheries service biologists predict there is nearly a 100 percent chance the western Steller sea lion population will be extinct in the next 65 to 100 years. CMC believes that current management measures are insufficient to prevent the extinction of this species and must therefore be modified. We recommend an additional $1 million, over the President's request, for additional research including assessing how well fishing area closures have functioned to benefit Steller sea lions, and developing adaptive management experiments to reexamine how reduce the impact of fishing on Steller sea lions.

CMC does, however, support the proposed increase in resources information of $1.6 million for fisheries oceanography.

Fishery Industry Information

NMFS has requested an increase of $1 million in Fishery Industry Information for the collection of fisheries statistics and economic analysis required under the Magnuson-Stevens Act which we support. Lack of socio-economic analysis of fishery management measures was an issue of concern at a recent NOAA constituent strategic planning workshop.

Fisheries Management Programs

Our nation's fisheries continue to be in trouble with fully one third of known U.S. fish stocks being overfished or quickly approaching that state. Currently NMFS is unable to provide timely assessments of most stocks. NMFS estimates that restoring fisheries will have a potential $25 billion total positive impact on the national economy. These public resources must be managed on a sustainable basis and assessments must be completed (for exploited stocks in particular) and kept up to date. In 1996, Congress took a critical step in rebuilding and conserving these public resources by enacting the Sustainable Fisheries Act which strengthened the Magnuson-Stevens Fishery Conservation and Management Act.

Over the past couple of years Congress has provided increases for NMFS and the regional fishery management councils in carrying out the provisions of the Act. The agency, however, remains short of funds to carry out its responsibilities. For next fiscal year the agency has requested and increase of just $2.6 million. We recommend the Committee provide $8 million in additional funding for the agency to implement the Sustainable Fisheries Act.

NMFS has requested $13.3 million, an increase of $300,000 for the Regional Fishery Management Councils next year. CMC supports this increase. We also support the President's proposal $22.7 million for Fishery Habitat Restoration.

For New England fisheries we recommend the Committee provide for the $5.2 million requested for implementation of plans for groundfish and scallops. In addition, we appreciated the inclusion of $1.9 million in the supplemental request for this purpose, but regret the Committee was unable to provide for the administration's request of $3.1 million for capacity reduction. In general CMC is supportive of vessel buyouts conducted in accordance with the provisions of the Magnuson-Stevens Act, and that provide conservation benefits by permanently retiring vessels from fishing. We encourage the Committee to include the $3.1 million of its fiscal year 2000 bill along with the $8.3 million sought for a $40 million buyout in the scallop fishery.

While CMC supports the $2 million initiative for observers in the west coast ground fish fishery, we are troubled that the administration is trying to pay for it with an increase of $1.575 million. Unless Congress provides an additional $2 million for this important effort, observer programs in other areas will have to suffer. Therefore we recommend a funding this line item at a level of $4.65 million.

Marine Mammal Protection Act

The President's request for $7.6 million for Marine Mammal Protection Act (MMPA) implementation is woefully inadequate. We recommend an appropriation of $18 million. Twenty million dollars alone is needed to conduct the necessary marine

mammal research and stock assessments, convene incidental take reduction teams, devise and implement take reduction plans, develop a streamlined system to report incidental mortality, observe fisheries at levels necessary to accurately determine incidental mortality, and to conduct public outreach to the fishing community to inform them of the various requirements under the MMPA. Lack of funding has been one of the primary reasons for NMFS's failure to effectively implement the MMPA. Furthermore, inadequate funding and the ineffectual implementation of the MMPA threatens to destroy unprecedented cooperation, started in 1994, among conservation groups, commercial fishing industry, and the government when the statute was last reauthorized.

Endangered Species Recovery Plans

CMC supports the $27.5 million increase and the additional 132 FTE's requested for Endangered Species Act Recovery Plans. However, the allocation of $5.1 million dollars and 8 FTE's to critically endangered species such as leatherback and loggerhead sea turtles, the Pacific and Atlantic right whales, and Hawaiian monk seal is still insufficient to recover these species. We therefore recommend an additional $4 million for this line item.

Dolphin Encirclement

We support the $3.3 million request to continue a four-year study on the effects of encirclement of dolphins as a method for catching tuna. However, the President's budget fails to include $3 million, authorized by Congress, for the implementation of the International Dolphin Conservation Program Act.

In addition to the programs and line items mentioned above CMC supports the $2.6 million increase to characterize and map biodiversity and protected species habitat, as well as the establishment of the new Pacific Coast Salmon Recovery Account.

Enforcement and Surveillance

CMC strongly supports the proposed $1.025 million and 13 FTE increase requested for enforcement and surveillance. While we are aware of concerns identified with the management of this program by the Inspector General, our inquiries leave no doubt that, given the responsibilities for enforcement placed upon NMFS in the areas of fisheries and protected species, this relatively minor increase is vitally needed.

National Underwater Research Program

Within the NOAA budget request for Oceanic and Atmospheric Research the administration proposes a substantial cut of $5.5 million for the National Underwater Research Program (NURP). CMC urges the Committee to reject this proposed cut and maintain funding for NURP, which supports important research in ecosystem health, sustainable fisheries and other living marine resources.

Ocean Bottom Observatories/Exploring our Last Frontier

The Center for Marine Conservation is committed to the gathering of much needed knowledge about our ocean environments. We therefore urge the Committee to fully fund the administration's request for $4.1 million for this new initiative. Funds will be used to expand activities in two shallow water observatories, establish two deep water observatories, and support NOAA's partnership with the privately funded Sustainable Seas Project to map and explore the biodiversity of our National Marine Sanctuaries with submersible craft.

Marine Mammal Commission

CMC urges the Committee to fund the Marine Mammal Commission at its authorized level of $1.75 million, rather the than the administration's request of $1.3 million. A fully funded Commission is a source of rational and constructive scientific advice on marine mammal protection issues. Many of these issues could become contentious absent the Commission's analysis. The President has requested an increase of $60,000 over current funding. For the last several years the Commission has only been able to function at a minimal level, unable to carry out an independent research program. Full funding for the Commission would provide for the reestablishment of a strong and meaningful research program.

This concludes our statement and we appreciate having this opportunity to express our support for needed funding for the stewardship of the nation's living marine resources.

PREPARED STATEMENT OF BETH CLAUDIA CLARK, DIRECTOR, THE ANTARCTICA PROJECT

INTRODUCTION

Thank you for including this statement in the hearing record for the fiscal year 2000 budget for the Department of Commerce, National Oceanic and Atmospheric Administration. I am Beth Claudia Clark [1], Director of The Antarctica Project. The following organizations join with me in supporting an appropriation of $2.4 million to support continued funding of the Antarctic Marine Living Resources Program (AMLR), NOAA's directed research program in Antarctica: Center for Marine Conservation, Greenpeace, The Humane Society of the U.S., Humane Society International, National Audubon Society, National Parks and Conservation Association, Natural Resources Defense Council, Sierra Club, and World Wildlife Fund.

The Antarctic Marine Living Resources Program is vital to longstanding U.S. economic, environmental and political interests in Antarctica, and supports our international obligations to the Convention on the Conservation of Antarctic Marine Living Resources (CCAMLR). AMLR's current level of funding ($1.2 million) must be increased to $2.4 million to allow it to remain effective and to fulfill its Congressional mandate.[2]

BACKGROUND ON CCAMLR [3]

CCAMLR was established under the Antarctic Treaty System in 1982 to provide a management system that would both protect the ecosystem and allow fishing activities in the Southern Ocean. CCAMLR's objective, unique among fisheries agreements, is to consider the impact of a fishery on the entire ecosystem, rather than on just the harvested species. CCAMLR is thus the first international convention to address ecosystem management goals. To date 22 nations and the European Community [4] have agreed to subject their fishing activities to regulation under the Convention. The Convention requires consensus decision-making, which means that all nations must approve each measure agreed on to prevent overharvesting. Barring consensus, fisheries could proceed without regulation.

The only way that the fishing nations will agree to and comply with conservation measures that limit fisheries to ecologically sustainable levels is if they are presented with scientific proof of a fishery's status. Thus, for CCAMLR to remain effective, nations need to continue funding research programs that generate the data to support these measures.

Research results from the Antarctic Marine Living Resources Program have provided this information. Since its inception, this U.S. program has been critical to CCAMLR's success because it has provided the scientific foundation for the adoption of ecologically-sound conservation measures by CCAMLR member governments. The U.S. is therefore able to be proactive in promoting measures aimed at safeguarding the ecosystem.

THE ANTARCTIC MARINE LIVING RESOURCES PROGRAM (AMLR)

Proper implementation of CCAMLR is necessary to ensure the wise and sustainable use of Southern Ocean fisheries. The Antarctic Marine Living Resources Program is essential for the proper implementation of CCAMLR because research results have provided the foundation for the adoption of ecologically sound conservation measures by CCAMLR.

Through AMLR, the U.S. has played a leading role in identifying and brokering internationally acceptable approaches to conservation problems in the Southern Ocean. Research results from AMLR have allowed the U.S. delegation to argue persuasively that fisheries decisions be based on science rather than economics. During the last several years, as fisheries around the world have collapsed, nations have yielded to domestic economic pressures at the expense of conservation, and have at-

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[1] Public sector representative on the U.S. delegation to the meetings of the Convention on the Conservation of Antarctic Marine Living Resources, 1990-present.

[2] The Antarctic Marine Living Resources Convention Act of 1984 (Public Law 98–623) directed NOAA to develop and implement a research program to support and facilitate implementation of CCAMLR.

[3] For additional information on CCAMLR and Antarctic fisheries, please see our past statements to this Committee, for instance, from fiscal year 1999.

[4] The following are members of CCAMLR: Argentina, Australia, Belgium, Brazil, Chile, European Community, France, Germany, India, Italy, Japan, Republic of Korea, New Zealand, Norway, Poland, Russian Federation, South Africa, Spain, Sweden, Ukraine, United Kingdom, United States and Uruguay.

tempted to gain consensus for catch levels which were economically beneficial, without regard to the state of the fishery.[5]

Without a strong U.S. research presence, Southern Ocean fisheries will be regulated by nations with a strong economic interest and presence in the region. Under such circumstances we fear that implementation of conservation measures will be difficult, overfishing will persist, and the region's marine living resources will be exploited beyond sustainable levels. Additionally, decreasing the U.S. research effort will jeopardize the ability of U.S. fishers to successfully compete for Antarctic fisheries.

The U.S. AMLR Program was the first national research program to investigate the state of the fish stocks in the Southern Ocean. The first AMLR cruise confirmed that fishing operations were having adverse impacts on marine life, and indicated that several fish stocks were being exploited at rates above those levels which allow replacement of the stock. Several species had been so heavily fished that their populations were less than 10 percent of their size in 1982.[6]

The importance of CCAMLR and the U.S. AMLR Program is in their ability, over a decade's time, to monitor changes in the Southern Ocean ecosystem. Whether fluctuations in the marine environment, including changes in marine populations, can be attributed to human or natural events, can only be determined by research which continues over a long period of time. Research results from this past season illustrate this point.

During the past 11 seasons, the AMLR Program has observed a multi-year cycle of physical and biological conditions in the pelagic zone of the waters surrounding the islands. The annual reproductive success of krill follows this cycle, as does the success of krill predators to raise their young. The multi-year nature of these cycles offers the promise of predictive capability and the possibility of managing the krill harvest to ensure the health of the ecosystem and commercial fisheries.

This was an unusual year. The spring and summer season of 1998/1999 appears to be a "transition year" between a period where the pelagic community was dominated by gelatinous, filter-feeding tunicates (salps) and one dominated by copepods and a wider diversity of zooplankton. This has profound implications for the reproductive success and potential growth of the krill population. This is based on the following observations:

—Antarctic krill (Euphausia superaba) abundance was the lowest ever recorded during AMLR surveys. The low abundance resulted from three successive years of poor recruitment success.

—High proportions of the adult population were in advanced maturity stages, spawning or spent. Furthermore, elevated abundance of 3–4 week old larvae indicate that active krill spawning was initiated in mid-December to early January. In recent years peak spawning has occurred several weeks later and in one year only a few ripe females were observed indicating negligible spawning.

—The abundance of competitive species dramatically increased along with several other zooplankton taxa including Thysanoessa macrura, another euphausiid that is shorter lived and faster reproducing than Euphasia superpa.

These results confirm the predicted failure of the 1997/98 year-class of krill based on last year's field season observations. They also indicate that summer 1999 is a "transition year" from a "salp period" to a "copepod period" in the Antarctic Peninsula region. The larger question is whether enough young krill were produced to rebuild the population. This depends on their over-wintering survival and how many young they can produce during their second and third years.

During the past three years, there has been significant illegal and unregulated fisheries occurring on the Patagonian toothfish. However, nations were unable to censure those flag states because of the narrow definition of fishing which specified that a boat had to be observed actually fishing on a closed fishery for an inspector to report a violation. The U.S. was successful in getting nations to agree to broaden this definition to give inspectors greater latitude in determining whether an infringement of a conservation measure had occurred when inspecting a research or fishing vessel. The U.S. was also successful in getting nations to agree to require

[5] At present, the principal fishing nations are Chile, Japan, Poland and Ukraine. During the last year, new fisheries have been proposed or initiated by Australia, Korea, New Zealand, Norway, Russia, South Africa, Spain, the U.S. and the UK.

[6] Because these early studies confirmed low standing stocks of fish, the traditional harvesting areas surrounding the South Shetland and South Orkney Islands in the Southern Atlantic Ocean were closed to finfishing. Attempts to reopen these areas have not been successful. However, unless fish stock surveys are completed in the future, we could lose the agreement to keep these areas closed. It will only be due to the consistent and vigilant application of the results of the research cruises that consensus will be maintained to prohibit or limit fishing in these and other areas.

the placement of satellite-linked vessel monitoring systems (VMS) on their boats. These systems have proved successful in ensuring compliance with conservation measures in domestic fisheries, because a boat's location is automatically conveyed to a central computer. Nations agreed to voluntary placement of VMS on board their vessels, and have agreed to discuss mandatory placement at this year's meeting.

AMLR has an added political benefit: the AMLR Program has encouraged collaboration with scientists of many nations. Politically, this cooperation enhances U.S. interactions in other international fora, in addition to CCAMLR and the Antarctic Treaty System. A list of these collaborators is available.

FISCAL YEAR 2000 APPROPRIATION REQUEST

Although the AMLR Program is vital to U.S. interests in Antarctica, and to the sustainable management and geopolitical stability of Southern Ocean fisheries, it had been constrained by funding limitations since its inception. In 1987, the Program Development Plan recommended funding the Program at $4 million annually; this included $1.8 million to charter a research vessel. AMLR has never been funded near this level.

AMLR Funding Levels

	In millions
Fiscal year:	
1987	[1] $1.8
1988	[1] 1.5
1989–91	[2] 1.3
1992	[2] 1.275
1993–95	[2] 1.2
1996–99	[3] 1.2
2000	[4] 2.4

[1] Included contracting the Polish vessel, *Professor Svedlecki*.
[2] Use of NOAA's ship *Surveyor*.
[3] Charter of Russian vessel.
[4] Requested; assumes availability of charter funds.

Fiscal Year 2000 Appropriation Request

For fiscal year 2000, funding of $2.4 million is requested to continue and augment the principle research components of the U.S. AMLR Program. This represents an increase of $1.2 million over the previous six fiscal years. Cost increases require an increased appropriation of $940,000, while research to further advance understanding of the fishery/predator/prey/environment interactions requires an additional $260,000. Funding will allow the continuation of both the land-based and ship-based research programs. The land-based ecosystem monitoring program monitors the reproduction and foraging behavior of the primary mammalian and avian krill predators, while the ship-based studies monitor the physical oceanography and spatial distribution and abundance of krill in the Southern Ocean contiguous with, and extending beyond, the land-based site.

Until it was taken off line in 1995, the AMLR Program was supported by the NOAA ship, *R.V. Surveyor*. Four years ago, NOAA contracted a Russian ship to support AMLR. NOAA will again need to charter a ship to support AMLR for the coming season, and will require up to $2 million for this charter. Therefore, a $2.4 million appropriation is sufficient if there is funding within the National Marine Fisheries Service budget to charter a ship to support AMLR. However, if there are insufficient funds, then additional funds would be needed to charter a vessel. Obviously, without a vessel, AMLR cannot continue its research program. We urge you to ensure that money is available for this charter.

Details of Fiscal Year 2000 Appropriation Request

Maintenance of Program ($940,000)

From fiscal year 1987 until fiscal year 1993, funding decreased from $1.8 million to $1.2 million; funding has remained at $1.2 million through fiscal year 1999. The AMLR Program has tried to keep the research program intact by cutting where it could. Unfortunately, annual costs (salaries, contracts and travel) now exceed allocated funds. $940,000 is needed to augment the annual $1.2 million appropriation to maintain both key aspects of the Program.

During the last several years the AMLR Program has been funded at $1.2 million minus 5 percent NOAA taxes. During that time it has had to absorb labor costs due to living increases, increased labor costs due to students becoming full fledged researchers, and increased travel costs. Although NOAA no longer extracts the 5 per-

cent tax, the NMFS now extracts a tax equal to 24 percent of the program's labor cost (approximately $150.0K). To offset these costs, the Program delayed hiring staff to support the predator (seal and penguin) part of the program until fiscal year 1999 when it hired a senior seal and a senior penguin biologist. The estimated annual increased cost for salary (including NMFS tax and pay raises) and travel is $400K/year.

The AMLR Program contracts university specialists for the collection and analysis of phytoplankton, physical oceanography, zooplankton and krill demographic data. Because of budget limitations these contracts have been underfunded for several years. They are now in a position where they can no longer continue to participate in the Program without a substantial increase in support. There are also important research questions that they need to address which are impossible with the present level of support. They need to hire additional personnel, students, and to be able to pay increased travel and other costs. An increase in the value of the contracts would allow for enhanced observation schemes, new instrumentation and computational facilities, and more aggressive analyses. Estimated cost for expanded contracts is $400k/year.

The AMLR Program has amassed a large amount of data over the last 11 years of field studies. A formal data base has never been established due to other pressing needs and the lack of available personnel. Organization and access to these data sets is becoming increasingly cumbersome and it is now necessary to address this issue. Estimated cost for hardware, software and specialist is $80k/year.

The AMLR Program has used a variety of students, technicians and volunteers to staff its field activities. This has resulted in inequities in payment for labor and some resentment. An increase in funding would allow the establishment of a uniform policy for compensation to seagoing technicians for work performed. Estimated cost is $60k/year.

Augmentation of Program ($260,000)

During the last few years, research results from AMLR have contributed greatly to understanding how the Antarctic ecosystem functions. This has been recognized both within CCAMLR and by the general scientific community. There are now several important questions which cannot be answered due to insufficient funds to buy equipment, contract or hire labor, or pay for travel. These questions are critical to advance our understanding of the fishery/predator/prey/environment interactions. $260,000 is needed to augment the Program.

There are several long-standing questions regarding the role of ocean transport in the abundance, distribution and availability of krill in the study area (i.e., how quickly does a krill move through the area and then become unavailable to the predators). There is now technology available that would allow the collection of this information. Estimated cost for instrumentation and a technician is $150k/year.

Observations of marine mammals and sea birds during the surveys have been opportunistic as there have never been funds available to hire an observer. A fuller ecosystem picture would allow an understanding of competing prey needs within the survey area, and could be overlaid with the collected acoustic data. Increased funding would allow contracts to be let to acquire useful data in a much more rigorous fashion. Estimated cost for labor and travel is $10k/year.

The AMLR Program has not been able to take advantage of real-time satellite data which describes sea surface temperature, chlorophyll and ice cover. Use of these extensive data sets would allow the survey work to be finely tuned in the field, and would greatly augment and expand the shipboard observations. Estimated cost for specialist and data access is $100k/year.

Ship charter

During the last four years approximately $2 million has been provided for ship charter. These funds come directly from NMFS Headquarters budget and are subject to their priorities. As funds get tighter and more scarce, there is a concern that NMFS will no longer support the AMLR Program. It would be extremely helpful if these funds were provided in the same way that the Program funds are provided.

CONCLUSION

CCAMLR was launched to sustainably manage Antarctic fisheries. It remains an exemplary fisheries management convention because it is required to consider the impact of fisheries on the animals that depend on those fish stocks when setting fishing limits. However, as fish stocks have decreased globally, economic pressures have compelled nations to increase fishing in the Southern Ocean. Without continued scientific effort to judge proposals for fishing, unsustainable fishing will cause

the depletion of fish stocks, mimicking the problems that are occurring in the rest of the world.

The results of the research consistently provided by NOAA's Antarctic Marine Living Resources Program have been crucial for CCAMLR's effective implementation and have enabled the U.S. to argue persuasively for the adoption of conservation measures aimed at setting appropriate catch limits and limiting the harvesting of exploited species.

Continued funding of the Antarctic Marine Living Resources Program will protect the leadership role that the U.S. has played over the past 40 years in the Antarctic Treaty System, and especially in CCAMLR, in developing ecologically sound and internationally acceptable approaches to Antarctic issues.

While we recognize that Congress must make difficult budget decisions, it is important not to underestimate the value of the U.S. AMLR Program. The modest allocation of funds that is being requested for investment in Antarctic marine research will go a long way toward addressing critical environmental and political issues that the United States faces in Antarctica. For future generations, investing in this cost-effective program will be more important than the modest savings gained through its elimination.

For these reasons, we respectfully request this Subcommittee to approve an appropriation of $2.4 million to support NOAA's Antarctic Marine Living Resources Program.

PREPARED STATEMENT OF CYRUS M. JOLLIVETTE, VICE PRESIDENT FOR GOVERNMENT RELATIONS, UNIVERSITY OF MIAMI

Mr. Chairman and Members of the Subcommittee, I appreciate the opportunity to present testimony on behalf of the University of Miami. The University is seeking your support for three vital initiatives within your purview to be funded through the National Oceanographic and Atmospheric Administration: the Florida Center for Climate Prediction, the National Center for Advanced Tropical Remote Sensing Applications and Resources, and a new Class II research vessel for the Southeast/Gulf of Mexico region.

Just a few days ago, on March 16, 1999, Federal Reserve Chairman Alan Greenspan reported that the nation's farm downturn can be traced to an important degree to the recessions that began in East Asia in 1997 and have since spread to Latin America and elsewhere. However, Mr. Greenspan cited technological improvements as vitally important for insulating U.S. agriculture from the worse effects of worldwide economic turmoil.

The Florida Consortium for Climate Prediction, a joint project of the University of Miami, the University of Florida, Florida State University brings to bear the latest climate prediction technology, which can provide the nation's farmers with predictive information to help maintain stable agricultural production.

This major collaborative program focuses on climate variability in Florida, the southeast region and beyond. Objectives include developing scientific applications for climate data. The Florida Consortium draws upon the expertise of scientists at Florida State University (climate analyses and coupled ocean-atmosphere prediction models), Miami (climate analyses and economic value forecasts) and the University of Florida (agriculture) to quantify climate variability (e.g. El Nino) for the southeast and to explore the potential value and practical application (with strong emphasis on agricultural issues) of climate forecasts.

The importance of El Nino South Oscillation (ENSO) events as a major source of climate fluctuations, together with advances in ENSO predictability, suggest that forecasts have significant potential for benefiting agricultural productivity and economic decision-making.

The geographic focus of this project will include the southeastern United States, a large food producer whose productivity is significantly impacted by weather conditions generated by the ENSO phenomenon. Decisions made by well-informed participants from farm to policy level, made several months or seasons in advance, can significantly benefit productivity.

This project presents an end-on-end approach that will provide the bridge between climate and forecast producers, such as the International Research Institute for Climate Prediction (IRICP) and agricultural decision-makers. Specific objectives of the project are to: (1) adapt, develop, and evaluate a generic, flexible set of tools and methodologies for assessing regional agricultural consequences of El Nino events and for applying forecasts to improve agricultural decision-making; (2) demonstrate by successful applications of forecasts to agriculture and other sectors that would benefit best in the southeastern United States that began in 1996; and assess the

value of climate predictions to different agricultural sectors in those southeastern regions.

As an example, during the initial phases of this effort, the team focused on temperature and precipitation patterns across the southeast. At Florida State, for example, researchers found a geographic shift in tornadic activity associated with El Nino events. A new climate forecast system to provide predictions of seasonal temperatures and precipitation with longer lead times and improved skill is in the testing phase. Improvements are due party to the coupled nature (i.e., linking the ocean and atmosphere so they respond to one another dynamically) of the forecast system. Our colleagues at the University of Florida identified several crops in Florida that are vulnerable to shifts in weather patterns associated with El Nino and La Nina, but noted further that the impact is not uniform across the state.

In continuing this collaboration, we plan to estimate the economic advantages that could be achieved by incorporating climate forecast information into farming management systems and eventually work with sector representatives in developing guidance products for the agricultural community.

Both NOAA and NASA have provided initial funding and we respectively seek your continued support Mr. Chairman, for fiscal year 2000, we seek $4 million from the Commerce, Justice, State Appropriations Subcommittee through the National Oceanographic and Atmospheric Administration to continue and expand this critical work for the agricultural community.

Second, we seek your support for the establishment of the National Center for Advanced Tropical Remote Sensing Applications and Resources which will use Synthetic Aperture Radar (SAR) in its operations.

SAR is a powerful remote sensing system operating at microwave frequencies where the atmospheric transmission is high. Thus SAR is able to operate in all weather, day or night. Because SAR artificially synthesizes an aperture or antenna which is hundreds of meters long in space, it will provide multi-parameter high-resolution observations in the microwave spectrum. Thus space-based satellite SAR systems are able to monitor the movement of targets on land and ocean in near real time, map topography with unprecedented accuracy, assess storm and flood damage to urban and rural infrastructure. In particular, real-time SAR imagery can make a major contribution to various missions of state and federal agencies, especially in the area of drug interdiction and human smuggling, storm damage assessment and natural hazard mitigation related to volcano, flood and severe storm.

The unique capability of the SAR Facility in South Florida would significantly expand the present satellite coverage extending as far south as the equator and including large portions of the Atlantic and Pacific Oceans. An operational center with quick turn-around processing capabilities would significantly enhance military and law-enforcement missions in the Caribbean Basin. The tracking and surveillance of ship activities is an enormous task. Illegal trafficking of drugs and human cargo has been on a sharp rise. Thus the monitoring of ocean features and detection of ships over large expanses of coastal and offshore waters would be impractical and prohibitively expensive if we could not rely on remotely sensed data and automated image analysis techniques. Extensive cloud cover of tropical and subtropical regions almost year-round, further complicates the effective use of high-altitude aircraft or satellites with high-resolution cameras for detecting ships and targets on land.

As a matter of fact, small, fast moving boats are one of the major vectors for drug delivery to the USA. These boats have small radar cross-sections, and travel exclusively at night without running lights, and thus are very difficult to detect by standard techniques. Their low radar signatures mean that surveillance aircraft equipped with standard ocean surface radar only rarely detect them (the targets have to be fairly close to the aircraft). Given the large area of ocean used by traffickers, and the relatively small numbers of surveillance flights, detection success rate is low. Furthermore, the extensive cloud coverage over the Caribbean Basin precludes the effective and continuous use of so-called "eye in the sky" surveillance of moving targets with high-resolution cameras.

The recent sharp rise of illegal trafficking of human cargo is affecting primarily the southern states and putting additional pressures and constraints on law-enforcing and military missions. Early detection of small ships (i.e., by means of their wakes) would help to establish patterns of movement, origination and destination and provide improved guidance for Coast Guard, Customs and Immigration officials for interception. Illegal smuggling of human cargo occurs both in the Pacific and Atlantic Oceans and often transit through third countries along the Caribbean or West Coast basins.

The sensitivity of SAR imagery to subtle changes of the targets on land and in ocean makes this type of remote sensing suitable to support operationally littoral warfare in foreign, subtropical and tropical environments. The SAR's ability to pene-

trate foliage and brush would reveal targets not visible by cameras and provide needed intelligence to LOTS (logistics-over-the-shore) during amphibious landings at inaccessible territories. Repeated gathering of images over the same regions will provide the basis for improved threat analysis for military countermeasures and monitoring of environmental impacts such as flooding, bathymetric and shoreline changes due to extreme events (e.g., tropical cyclones, volcanic eruptions, seismic activities).

As more people and societal infrastructure concentrate along coastal areas, the United States is becoming more vulnerable to the impact of tropical cyclones. Furthermore, it is not surprising that hurricanes are the costliest natural disasters because of the changes in the population and the national wealth density or revenue. The States most affected by the cost of hurricanes (e.g. Florida, Texas, North Carolina and Maryland) have also a high total common tax revenue, which is an indicator of wealth for the state. The impact of hurricanes along the east coast is further amplified because the people moving into these coastal areas represent the higher wealth segment of our society. Early and accurate warnings can save millions in dollars and reduce the detrimental impact of storms upon making landfall.

Respectfully, we seek $3 million to establish a SAR Receiving Facility in fiscal year 2000. A consortium of academic scientists from several Florida and out-of-state universities would provide the scientific expertise for the development efforts of this operational facility. We are convinced that this funded effort with a long-term partnership provides the best benefit to the operational requirements for drug interdiction and military/civilian monitoring of environmental impacts. The collaboration of oceanographic, atmospheric and earth scientists on the operational needs of critical DOD missions will provide military and law-enforcement as well as civilian government agencies with continued new science and technology development to fight the war on drug trafficking and mitigate the impact of natural disasters on society and the environment.

Finally, Mr. Chairman, we seek your support for the construction of a new oceanographic and fisheries research vessel that the Southeast Consortium for Ocean Research (SECOR) wishes to build for the Gulf of Mexico and surrounding areas. The SECOR members involved in this project are: the University of Southern Mississippi (lead for this project), the University of Texas at Austin, Texas A&M University, and the University of Miami.

It is planned for the vessel to be part of University-National Oceanographic Laboratory System (UNOLS) and operated by SECOR. The proposed vessel will have accommodations for 42 scientists and crew, with a 10,000-mile range at 12 knots and 45-day endurance. The vessel, designed with twin-screw diesel electric propulsion will be able to maintain station and follow track lines in up to sea state 4. It will have a full-load draft of 14 feet with the ability to operate continuously at speeds from to 12 knots. Research mission spaces include 2,500 square feet for laboratories, 30 by 40 foot aft work deck with 100 feet of clear length side deck, sites for 3 vans, and 1,000 square feet of stores. The vessel also will have ample main deck area aft for reconfiguration between oceanographic and fisheries research missions. The aft deck includes a stern ramp with removable cover that when installed provides a level main deck aft to the transom. Construction cost, to include basic equipment, is estimated at $35 million.

SECOR will home port the vessel on the Gulf of Mexico, using the facilities of one or more of its members. The annual operating cost is estimated to be $2,388,000, and the daily rate, based on 240 days of use each year, is therefore $9,950. Principal users will include federal and state agencies, university investigators and educators, and private companies. This research vessel will provide additional intermediate-size ship days needed to conduct oceanographic and fisheries research in the Gulf of Mexico and adjacent seas. It is small enough to serve as a versatile coastal vessel, and it will be outfitted with state-of-the-art equipment and instruments.

UNOLS is apprised of and supports the existing SECOR arrangement, which provides dockside facilities in Galveston, Texas, and Miami, Florida, and coordinates instrumentation use and marine technician support among SECOR members. In these times of increased competition for funding and increased need for affordable ship-time from non-ship-operating institutions, we strongly believe that only through resource sharing can we effectively manage costly ship operations. SECOR has the resources and is prepared to manage a new Class II ship on behalf of the research community. Support of this project benefits all academic institutions in the southeastern U.S. and the Gulf of Mexico.

Mr. Chairman, we understand how difficult year this will be for you and the Subcommittee. However, we respectfully request that you give serious consideration to these vital initiatives. All of them have great implications and will provide exceptional benefits to the well-being of the nation.

PREPARED STATEMENT OF DR. ELISABETH ZINSER, CHANCELLOR, UNIVERSITY OF KENTUCKY, LEXINGTON CAMPUS, ON BEHALF OF THE NATIONAL ASSOCIATION OF STATE UNIVERSITIES AND LAND-GRANT COLLEGES

Mr. Chairman, I very much appreciate the opportunity to present testimony on fiscal year 2000 appropriations for the National Oceanic and Atmospheric Administration. I want to commend you for all your efforts and outstanding leadership in ensuring that NOAA has the tools to carry out its mandate.

My name is Elisabeth Zinser. I am the Chancellor of the University of Kentucky, Lexington Campus. I am providing this statement for the National Association of State Universities and Land-Grant Colleges (NASULGC). I currently serve as the chair of the Association's Board on Oceans and Atmosphere.

NASULGC MISSION

Founded in 1887, NASULGC is the nation's oldest higher education association. Currently the association has over 200 member institutions—including 17 historically black institutions—located in all fifty states, with a total of 3 million students. The Association's overriding mission is to support high quality public education through efforts that enhance the capacity of member institutions to perform their traditional teaching, research, and public service roles—roles which reflect a strong social commitment to investing in the development of America's greatest resource, its people.

WHITE PAPER ON NOAA

The Board on Oceans and Atmosphere brings together leading educators and research scholars in the Association's universities to ensure that the nation maintains and benefits from a strong and diverse academic capability in the marine (including Great Lakes) and atmospheric sciences. Last year the Board completed a white paper, "Recommendations for the Future of the National Oceanic and Atmospheric Administration." We have sent a copy to your staff, but have not yet been able to schedule a meeting to discuss it. The report makes several recommendations. Among the most important: NOAA should streamline its operation and focus on its unique strengths; NOAA should revise and improve its strategic plan explicitly recognizing research and development as a core element; NOAA should downsize to three line offices with one office responsible for the R&D to support the other two; NOAA needs to continue to improve the management of its R&D programs. We discuss these and other recommendations in detail and I would strongly urge you to review the report.

IMPORTANCE OF EXTRAMURAL RESEARCH

The Government Performance and Results Act presents extraordinary opportunities for creative partnerships between the Federal government and universities. These partnerships can contribute significantly to the national goal of a more efficient and productive Federal government by providing policy makers higher quality research at lower costs to address society's most compelling issues. Competitive, peer-reviewed extramural research is fundamental to developing the technologies which ensure safe food and water supplies, a healthy environment, sufficient energy sources, better medical care, improved communications and transportation systems, a stronger national defense and strategies and tools to mitigate natural hazards. Information from such research leads to improved management of natural resources and maintenance of conditions that contribute to a desired quality of life.

NOAA AND THE UNIVERSITIES

To carry out its mission most effectively and efficiently, NOAA must employ the best scientific talents of the nation. NOAA and the nation's universities have benefitted for many years from a diverse array of working relationships. These vary substantially in scope and structure, including formal joint institute agreements and colocation of facilities; personnel exchanges and student internships; and major joint programs. NOAA has involved universities in its Strategic Planning Process and universities and NOAA worked together to establish a Science Advisory Board for the Agency. The importance of the SAB to NOAA's scientific mandate cannot be overstated. Yet NOAA could benefit much more from academic capabilities and we are disappointed that the preponderance of NOAA's R&D budget is spent on internal activities, in contrast to many other agencies whose central mission is science-based.

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

NOAA is responsible for programs that are critical to our society, including understanding the nation's ocean, Great Lakes, and coastal resources, protecting life and property from severe weather and describing and predicting changes in the Earth's environment. Many of NOAA's missions require a continuing investment in scientific research. As a science agency, NOAA demonstrates that policy is predicated on sound science.

OFFICE OF OCEANIC AND ATMOSPHERIC RESEARCH

Mr. Chairman, NASULGC believes that the fiscal year 2000 budget request for NOAA insufficiently funds the Office of Oceanic and Atmospheric Research and many of the Agency's most important extramural research programs. We urge the Committee to provide no less than $316.3 million for OAR for fiscal year 2000. OAR is the main research arm of NOAA and contributes to all other Line Offices and Strategic Plan goals and provides the scientific basis for national policy decisions in key areas. It supports a world-class network of scientists and environmental research laboratories and partnerships with academia and the private sector. An overarching issue for research is to ensure that cost increases due to inflation don't erode the long term research capabilities. While the proposed budget increases funding for the Ocean Service by about 30 percent, and the Fisheries Service by 15 percent from the fiscal year 1999 appropriated level, OAR's budget suffers a cut. In fact, fiscal year 2000 continues a disturbing pattern where research is underfunded to make way for new trendy initiatives, and Congress is left to restore the balance among research and other activities.

I would now like to highlight those programs where universities have worked closely with NOAA and which have been highly successful. They are in no particular order. We encourage you to make these activities priorities for your Committee because they have been sound investments for the taxpayers and are in the best interests of the nation.

Climate and Global Change Program

NASULGC recommends the President's request of $69.7 million for Climate and Global Change. This competitive grants program is essential to improve NOAA's predictive and assessment capabilities. It provides critical information on patterns of climate variability and on the trends and probabilities of occurrence of extreme events such as floods, hurricanes, storms, and tornadoes.

U.S. Weather Research Program (USWRP)

NASULGC recommends that the NOAA contribution to the multiagency USWRP be $10 million for fiscal year 2000. We are encouraged that NOAA finally specified an amount in its budget to contribute to USWRP. However, the $1.5 million it proposed is not sufficient to realize the tremendous potential of this program. The figure we urge the Committee to adopt will allow USWRP to focus new meteorological knowledge on saving lives, protecting property, and providing weather-sensitive industries and businesses a competitive edge.

Health of the Atmosphere Program (HOA)

We urge the Committee to provide the proposed $0.4 million increase for HOA. This program is important to understanding ozone episodes in rural areas where crop and forest damage is of great concern.

National Sea Grant College Program

NASULGC recommends $65.8 million total appropriation for Sea Grant for fiscal year 2000, which is the authorized amount for fiscal year 2000. This level is justified because, when adjusted for inflation, the 1998 appropriations were 23 percent below 1980 buying power. Sea Grant as the marine counterpart to the Land-Grant College system, combines research, education and public service. It is a fully peer-reviewed, highly leveraged program in which the universities, government, and the private sector share costs. It is a program which annually generates benefits many times the level of the Federal contribution, and involves over 200 universities. Sea Grant is virtually the only source of funding in the U.S. for activities in marine biotechnology. In addition, it has played a major role in promoting advances in fisheries management, hazards mitigation, coastal engineering, seafood safety, coastal environmental management, coastal economic development, and marine technology. Sea Grant has supported students at all educational levels. It has been responsible for educating many of the nation's leading marine scientists. Sea Grant is making some remarkable discoveries related to the anti-carcinogenic properties of marine organisms which could have a profound effect on human health.

National Undersea Research Program (NURP)

NASULGC recommends $28 million for NURP. The increase is necessary to sustain baseline operating funds for 6 national undersea research centers, direct science support to investigators, and maintenance of priority undersea investments such as the Aquarius habitat, LEO–15, ROV's, and submersibles. Funds also will support the NOAA contribution to operation of ALVIN, an information transfer program administered through the JASON foundation, and establishment of sea floor observatories. Support also is sought to continue the Delta competition, a grant program based on competition between the 6 national undersea research centers.

Autonomous Floats

NASULGC strongly supports the $4 million request for 1,000 autonomous floats in the Pacific and Atlantic Ocean. The floats will provide real-time measurements essential to produce "weather maps" of the upper ocean and seasonal cycles, and are key to understanding and predicting the climate phenomena affecting our nation. These floats are a critical component of a global ocean observing system.

Aquaculture

NASULGC supports the request for an increase of $3.6 million for the sustainable production of native commercial ocean species and $10 million to Sea Grant to address this critical need. The U.S. lags way behind many other coastal nations in realizing the vast potential of aquaculture. The funding increase will allow for the research to ensure responsible development of this industry.

Coastal Ocean Program (COP)

NASULGC endorses the fiscal year 2000 budget request of $19.4 million for COP. COP directs NOAA science capabilities and extramural research to address coastal ocean and Great Lake issues. It enhances NOAA's stewardship of coastal waters by strengthening existing coastal programs, developing new and innovative strategies on priority issues, and coordinates its efforts with other agencies and the academic community. COP's mission is to provide the highest quality science for coastal policy decisions.

National Estuarine Research Reserves (NERRS)

NASULGC supports the request for $24 million, to support a network of critical estuaries representing all the biological regions and for operations to support research, education, and stewardship programs. Estuaries play a vital role in the health of our coastal ecosystems.

The Natural Disaster Reduction Initiative (NDRI)

NASULGC supports the requested increase of $42.1 million for NDRI, an interagency effort to reduce and mitigate the effects of natural disasters. We do believe, however, that NOAA needs to establish a strong research base in the program along with the technology applications, tech transfer, and education and outreach.

Minority Outreach

NASULGC strongly supports NOAA's plans to establish educational training relationship and partnerships with HBCU's, and we commend the Agency for the prominence it gives this effort in the budget document. However, the $1 million allotment is insufficient. Over the years, NOAA has given much rhetorical commitment to enhancing partnerships with Minority institutions, but the results have been minimal. NOAA needs to develop a clear strategy to bring minorities and minority institutions into the marine and atmospheric sciences.

IMPORTANT DIRECTIONS AND TRENDS

NOAA is involved in several other research activities, some of which are part of Administration initiatives, and we would like to briefly discuss these at this time. NASULGC strongly supports NOAA's proposed increases for research, monitoring and detection of pfiesteria and other Harmful Algal Blooms, the ECOHAB program, and related hypoxia in the Gulf of Mexico program. Problems associated with nutrient loading remain poorly understood and command continued research. Aquatic nuisance species are becoming an ever more dangerous problem for our nation and NASULGC supports NOAA's request for additional resources for research, new technologies, outreach, and control programs to combat them.

In its OCEAN 2000 cross-cutting initiative, NOAA committed additional resources to addressing important national needs. We endorse the Agency's direction to strengthen marine sanctuaries, restore fragile coral reefs, repair fisheries habitats, ensure sound coastal dredging, for increased shallow-water and deep-sea ocean observations, and beef up the Coastal Zone Management Act as an effective Federal-

State coastal partnership. El Nino has driven home the importance of ocean-atmosphere coupling. We support NOAA's initiatives which attempt to build our understanding of this linkage. NASULGC supports NOAA's request for a systemic long-term carbon observation program, a scalable super computer system for NOAA's Geophysical Fluid Dynamics Laboratory, and for the GEOSTORMS satellite. Finally, NASULGC would recommend $13.5 million for the NOAA Coastal Service Center to develop coastal information and technical products and services, and for the necessary capacity building and training for state and local coastal managers.

Thank you for the opportunity to present this statement.

DEPARTMENT OF JUSTICE

PREPARED STATEMENT OF KENNETH E. BISCHOFF, DIRECTOR, ADMINISTRATIVE SERVICES, ALASKA DEPARTMENT OF PUBLIC SAFETY AND CHAIRMAN OF SEARCH OF THE NATIONAL CONSORTIUM FOR JUSTICE INFORMATION AND STATISTICS

SEARCH is a nonprofit criminal justice organization dedicated to assisting state and local criminal justice agencies combat crime and administer justice through the effective and responsible use of information and identification technologies. SEARCH is governed by a Membership Group comprised of one gubernatorial appointee from each of the 50 states, the District of Columbia, Puerto Rico and the Virgin Islands.

We submit this testimony seeking appropriation support for SEARCH's National Technical Assistance and Training Program in the fiscal year 2000 Byrne discretionary program appropriation for the Bureau of Justice Assistance (BJA). The National Technical Assistance and Training Program received an appropriations earmark in fiscal year 1999 in the amount of $1.5 million. We respectfully submit this testimony to request funding at the $2 million level for fiscal year 2000.

SEARCH's National Technical Assistance and Training Program is unique—it provides no-cost assistance to all components of the state and local criminal justice system with respect to the development, operation, improvement and/or integration of all types of criminal justice information systems. The National Technical Assistance and Training Program not only helps state and local agencies work more efficiently and effectively through the use of advanced information technology, but it creates the foundation for a national information infrastructure for justice systems.

SEARCH is experiencing rapidly increasing demand for the program for a number of reasons. Most notably, the nation's criminal justice agencies' have a critical need to quickly share complete and accurate information, and, therefore, their efforts to integrate and connect justice information systems have impacted the demand for SEARCH technical assistance and training services. In addition, grant programs such as COPS More, the Edward Byrne Memorial State and Local Law Enforcement Assistance Grant Program and the Local Law Enforcement Block Grant have provided seed money for justice information systems automation and integration. For these reasons, we anticipate this demand to not only continue, but to accelerate.

On a slightly different topic, we also urge the Subcommittee to fund as fully as possible S. 2022, the Crime Identification Technology Act which was enacted into law last year (Pub. L. No. 105–251). The Crime Identification Technology Act authorizes $1.25 billion during fiscal year 1999-fiscal year 2003 in grants administered by the Office of Justice Programs, in reliance upon the expertise of the Bureau of Justice Statistics. The grants would help every state to establish or upgrade its use of information and identification and forensic technologies. In addition, Title II of the Act, the National Criminal History Access and Child Protection Act, establishes the National Crime Prevention and Privacy Compact. The Compact binds the Federal Bureau of Investigation and, upon approval by the state legislatures, the states to participate in the cooperative program to use the Interstate Identification Index for noncriminal justice purposes.

We want to commend BJA and its fine, professional staff. Working in partnership with SEARCH, BJA has provided strong, national leadership to create opportunities for information systems training and technical assistance for state and local criminal justice officials.

Because SEARCH's Technical Assistance and Training Program is national, SEARCH is able to replicate successful computer implementation strategies in one state or locality and disseminate and transfer those strategies to other states and localities. SEARCH is also able to provide its assistance in a manner that promotes the interstate compatibility of criminal justice information systems. The beneficiaries are state and local criminal justice agencies throughout the nation; the fed-

eral government, which is the largest single consumer of arrest and conviction and other criminal justice information; and the public.

This year the National Technical Assistance and Training Program will accomplish the following:

—Provide in-depth technical assistance at SEARCH's National Criminal Justice Computer Laboratory and Training Center to representatives from state and local criminal justice agencies;
—Provide on-site, technical assistance to state and local criminal justice agencies;
—Provide technical assistance by telephone and via the Internet to officials from literally hundreds of criminal justice agencies in virtually every state in the union;
—Provide training to nearly two thousand criminal justice officials nationally; and
—Develop and publish practical criminal justice information system technical bulletins and reference guides.

SEARCH's information support program for state and local criminal justice agencies makes a unique and vital contribution. Through a comprehensive program of technical assistance and training, SEARCH facilitates the operation of the criminal justice system in a cost-effective, efficient and fair manner.

BENEFITS OF THE NATIONAL PROGRAM

SEARCH's National Technical Assistance and Training Program:

—Facilitates the development and implementation of state-of-the-art computer and networking capabilities among state and local criminal justice agencies with an emphasis on compatibility throughout the nation;
—Improves the accuracy, completeness and reliability of arrest, conviction and other criminal justice information;
—Increases the information capabilities of criminal justice agencies, particularly small- and medium-sized criminal justice agencies which often lack financial resources and specialized computer personnel to operate computer systems in a cost-efficient and effective manner;
—Improves the information system proficiency of criminal justice officials, resulting in a nationwide cadre of law enforcement officials trained in computer technology and its application to law enforcement;
—Provides assistance and training based upon a national perspective and national strategy that promotes a consistent nationwide approach to managing criminal justice information and integrating information systems. A nationwide approach is essential because the processing of individuals and cases through the justice system depends on the sharing of information between state, local and federal agencies nationwide;
—Facilitates the effective and targeted expenditures of other federal justice assistance monies;
—Services provided by the National Program act as "seed" monies, leveraging state and local monies that then build upon the foundation established by the National Program;
—Identifies state and local criminal justice information management problems nationwide, and develops solutions that not only benefit individual agencies, but that promote compatibility and consistency with other state, local and federal systems; and,
—Replicates and disseminates successful information management strategies on a national basis, emphasizing the efficient and timely sharing of high-quality information, and, thus, improving the effectiveness of the administration of justice.

SEARCH's National Technical Assistance and Training Program assists agencies in developing the information resources which are critical in the reliable and timely identification of suspects and offenders; the effective prosecution and adjudication of offenders, including drug-related offenders; the efficient use of criminal justice resources; and the production of comprehensive and compatible criminal justice statistics and research information.

Furthermore, the National Technical Assistance and Training Program provides essential infrastructure support to targeted block and discretionary grant anti-crime and anti-drug initiatives. Without information technology support, these initiatives are handicapped.

As an example of such technology support, SEARCH convened nearly 1,000 justice practitioners from across the country for a national training event that focused on the integration of justice information systems. The event trained justice practitioners on technology and its application to the justice system, and has generated

scores of requests for SEARCH technical assistance to develop and implement integrated justice information systems from the attending agencies.

TECHNICAL ASSISTANCE PROGRAM

SEARCH provides technical assistance via written correspondence, telephone consultations, electronic mail, and/or through an Internet web site, and when the needs of agencies require, SEARCH provides on-site technical assistance.

In-house Technical Assistance

SEARCH's program of in-house technical assistance provides access to a unique, centralized source of data about information management systems and related technologies that would otherwise be beyond the reach of most criminal justice agencies and, particularly, small- and medium-sized agencies. Simply by placing a telephone call or sending electronic mail, state and local criminal justice agencies have immediate access to the specialized knowledge of SEARCH's professional staff. Under fiscal year 1999 funding, SEARCH will respond to several hundred telephone calls requesting technical assistance, which, on average, require two hours of staff time to effectively respond.

The nature and scope of in-house technical assistance varies considerably, but can involve the following: providing technical consultations on the planning, implementation or operation of automated systems, such as network configurations, software installations and technical innovations; conducting in-depth research; making referrals to other appropriate resource providers; and providing answers to questions on a wide range of topics related to justice automation.

SEARCH has also taken advantage of the Internet to expand the reach of its technical assistance program to justice agencies. SEARCH web sites are specifically designed so that justice agencies of any size, in rural or urban locations, can immediately access information on a variety of technical issues related to justice information management via the World Wide Web. The web sites offer virtual libraries of information to justice practitioners, including published articles, documents and white papers; references to other justice agencies using particular technologies; interactive discussion forums where practitioners can share information with peers and experts on particular technologies; requests for proposals and requests for information databases; and links to other justice technology resources and information.

On-site Technical Assistance

The Technical Assistance Program also provides on-site assistance to agencies throughout the nation that are predominantly nonautomated or lagging in automation, and which have special needs in automating their information systems. Priority for technical assistance is given to block grant recipients, and among them, to grantees planning for and/or implementing multijurisdictional or statewide information systems. Since 1986, SEARCH has provided technical assistance to scores of agencies in every state, representing all components of the criminal justice system.

The majority of technical assistance is completed within one month, consists of a single site visit by two staff for approximately 2–3 days, and includes staff preparation, follow-up and production of a formal report. The following illustrates just a few examples of SEARCH on-site technical assistance in the past year and the broad range of agencies receiving assistance.

At the request of state-level court and law enforcement officials, SEARCH is working with New Hampshire on an ambitious project to integrate the information systems of all state criminal justice system participants. The project is designed to facilitate the exchange of justice data and information among local, state and federal criminal justice agencies by maximizing the use of a new criminal justice information network. SEARCH is working with the Interbranch Criminal and Juvenile Justice Council, which includes the Governor, the Speaker of the House, the President of the Senate, the Chief Justice of the Supreme Court and a variety of other officials from the executive, legislative and judicial branches of New Hampshire state, county and local government.

In Alaska, SEARCH helped the Anchorage Police Department after it encountered encrypted graphics while investigating a child pornography suspect.

SEARCH is working with state agencies in Kentucky on planning for a statewide justice information system. At the request of Kentucky's Chief Information Officer and state justice officials, SEARCH will work with the Uniform Criminal Justice Information System Committee to develop the concept for a statewide integrated justice system and is establishing project "next steps." A site visit is planned for June 1999. At the local level, SEARCH is also working with the Jefferson County and Louisville police departments to develop plans for a new records management infor-

mation system that is integrated between the departments and between other city and county agencies.

In Texas, SEARCH is helping Dallas and Tarrant counties develop and integrate their justice information systems. Also, SEARCH addressed the Texas Court Appointed Special Advocate Conference on "Child Pornography and the Internet."

At the request of the Colorado Division of Criminal Justice, SEARCH helped the sheriffs' departments in Alamosa and Conejos and the police departments in Center and Monte Vista plan for automated, integrated information systems. SEARCH also worked with the Lakewood Police Department to upgrade old information systems, and trained the Colorado Bureau of Investigation on implementing an automated interstate model rap sheet.

In South Carolina, SEARCH instructed the South Carolina Law Enforcement Division on how to build a forensic computer system.

SEARCH helped the Hawaii Criminal Justice Data Center to prepare and disseminate a Request for Proposal for a statewide digital mugshot system, and to develop a strategic plan for Interstate Identification Index participation.

In New Jersey, SEARCH worked with the Camden Sheriff's Department to design a relational criminal information database with photo imaging and warrant filing, and trained representatives from the New Jersey State Police on implementing an automated interstate model rap sheet.

In Maryland, SEARCH aided efforts by the Department of Public Safety to improve its ability to process National Crime Information Center information. SEARCH also aided efforts by the Hagerstown Police Department to acquire a records management, computer-aided dispatch and mobile computing system, and helped the Montgomery County Police Department compare models of mobile computers for patrol cars.

Beyond these efforts to provide short-term assistance, there exists a pressing need to provide more extensive, long-term technical assistance to states and/or agencies within states to address the technically complex and sophisticated planning, design and implementation issues associated with developing integrated or consolidated information systems within and between justice agencies; and to assist these jurisdictions in developing state-, county- or city-wide plans for justice information systems and technology and improvements in criminal records.

In response, SEARCH provides a limited number of agencies with technical support for extended periods of time, including multiple on-site visits, research and, often times, complementary training sessions. During such a project, SEARCH will often work with a variety of justice agencies, including police departments, courts, and prosecutorial, probation, parole, corrections and case management offices. In our experience, this type of project often produces knowledge and products suitable for transfer to other jurisdictions. Indeed, the vast majority of SEARCH's technical assistance is multijurisdictional.

This type of on-site assistance typically involves helping a state or agency establish an automated justice information system, evaluate and plan for statewide integration of existing automated justice information systems, or assistance in enhancing, expanding or implementing a computerized criminal history repository program.

SEARCH is providing long-term technical assistance to agencies in Washington, New Hampshire (noted previously) and Montana, specifically focusing on the integration of justice information systems at the state, local and county levels.

In fiscal year 2000, SEARCH would expect to provide on-site technical assistance to several dozen criminal justice agencies.

NATIONAL TRAINING PROGRAM

Since its inception in 1986, SEARCH's National Technical Assistance and Training Program has trained over 20,500 criminal justice officials from every state in the use of computers and other information technologies. In fiscal year 1999 alone, SEARCH will provide training to approximately 2,000 state and local criminal justice officials across the nation by presenting 25–30 in-house and outreach training courses, as well as making presentations at training conferences nationwide.

SEARCH's National Criminal Justice Computer Laboratory and Training Center in Sacramento serves as a hands-on resource for criminal justice practitioners to learn about and evaluate computer technology. The National Computer Laboratory and Training Center is presently configured to accommodate students representing 20 different agencies. Each student is equipped with a computer configured with various operating systems and state-of-the-art training technology. It is critical that this technology be maintained and updated on a regular basis.

Training sessions are customarily three to five days in length and are normally limited to 20 students, thus affording a high instructor to student ratio. Courses

focus on such issues as the investigation of computer crime, and on the investigation of crime perpetuated over the Internet.

SEARCH training in a particular state attracts participants from various state, federal and local agencies and, often, from agencies in neighboring states. During fiscal year 1999, SEARCH provided numerous training seminars at the National Criminal Justice Computer Laboratory and Training Center located at SEARCH headquarters in California. Criminal justice practitioners from throughout the nation are eligible to attend. For example, investigators from New Hampshire and Texas were among those who attended "Investigation of Computer Crime" training courses conducted by SEARCH. SEARCH conducted its "Investigation of Computer Crime" training course in a number of states, including Alaska, Colorado, Hawaii, New Jersey and South Carolina.

NATIONAL CYBER CRIME TRAINING PARTNERSHIP

During the past three years, the Computer Crime Unit of the U.S. Department of Justice, in conjunction with the National White Collar Crime Center, has conducted a federal level project to define how to best train and equip the nation's criminal justice investigators and prosecutors to deal with computer crime in the information age. The organizing agencies asked SEARCH to participate in a series of meetings to discuss the mission and functional objectives of computer crime training for state and local justice practitioners.

The Partnership continues to identify needs; develop new, advanced training courses; and sets standards for national justice training courses in the area of curbing computer crime. Other organizations participating in the group include: the Defense Department, Drug Enforcement Administration, Federal Bureau of Investigation, Federal Law Enforcement Training Center, National Security Agency, U.S. Postal Service, U.S. Secret Service, Canadian Police College, Forensic Association of Computer Technologists, National Aeronautics and Space Administration, National Association of Attorneys General, National College of District Attorneys, International Association of Chiefs of Police, and the International Association of Computer Investigative Specialists.

TECHNICAL ASSISTANCE AND TRAINING PROGRAM MATERIALS

SEARCH's National Technical Assistance and Training Program also includes the preparation, publication and national dissemination of materials and reports that assist criminal justice agencies in acquiring and using computers and other information technology. SEARCH publishes quarterly Technical Bulletins that identify and evaluate information systems and technologies that have existing or potential application in criminal justice management. The Bulletins are a vital resource for criminal justice practitioners who receive them and help to identify and encourage potential markets for private sector development. Examples of past issues include new technologies for courts, data security and encryption, law enforcement mobile computing, the FBI's Integrated Automated Fingerprint Identification System, and digital imaging. The Bulletins are mailed to over 2,000 criminal justice practitioners, and are also made available electronically via the Internet.

Other types of SEARCH technical publications have included reports on issues such as countywide justice integration strategies and understanding biometric technologies. SEARCH also provides a variety of on-line resources, including the technical assistance exchange form, which shares information on technologies employed by all justice agencies, and the law enforcement mobile computing web site.

CONCLUSION

Federal support for SEARCH's National Technical Assistance and Training Program does not promise a quick victory or big headlines in the war against crime and drugs. But, without question, federal support for the National Technical Assistance and Training Program makes a vital contribution to the war on crime and drugs. For a modest federal investment, leveraged many times over by state and local funds, a critical contribution is made to the ability of state and local criminal justice agencies to provide timely, accurate and compatible information for use in apprehending, prosecuting and sentencing offenders.

Accordingly, we respectfully request that the Subcommittee act to ensure fiscal year 2000 funding of SEARCH's National Technical Assistance and Training Program.

We thank you, Mr. Chairman, the members of your Subcommittee and the Subcommittee staff for your continued support.

PREPARED STATEMENT OF LEE ARBETMAN, NATIONAL COORDINATOR, NATIONAL, COORDINATED LAW-RELATED EDUCATION PROGRAM

I am Lee Arbetman, the National Coordinator of the National, Coordinated Law-Related Education Program. I am submitting this testimony on behalf of Youth for Justice, the National, Coordinated Law-Related Education Program (LRE). We respectfully request the Subcommittee's appropriations support for fiscal year 2000.

LRE/Youth for Justice is committed to involving young people in each state directly in identifying and implementing solutions to this nation's epidemic of violence. The program's approach is to teach young people about the law so that they can lead their lives within the law. In the last decade, the National Program has reached millions of at-risk children and trained hundreds of thousands of teachers, juvenile justice counselors and law enforcement officials.

Law-Related Education, despite its name, has nothing whatsoever to do with legal or pre-legal training. The National, Coordinated Law-Related Education Program has a proven record of success in juvenile delinquency and violence prevention. Law-related lessons reach at-risk children and juvenile offenders in school and juvenile justice settings in both urban and rural environments. Youth for Justice meets its goals by developing and maintaining strong, viable LRE centers in each state. The National Program leverages a tiny federal investment, $1.5 million in fiscal year 1999, many times over in private sector and state and local money and in in-kind support from the criminal justice and juvenile justice communities.

The program has two components. The first component of the program is intervention. This part of the program operates primarily in various kinds of juvenile justice facilities. In settings ranging from detention centers to training schools and after-care, Law-Related Education Programs help youth develop problem-solving, conflict resolution, and communication skills in the context of engaging lessons that focus on personal responsibility.

The second component, prevention, operates primarily in elementary and secondary schools. When you visit a school involved in this program, you are very likely to see a teacher, a judge, a lawyer, the town's police chief, a law student or a probation officer working with a class of students. In some of the best Youth for Justice classrooms, police officers co-teach with classroom teachers on a daily basis.

Your home state of New Hampshire is a national leader in adopting Law-Related Education for use as both a prevention and intervention program. In 1996, 365 lawyers visited 31,000 students in 205 schools throughout the state as part of the Lawyer in Every School program. Students from 41 schools just completed their participation in the expanded 1999 New Hampshire Mock Trial Competition. A Peer Meditation video for high school students has been added to strengthen what is already a model program.

The State of Kentucky is another national leader in the adoption of LRE programs. Approximately 56,000 juveniles entered the Kentucky juvenile justice system last year. Half of those juveniles participated in Law-Related Education programs. In addition, every judicial district in Kentucky has a fully operational court diversion program. Evaluation research conducted by faculty at the Eastern Kentucky University Department of Corrections has found that the recidivism rate for youth in the Law-Related Education intervention program is only about 7 percent, compared to about 20 percent for other youth who receive more traditional probation services.

The State of Hawaii, a long-time leader in LRE programming, has just conducted a major training activity with the national coordinated LRE program. Through that activity, and in conjunction with the Judiciary Center of Hawaii, 29 teachers and other professionals who work with teen parents throughout the state were trained to implement LRE's Parents and the Law program.

In the spring of 1999, Vermont conducted its largest Youth Summit to date. More than 100 young people participated with their teachers, representatives of the juvenile justice system, and officials from the state's department of corrections (as well as several inmates) at an all day program held at Vermont Law School in South Royalton.

Mr. Chairman, thanks to the continued commitment of this Subcommittee, Youth for Justice, the National, Coordinated Law-Related Education Program has built a vital, cost effective program serving the needs of youth throughout our nation. This program:

—Involves young people in every state in identifying and implementing solutions to the nation's epidemic of violence;
—Promotes research-based educational programs that strive for safe, disciplined and drug-free schools and communities;
—Teaches young people acceptable ways to resolve conflicts;

—Fosters constructive attitudes towards authority figures, such as parents, teachers and police officers;
—Provides young people with meaningful opportunities to serve their communities;
—Promotes understanding of and reasoned commitment to the rule of law along with tolerance for varied points of view in a free and diverse society; and
—Helps young people understand the democratic process and develop the critical thinking, decision-making, and problem solving skills to enable their full participation in that process.

Youth for Justice is committed to providing leadership in the national effort to stop the outrage of violence committed by and perpetrated against this nation's youth. We have the capacity to involve young people directly in helping to identify and implement solutions. With the support of Congress, Youth for Justice is refocusing all programs to reflect the nation's growing concern about violence committed by and against young people in our schools and communities.

—Law-Related Education is one of the few juvenile delinquency prevention programs with a proven record of reducing delinquent and antisocial behavior, increasing belief in the rule of law and developing responsible citizens.
—Law-Related Education focuses on violence prevention. Last Spring, thousands of young people from both the school and juvenile justice settings again gathered with public officials in more than 20 States, participating in Youth Summits designed to help develop public policy to help prevent violence by and against youth. During this fifth season of summits, thousands of young people are taking a close look at the problem of violence by and against youth. Recently, youngsters in Wyoming's Youth Summit actually wrote a violence prevention bill, lobbied the governor and the state legislature and were successful in having the bill passed last session and signed by the governor. As a result of this bill, teen courts are being established throughout the state.
—Law-Related Education is an extraordinarily effective prevention program, but it is also an extraordinarily effective intervention program—Law-Related Education reaches juvenile offenders in school settings as well as halfway houses, detention centers, and other non-school settings.
—While Law-Related Education targets at-risk children, it does so not just in urban settings but also in suburban and rural environments.
—Law-Related Education is one of the most effective programs in mobilizing volunteer support from the criminal justice community, including law enforcement officers, prosecutors and judges.

THE NATIONAL LAW-RELATED EDUCATION PROGRAM

The National, Coordinated Law-Related Education Program is comprised of five not-for-profit corporations, each of which is recognized nationally and internationally as a leader in the field of law and civic education: The American Bar Association's Special Committee on Youth Education for Citizenship; the Center for Civic Education; the Constitutional Rights Foundation; Street Law, Inc.; and the Phi Alpha Delta Public Service Center. By combining their expertise and experience as teachers, school administrators, juvenile justice professionals, attorneys and professors, these five organizations have successfully administered a nationwide program in which they have:

—Established and maintained an effective network of delinquency prevention law and citizenship projects in all fifty states, the District of Columbia and Puerto Rico, so that accurate information and effective materials can be efficiently distributed and widely used without costly replication of research and development efforts;
—Provided training and technical assistance to the state projects in this network so that federal funding effectively leverages public and private funding appropriate to each state;
—Established innovative law and citizenship programs for at-risk youth in urban, rural and suburban communities;
—Provided several hundred thousand hours of training for teachers, law enforcement personnel and other professionals who work with young people;
—Developed and field-tested quality, research based curricular materials for children—kindergarten through grade twelve—in public and private schools, juvenile detention centers, after-school programs and court-related diversion programs;
—Organized special initiatives on violence prevention, drug prevention, juvenile justice and urban education, publishing materials and sponsoring training events nationwide;

—Mobilized thousands of volunteers with expertise in law, public policy, drug and alcohol abuse prevention, juvenile justice and other areas; and

—Provided leadership and organization for another season of Youth Summits in the Spring of 1998, involving youth and public policy makers in more than 20 States in developing plans to solve the widespread problem of conflict and violence among our nation's youth.

We at the National, Coordinated Law-Related Education Program acknowledge with pride the participation of dozens of organizations and thousands of individuals from the education, legal, law enforcement, judicial and juvenile justice organizations. The Program has had assistance from the executive branch and strong bipartisan support in Congress for the outstanding delinquency prevention programs and materials it has developed and implemented.

In addition, it is a particular source of satisfaction to note that similar partnerships have been developed in most of the states participating in this network. A small amount of federal support has provided the impetus to attract funding from local organizations, agencies and foundations as well as large numbers of volunteer hours. One important goal of this Program is to continue to provide the support and technical assistance necessary to enable all of the states to build their own public/private partnership networks, effectively leveraging a small amount of federal assistance to build strong, well-funded local and state programs.

EVALUATIONS OF LAW-RELATED EDUCATION

For the past two decades, researchers have consistently reported that law-related curricula and instruction make a positive impact on youth, when compared with traditional approaches to teaching and learning law, civics and government. A review of the research in Law-Related Education and related fields (including scholarly papers, dissertations, journal articles and book chapters) conducted by Dr. Jeffery W. Cornett and published on April 1, 1997 in monograph form concludes that LRE programs have a positive effect on student knowledge about law and legal processes, and about individual rights and responsibilities. In addition, the report concludes that there is evidence that LRE programs have a positive influence on student attitudes and behavior. Research studies indicate that effective LRE programs have improved juveniles' attitudes toward the justice system and toward authorities. Research findings also indicate a link between particular LRE programs and youth who, as a result of Law-Related Education, exhibit more law-abiding behavior and commit fewer delinquent acts.

In 1998, the National, Coordinated Law-Related Education Program released impact data from demonstration programs in Los Angeles, Chicago and Washington, D.C. showing the positive effect that Law-Related Education can have on the highest at-risk youth. This data is the culmination of a three-year effort to test the impact of Law-Related Education on at-risk youth in the most challenging environments.

A four-year national quantitative evaluation of Law-Related Education was carried out in 32 schools in six different states from 1980–1984. Conducted by the Center for Action Research and the Social Science Education Consortium of Boulder, Colorado, the evaluation found that:

—Law-Related Education, when implemented properly, reduces those factors associated with delinquent behavior;

—Law-Related Education, more than any other subject, fostered a belief in students that laws are legitimate and should be obeyed; and

—Some of the positive effects of Law-Related Education included reduction of school infractions, decrease in the use of alcohol and other drugs, and a decrease in other delinquent behaviors.

The Office of Juvenile Justice and Delinquency Prevention (OJJDP) has noted that evaluations of Law-Related Education Program have been "encouraging * * * confirming the previous findings that such education serves as a significant deterrent to delinquent behavior". Eighth Analysis and Evaluation of Federal Juvenile Delinquency Programs, U.S. Department of Justice, OJJDP, p. 60 (1985).

The Twelfth Analysis and Evaluation of Federal Juvenile Delinquency Programs published in 1988 similarly states, "[A] national study suggests that Law-Related Education, when properly implemented, can reduce the tendency to engage in delinquent behavior."

Dr. Timothy Buzzell of Drake University in Des Moines, Iowa, in 1992 published a study of one of the first Law-Related Education Programs in a juvenile justice setting. He found over the six-year period of the study that a Law-Related Education Program implemented at the state training school for boys positively influenced risk factors commonly correlated with delinquent behavior.

A 1993 study of a Law-Related Education diversion alternative in Kentucky's Designated Court Worker Program showed both improved perceptions of the police and a low recidivism rate (10.5 percent after one year).

The National Program has a unique and remarkable record of achievement. Continued support for the National, Coordinated Law-Related Education Program is crucial for the following reasons:

—First, without congressional support it is clear that Law-Related Education will die.

—Second, it is also clear that LRE works and that it is one of the few programs proven to do so.

—Third, the federal government and, in particular, the Congress, has made a substantial investment over more than a decade in the creation of a National, Coordinated Law-Related Education network and infrastructure including coordinating organizations in every state.

—Fourth, only a national program will undertake national initiatives that benefit the entire country, such as national training; national technical assistance; state financial assistance; new program and curriculum development such as Law-Related Education's highly successful and acclaimed Youth Summits; and the replication of successful state programs and the avoidance of unsuccessful pilot programs.

—Fifth, federal money is seed money used to sustain a national program which raises approximately seven times the federal support through state legislative support, private donations and in-kind support.

For all of these reasons, the National, Coordinated Law-Related Education Program is seeking earmark support at the $1.9 million level. This Subcommittee approved funding at $1.9 million for fiscal year 1999. (The House called for "a grant to continue funding at the current [$1 million] level." The conference Report adopted language requiring funding "at more than the current year level." OJJDP awarded LRE a grant of $1.5 million.).

We thank you, Mr. Chairman and the members of this Subcommittee, for your support over all these many years and we ask for your continued support.

PREPARED STATEMENT OF THE UNIVERSITY OF MEDICINE AND DENTISTRY OF NEW JERSEY

Mr. Chairman, the following is the testimony of the University of Medicine and Dentistry of New Jersey (UMDNJ), the largest public health sciences university in the nation. The UMDNJ statewide system is located on five academic campuses and consists of 3 medical school, and schools of dentistry, nursing, health related professions, graduate biomedical sciences and our latest school—the School of Public Health. UMDNJ also comprises a University-owned acute care hospital, three core teaching hospitals, an integrated behavioral health care delivery system, a statewide system for managed care and affiliations with more than 100 health care and educational institutions statewide. No other institution in the nation possesses resources which match our scope in higher education, health care delivery, research and community service initiatives with state, federal and local entities.

We appreciate this opportunity to bring to your attention some priority projects of UMDNJ that are consistent with the mission of this committee, including research and education initiatives that will counter the threat of chemical and biological terrorism.

In our complex world of instant communication and ease of global transportation, disaffected individuals or political groups have access to highly destructive weapons of terror. With our open society the United States is particularly at risk to an individual with a grudge, a band of ideologically motivated fanatics, or to nations seeking revenge. The possibility of the employment of weapons of mass destruction on an innocent population has already become a reality with the Sarin nerve gas attack in the subways of Tokyo.

State and local governments and health organizations need reliable information upon which to develop and coordinate response plans for contingencies due to weapons of mass destruction. They need programs to educate planners and response teams on the public health aspects of these threats and how to recognize and respond to them. In addition, they need to understand both the short and long term implications for human and ecologic health. To develop such a plan requires a broad base of scientific and educational expertise. Scientific expertise is also needed to devise approaches for the early detection and treatment of biological and chemical weapons of terror.

As the nation's most densely populated state, we in New Jersey have a particular concern about being targets of bio- and chemo-terrorist activities. Our communities abut each other and our traffic patterns are statewide making us especially vulnerable to infectious disease. There are no obvious geographical boundaries to readily institute a quarantine. Our central location as a transportation hub for the populous Northeast also makes us a prime target.

Terrorists have three types of weapons available to them. For one, explosive devices, although increasingly deadly, our society has developed emergency response approaches to deal with, including explosions caused by sources as varied as factory processes and gas mains. The other two types of terrorist weapons are relatively new and present particular challenges to our normal response processes. These are chemical weapons of terror, such as nerve gas, and biological weapons of terror, such as anthrax bacillis. Chemical and biological weapons differ dramatically from explosions in that for these newer threats early recognition and diagnosis is crucial for both those initially affected and for others who might yet be affected through spread of infection or contact with the chemical. Education of emergency responders to correctly identify these threats is crucial to minimize the impact of biological and chemical weapons, as well as to protecting the emergency responders themselves. Compounding our problems is the need for a better understanding of the effects of likely chemical and biological agents of terrorism, and of the means to prevent their spread and treat their victims.

We respectfully make four recommendations for the committee's consideration: (1) Provide funding for a major program aimed at improving the recognition of the effects of chemical and biological terrorism weapons by community emergency response elements; (2) Unify the approaches to educating emergency responders about chemical and biological terrorism. These two types of weapons present similar challenge and it would be inefficient to develop separate initiatives for these threats; (3) Take advantage of existing expertise in training emergency responders in medically-related issues that has been developed for hazardous chemicals and wastes through the NIOSH Training Centers. There have already been used for pass through funding from DOE, EPA and NIH to train emergency responders; and, (4) Provide funding for research derived specifically at understanding the heath effects of chemical and biological agents of terror so that early diagnosis and treatment becomes more likely.

The nation's foremost program in education and training concerning chemical and physical threats is headed by a UMDNJ faculty member, Dr. Audrey Gotsch, who is currently President of the American Public Health Association. Among her programs is the Center for Education and Training which provides training concerning chemical and physical agents to more than 160,000 police, firefighters, municipal and state employees, as well as to physicians, nurses and industrial hygienists.

Also, researchers at the Child Health Institute at the UMDNJ-Robert Wood Johnson Medical School in New Brunswick, New Jersey are looking into the effects of radiation on children in utero and on their growth and long-term development. Children who survive bioterrosist attacks live and carry forward the results of that attack in a different manner than exposed adults. The basic mechanisms of biology that operate to cause serious neurological injury can be counteracted or reversed if properly understood at the molecular and chemical level.

Understanding the nature of these "targets" will help in the development of antidotes for developmental neurotoxins; detoxification of surface, ingested or penetrated agents; novel vaccination mechanisms and vaccine delivery systems; novel therapies for neurotoxins and diagnostic tests for neurotoxin exposures.

Because of its scientific expertise, UMDNJ is uniquely qualified to develop a program to educate state and municipal governments, emergency responders and health and hospital professionals on planning for the response to terrorism; to train personnel to deal with threats of terrorism and how they affect public health; and to conduct research into the effects of chemical agents on the general population, with an emphasis on the long-term effect on children.

We respectfully seek $1.5 million through the Department of Commerce, Justice, State to expand our research, education and training programs in response to threats of chemical and biological terrorism.

Thank you.

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 throughout the United States. Collectively, public power utilities de-

liver electric energy to one of every seven U.S. electric consumers (about 35 million people), serving some of the nation's largest cities. The majority of APPA's member systems are located in small and medium-sized communities in every state except Hawaii.

We appreciate the opportunity to submit this testimony in support of fiscal year 2000 appropriations for the Federal Trade Commission and the Antitrust Division of Justice.

The electric power industry is in the midst of sweeping and dramatic change, with a record number of proposed mergers, increasing exponentially in the last two to three years. The industry experienced little competition in the past, except for franchise competition between investor-owned utilities (IOUs) on the one hand and publicly and cooperatively owned utilities on the other. During this transitional period—as this important, closely regulated industry moves towards increased competition—sufficient resources are necessary so that the two federal antitrust agencies can adequately perform merger assessments.

Justice Antitrust Division and the Federal Trade Commission play a critical advisory role along with the Federal Energy Regulatory Commission (FERC) with respect to antitrust monitoring and enforcement in the electric utility industry.

Current industry predictions are for more consolidation, not less, with ever larger consolidated companies. Such predictions were discussed in detail at the recent Eleventh Annual Exnet Utility Mergers and Acquisitions Conference (Feb. 2–3, 1998, New York City). These predictions spur more consolidation, as CEOs engage in perceived "defensive posturing." But "keeping up with the Joneses" in this industry is already reducing structural market options, and the trend only promises to get worse.

Yet there is little history of antitrust enforcement in the electric power industry to draw upon in analyzing this new wave of merger activity. Regulation controlled what were natural monopoly characteristics of the industry. With little room for competition, antitrust considerations had only a limited role. Accordingly, as historical monopolists, IOUs in the United States have grown comfortable with having and using market power. If the agencies responsible for reviewing proposed electric power mergers do not have the resources, the time or the data with which to properly assess these mergers in this fast paced consolidation phase, ultimate consumer service options—including the possibility of achieving competition and its benefits for all customers—may structurally be precluded by merger or otherwise.

Electric power is certainly not the first industry to undergo the transition from regulation to competition. Industries such as airlines, cable, and telecommunications all have experienced deregulation and all share a number of important characteristics with the electric power industry. First among these is basic industry structure. Prior to deregulation, each of these industries was populated with one or more incumbent firms possessing significant market power as the result of past regulation. A second important shared characteristic is the route-based nature of the goods and services they supply. Whether those routes are airways, land lines or airwaves, access to those routes is a prerequisite for all participants in these industries, and control over that access is a source of market power and/or economies of scale. Third, from a demand perspective, each of these industries involves goods and services that the public generally has come to expect and depend upon, and would not readily forego.

Important lessons have been learned through the deregulatory experiences of the airlines, cable, and telecommunications industries. As the electric power industry begins the transition from regulation to competition, those lessons must inform the policies and process that will guide, and ultimately determine, the structure of a deregulated electric power industry. There is no need to start at the bottom of the deregulation learning curve, or to repeat the mistakes made in other industries.

The electric power industry is comprised primarily of vertically integrated local monopolies that generate, transmit and locally distribute electric power to a captive group of industrial, commercial and residential customers. Historically, this structure was thought to be most efficient because of scale economies, and the need for reliable universal electric service by the public. In terms of basic industrial structure, at least, the electric power industry is similar to the structures found in the airline industry, cable and telecommunications prior to their deregulation.

In recent years, technological advances in electric power generation have reduced the historical economies of scale enjoyed by the incumbent utilities. The ability to generate power efficiently may be, as a technological matter, no longer dependent on the economies associated with vertical integration. Regulatory measures such as FERC's Open Access Rule requiring open access to the transmission facilities typically owned by the incumbent utilities and allied state level initiatives, have allowed competition in the market for power generation to begin to take root. Meanwhile,

the local monopolies in transmission and distribution largely have remained intact, due to the essential nature of their facilities and the prohibitive cost of duplicating them. Again, these developments are reminiscent of the telecommunications industry in the 1970's, when technology and deregulation combined to permit competition in the long distance market, while the local monopolies possessed by the Bell operating companies remained in place.

Mergers among electric utilities are likely to have a profound effect on the development of "competition" in the electric industry. In fact, because utility mergers will determine the basic structure of the electric power industry, they actually have the potential to define (or preclude the development of) the competitive landscape. The recent wave of electric utility mergers certainly will increase concentration in the industry, as the number of firms that are legally and practically capable of providing electric service declines through consolidation. Largely for the same reasons, the structural impacts of such mergers will likely be permanent. What is not known is whether mergers of incumbent electric utilities and/or other wholesale power suppliers, collectively or individually, are on balance procompetitive or anticompetitive. Specifically, there are a number of unknowns about electric utility mergers: Whether an increase in concentration will produce associated efficiencies; Whether any efficiencies that do result will be passed on to consumers in the form of lower electric rates, or instead be passed on to shareholders (the Baby Bells), or used to build diversified empires (cable) and Whether an increase in concentration will simply serve to fortify existing market power to exclude new entrants (Baby Bells, cable), drive out new entrants through price competition and merger (airlines), purchase existing competitors, or gouge consumers (airlines, cable, telecommunications).

As the deregulatory experiences of other industries demonstrate, these are not questions that can be accurately answered in the absence of actual market data. The pressure placed on Antitrust Division and FTC will be enormous as we search for the answers to these and many more questions.

We are at a critical juncture in the history of our antitrust laws. After a full generation of decline, antitrust enforcement is making a comeback. In response to the unprecedented wave of mergers that has overtaken the U.S. economy in the last few years, the Administration recently proposed substantial increases in the budget of the Justice Department's Antitrust Division and the Federal Trade Commission. The restructuring of many industries, the concurrent revolution in international trade and international competition policy, and the emergence of serious competitive problems in the evolving high tech industries have also made the task of antitrust enforcement more challenging and requiring a larger commitment of resources.

Moreover, the wave of mergers has made antitrust enforcement a great bargain for the public. Since funding for the Antitrust Division and FTC comes out of a special fund consisting of fees paid by companies applying for merger approval, antitrust enforcement pays for itself. Under the Administration's budget proposal, no money comes from the General Fund of the Treasury. In addition, criminal and civil penalties attained by the agencies bring millions of dollars into the Treasury, and consumers are saved untold millions by the agencies' successes in promoting and maintaining competition.

APPA supports the Administration's fiscal year 2000 budget request of $114 million for the Antitrust Division, an increase of $16 million over the fiscal year 1999 funding level, and $134 million for the Federal Trade Commission, an increase of $15 million or nearly 13 percent over fiscal year 1999 requested levels.

We urge you to approve the Administration request.

DEPARTMENT OF STATE

PREPARED STATEMENT OF DANIEL F. GEISLER, PRESIDENT, AMERICAN FOREIGN SERVICE ASSOCIATION

Mr. Chairman and Members of the Subcommittee: On behalf of the 23,000 active duty and retired members of the Foreign Service that the American Foreign Service Association (AFSA) represents, I thank you for the opportunity to present testimony before this Subcommittee. AFSA was founded in 1924, the same year that Congress passed the Rogers Act creating the modern, merit-based Foreign Service. Throughout our 75 year history, we have been the voice of Americans who serve their country at home and abroad as Officers and Specialists of the Foreign Service.

Mr. Chairman, last year at this time I submitted testimony to this Subcommittee that focussed on three concerns: the rising cost of service abroad, the alarming state of the State Department's information technology, and lack of workforce planning

among the foreign affairs agencies, especially the State Department. I am disappointed to report that we have seen little progress on any of these three issues.

In addition to these three ongoing concerns, this year we have an additional matter we would like the Subcommittee to consider: adequate, sustained funding to ensure the safety of the people serving at U.S. missions abroad. For us, Mr. Chairman, this is literally a matter of life and death.

SECURITY OF OUR DIPLOMATIC MISSIONS

Last August we saw our people die tragically and needlessly in the cowardly bombings of our embassies in Nairobi and Dar es Salaam. On January 8, 1999 the statutorily-required Accountability Review Boards, under the direction of Admiral William J. Crowe, reported the results of their inquiry into the responsibility for these terrible losses. They said that no single person had acted irresponsibly or inappropriately. People were killed and wounded due to "* * * a collective failure by several Administrations and Congresses over the past decade to invest adequate efforts and resources to reduce the vulnerability of U.S. diplomatic missions around the world to terrorist attacks." The Boards recommended spending about $14 billion over the next decade to make our missions safer.

Mr. Chairman, the Administration and the Congress must begin to remedy that collective failure this year. We know that terrorists continue to probe our overseas missions for targets. In recent months, counterintelligence forces thwarted plots to murder Americans serving abroad in countries as diverse as Uganda, India, and Albania. Last month CIA Director Tenet said, "There is not the slightest doubt that Osama bin Laden, his world wide allies and his sympathizers are planning attacks against us." The threat is real. It is current. Our enemies will not curtail their attacks.

The President called the nation's attention to this problem in his State of the Union address, saying that the federal government must provide Americans serving their country abroad with secure workplaces, and adequate funds to pursue our vital interests. We are deeply concerned that he has failed to ask the Congress for the money to do so. The Clinton Administration's fiscal year 2000 budget request does not contain a single penny for the construction of new, safe U.S. missions abroad. It contains only $36 million for design and site acquisition work on a small number of new projects next year. It does not even contain a request to fund the construction of projects for which the Congress appropriated design funding for the current fiscal year.

In addition, Mr. Chairman, the Administration has asked you for an advance appropriations of $3 billion, to be spent in fiscal year 2001–2005. Under this request, more than half of the money is slated for disbursement in the final two years. That is six years from now. Terrorists will not wait for six years to attack us. We must not wait for six years to defend ourselves.

We understand that the Administration is considering withdrawing its request and resubmitting. State Department managers testified publicly that they had asked the Office of Management and Budget to include $1.4 billion for embassy construction in the fiscal year 2000 budget, a figure they arrived at independently of Admiral Crowe's panels. Their request was denied. Moreover, it appears that budget officials expect the State Department to find any money the Administration ultimately requests from current-services level budgets. This makes no sense. It would require shifting hundreds of million of dollars out of core programs and into security, forcing the State Department to spend over half its budget on overhead. This is not the responsible governance that our people deserve and that Americans expect.

Mr. Chairman, years ago AFSA erected a memorial plaque in the diplomatic lobby of the State Department. It now lists 171 of Americans who "died in heroic or other inspirational circumstances" while serving abroad at a U.S. diplomatic mission. Since 1968, eight U.S. ambassadors died in such circumstances. This year we are forced to add more names to the list. In public criticism of the Administration budget request, Admiral Crowe predicted that, "There are going to be more attacks, and we are going to lose more lives." And we will add more names to our list of the dead.

We seek from the Administration and the Congress a commitment to adequate, sustained funding to protect the lives of our people abroad. We seek an immediate beginning, not a six-year delay. We seek a security program that does not rob us of the funds we need to carry out our core mission.

There is one thing which we do not seek. We do not seek to cower in hardened fortresses. Diplomacy has always been a risky business. In the Foreign Service, we accept that. We recognize the need to balance security and accessibility.

Mr. Chairman, Admiral Crowe's recommendation for funding amounts to less than one-tenth of one percent of federal spending, about one penny out of every ten dollars. We ask that you appropriate that penny.

INCREASING FINANCIAL BURDEN OF SERVICE ABROAD

Last year, I began a discussion with the Subcommittee on the increasing financial burden of service abroad. Agency management has responded to tight budgets over the past years by shifting part of the burden onto individual employees. They have done this in many ways. Individual employees posted abroad now pay substantially more for medical treatment than they would if they remained in the United States. Many standard allowances have not been adjusted for inflation for decades, and are based on costs calculated in the late 1970's. Incentives provided by the Congress in 1966 for post differentials have been drastically reduced. As the percentage increments allotted to locality pay increase, Foreign Service personnel experience an ever larger wage reduction when they are assigned overseas. This is particularly damaging to people near retirement, since loss of locality pay produces a lifelong decrease in retirement annuity. The increased financial burden takes a particularly heavy toll on Foreign Service Specialists, who have a lower average salary than the Officer corps.

The Foreign Service is now experiencing difficulty in recruiting new officers and specialists, especially specialists in information technology. We are also seeing a marked increase in the number of mid-grade officers resigning to take jobs in the private sector. AFSA is proposing measures to restore some of the lost ground, and we hope that the Subcommittee will look favorably on Administration requests for funding to accommodate this restoration.

INFORMATION TECHNOLOGY

Two respected Washington think-tanks, the Stimson Center and the Center for Strategic and International Studies, assembled distinguished experts from government and industry to analyze the needs of American diplomacy in the 21st century. In the reports they issued last Fall, both identified a key current deficiency: our foreign affairs institutions are dangerously out of touch with advances in information technology. To achieve our diplomatic goals, we use information to influence other nations into taking actions which advance our own vital interests. We are rapidly losing our ability to collect, analyze and use information for this purpose. We are further losing our ability to disseminate this information in a timely fashion.

Last year, AFSA submitted testimony before this Subcommittee on the growing crisis. It is particularly acute in the State Department. Although responsible for coordinating foreign policy, the State Department has limited means for communicating with the rest of the U.S. Government, and even has severe problems communicating internally.

We have hopes that the State Department's impending consolidation with USIA presents an opportunity. USIA is markedly more advanced in this area, largely due to its corporate culture. It views its mission as providing information. The State Department focuses on policing information. In its effort to control sensitive information, it restricts all information.

Failure to invest in information technology today will have drastic consequences for America tomorrow. It will steadily erode our ability to shape, rather than merely respond to, world events.

NEEDS-BASED WORKFORCE PLANNING

Mr. Chairman, AFSA has long advocated that the foreign affairs agencies establish a forward-looking, needs-based workforce planning system.

When AFSA worked with Congress to draft the 1980 Foreign Service Act, we attempted to address this concern by asking Congress to insert Sections 601(c)(2) and (4) into the Act. These provisions require the State Department, acting on behalf of the foreign affairs agencies, to report annually to Congress on the "upper and lower limits planned by each agency recruitment, advancement, and retention" of Foreign Service personnel with a view to establishing "a regular, predictable flow of talent upward * * *".

To the best of our knowledge, the State Department has not complied with this requirement since 1995.

State Department management acknowledges the need for workforce planning, but has failed to take action. A decade ago, the Thomas Commission's Report on the Foreign Service Personnel System stressed "the need for long-range planning [which] would allow personnel managers to assess the effects of demographic and

societal change and * * * changes in the mission of the Foreign Service and the overseas environments in which it operates * * *."

Similar calls for workforce planning can be found in the 1992 State 2000 Report, and more recently in the both the Stimson Center and the Center for Strategic and International Studies reports mentioned above.

The State Department has tools for workforce allocation, but not for workforce planning. The difference is crucial. Allocation involves matching the list of current jobs with the list of current employees. Personnel managers do this using five-year average values. Their base their calculations on the present and the recent past, not on the future. Planning involves the future. It requires answering questions such as: What skills will American diplomacy require in the future? How will we recruit, train and retain people with those skills? How many people do we need to recruit and train today in order to ensure that we have them when we need them in the future? The State Department is particularly weak in incorporating training needs into personnel policy.

Forward-looking, needs-based workforce planning must take training requirements specifically into account, and must make training an integral part of managing the workforce.

The foreign affairs agencies need to plan systematically today if we are to maintain the world's top-ranking diplomatic corps tomorrow. We seek Congress's assistance in bringing this about. We believe that, absent a strong indication of Congressional interest, the foreign affairs agencies will continue to ignore this issue, and continue to implement ad hoc, short-term personnel policies.

PUBLIC DIPLOMACY AND NON-PROLIFERATION

Finally, Mr. Chairman, AFSA is concerned about the Administration's support for public diplomacy. The Administration failed to request any fiscal year 2000 funds to accommodate the administrative costs of merging United States Information Agency and the Arms Control and Disarmament Agency with the Department of State. That means that program funds must be used for the move. This is poor budgeting.

Virtually all of the thought and effort devoted to consolidation has focused on the administrative process of merging three agencies into one. The goal of consolidation is to integrate public diplomacy and non-proliferation into foreign policy formulation and execution. We have seen little evidence of policy consolidation. We believe these functions should be integrated and strengthened as part of our total foreign policy process.

CONCLUSION

Mr. Chairman, for 75 years, the modern, merit-based Foreign Service has fought to advance America's vital interests in the world. Our client is the American people. Our goal is to enhance their security and their prosperity. Our hope is that the Subcommittee will support our efforts by supplying us with the tools we need to achieve our mission.

Thank you for the opportunity to speak on behalf of the Officers and Specialists of America's Foreign Service.

PREPARED STATEMENT OF THE ALLIANCE FOR INTERNATIONAL EDUCATIONAL AND CULTURAL EXCHANGE

INTRODUCTION

The Alliance for International Educational and Cultural Exchange, Inc. appreciates the opportunity to submit testimony in support of the educational and cultural exchange programs now at USIA and to be administered by the Department of State beginning Oct. 1, 1999. We urge an appropriation of $225 million for educational and cultural exchange programs—approximately $15 million above the Administration's request—but no more than is needed to maintain the current level of exchange program activity and to provide minimal increases to key programs.

The Alliance for International Educational and Cultural Exchange is a coalition of over 60 non-profit organizations with chapters and grassroots networks in all 50 states. Through these federally-sponsored programs, Alliance members help advance the U.S. national interest by putting a human face on American foreign policy, transmitting American values, fostering economic ties with rapidly developing overseas markets, engaging millions of Americans across the country in our foreign affairs, and assisting individuals with the development of critical foreign language, cross-cultural, and area studies expertise.

Alliance members administer the range of exchange programs—including academic, professional, cultural, citizen, and youth exchange programs. Some member organizations administer programs on behalf of the U.S. government. Others manage non-governmental programs. All are united, however, in the conviction that federally-sponsored international exchange programs are an extemely cost-effective means of serving our national interests both at home and abroad.

The following statement provides a private sector perspective on how the fiscal year 2000 exchange budget should support exchange programs—a vital diplomatic tool in our foreign policy arsenal. The support is particularly essential as exchange programs prepare to move to a new bureaucratic environment in the Department of State.

$225 Million Needed to Support Modest Increase

The Administration's proposed budget of $210 million for the exchange account would provide minimal increases for valuable programs such as Fulbright, International Visitors (IV), the Humphrey program, and the Congress-Bundestag youth exchange program. However, these increases barely begin to restore lower participant levels due to five years of funding cuts. In fact, the increases requested by the Department of State for these programs barely keep pace with the current low rate of inflation.

An independent study of the Fulbright Educational Exchange Program released in 1997 concluded that Fulbright exchanges for students, teachers, and scholars are critical to American interests, especially given the rate of global change and the dynamics of a global economy. The study report "Fulbright at Fifty" calls for restoration of Fulbright Program funding to the fiscal year 1995 level of $125 million. The report states that "the Fulbright Program remains a vital and successful means to address the current issues facing established and emerging nations * * *. Its hallmark qualities—merit-based competition, open inquiry, shared responsibilities, and the engagement of other nations—stand the program in good stead for the future." A $225 appropriation for the overall international exchange account would allow the Department of State to take a meaningful step toward the Fulbright goal.

A larger step is also needed for the International Visitor program. The modest increase requested is insufficient to fully support the national network of community-based volunteer organizations which administer the program. Steep funding reductions over the past five years have strained this invaluable network, and insufficient visitor flows have forced some local chapters to close. The Administration's IV request represents only a minimal first step in restoring the vigor and dynamism of this critical exchange program, and of the national grassroots network which supports it.

1Deep Cuts Slated for Citizen and some Academic Programs

The Administration's budget contains a short-sighted 20 percent cut to citizen exchanges and other programs renowned for their ability to leverage involvement and engagement from citizens, communities, and educational institutions throughout the United States. The Administration's request would force a 20 percent cut in programs such as Sister Cities, Partners of the Americas, and American Council of Young Political Leaders.

While leveraging significant private contributions, citizen and academic exchange programs engage tens of thousands of volunteers—"citizen diplomats"—in communities and universities throughout the U.S. Citizen diplomats volunteer their time because they recognize the tremendous value which globalization has both for themselves and their communities. These activities create new trading partners, build understanding and cooperation between Americans and future foreign leaders, advance democracy and economic growth, and create opportunities for Americans to learn, to prosper, and to work with others to solve shared problems and make our future more secure. USIA has carefully developed diverse tools to reach each of the above goals.

The budget also proposes slicing significant funds from other valuable programs. The College and University Affiliation Program and English language programs would be cut by 20 percent or more; and USIA funding for the Muskie Fellowship program would be eliminated.

The Muskie Graduate Fellowship Program—a grassroots democracy building program—brings students from the NIS and the Baltic states to the United States for graduate study in fields that are critical to economic reform and political development. U.S. host institutions form a critical public-private partnership in support of the Muskie program by providing significant cost reductions that include waiving or reducing tuition and fees, and participating in recruitment, screening and inter-

viewing of candidates on a volunteer basis—saving the government a substantial portion of the real cost of recruiting and educating these graduate students.

Failing to fully support these grassroots programs—which democratize our foreign affairs by involving thousands of Americans—will erode our ability to meet the continuing public diplomacy challenges our country faces as the world's only superpower. A modest increase in the exchange account will allow us to maintain the full diversity of USIA's time-tested program tools to support U.S. foreign policy.

Another issue of fundamental importance to higher education institutions throughout the United States is maintaining adequate support for overseas educational advising and student services. The Administration's budget request of $3.1 million for this program would cut funding by $100,000 from fiscal year 1999 estimates, and merely maintain flat funding compared to fiscal year 1999 appropriations. Overseas educational advising consists of a network of 450 government-supported offices where prospective foreign students interested in American higher education can receive unbiased, professional information about educational opportunities throughout the United States.

Overseas advising plays a critical role in maintaining the flow of foreign students and scholars to our nation. Last year, nearly 480,000 foreign students brought almost $8.3 billion into the U.S. economy and created more than 100,000 U.S. jobs, a significant return on a $3 million government investment. Government funds spent on overseas educational advising services are one of the most cost-effective investments in the international affairs budget.

Foreign students who choose the U.S. for their educations become leaders in their societies, a circumstance from which the U.S. derives many benefits. They take American values and perspectives home with them; promote democratic institutions and market-based economies; make major purchasing decisions involving American products; create partnerships with American enterprises; and have a profound, positive impact on our own security and prosperity. The past decade's explosion of democracy and prosperity in Latin America, for example, precisely corresponds to the rise to power of a generation of leaders educated in the United States.

Although the United States has for decades attracted far more foreign students than other nations, the international student marketplace is increasingly competitive. Australia, Canada, Japan, New Zealand, the United Kingdom, as well as several other European countries, have geared up major recruitment efforts. Many of these governments offer full government support to maintain their overseas advising networks. Moreover, as the European Union continues to integrate, many European students are likely to study in one of their fellow EU nations, at a much lower cost than an American education. A modest increase in the overseas advising budget would clearly signal Congressional recognition of the political, economic, and educational benefits we derive from a vigorous flow of foreign students and scholars to the U.S.

Strong Base Funding Needed for USIA's Transfer to State

The pending foreign affairs reorganization means that for the first time since 1978, exchange programs—with their long-term, non-political focus—will be administered by the State Department.

The Administration's plan for reorganization indicates an intention to combine the exchanges bureau with USIA's overseas information activities, a structure which appears to violate two provisions of the Fulbright-Hays Act and another of the Foreign Affairs Reform and Restructuring Act. In addition to the statutory problems, the melding of these disparate functions would likely diminish the credibility of the exchange programs by associating them closely expressly political information activities. The exchange community has been gratified by the strong expressions of support for a separate exchanges bureau from Senators Helms and Biden, and from Representatives Gilman and Smith, and we remain hopeful that the final organization chart for State will include a separate exchanges bureau headed by an Assistant Secretary.

The proposal to combine exchange and information suggests that stakeholders and supporters of exchange must remain actively engaged during the reorganization to insure that exchanges are accorded appropriate priority with the State Department. A $225 million funding level will unmistakably signal Congressional support for a vibrant exchanges program, and will help to build support for reorganization from a national, community-based constituency.

Conclusion

Ten years after the fall of the Berlin Wall, we find ourselves in a world with challenges far more complex than "containment". In this new global dynamic, the need for public diplomacy, particularly people-to-people exchange, is greater than ever. As

Secretary of State Madeleine Albright stated earlier this year with regard to public diplomacy, "My firm goal is to bolster and empower this vital diplomatic tool." We couldn't agree more.

We recognize and appreciate your support for these programs in the past, while recognizing the difficult task before this subcommittee in attempting to meet the needs of a diverse array of national interests with limited funds. We count on your continued support for international educational and cultural exchange, and urge you to appropriate $225 million—a modest $15 million increase for educational and cultural exchanges. This figure more accurately reflects the growing needs and proven benefits of international exchange programs.

PREPARED STATEMENT OF WILLIAM P. FULLER, PRESIDENT, THE ASIA FOUNDATION

Thank you for the opportunity to submit testimony on behalf of The Asia Foundation's fiscal year 2000 budget request. The Foundation has been grateful for the support that the Congress and this Committee have provided over the years.

Mr. Chairman, I want to discuss with you and the Committee the work The Asia Foundation is doing today, and our hopes and plans for future projects. We believe that we have many examples of how a small, independent organization can advance American interests in the Asia-Pacific region, particularly in light of the challenges facing Asia today.

We are pleased that for fiscal year 2000 the Administration has endorsed the work of the Foundation by requesting an appropriations level of $15 million for the Foundation, $10 million for broad based programs in the Asia-Pacific region and $5 million for expanded legal reform programs in Asia. Budget cuts since fiscal year 1995 have forced the Foundation to significantly reduce programs in support of democratic development, law and economic liberalization. Regrettably, this has occurred precisely when Asia's economic woes have mounted and threats to the continued progress of democratic reforms and economic liberalization have increased. The level of funding requested by the Administration will allow the Foundation to resume some of these program activities and expand its level of grantmaking in support of broader American interests at this critical juncture in the region.

Let me put the work of the Foundation into context. After decades of extraordinary growth and development, Asia faces its most significant economic crisis in the past thirty years. We have seen in the past year how fragile economic systems are when they are not supported by adequate legal, regulatory and political systems. While democratic advances have been made, the crisis has raised new threats to democratic governance and human rights, and underlined the need for continued support for reform in countries where democracy remains fragile. These challenges reinforce the need for the United States to remain engaged and continue to support the new democracies of Asia.

We believe that The Asia Foundation, building on its 45 years of experience on the ground throughout the region in service of U.S. interests, has the capability to further advance these interests.

The United States seeks an Asia-Pacific region which is increasingly democratic, with governments that are governed by the rule of law and are accountable to their people not only through free and fair elections, but through administrative processes that are open and transparent.

The United States also seeks an Asia-Pacific region that harnesses its enormous indigenous economic potential to improve the well-being of its own people. An important element in this process is the pursuit of open trade and investment policies which allow U.S. businesses to trade and invest in the region to the mutual benefit of Americans and Asians.

Finally, the United States seeks an Asia-Pacific region that is stable and free from military conflict and territorial aggression, where nations work together harmoniously within the region and in friendship with the United States.

Mr. Chairman, these are precisely three programming priorities of The Asia Foundation: democracy, the rule of law and human rights; open trade and investment; and peaceful U.S.-Asian and intra-regional relations.

I want to emphasize that the Foundation remains a field organization that supports local Asian groups and projects. Our job is to strengthen the capacity of our local partners. We are not Washington based. We operate through a network of thirteen offices in the Asia-Pacific region, including a presence in both China and Taiwan. Through those offices, we can identify and form relationships with creative individuals and groups who seek to advance the same goals and interests that we support.

We are not a research organization. We remain a grant making organization, conscious at all times of the necessity of being efficient, committed to keeping our administrative overhead low and delivering financial and technical support to Asian projects. We are pleased to report to you that in 1999, for the second year in a row, The Asia Foundation has been nationally recognized as one of the top most efficient and effective non-profit organizations in the United States.

The Committee in the past has praised and encouraged the Foundation's grant making role and we remain faithful to it. We make strategic, sequential grants to steadily build the capacity of institutions, develop leaders and move policies forward. Foundation support is used for training, consultancies, technical assistance and seed funding for new organizations, all aimed at promoting reform and enhancing Asian capacity. We can say with confidence that there is no other U.S. non-profit engaged on the ground for over forty years, that has the breadth of contacts and relationships or the trust and credibility that the Foundation has established in Asia and the Pacific. The democratic development we are seeing now in several countries, specifically Thailand, the Philippines and Korea, are in part the fruit of the investments that the Foundation has made over time in support of reform minded individuals. This sustained involvement is the hallmark of the Foundation and its field presence in Asia.

We are seeking an appropriation of $15 million because we have identified worthwhile and urgent programs in the region that require that level of funding, particularly given the economic and political crisis facing many countries in the region of key interest to the United States.

Public funding is essential to us for many reasons. While the Foundation remains committed to expanding private fundraising, the credibility, flexibility and reliability that public funding lends to the Foundation's efforts is critical. As an organization committed to American foreign policy interests in Asia, we can only be successful if potential private donors understand that the U.S. government continues to support our efforts in the region.

Private funding does not replace public funding, either in scale or flexibility. Private funding is almost always tied to specific projects (as are USAID contract funds for which the Foundation competes) and the Foundation does not solicit or accept private funds that might compromise our fundamental commitment to support overall U.S. interests in Asia. Further, U.S. government appropriated funding maintains the Foundation's flexibility to respond quickly to fast-breaking developments and program opportunities and enables the Foundation to work in key countries that are of high priority to the U.S. but where USAID and other assistance does not exist. This has proven true in Pakistan, where the Foundation implements the Pakistan NGO initiative in the absence of USAID, and in Thailand, where the Foundation has been engaged for decades, but where USAID no longer operates. This is also true in Korea, another country affected seriously by the region's economic crisis, and where the U.S. faces serious security concerns related to North Korea. In this respect, Foundation programs are also able to undertake initiatives that government programs cannot, such as sensitive issues related to economic and political reform. The Asia Foundation continues to be a model of public-private partnership and a resource which complements official foreign policy efforts.

In this discussion of what we are doing, I hope to demonstrate the value to the United States of what we do and provide examples of what we would be able to do in programmatic terms with a $15 million appropriations level.

Democracy, the Rule of Law and Human Rights

Strengthening formal governmental institutions—the constitution, the legislative branch, and the judiciary—and encouraging the development of civil society have been the hallmarks of the Foundation's programs in Asia. The Foundation's commitment to support developments in these areas is based on the conviction that, over the long term, sustainable advances in the countries of the region will require movement toward more open and participatory societies, democratic elections, the rule of law, the guarantee of basic human rights and more open markets. Foundation support goes beyond the formal structures of institutions by focusing on the performance of those institutions and their ability to enhance the lives of the public they serve. Democracy, law and support for civil society are, historically and presently, the largest component of the Foundation's grant making activity in support of Asian institutions.

DEMOCRACY

Foundation programs have provided substantial assistance to parliaments in 16 countries in Asia, from technical assistance on specific legislation to training for

members and staff, including facilitating interaction with the nongovernmental sector.

In the last year, the Foundation supported election programs in Bangladesh, China, Mongolia, Cambodia and Thailand. In Cambodia, during the July 1998 National Assembly elections, the Foundation supported the largest voter education and domestic election monitoring effort through two coalitions composed of Cambodia human rights NGO organizations. Twelve thousand Cambodians were trained and deployed throughout the country to monitor election day procedures and the ballot count. The Foundation also recruited long-term election monitors as the American contribution to the international election monitoring effort. The Foundation's efforts have been widely praised by the Embassy, State Department, USAID and the international donor community as critical contributions to the election process.

The Foundation continued its support for local governance reform in China, which reaches over 100,000 villages nationwide, including training of election managers, production of videotapes on the election process which have been broadcast on national television, and research on the role and structure of Villager Committees and county-level People's Congresses, along with surveys of villagers' views of local governance.

The Foundation has been the single largest supporter of the nongovernmental sector in all of the Asian countries in which we operate, supporting over 900 local organizations over the last five years alone. These organizations are essential contributors for a vibrant civil society, encouraging public participation, transparency and accountability in the policy making process.

LAW

The Asia Foundation recognizes the importance of effective legal systems founded on the rule of law as a critical underpinning of stable and just democratic societies. The Foundation is the leading American supporter of legal systems development in the Asia-Pacific region. Foundation grants and technical assistance support improved judicial administration, law reform, legal education and professional development, and alternative dispute resolution. The Foundation has assisted in the reform of legal and judicial systems through the training of judges and lawyers in 13 countries aimed at improving the performance of the formal legal system and court administration programs to reduce case backlog. The Foundation has also assisted in providing technical assistance for substantive law reform.

In the Philippines, the Foundation continued support of alternative law groups that assist disadvantaged citizens to advance their interests through advocacy efforts and improved access to formal and informal decisionmaking processes. For example, these groups have played a key role in ensuring that administrative procedures at the national and local levels take full account of citizen rights and interests. In Sri Lanka, the Foundation supports over 200 mediation boards which handle an annual caseload of 350,000 and legal education programs reaching over 600,000 people. The Foundation has a major effort underway with the National Institute of Administration in China in the preparation of new administrative laws that protect the rights of citizens, enabling them to sue government agencies in order to curb government agency abuses. Other efforts will be directed toward both the grassroots and policy levels, to ensure more responsive administrative regulations, and support legal reform efforts related to legal aid and popular legal education.

Expanded legal reform programs in Asia in fiscal year 2000 will support efforts in Indonesia, China, Thailand, the Philippines, Vietnam, Sri Lanka and elsewhere to advance legal training, education, alternative dispute resolution, judicial training and administration reform, legal aid, human rights protection, legislative drafting, and to contribute to substantive law reform in specific country circumstances. International donors and business communities all maintain that legal reform is a critical element for Asia's economic recovery and the Foundation is well positioned to support practical programs on a national and regional level.

HUMAN RIGHTS

The Foundation has expanded and will continue to expand its human rights activities across the region. Our programs support a full range of strategic human rights activities, including training, education and capacity building, monitoring, investigation, and technical support for specialized skills such as forensics. For instance, in Cambodia, Foundation support has assisted courageous human rights NGOs to overcome extraordinary difficulties in leading the establishment of a dynamic civil society movement over the past five years and protecting rights. The Asia Foundation is the single most active American supporter of key human rights

organizations in Cambodia. Grants have supported human rights education, advocacy, and monitoring and investigation of human rights abuses. In politically sensitive circumstances, building democratic systems takes time, sustained commitments, resources and experience. Programs like the one in Cambodia are carefully calibrated and based on regular analysis of the working environment by Foundation staff on the ground.

INDONESIA

Of great concern to the Foundation is the changing situation in Indonesia. Caught in the Asian economic crisis and a dramatic political transition, Indonesia is at a historical crossroad. Amidst serious economic crisis that has sharply reduced the country's middle class, eruptions of violence, and political uncertainty, Indonesia faces a significant challenge—most notably, its commitment to democracy by holding free and fair elections in June. Given the country's size and importance in the region, stability and economic recovery in Indonesia are high on the agenda for U.S. policymakers.

With a $15 million appropriation, the Foundation will deepen its involvement in Indonesia, a country where it has maintained a program since 1955. Because of its long history and experience in Indonesia, the Foundation has been able to advance U.S. interests in important, yet sensitive public policy areas related to civil society development

The impact of Foundation program investments over the past several decades to support nongovernmental organizations and government institutions is now evident, as nongovernmental actors begin to play a more active role in politics and public debate. Institutions previously disregarded, such as the National Parliament, are gaining strength and importance. The Foundation will address substantive law reform, along with additional support to the newly elected Parliament where for the first time in 40 years legislators will be drafting their own legislation and law reform proposals.

While the Foundation is currently supporting a national voter education effort in partnership with Indonesian NGOs, it is the broader aim of expanding civic education that will prepare Indonesians for the democratic transition they face in the coming years. The Foundation will expand its program with Indonesia's moderate Islamic community to support peaceful community development and a secular society, inter-faith and inter-ethnic efforts to increase cooperation and political tolerance, assistance to women who are the hardest hit by the economic crisis and most politically disenfranchised, and support for media training, to strengthen their "watchdog" functions.

The challenge to groups working in the field of human rights in Indonesia has increased due to heightened social tensions arising from the economic crisis-such as increased unemployment, rising prices and great social inequity. The Foundation will expand its activities with Indonesian NGOs and support for the National Human Rights Commission, which has taken on the role of an ombudsman whose assistance is actively sought by citizens who have limited access to or confidence in the legal system. Programs will include the establishment of a human rights education system for the country through a network of educational institutions, and NGOs, and will reach the police and military. The Foundation continues to work with the Commission to provide training for its staff, and to develop a database for both its monitoring and investigative work, and to facilitate information dissemination. The Foundation will also continue its support to the Commission's branch in East Timor.

OPEN TRADE AND INVESTMENT

The Asia Foundation supports programs that lead to open trade, investment and economic policy reform at the regional and national levels, and projects that work to spread the benefits of economic growth throughout Asian societies. The current economic crisis has increased the impetus for reform as it has placed enormous pressure on domestic political and governance systems and regional and international arrangements. The Foundation's programs complement official U.S. initiatives to support economic recovery in Asia, and reinforce the need to address the critical linkages between the immediate economic causes of the crisis and the deeper causes related to political processes and governance.

The Asia Foundation supports regional organizations such as APEC and the private sector Pacific Economic Cooperation Council (PECC) that are committed to open trade and investment. In the past year, the Foundation has been engaged in contributing to country efforts under APEC, such as in the Philippines, to support efforts to reduce tariffs and help open trade in specific sectors, such as information

technology and civil aviation. At the same time, the Foundation supports specific training programs, such as the seminar on bank surveillance techniques and prudential regulations the Foundation sponsored recently for central bank officials from the region at the San Francisco Federal Reserve Bank.

The Foundation has provided technical expertise to the Ministries of Finance and Trade on issues related to Vietnam's accession into the World Trade Organization and the U.S. Vietnam Trade Agreement negotiations. In this process, through training programs and seminars, the Foundation will assist Vietnamese officials to identify needed economic reforms and obtain the skills needed for Vietnam to meet the basic requirements on the international trading system and to negotiate bilateral and multilateral trade agreements.

The Foundation is helping to introduce a greater degree of predictability among major Asian economies by improving intellectual property rights protection, strengthening counter corruption laws and public scrutiny of the social and economic costs of corruption, and establishing private commercial dispute resolution organizations. For example, in China, together with the National Bureau of Asian Research in Seattle, the Foundation funded constituency building workshops in China with government officials and the private sector which focused on the long-term domestic economic and business benefits of intellectual property rights protection. In Thailand, the Foundation focused on the development of constituencies to promote sustained counter-corruption efforts by the government and civic sector through support for research on the political economy of corruption. This received widespread attention the press and mass media. The Foundation was a partner in a recent OECD conference on corruption in Washington, discussing lessons learned in counter corruption programming and has been consulted by Transparency International and other groups active in the field because of its experience in Asia.

The Foundation supports small and medium enterprise (SME) development in Indonesia, Bangladesh and the Philippines, and plans to expand its successful and innovative policy reform program in other countries. Efforts will focus on identifying key regulatory constraints, strengthening the capacity of small and medium scale business constituencies to advocate for reform, and facilitating cooperative links with international donors, NGOs and business associations. SMEs are receiving increased attention during this time of economic crisis and the Foundation is seen as a leading resource in this field.

In addition, the Foundation will focus on economic growth through programs that would selectively support innovative microcredit mechanisms for the poorest populations, including rural women in China.

INTERNATIONAL RELATIONS

The Asia Foundation organizes U.S.-Asian dialogues on issues such as democratization, human rights, civil society, regional economic policy, and the environment, and supports diplomatic efforts to address security issues.

The Foundation has supported and participated in several U.S.-China bilateral dialogues, including the "Symposium on China-U.S. Relations Toward the 21st Century: A Constructive Strategic Partnership", the first meeting of its kind in China, with equal numbers of senior American and Chinese policymakers, business representatives and NGO leaders participating. Major bilateral, regional and global issues were discussed aimed at forging as much consensus as possible for a joint report to the two governments. The Foundation is also supporting a series of Track II trilateral meetings involving representatives of Japan, China, and the United States. Convened by the Asia Center of Harvard University, the trilateral series aims to promote candid dialogue and improved understanding among the participating nations. The first meeting was held at Harvard in January 1999, and the next session is scheduled to be held in Tokyo in September 1999.

The Foundation also continued to pursue human rights programs on a regional basis. Activities include an unofficial human rights dialogue in which 18 countries in the region are represented, including China and Vietnam, as well as support for the ASEAN Human Rights Working Group Toward the Establishment of a Regional Mechanism. The ASEAN initiative has an ambitious agenda for training and confidence building within the original five ASEAN countries.

The Foundation will continue it support for the Council for Security Cooperation in the Asia Pacific (CSCAP) as a crucial vehicle for Track Two dialogue on the evolving regional security structure.

CONCLUSION

In closing, Mr. Chairman, I have attempted to outline some of the program activities which the Foundation hopes to undertake throughout the region. We believe

that these programs are at the core of U.S. interests in the region and that they merit an appropriation at the level of $15 million for fiscal year 2000, consistent with the President's request.

As you and your colleagues know, the budget constraints of recent years have compelled significant reductions in the Foundation's annual appropriation. We have worked hard to reduce our budget, cut staff and expenditures, and increase our efficiency as well as diversify our funding sources. During this difficult period, we have worked to maintain our regional presence through our 13 offices in Asia, and to put the maximum possible amount of appropriated dollars toward on the ground program activities. I pledge to you that if the Congress appropriates the full $15 million request, The Asia Foundation will use those funds efficiently and effectively for program activity in the region as I have just described.

Thank you for your attention and consideration.

THE JUDICIARY

PREPARED STATEMENT OF LEONIDAS RALPH MECHAM, DIRECTOR, ADMINISTRATIVE OFFICE OF THE U.S. COURTS

Mr. Chairman and Members of the Subcommittee, thank you for giving me the opportunity to testify before you on the fiscal year 2000 budget request for the Administrative Office of the United States Courts (AO). It has been a pleasure to work with you and your very able staff over the years and I look forward to our working together in the future.

I would first like to express my appreciation to Chairman Gregg and the subcommittee members for your support of the AO in the past and your recognition that it is an indispensable part of the justice system. In these times of fiscal constraint you have provided funds for modest staff increases so that we could address some of the most critical needs of the courts.

ROLE OF THE ADMINISTRATIVE OFFICE

The work of the AO has grown tremendously, both in volume and complexity over the years. Chief Justice Rehnquist, in his 1998 Year-End Report highlighted the range of activities performed by the AO. He noted the traditional core function of serving "as the central support agency for the administration of the federal court system." The addendum highlights some of those activities. His report also enumerates some of the emerging areas the AO has developed to spearhead support for the judiciary's growth and in a more complex environment. These include developing a long-range planning and budgeting process, ensuring that all judiciary automated systems are Year 2000-compliant, and analyzing ways for the judiciary to work most efficiently.

Supporting a court system whose proportional growth far outpaces that of the AO is a daunting task in and of itself since the AO's workload increase is directly tied to the courts' growth. Yet, in addition to continuing this ongoing support at a much greater level of effort, the AO has had to branch out into additional, and often unexpected arenas. These range from instituting a long-range facilities planning process that recently won a government-wide award to managing a project on electronic courtrooms. The AO has done all of this with marginal increases in staffing resources.

ADMINISTRATIVE OFFICE BUDGET REQUEST

The AO's budget request for fiscal year 2000 is a request to maintain current services levels. The only increases requested are for standard pay and benefit cost adjustments and general inflationary increases. We are requesting total funding of $100,594,000, a 6.5 percent increase over anticipated fiscal year 1999 obligations. The total funding needed is comprised of appropriations, reimbursements from the courts primarily for automation support, fiscal year 2000 fee collections, prior year carryover, and independent counsel reimbursements.

Although our workload is continuing to grow substantially, we felt compelled to request a current services budget and not to request needed additional staff for two reasons. First, we recognize the very difficult fiscal position you are in. Second, the Judicial Conference decided not to request additional staff to meet the increased workload in the courts. While Congress has approved staffing increases for the courts in the past, the AO has actually declined in size relative to the courts. Nonetheless, we felt it would be imprudent to request additional staff in fiscal year 2000 for the AO when none are requested for the courts, regardless of our need. Con-

sequently, it is imperative that the AO receive its full request; otherwise critical staff and support functions for the courts will be in jeopardy. In particular, in order to maintain core support functions, we would have to slow down or stop entirely many of the projects underway that will eventually produce efficiencies and improvements in judiciary operations.

THE ADMINISTRATIVE OFFICE'S INCREASED RESPONSIBILITIES

In recent years the AO has greatly increased its efforts in three areas: (1) supporting enhanced program assessment, economy efforts, and planning by Judicial Conference committees; (2) leading the effort in major analytical studies of various judiciary activities and (3) developing and implementing automated systems and fostering other innovations to help the courts absorb more work and continue to serve the public well. I am very proud of the results that we are achieving and the lead role of the Administrative Office as assigned by the Judicial Conference. The coordination and support of all of these efforts will require substantial AO staff resources, but they have and will continue to assist the judiciary in handling its increasing workload without a commensurate increase in staff.

The AO undertook these initiatives in support of the Judicial Conference Committees and with the encouragement of Congress, with very modest increases in resources, while still maintaining the high level of support to the judiciary in its traditional core functions. Compared to other administrative support organizations, the Administrative Office continues to be a bargain for the taxpayers. AO staffing as a percentage of the judiciary's total staff is 3 percent, while the staff in the Department of Justice's Management and Administration accounts represent 5 percent of DOJ's total staff.

I would like to summarize some of the efforts we have underway. In many instances, the results of these initiatives will have a significant impact on court operations and resource requirements.

Assessment and Planning

Judicial Conference Support.—One of the agency's primary responsibilities is providing professional support to the Judicial Conference and its twenty-four committees. AO staff plan meetings, prepare agendas, and produce reports. They also provide substantive analyses of issues, seek advice and opinions from advisory groups of court officials, and make recommendations for consideration by committees, and ultimately, the Judicial Conference.

Long Range Planning and Budgeting Efforts.—To ensure the Judiciary continues to be able to accomplish its mission in the face of ever-tightening resources, the AO is coordinating and supporting an enhanced program and budget planning effort in the short, medium, and longer term. Committees of the Judicial Conference, through AO staff support, are placing greater emphasis on examining current and future program requirements, setting priorities, and determining resource needs so the judiciary will be better able to decide how best to use available funds and successfully meet its responsibilities. This will involve a more direct focus on conducting tactical and strategic planning at the program level, examining issues that cross program lines and the resulting impact on the involved programs, and estimating resource needs several years beyond the budget year.

Major Analytical Studies

Improved Work Measurement Formulas.—In June 1998 a major two-year study was initiated to update formulas for determining staffing requirements in the courts. Defining and measuring the work of the courts requires a tremendous effort by AO staff throughout the agency, including on-site assessments to ensure the results are valid. These staffing formulas serve as the basis for determining personnel needs in appellate, district, and bankruptcy clerks offices and probation and pretrial services offices, which in fiscal year 1999 include about 20,000 people. The new formulas will account for changes in recent years that may have impacted the need for staffing, such as new automated systems, more efficient work processes, or additional workload demands imposed by new legislation. The judiciary will use the new formulas to allocate court staff resources beginning in fiscal year 2001.

Space and Facilities Review.—The AO is in the process of engaging an outside consultant to conduct an independent comprehensive study of the judiciary's space and facilities program. The review is broad in scope and will address: program missions and objectives; long range planning assumptions, including the effects of staffing and operational policies, technology and all major cost-drivers; facilities management policies and business processes; courtroom utilization; courthouse design standards and practices; internal and external organizations involved in the program, and their roles, authorities, and relationships; funding and budget mecha-

nisms and GSA rental policies, which currently cost the judiciary about $650 million per year.

To ensure all views are expressed and issues are addressed, the AO will bring in focus groups of court officials, congressional staff, GSA, OMB, attorneys, and others who use courthouse facilities.

Probation and Pretrial Services Study.—Another comprehensive review that the AO will oversee is a study of the probation and pretrial services system which currently requires $655 million annually. An independent consultant will analyze current programs, identify strategic issues, and make recommendations for the future direction of the system. This study is necessary because the system is increasing in complexity, growing in size, and facing changing needs. We expect the study to produce recommendations for improving both the efficiency and quality of the system.

Defender Services Analyses and Cost Containment.—Several studies are underway in the defender services area, some of which we initiated and others which were requested by Congress. The AO has taken a lead role in supporting the Defender Services Committee, contracting with independent consultants, and working with advisory task forces to carry out analyses on various aspects of the defender services program and its cost. Efforts focus on assessing the various components of the program including federal death penalty representations, noncapital case cost drivers, and comparative costs of federal capital habeas corpus cases. In addition, AO staff are supporting the development of performance measures for the defender services program. The measures should help the Judiciary improve management of the program budget, direct resources to areas where they are needed most, and better demonstrate the effectiveness of the program to Congress and the public. These studies provide insights into what is driving the costs, with resulting recommendations on how to contain costs while meeting the constitutional and Criminal Justice Act mandates to provide defense services to all eligible defendants.

Judicial Officers Resource Study.—AO staff is supporting a judiciary working group to explore ways and means of managing available judicial officer resources in a manner that might reduce the need for some additional judgeships. A primary area of focus will be ways to better use existing resources such as visiting judges, to address the imbalance of workload among courts.

Automated Systems and Technology Advances

We continue to study and invest in technological innovation to enhance the quality and efficiency of court proceedings, to provide better services to the bar and public, and to reduce the costs of judicial operations. The AO has an ambitious automation program underway, with a dozen major automation projects in various stages of development. All of these systems will improve information processing, timelessness and availability, but they will require a sustained investment of substantial AO staff members over the next several years to complete the design, perform testing, install in over 400 hundred court units, and provide training and support to over 39,000 users on an ongoing basis.

Videoconferencing.—The use of videoconferencing continues to expand. In addition to being used in certain judicial proceedings, the judiciary is increasingly using videoconferencing for administrative meetings, conferences, and training seminars. In the area of distance learning, plans for the future include interactive video teletraining and desk top videoconferencing. Downlink facilities have been installed in about 200 court locations around the country. Fifty additional sights are on order for installation in the coming months. The Federal Judicial Television Network is now the second-largest broadcasting network in federal civilian government. It currently airs 30 hours of programming per week on a variety of subjects ranging from training judges on recently passed legislation to general training on computer security.

Courtroom Technology.—A multi-year plan is underway to equip courtrooms with a variety of technologies to facilitate judicial proceedings. The technologies include video evidence presentation systems, videoconferencing capabilities, and electronic court-reporting systems that provide immediate access to the record. Results of a pilot study show the technologies can reduce trial time, lower litigation costs, improve fact-finding, enhance understanding of information, and improve access to court proceedings.

Case Management/Electronic Case Files.—A major effort is underway that is consuming substantial AO resources to provide a new case management system to the appellate, district and bankruptcy courts. This new system will provide electronic case filing capabilities to the bar while allowing judges, court staff, attorneys and others to store and retrieve case documents without leaving their desks. The Administrative Office is working closely with the courts, the Department of Justice and

various bar associations on this effort, particularly since the cultural and operational changes in the way the judiciary conducts its business will be dramatic. In addition, the new systems will replace the antiquated case management systems now being used in the federal court system. The new systems will provide the judiciary with modern database capabilities, improved user interface, better reports for case management and will reduce the life cycle for making necessary changes and enhancements.

Panel Attorney Payment System.—A new payment and management information system for panel attorneys is being readied for implementation in the courts beginning later this year. The system will provide a more efficient means of making payments to panel attorneys. Further, it will allow the judiciary to collect additional, more timely, and better quality data to improve management of the program.

Probation/Pretrial Services Case Management.—A new case management system for probation and pretrial services offices is underway. Called PACTS, the system will automate many of the tasks that a probation or pretrial services officer currently handles manually, thereby enabling officers to focus more fully on supervising offenders, serving the court, and protecting the community. Access will be available in offices and from mobile computers that officers will have when conducting supervision and investigation activities.

Electronic Public Access Program.—Over the past nine years, AO staff has supported the development of a broad and comprehensive electronic public access program that has dramatically enhanced the public's ability to access and obtain court information quickly. The public access systems are available at 184 federal court sites and received over nine million calls in fiscal year 1998. The use of these systems by the public reduces the amount of counter and telephone traffic that would otherwise be handled by clerks' office staff. Users of the electronic public access services save transportation and personnel costs associated with traveling to and from the clerk's office to retrieve the information, as well as copying costs, while paying only a nominal fee for electronic access. A new initiative for the Electronic Public Access program is the Public Access Network, which will allow courts to offer their information on the Internet while providing a secure environment for the judiciary.

Communications Network.—Through extensive AO staff efforts the Data Communications Network (DCN) has been fully implemented. Completed September 1998, one year ahead of schedule and below estimated cost, the network provides an internal electronic communications link for all Judiciary employees. The DCN offers a number of benefits and opportunities for efficiencies. Completion of the DCN makes possible widespread use of the judiciary's intranet. Called the J-Net, the site allows electronic dissemination of a substantial and growing number of judiciary documents. The site is visited more than 2,000 times daily by judiciary employees looking for reports, statistics, newsletters, directories, manuals, and other documents.

Jury Management System.—A new automated jury management system has been developed and tested in eight courts and will be deployed in all district courts over the next year and a half through extensive AO staff efforts. The Jury Management System (JMS) will assist courts with selecting, managing, tracking and paying jurors. The JMS will reduce juror processing time and the cost of jury selection, management, and tracking, and enhance juror satisfaction through better service.

Human Resources Management Information System.—The AO is supporting modernization of the judiciary's outdated and non-integrated personnel and payroll systems. The new system will produce more accurate records and will reduce the amount of printing, copying, postage, long distance calls and faxes, and staff time at both the AO and courts associated with the processing of personnel actions.

Financial Accounting System for Tomorrow.—We are continuing development and looking ahead to nationwide implementation of a financial system to replace the myriad of existing incompatible systems. This is a major undertaking that will provide a uniform financial accounting system linked to the judiciary's central accounting system. When fully implemented, the system will produce timelier, more reliable reports to enhance financial management and decision-making and will improve internal control processes to reduce the risk of potential fraud or abuse.

CONCLUSION

Mr. Chairman and Members of the Subcommittee, I hope I have given you a sense of the very ambitious agenda to which I have committed the AO and the critical role the AO plays in our justice system. We have been assigned many of these initiatives, but we have been provided with few if any additional resources and that will again be the case in fiscal year 2000. We hope we can maintain our record of accomplishments and succeed in the many undertakings that we have embarked on

without a serious diminution in the quality of the service we must provide the Judicial Branch. Thank you for giving me the opportunity to be here today and I am available to answer any questions you may have.

PREPARED STATEMENT OF JOHN G. HEYBURN, II, CHAIRMAN, COMMITTEE ON THE BUDGET OF THE JUDICIAL CONFERENCE OF THE UNITED STATES

Mr. Chairman and Members of the Subcommittee, I appreciate the opportunity to testify before you on the Judiciary's fiscal year 2000 budget request. It is indeed a pleasure to return for my third appearance before the Subcommittee.

I would first like to take this opportunity to thank you, Mr. Chairman, the Members of the Subcommittee and your hardworking staff for the thoughtful consideration you give to the Judiciary's budget requests. Year after year you face the daunting challenge of balancing the funding needs of all the agencies under your jurisdiction within a constrained federal budget.

Mr. Chairman, it appears that your task will be even more difficult in fiscal year 2000 because of the discretionary budget caps. Knowing this, the Judicial Conference has made some very difficult and potentially risky choices. The Conference has to balance the courts' growing workload with the reality that Congress has limited funds this year.

To balance these conflicting needs, the Judicial Conference made a conscious decision to limit the judiciary's obligations increase to $310 million. However, the appearance of an increase is very deceptive. Our request for the courts is actually a current services budget. This budget request freezes overall court staffing levels—for the second year in a row. The specific increases are easily summarized generally as follows:

Salaries and Expenses:	
Judicial officer salaries	$9,900,000
New Judges confirmed & senior judges	13,200,000
Inflationary, pay and cost increases	116,200,000
New space and rental increases	92,200,000
New magistrate judges	4,900,000
Total	236,400,000
Defenders:	
Panel attorney rate increase	15,700,000
Staff salary and inflation increases	14,100,000
Costs due to projected increased representations	19,300,000
Total	49,500,000
Fees of Jurors: Projected increase in juror days	2,500,000
Court Security:	
Inflationary pay and cost increases	11,600,000
New CSO's	3,100,000
Net increase in security equipment for new or renovated buildings and upgrades (Total is $22.6 million)	5,200,000
Perimeter security enhancements	1,600,000
Total	21,500,000

The judiciary is unlike other agencies. We do not have the luxury of closing down old programs or choosing not to provide a basic service. The $310 million increase is, to a large measure, uncontrollable. It is rent, pay increases, and other mandatory costs associated with law enforcement and increased security needs. It is an eight percent increase over our fiscal year 1999 obligations. In reality, we will try to do more work with the same resources.

HISTORICAL PERSPECTIVE

The workload of the courts is largely uncontrollable. It is driven by a growing number of increasingly more complex cases. The growth in criminal cases has two causes (1) the continuing federalization of crimes and (2) the increased resources provided to the Department of Justice. Civil and bankruptcy workload is driven largely by individuals and businesses seeking resolution of disputes or the protection of the courts.

In fiscal year 1998, the judiciary had sufficient funds available to provide additional staff required to handle workload increases. That is not the case in fiscal year 1999. The courts do not have enough funding for any additional staff to handle workload increases.

Over the past several years the judiciary has relied on non-appropriated sources of funds (fees, carryover balances, etc.) to augment the annual appropriations provided by Congress. Up through fiscal year 1998, this combination of appropriations and other sources of financing allowed the Judicial Conference, for the most part, to provide the funds needed by the courts to maintain a high level of service in the face of an ever-growing workload. We are beginning to experience a decline in our non-appropriated sources of funds, primarily resulting from reduced carryover amounts. The fiscal year 1999 financial plan utilizes carryover of $217 million from fiscal year 1998 to 1999 in the Salaries and Expenses account. The carryover available in fiscal year 1999 is 10 percent less than carryover available in fiscal year 1998.

In fiscal year 1999, this lower carryover, when combined with enacted appropriations, resulted in total available obligations that allowed for noadditional court staff. However, the Judicial Conference determined that some relief was necessary for those courts that were experiencing a significant growth in workload. Accordingly, the Conference reduced the fiscal year 1999 operating budgets of the court units by one percent in order to establish a pool of funds that would be available to provide some additional staff to courts with significant workload. In essence, we "robbed Peter to pay Paul." Recently, this pool of funds was allotted to hire an estimated 300 additional court staff in fiscal year 1999, primarily probation and pretrial services officers.

For a number of reasons, including the constrained staffing and operating funds provided the courts in fiscal year 1999, we anticipate that carryover amounts from fiscal year 1999 to 2000 will be lower than last year. In the Salaries and Expenses account, we project now that only $51 million in carryover will be available in fiscal year 2000, compared to the $217 million carryover for this fiscal year. When carryover amounts decline, appropriated funds must increase accordingly to maintain overall funding levels. The lower projected carryover in fiscal year 2000 is the major reason why our requested appropriation increase is higher than in the past several years. Our requested increase in total obligations is actually about the same as prior years.

The following chart displays the financing problem created by the projected decline in carryover amounts.

COURTS' SALARIES AND EXPENSES

[In millions of dollars]

	Fiscal Year 1991	Fiscal Year 2000	Change	
			Amount	Percent
Appropriated Funds	2,835	3,252	+417	+14.7
Carryover	217	51	−166	−76.5
Other Non-Appropriated funds	162	147	−15	−9.3
Total S&E Obligations	3,214	3,450	+236	+7.4

FISCAL YEAR 2000 JUDICIARY BUDGET REQUEST

Our fiscal year 2000 request is a bare bones budget. We ask for no new initiatives, no new programs and, for the Salaries and Expenses account, no new court clerk's staff or probation and pretrial services officers. To make it so entails some risk to the courts. To develop this budget, we made a number of assumptions concerning workload, certain uncontrollable expenses such as the number of filled judgeships, and levels of carryover from fiscal years 1999 to 2000. As always, we will work with the Subcommittee over the upcoming months and, if these assumptions change, we will provide you with our best re-estimates. However, based upon what we know today, we do not anticipate that our estimates will change appreciably.

The following are the highlights of our request. In addition, attached is a detailed analysis of each appropriation account.

Salaries and Expenses

In fiscal year 2000, we are requesting a 7.4 percent increase in total obligations for the Salaries and Expenses account. Using conventional budget terminology, this is essentially a "current services" request, meaning that, other than staff associated with judicial officers, we are requesting no additional support staff for the courts of appeals, district courts, bankruptcy courts, and probation/pretrial services offices. This freeze in overall staffing levels in fiscal year 2000 comes in spite of the fact that workload continues to climb. Additionally, it comes on top of a similar current services budget in fiscal year 1999. Over the two year period between fiscal years 1998 and 2000, overall court staffing levels are being frozen at essentially fiscal year 1998 levels, while during that same period, the courts will experience a 23 percent increase in criminal filings, a four percent increase in criminals under supervision, a 21 percent increase in pretrial services reports, a net four percent increase in bankruptcy filings, and a two percent increase in appeals filed.

The courts' workload is unlikely to decline any time soon. In fiscal year 1999, the Congress provided sufficient funds for the Department of Justice (DOJ) to hire almost 400 new attorneys. In addition, DOJ plans to increase the number of Border Patrol Agents by 15 percent and FBI/DEA Special Agents by three percent in fiscal year 1999. We expect, no doubt as does DOJ, that these additional investigators and prosecutors will bring even more cases to the federal courts in the coming years.

With what amounts to a two-year freeze in overall staffing, the courts can only accommodate the tremendous growth in workload with either (1) productivity enhancements from various automation and technology improvements or (2) by actually reducing services in some areas. Either of these two options exposes the judiciary to some risk.

First, because we have submitted a current services budget, if the Salaries and Expenses account receives less than the requested 7.4 percent increase in total obligations, then the courts will likely have to reduce current staffing levels in some areas, which could entail reductions-in-force (RIFs). Overall court staffing is already frozen at fiscal year 1998 levels, so further cutbacks would undoubtedly lead to reductions in the services provided by the courts.

Second, if our automation/technology improvements and other economy and efficiency efforts do not produce the cost savings and productivity enhancements we anticipate, then the current, frozen court staffing levels will be unable to handle the spiraling workload. It will force us to make some very unsatisfactory and even dangerous choices.

Based upon previous experience, if either of the above scenarios materializes, the following are possible:

—probation officers will have to focus their supervision efforts on offenders who are the most obvious risk to the community. Those who remain will receive minimal supervision;
—a reduced level of drug and mental health treatment;
—an increase in the average time of disposition for civil and bankruptcy cases and appeals;
—delays in the implementation of important new automated systems;
—reduction in both public hours in clerks' offices and timeliness in responding to public inquiries;
—shutdown of non-resident, visiting court facilities, which would mean added travel and related costs to litigants and could impose significant hardship on citizens in states whose residents are geographically dispersed.

Defender Services

I have some good news to report to the Committee concerning the Defender Services account. For fiscal year 2000, while our overall costs continue to grow, the average annual cost per case is leveling off and in some instances declining.

Our request for a five percent appropriation increase will provide total obligations of $430.2 million in fiscal year 2000. One-third of the cost growth in fiscal year 2000 results from standard pay and inflationary increases. Another third of the growth results from an anticipated six percent increase in the number of Criminal Justice Act (CJA) representations, which in turn are driven by a seven percent increase in criminal filings by the Department of Justice. The final third is required to avert an impending crisis in the criminal justice system, which as described below, is threatened by the low hourly rates paid to private panel attorneys.

There is good news. Fiscal year 1999 is the third year in a row in which the average annual cost per representation by private panel attorneys in non-capital cases is expected to decline. The anticipated fiscal year 1999 average annual cost of $2,804 for a non-capital case is seven percent less than the average annual cost in fiscal year 1996. The reduction in the average annual cost of capital representations

is even more dramatic, projecting to decline by 44 percent, from $61,600 in fiscal year 1996 to $34,400 in fiscal year 1999. While the judiciary can take some credit for this decline because of our ongoing cost containment efforts, another factor is the mix of cases panel attorneys are asked to represent, which is totally outside of our control. In hindsight, we believe that the mix of cases drove the large increases in average annual costs back in 1996 and 1997, which raised your concern. In those years, a number of high cost capital cases, which were new to our system, drove up the overall average annual costs.

Currently, the decline in average annual costs is probably driven, in part, by the mix of cases being prosecuted by DOJ. Over the past several years, DOJ has emphasized the criminal prosecution of illegal aliens. These immigration cases are much less expensive than the average criminal case. The result is a reduction in the overall average annual cost. Since we do not control the criminal caseload, a word of caution is in order. Should DOJ decide to deemphasize immigration in favor of other more complex, higher cost criminal cases, such as drugs and violent crime, the average annual cost per case will likely grow again.

An impending crisis threatens the entire criminal justice system. The crisis is caused by the inordinately low hourly rate currently paid private panel attorneys in non-capital cases. Generally, the current hourly rates of $45 (out-of-court) and $65 (in-court) do not even cover overhead expenses, and judges from all over the country are reporting that the low rates seriously compromise their ability to find qualified attorneys to accept Criminal Justice Act (CJA) appointments.

Panel attorneys in 78 of the 94 judicial districts have had only one increase in the hourly rate since 1984, a $5.00 rate increase approved by your Committee in fiscal year 1996. If the panel attorney rates had kept pace with COLAs provided federal employees since 1984, the hourly rate would now be $104 per hour. It is important to note that panel attorney rates are by far the lowest paid to any private counsel by the U.S. Government. Of the 59 federal agencies surveyed by the General Accounting Office in 1992, the vast majority paid significantly more than the current $45/$65 rate paid panel attorneys.

To solve this inequity of only one small rate increase in fifteen years and to avert the impending crisis, the Judicial Conference requests an increase of $15.7 million in fiscal year 2000 to allow all judicial districts to increase the hourly rates up to the statutorily authorized level of $75 per hour. We believe that the time has come to raise rates to at least a minimally acceptable level.

Court Security

Providing an adequate level of security to all citizens entering our federal courthouses remains an ongoing concern of the Judicial Conference. Federal courts are among the most vulnerable security risks of any facilities in the nation. Over the past several years, the Congress has provided the judiciary with the resources to purchase the equipment and contract personnel needed to provide the courts with what we consider to be a minimum level of security. Our fiscal year 2000 request of $206 million in total obligations will allow the courts to maintain that level of security. Over half of the requested increase is required merely to maintain current services. The remaining increase is needed to fund 120 additional Court Security Officers (CSOs) at new, renovated and existing facilities based on current staffing guidelines, and to purchase security equipment for new/renovated facilities or to upgrade outdated equipment.

COST CONTAINMENT

Knowing the problem Congress faces in balancing the budget, the judiciary is doing everything possible to contain costs. In February your Committee received the latest update to the judiciary's annual report entitled Optimal Utilization of Judicial Resources. At the back of that report is an extensive list of past and ongoing efforts to reduce spending and improve resource use. As I stated earlier, the ability of the courts to handle an ever-growing workload with no additional staff in either fiscal year 1999 or 2000, is dependent upon the potential savings and productivity improvements associated with these initiatives.

We are embarking on a number of comprehensive program reviews and studies that will go a long way towards determining the appropriate level of resources required by the judiciary to handle its workload in the future. A brief description of the major projects follows:

—In June 1998 the judiciary initiated a two-year study to update the formulas we utilize for determining staffing requirements in the courts. The formulas, which were developed several years ago through a detailed work measurement process, will be updated to take into consideration new and more efficient work processes, as well as additional workload demands imposed by new legislation.

It is anticipated that the updated formulas will be available to develop the fiscal year 2002 budget request.

—In October 1998 the judiciary established a working group to explore ways and means of managing available judicial officer resources in a manner that might reduce the need for some additional judgeships. The group will examine ways to better use existing resources, such as visiting judges, magistrate judges, and senior judges, to address possible imbalances of workload among the courts. The group plans to complete its work in fiscal year 2000.

—In the Spring of 1999 an outside consultant will be engaged to conduct a comprehensive study of the judiciary's space and facilities program with a goal of issuing a report within a year. This top-to-bottom review will examine all major cost drivers, including planning practices and policies, courtroom utilization, building design, furniture acquisition, and facilities management practices. The study should produce recommendations to improve program effectiveness and efficiency and reduce future costs, adding to the $13 million in space cost avoidances realized in fiscal years 1996 and 1997.

—In fiscal year 1999 an outside consultant will be engaged to conduct a comprehensive study of the judiciary's probation and pretrial services system. As a result of legislation and an increasing number of individuals being supervised after release from prison or pending trial, this critical law enforcement system has grown in complexity and size, and faces many changing needs. The consultant will analyze current programs, identify strategic issues and make recommendations for the future, all with the goal of assuring the continued efficiency and quality of the system, while minimizing any risk to the communities.

As our annual Optimal Utilization report points out, there are many other efforts underway. These include studies to reduce the cost and increase the quality of the Defender Services program; numerous automation and technology initiatives such as videoconferencing of both judicial proceedings and training; installing new courtroom technologies; expanded use of telephone interpreting; electronic case files; improvements to the judiciary's electronic public access program; and expansion of electronic bankruptcy noticing.

Lastly, in fiscal year 2000 we will continue to develop and implement a number of new or updated automated systems, namely the Financial Accounting System for Tomorrow, the Criminal Justice Act Payment Replacement System, a new Integrated Library System, a new case management system for probation and pretrial services offices, a new jury management system, and the Personnel Systems Modernization Project.

Of course, our ability to implement the above improvements is contingent upon receiving sufficient funds in fiscal year 2000.

CONTRIBUTIONS OF THE ADMINISTRATIVE OFFICE

I would like to call to your attention the budget request of the Administrative Office of the United States Courts and to tell you how critical it is to the operations of the courts. The Administrative Office (AO) requests a 6.5 percent increase in total obligations which, like the funding request for the courts, will merely allow it to maintain the staffing levels funded in fiscal year 1999. It includes an increase in reimbursable funding to provide independent contractual support for our efforts to update the judiciary's staffing formulas.

The Administrative Office is the oil that keeps the judiciary operating smoothly and efficiently. As you know, the AO provides core administrative services to the courts, such as accounting, personnel, payroll, budget and facilities planning. In addition, the Administrative Office provides the resources needed to staff the Judicial Conference and its Committees.

What is probably of utmost importance to your Committee, however, is the key role the AO plays in spearheading efforts to reduce costs and enhance productivity throughout the judiciary. The staff of the Administrative Office is playing a major role in managing and in some instances performing the comprehensive studies I discussed earlier on work measurement formulas, space and facilities, and probation and pretrial services. Also, it is the AO staff that is providing the technical advice and training needed by the courts to allow them to implement new automated systems.

I urge the Committee to provide the Administrative Office with its full budget request. Without sufficient funding, the AO will be unable to provide adequate administrative support to the courts and still lead efforts to enhance operations and reduce costs in the courts.

FEDERAL JUDICIAL CENTER SUPPORT

I strongly recommend that the Subcommittee approve full funding for the Federal Judicial Center's request which is only 7 percent over its 1999 level. The requested increase is limited to funds for the normal adjustments to the base budget, and for eight additional positions to enhance the Center's ability to provide distance education, through the judicial branch's internet (J-Net) and of course by satellite from its studios.

The Center provides judges and their staffs orientation seminars to ease the transition to their new jobs, and helps them throughout their careers as new needs arise. For example, the Center offers sessions on how probation officers should deal with gangs among offender populations and how judges, magistrates and clerks can implement the Alternative Dispute Resolution Act of 1988. The committees of the Judicial Conference turn to the Center for top-quality policy research and analysis on the efficacy of proposed changes in rules and procedures.

It is important for me to note that this year Judge Zobel is concluding her service as Center director to return to the federal bench. Of her many accomplishments during the past four years as director, I know she is most proud to have led the Center to greater reliance on new technologies with which to provide its education and training services to the Third Branch. This has enabled her to make major reductions in Center travel expenditures while achieving major increases in the number of judges and staff that receive education and training.

I can assure you from my perspective as a federal judge, that the modest funds appropriated to the Center (less than one-half of one percent of the judiciary's budget) produce a significant return on investment. I urge you to approve full funding for the Federal Judicial Center in fiscal year 2000.

JUDGES' COLA

There is one last issue I would like to discuss with you today, and that is providing fair, adequate compensation to judges. Although it obviously affects me personally, I am here speaking for judges throughout the country.

An Employment Cost Index adjustment of 3.4 percent is due Members of Congress, federal judges and senior Executive Branch officials in January 2000, as provided for under the Ethics Reform Act of 1989. The Judicial Conference strongly endorses such a COLA for top government officials in all three branches of government.

Since 1993, these top officials have received only one single COLA—a modest 2.3 percent ECI adjustment in January 1998. This one-time COLA has not protected their salaries from changes in the cost-of-living. As a result, the value of their salaries has declined over 16 percent when measured against the Consumer Price Index. What that means is that each judge's salary is worth about $22,000 less today than it was in 1992. Another way of looking at it is that since 1993 each judge has lost over $77,000 in purchasing power. Compounding the problem for the judges is that, while their salaries are declining in real terms, they are being given more work to do—since 1993 the caseload of district judges has increased by more than 15 percent.

The lack of annual COLAs for top government officials is also hurting career federal employees in all three branches, who are impacted by pay compression. Depending upon the area of the country, pay has been frozen for the top three or four levels of the Senior Executive Service (SES). In fact, because of increased costs of retirement and health benefits, some members of the SES actually received a salary reduction in 1999. If salaries of top government officials are not increased, the pay compression will be reaching down to General Schedule employees before too long.

Judges do not expect to receive real salary increases annually; however, they also do not accept judicial appointments anticipating that their purchasing power will shrink annually. I sometimes wonder how quickly those judges appointed in 1993 would have accepted their commissions if they had been told then that their real annual pay would be worth $22,000 less by 1999. While the judiciary is not yet experiencing an exodus of judges because of the declining value of the judicial salary, there is real concern about our ability to continue to retain and attract the best and the brightest to a career on the bench.

We live in a society where cost-of-living adjustments to maintain purchasing power are a fact of economic life. As an employer, the judiciary must compete with private law firms and corporations which can afford to pay considerably more than can the U.S. Government. While the judiciary does not expect to pay judges the salaries being paid to law partners, we would hope to at least pay judges considerably more than first-year associates at big law firms. In some big law firms, first year associates are earning well over $100,000 a year. Able lawyers are more than will-

ing to make some sacrifices in pay for the prestige and sense of public service that the judiciary offers, but that will not buy them a house or send children to college.

I want to emphasize that we, in the judiciary, understand that this pattern of salary neglect has had an adverse impact upon Members of Congress too. I believe that a majority of the American public supports fair compensation for its government's top officials. With that in mind, we are hopeful that Congress will allow the mechanisms of the 1989 Ethics Reform Act to work, and that all top government officials be provided a COLA in fiscal year 2000.

APPENDIX—COURTS OF APPEALS, DISTRICT COURTS AND OTHER JUDICIAL SERVICES FISCAL YEAR 2000 BUDGET REQUEST

SUMMARY

The fiscal year 2000 appropriation request for the Courts of Appeals, District Courts and Other Judicial Services totals $3,936,287,000, an increase of $471,041,000 over our fiscal year 1999 appropriation level. In addition to appropriated funds, the judiciary utilizes other funding sources to supplement our appropriations. Included in these sources of funding are fee collections, carry forward of fee balances from a prior year, and the use of no-year funds. When all sources of funds are considered, the increase in obligations for fiscal year 2000 is only $310,121,000 or 8.1 percent.

Of the $310,121,000 increase in obligations, 89 percent ($274,773,000) is adjustments to the fiscal year 1999 base primarily associated with inflation, pay increases and GSA rental payment increases. The remaining 11 percent ($35,348,000) is needed to respond to increased requirements for security, magistrate judges, juror days and federal defender offices. The request for the principal programs are summarized below.

Salaries and Expenses

The salaries and expenses of circuit, district, and bankruptcy courts and probation and pretrial services offices account for most of our request. A total of $3,449,921,000 is required for this activity, $236,345,000 over fiscal year 1999 estimated obligations. Funding of $229,995,000 is expected to be available from other sources to offset the S&E appropriation requirement, leaving a direct appropriation need of $3,219,926,000. Included in these other sources of funding are requested appropriations from federal trust funds including $29,395,000 from the Violent Crime Reduction Trust Fund and $2,581,000 from the Vaccine Injury Trust Fund; $55,709,000 in funds expected to carry forward from fiscal year 1999; and $142,310,000 in fee collections.

Over 98 percent of the $236,345,000 increase ($231,444,000) is needed to fund adjustments to the fiscal year 1999 base for pay increases for courts support staff ($119,460,000), pay increases for judicial officers ($9,925,000), the filling of vacant judgeships and increases in senior judges ($13,153,000), additional space rental costs ($92,479,000) and reductions in other operational costs (−$3,573,000).

The remaining increase ($4,901,000) will fund 11 additional magistrate judges and their staff. This increase is needed to provide an effective, yet less costly, way of providing help to Article III judges to handle the growing volume of civil and criminal cases facing the courts.

Defender Services

A total of $430,175,000 is required for the Defender Services program to provide representation for indigent criminal defendants in fiscal year 2000. Of this amount, $374,839,000 is requested in direct appropriations, $36,605,000 is requested to be derived from the Violent Crime Reduction Trust Fund, and $18,731,000 is expected to carry forward from fiscal year 1999. The total requirements for fiscal year 2000 are $49,706,000 over the fiscal year 1999 projected obligations of $380,469,000.

Most of the increase ($49,106,000) is needed for adjustments to the fiscal year 1999 base for inflationary and workload increases. Included in these adjustments is an increase of the non-capital hourly private panel attorney rate to $75 for all districts beginning April 1, 2000. Also included is a $19,279,000 net increase associated with 6,200 additional representations in fiscal year 2000.

The remaining increase ($600,000) will fund the start up costs of two new federal defender organizations. The Congress and the Judicial Conference have urged us to establish more federal defender organizations as an alternative to using panel attorneys in districts where this would be appropriate.

Fees of Jurors and Commissioners

For the Fees of Jurors program, a total of $71,992,000 is required, of which $69,510,000 is requested in direct appropriations and $2,482,000 is expected to be available in carry forward balances from fiscal year 1999. The total requirements for fiscal year 2000 are $2,613,000 higher than estimated fiscal year 1999 obligations. This increase funds inflationary adjustments and a four percent increase in juror days.

Court Security

For the Court Security program, a total of $206,012,000 is required. This is a $21,457,000 increase over estimated fiscal year 1999 obligations. Adjustments to base include increases of $11,574,000 including: inflationary and contractual cost increases; funding to annualize the costs for 121 new court security officers (CSOs) brought on in fiscal year 1999; and a reduction of $17,423,000 for non-recurring equipment and CSO start-up costs acquired in fiscal year 1999 for an overall net reduction in funding for base adjustments of −$5,849,000.

The remaining increase of $27,306,000 is for program increases. These include: $3,109,000 to fund 120 additional CSOs to provide a security presence in existing, new and renovated facilities housing a full-time judicial officer; $22,647,000 for security equipment for new and renovated facilities, probation and pretrial offices and equipment upgrades; and $1,550,000 to upgrade perimeter security.

PREPARED STATEMENT OF RYA W. ZOBEL, DIRECTOR, FEDERAL JUDICIAL CENTER

Mr. Chairman and members of the subcommittee: My name is Rya Zobel. I am a United States district judge and have been the director of the Federal Judicial Center since 1995. I return in July to the District of Massachusetts on a full-time basis.

It has been a privilege to work with the subcommittee. I appreciate your recommendation last year that the Center receive a 1.3 percent increase over its 1998 level and although I am disappointed that the House mark of 3 percent did not prevail, I am grateful for the enhancement and your support all the same.

Our fiscal 2000 request, unanimously endorsed by the Chief Justice and the Board of the Center, is for a 7.2 percent increase, which will provide the standard adjustments to base and eight new positions to allow us to continue to expand distance education by increased use of satellite broadcasting, web-based technologies, and other methods.

CUTTING TRAVEL COSTS AND INCREASING DISTANCE EDUCATION

Mr. Chairman, since 1995, when I became Center director, we have dramatically reduced our spending on travel, cutting it almost in half. We have also expanded use of leading-edge technology to provide education, including the creation of the Federal Judicial Television Network. Congress made clear it wanted both these actions, and we responded.

We have reduced spending for travel by more than $2 million since 1995

Our travel spending has decreased more than 40 percent; during the same period, the Center's overall appropriation declined 6 percent. In 1995, we allocated almost 30 percent of our appropriation to travel; our fiscal 2000 request allots only 16 percent. It is also important to note that about 17 percent of our travel expenditures are in fact for distance education—for example, bringing a judge to Washington to teach on the network. We are directing our remaining education travel funds to meet those training needs that require judges or staff to learn in the company of others. To cut back further on these programs will compromise our ability to perform the job Congress has assigned us and that is essential to the judicial branch.

The Federal Judicial Television Network is now a reality

The network broadcasts almost daily to satellite downlinks that the Administrative Office has installed in more than 200 federal courthouses.

Many people helped make the network a reality. Special praise is due the judges and the staff of the federal courts who are embracing this new way of receiving education. Such a transition is not easy in a profession that, as you said, Mr. Chairman, is sometimes reluctant to change or innovate.

To ensure the network's acceptance, we are committed to producing programs for broadcast that provide quality third branch education—timely and carefully designed in every instance to help judges and their staffs do their jobs better and more effectively. Time spent in training is time spent away from the courtroom, the office,

the intake counter, or offender supervision. Only if the network provides well-designed education that enables people to do their jobs more effectively will judges and court staff turn to the network.

As well as developing our own educational programs for satellite broadcasting, the Center is managing the network for the Judicial Branch. In that capacity:

—We have assigned four staff to manage the transmission of network programs of the Center and the Administrative Office and to operate the special teletraining studio we constructed in 1996. These staff are separate from and in addition to the Center educational staff who design and produce our programs.

—We work with site coordinators and others who help ensure that arrangements are in place in the courts to allow those who wish to use broadcasts to do so.

—We prepare and distribute the FJTN Bulletin, a full schedule of broadcasts, to court managers and training specialists so they can integrate the network's offerings into their local training, and we maintain this broadcast schedule on the Center's site on the judiciary's intranet so the courts can consult it for scheduling changes.

—We are developing a monitoring system to provide us information on who uses the network—both direct and delayed viewing, and both preregistered and open courses. We need this information so we can program accordingly. The estimates in this statement are conservative and under count total viewership.

Four of the eight additional positions we are (see pp. 4–5) are to improve our network and other video-related education.

In addition to developing our satellite broadcasting capability, we have also constructed and operate two teleconferencing facilities for educational planning meetings and administration. These are in full use by Center, Sentencing Commission, and Administrative Office staff and are also used on occasion by federal judicial personnel in the area.

CENTER FUNCTIONS

The Center is the federal courts' agency for continuing education and training and for research and analysis. With less than one half of one percent of the total appropriation for the Third Branch, it provides services vital to an efficient and effective judicial system.

Education

In 1999, the Center expects to provide training to almost 39,000 judges and staff. More than 35,000 of these—91 percent—will receive training by distance education methods as follows:

—16,500 through Federal Judicial Television Network programs such as implementing the Alternative Dispute Resolution Act of 1998; Recent bankruptcy decisions of the U.S. Court of Appeals for the Fourth Circuit (for Fourth Circuit bankruptcy judges and clerks); 1998–1999 U.S. Supreme Court decisions of special relevance to federal trial and appellate judges; Programs on pharmacology and drugs, sex offenders, courtroom Spanish, and other topics to help probation and pretrial services officers with the full range of their duties (we also work with the U.S. Sentencing Commission to include its satellite training in our programs) and Programs on effective management and supervision, for court executives.

—17,750 through in-court nontravel-based training using some fifty Center-prepared study guides and courses with lesson plans, overheads, and video segments on such subjects as effective courtroom testimony for probation officers; office safety for probation officers; current management theories of process improvement and total quality service (for court managers); and customer service (for intake clerks).

—1,000 through on-line, multi-week computer conferences on such subjects as project management (for mid-level managers and technical specialists) and technology and the role of the courtroom deputy in ensuring case-flow management.

We will also train 3,450 judges and staff by more traditional methods, such as the following (some combine travel and distance education methods):

—judicial orientation seminars (tailored in-court training using a Center-developed checklist followed by regional seminars using Center video lectures and then a one-week Washington, D.C., seminar);

—probation and pretrial orientation seminars (in-court satellite training followed by one-week Washington, D.C., seminars);

—continuing judicial education seminars that combine plenary presentations with intensive, small group interactive sessions.

These numbers do not include individual users of our manuals and monographs, computer-assisted instructional programs, and videocassettes.

RESEARCH AND EVALUATION

In 1998, the Center had in place more than 70 research and evaluation projects, large and small, mainly at the request of committees of the Judicial Conference. In addition, it responded to more than 145 informal requests for research assistance from the courts, Conference committees, and other federal agencies. Major areas of investigation include the use of expert testimony in civil litigation, sentencing and pretrial supervision policies, management of habeas corpus and federal death penalty litigation, effective case-management techniques in mass tort litigation, appellate restructuring (for committees of the Conference and for the Commission on Structural Alternatives for the Federal Courts of Appeals), and use of alternatives to conventional civil litigation.

NEED FOR EIGHT ADDITIONAL DISTANCE EDUCATION POSITIONS

The Center employs 135 FTEs. We seek eight additional FTEs. Even with these eight, we would still be well below our employment-level high of 158 (in 1994).

Our request targets two specific needs, both related to enhancing our distance education capacity:

—four computer specialists, primarily to establish adequate technical capability to develop and provide Web-based training on the J-Net (the judicial branch internet).

—four video technical support staff to maintain our ability to provide quality education by satellite and through other forms of in-court, distance education.

Web and J-Net training

We have permanently shifted $400,000 in travel funds to add five computer professionals to our staff of six, but that is not a sufficient complement to allow us to provide technology-based education as well as meet our internal office automation needs. Thus we request funds for four more positions.

Even with our small staff, we

—developed, in cooperation with the Space & Facilities Division of the Administrative Office, the first judicial branch Website with an on-line, browser-accessible training component. The site helps ensure accuracy and efficiency in seeking and processing requests for reimbursable services and tenant alterations.

—have sponsored almost fifty on-line, Web-based computer seminars, including five now in progress; judges and staff from all over the country participate in these conferences from their desktops.

—host a Website at the request of U.S. District Judge Sam Pointer (N.D. Ala.) to disseminate information to attorneys in the multi-district breast implant litigation.

—maintain search engines, and attendant firewall and other security protections, for our Websites.

The technology office also provides our internal technical support for database management, e-mail, and the like. Center automation is Y2K compliant.

We seek the four additional FTEs so we may expand the services described above and develop additional uses, including on-line catalogs for inventory, ordering, and distribution of Center publications and media productions; Web-based course registration and related functions; conversion of CD–ROM and computer disc training tools to Web-based applications; real-time educational presentation applications; and preparation for Web-based audio and video broadcasts. All of these steps will make our education and training more flexible and available to judges and staff, not simply in the courthouse but at their desktops.

VIDEO PRODUCTION

As explained above, we have permanently reallocated four of our nine video specialists to manage the transmission of the Federal Judicial Television Network and operate its teletraining studio. So that we may continue to produce effective educational videos for broadcast on the network and for other purposes, we seek to rebuild our complement of nine video specialists by replacing the four we have reassigned to network operations.

Our video production specialists produce programs for network broadcasts and other purposes. For example:

—Center-produced videos have long been a major part of our initial orientation for judges and for in-court orientation of new clerks' offices staff.

—Center video vignettes are an important element in some of our curriculum packages for in-court, locally presented training. For just two examples, the video segment in our in-court safety program for probation and pretrial services officers demonstrates dangers presented by violent probationers, and a segment

in one of our in-court programs for clerk's office staff helps illuminate the difference between providing information and legal advice to litigants.

The satellite network has increased the demand on our video production staff to provide program elements for broadcast. For a few examples, our orientation for federal court law clerks included an extensive component on ethics, featuring interviews with current law clerks describing unanticipated ethical dilemmas and how they resolved them. Our distance learning series for probation and pretrial services officers on offenders with special supervisory needs, such as sex offenders and gang members, included four satellite broadcasts last year, with another four projected this year. We also produced a video on judicial branch travel regulations for the Administrative Office to broadcast on the network.

I will be pleased to respond to any questions that you might have.

PREPARED STATEMENT OF HALDANE ROBERT MAYER, CHIEF JUDGE, UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

Mr. Chairman, I am pleased to submit my statement to the Committee for this court's fiscal year 2000 budget request.

Our 2000 budget request totals $17,636,000. This is an increase of $1,535,000 over the 1999 approved appropriation of $16,101,000. Thirty nine percent of the requested increase ($594,000) is for mandatory, uncontrollable increases in costs. The remaining increase of $941,000 is for funding of additional positions.

Request for Program Increases

$941,000 of our fiscal year 2000 request would cover the salary and benefits costs of nine (9) statutorily authorized positions for technical assistants for the court's legal staff, and four (4) additional positions for the Office of the Clerk of Court. The court requests funding for compensation and benefits only. All furniture, furnishing and equipment needs for the new employees will be absorbed by the court. Further justification for these positions follows. Funding for Nine (9) Technical Assistants ($792,000). The court is requesting nine (9) technical assistants in addition to the three now working in the Office of the Senior Technical Assistant. Under the provisions of 28 U.S.C. § 715(d) the court may appoint technical assistants equal to the number of judges in regular active service. The nine technical assistants requested here, plus those currently on board, will give the court one technical assistant for each active judge position.

The technical assistants do research and assist the court and all of its judges in addressing technical aspects of appeals, maintaining consistency in precedential opinions, and otherwise fulfilling the court's mission. That requires not only a law degree but a background in science or engineering because of the significant number of highly technical intellectual property appeals handled by the court. This court has exclusive jurisdiction over patent appeals from district courts and the Patent and Trademark Office. Those appeals often are most difficult and time consuming, involving complex issues at the forefront of biotechnology, computer engineering, pharmacology, and other areas of science and engineering.

Funding for additional positions in the Office of the Clerk of Court ($149,000).—The court is also requesting funds to hire four full-time positions in the Clerk's Office. These positions are needed to keep pace with the court's growing jurisdiction. There is now only one secretary in the Clerk's Office. Another secretary position is needed to assist the chief deputy clerks and to insure that secretarial functions for the entire office, now exclusively provided by the secretary to the Clerk, are available whenever required. A systems manager position is needed because the complexity of the Clerk's database management system has grown beyond the competence of the non-technical staff to maintain as extra duties. Two deputy clerk positions are needed, one position for a calendar/deputy clerk to alleviate the calendar functions now performed by the chief deputy clerk as an extra duty, and one position for a records manager to develop a records management system now required to keep pace with the large increase in the permanent records which the court has accumulated since its creation, and which must be maintained and preserved.

I would be pleased, Mr. Chairman, to answer any questions the Committee may have or to meet with Committee members or staff about our budget requests.

PREPARED STATEMENT OF GREGORY W. CARMAN, CHIEF JUDGE, UNITED STATES COURT OF INTERNATIONAL TRADE

The Court's budget request for fiscal year 2000 is $12,146,000, which is $342,000 or approximately 2.9 percent more than the $11,804,000 provided for in fiscal year 1999.

The overall increase of $342,000 consists of "Mandatory Adjustments to Base and Built-in Changes" as follows: $251,000 is requested for pay and benefit cost adjustments for judicial officers and court personnel; $25,000 is requested for other mandatory changes, including increases in travel costs, postage, contract rates and charges for supplies, equipment, services and telephone usage; $18,000 is requested for anticipated increases in printing costs; $10,000 is requested for inflationary adjustments for lawbooks and $38,000 is requested for GSA space rental increases.

The Court's fiscal year 2000 request includes funds for maintaining, supporting and continuing the enhancements made in fiscal year 1999 to the court's integrated network computer system, the security access control card system implemented in fiscal year 1999 and the video conferencing system which will be operational in fiscal year 1999. The fiscal year 2000 request also includes funds for security system upgrade projects which will help enhance overall security within the Court.

In fiscal year 1996 the Court made the decision to deposit funds into the Judiciary Information Technology Fund (JITF) in order to address the long term automation needs of the Court to establish a viable network infrastructure. To this end, funds were deposited into the JITF in fiscal years 1996, 1997 and 1998. In fiscal years 1997 and 1998 funds were obligated for upgrading personal computers, printers and laptops in accordance with the annual 20 percent cyclical replacement recommendation by the Judicial Conference, for the purchase of fax machines and modem lines which enabled chambers to take greater advantage of technology and obtain internet access, for routers which linked the Court's LAN to the internet and for the purchase of a video conferencing system. The Court's five year plan to enhance service to the public through technology includes such projects as: an Integrated Case Management System which integrates case management with electronic filing and document imaging; the development of a web-site which will provide the general public and the bar with information; the installation of a satellite downlink antenna which will augment the Court's training program, expand the use of video telecommunications technologies and enable the Court to access the Judiciary informational and educational programming systems; the design and implementation of a new digital phone system which will enhance data communications; the purchase of new software packages, including fixes and patches; the purchase of a server for implementing FAS4T; and the purchase of new LAN hardware which will upgrade the Court's LAN infrastructure. The Court anticipates these systems to be completed by the end of fiscal year 2004. The implementation and continuation of these projects will enable the Court to continue to build its needed infrastructure and operate effectively in the 21st century.

I would like to emphasize that the Court will continue, as it has in the past, to conserve its financial resources through sound and prudent personnel and fiscal management practices.

The Court's "General Statement and Information" and "Justification of Changes", which provide more detailed descriptions of each line item adjustment, have been submitted previously. If the Committee requires any additional information, we will be pleased to submit it.

PREPARED STATEMENT OF TIMOTHY MCGRATH, INTERIM STAFF DIRECTOR, UNITED STATES SENTENCING COMMISSION

Mr. Chairman, members of the Committee, I appreciate the opportunity to submit a statement on behalf of the United States Sentencing Commission's fiscal year 2000 appropriation request. As you know, the Commission has been without any commissioners since the end of October 1998. Notwithstanding these vacancies, the Commission continues to perform many of its functions as set forth by Congress in the Sentencing Reform Act of 1984 and, when Commissioners are appointed, stands ready to fully execute its important mission: to establish, review, and revise sentencing guidelines, policies, and practices for the federal criminal justice system and to advise Congress and the Executive Branch on the development of fair and effective crime and sentencing policies.

RESOURCES REQUESTED

The Commission's budget request is for $10,600,000, up by $1,113,000 from its fiscal year 1999 appropriation. Although this represents a twelve-percent increase, the Commission asks for no additional staff and holds many operating costs at fiscal year 1999 levels.

The overall increase of $1,113,000 is made up of "Adjustments to Base." $479,000 is requested for pay and benefit costs adjustments; $54,000 is requested for inflationary increases for non-personnel operating expenses and $580,000 is requested for technology improvements.

Nearly half of the requested increase ($479,000) would fund adjustments needed to pay employees to continue current operations; these are mandatory adjustments in salaries and benefits and slight inflationary increases ($54,000) in some non-personnel expense categories. The remainder of the requested increase ($580,000) is for necessary technology improvements to our comprehensive sentencing data collection.

Looking at the budget in terms of total funds available, when the fiscal year 1999 appropriation is combined with the remaining carryover money the Commission intends to obligate in fiscal year 1999, the Commission has a funding level of $10,122,000 for fiscal year 1999. Compared to this base figure, the fiscal year 2000 request represents an increase of $478,000 or five percent over resources available in fiscal year 1999. Please be assured that the Commission will continue, as it has in the past, to use its financial resources in a prudent and sound manner.

JUSTIFICATION

The Commission was created under the Sentencing Reform Act of 1984 as a permanent, independent agency within the judicial branch. Congress gave the Commission a dual mission. First, the Act assigned the Commission broad authority to establish federal sentencing policies and practices that (i) serve the four purposes of sentencing set forth in section 3553(a)(2) of title 18, United States Code (just punishment, adequate deterrence, protection of the public from further criminal conduct, and rehabilitation of offenders), (ii) provide certainty and fairness in sentencing, and (iii) avoid unwarranted sentencing disparities among similarly situated offenders. The Commission was organized in October 1985, and in just a few years, established the first comprehensive set of determinate sentencing guidelines ever created for the federal judicial system. The federal sentencing guidelines became effective on November 1, 1987, for offenses occurring on or after that date, and since their implementation have been used to sentence approximately 384,534 defendants. The Commission believes that the federal sentencing guidelines have strengthened the ability of the criminal justice system to combat crime by providing certain, fair, and markedly more uniform punishment for similar offenders.

With the initial developmental portion of its mission complete, the Commission in recent years has focused on the second prong of its dual mission: monitoring the application of the guidelines and evaluating the extent to which the guidelines have achieved the goals set out by Congress; amending the sentencing guidelines and policy statements to implement new legislation and refining the guidelines in light of court decisions and criminal justice research; recommending to Congress modifications of statutes relating to sentencing, penal, and correctional matters; and conducing sentencing research, education, and information dissemination.

Monitoring Application of the Guidelines

The Commission maintains a comprehensive, computerized data collection system which forms the basis for its clearinghouse of federal sentencing information. This database is the basis for the Commission's monitoring and evaluation of guidelines application, for many of the research projects we undertake, and for responding to the hundreds of data requests from Congress and other criminal justice entities each year. In 1998, the Commission received court documents on more than 50,000 individual cases sentenced between October 1, 1997, and September 30, 1998. The Commission also received court documents on more than 200 organizations that were sentenced under Chapter Eight of the sentencing guidelines in 1998. For each case, the Commission extracts and enters into our comprehensive database more than 260 pieces of information such as case identifiers, sentence imposed, demographic information, statutory information, the complete range of court guideline application decisions, and departure information.

The Commission also tracks final opinions and orders, both published and unpublished, in federal criminal appeals. The Commission gathered information on more than 6,000 appellate court cases in fiscal year 1998 and now has an appeals dataset containing information on more than 38,000 appeals. The appeals database informs Congress and the criminal justice community about court action related to the

guidelines and enables the Commission to identify and, where appropriate, resolve circuit conflicts pertaining to application of the guidelines. In 1998, the Commission resolved several circuit conflicts, including conflicts related to the failure to appear guideline, the abuse of position of trust guideline, the obstruction of justice guideline, and the diminished capacity departure.

Recent Accomplishment and Ongoing Work in Amending the Guidelines

The Commission continues its ongoing responsibility to respond to recent legislative initiatives and enactments by reviewing the guidelines and, when appropriate, making changes to the guidelines and policy statements. Among others, recent accomplishments include the following:

Telemarketing Fraud.—The Commission conducted a detailed study of the characteristics and sentencing of telemarketing fraud offenses. As a result of its findings and in response to the Telemarketing Fraud Prevention Act of 1998, the Commission promulgated amendments to the guidelines that provide for three separate sentencing enhancements for fraud offenses that involve mass-marketing, a large number of vulnerable victims, and the use of sophisticated means to carry out the offense. The Commission must review and repromulgate the emergency amendments promulgated pursuant to the Telemarketing Fraud Prevention Act as permanent amendments or they likely will expire by November 1999.

Firearms.—The firearms guideline was amended to provide an increased penalty for anyone convicted of transferring a large number of firearms to a felon or any other person prohibited from having a firearm. The Commission also is in the process of reviewing and, if appropriate, developing amendment options to respond to recent legislation concerning the use of firearms, Public Law 105–386, which amended 18 U.S.C. § 924(c), and section 121 of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, Fiscal Year 1999, Public Law 105–299, which amended 18 U.S.C. § 922.

Desecration of Veterans' Cemeteries.—In response to the Veterans' Cemetery Protection Act of 1997, the theft, property destruction, and arson guidelines were amended to provide a sentencing enhancement for theft from or destruction of the property of a national cemetery.

Intellectual Property Offenses.—In response to the No Electronic Theft Act of 1997, the Commission has requested and received public comment on three alternative proposals that would amend the copyright and trademark infringement guideline to ensure that the guideline is sufficiently stringent to deter such offenses.

Protection of Children.—In response to the Protection of Children from Sexual Predators Act of 1998 and certain provisions of the Omnibus Consolidated and Emergency Supplemental Act of 1998, the Commission is in the process of reviewing and developing amendment options to the guidelines pertaining to certain sexual abuse offenses and distribution of child pornography.

Identity Theft.—In response to the Identity Theft and Assumption Deterrence Act of 1998, the Commission is in the process of reviewing and, if appropriate, developing amendment options to provide an appropriate penalty for each offense under 18 U.S.C. § 1028 (relating to fraud in connection with identification documents).

Telephone Cloning.—In response to the Wireless Telephone Protection Act of 1998, the Commission is in the process of reviewing and, if appropriate, developing amendment options to provide an appropriate penalty for offenses involving wireless telephone cloning.

Methamphetamine Trafficking.—In response to the Methamphetamine Trafficking Penalty Enhancement Act of 1998, the Commission is in the process of developing an amendment to the drug quantity table to account for the increased penalties for manufacturing, importing, or trafficking in methamphetamine imposed by the Act.

Tax Offenses.—Congress recently has enacted several offenses that appear to implicate the privacy interests of individual taxpayers (e.g., 26 U.S.C. §§ 7213, 7213A, 7216, and 7217). The Commission is in the process of reviewing how the guidelines should account for these new offenses.

Nuclear, Biological, and Chemical Offenses.—In response to the Chemical Weapons Implementation Act of 1998 and the sense of Congress expressed in the National Defense Authorization Act for Fiscal Year 1997, the Commission is planning to conduct a comprehensive review of the guidelines pertaining to importing and exporting nuclear, biological, and chemical weapons to determine whether any amendments to the guidelines are warranted.

In addition, the Commission has undertaken a systematic study and analysis of the guidelines for fraud, theft, and tax offenses, which account for more than a quarter of all the cases sentenced in the United States federal district courts. After approximately one year of data collection, analyses, public comment, and public hearings, the Commission developed a comprehensive "economic crime package" de-

signed to: create new loss tables for fraud, theft, and tax offenses that would result in higher sentences for offenses involving moderate and large monetary losses; consolidate the theft, fraud, and property destruction guidelines; and clarify the definition of loss for selected economic crimes.

Although the package narrowly failed to pass during the amendment cycle ending May 1, 1998, the Commission committed itself to continue its development. Working in conjunction with the Criminal Law Committee of the Judicial Conference, the Commission conducted a field-test of the proposed loss definition by surveying federal judges and probation officers and applying it to actual cases. In October 1998, the Commission issued a report of its findings, including the fact that more than 80 percent of the judges stated that the proposed loss definition produced results that were more appropriate than the current definition. Encouraged by these findings, in November 1998, the Commission voted to formally seek public comment on possible changes to the economic crime guidelines.

Making Recommendations to Congress

In 1998, the Commission conducted a comprehensive review of the guidelines pertaining to homicide to determine whether they adequately account for the variety, severity, and ranges of offense behavior. As a result of its research and analysis, in 1998 the Commission recommended to Congress that the statutory maximum penalty be raised for voluntary manslaughter from ten to 20 years so that the guideline penalties for the most serious cases could be fully executed.

In 1998, the Commission conducted a detailed study of telemarketing fraud offenses in conjunction with its multi-year comprehensive assessment of the fraud and related guidelines. As a result of its research and analysis, in February 1998 the Commission sent a report to Congress recommending that Congress amend 18 U.S.C. § 2326 (Enhanced Penalties for Telemarketing Fraud) to (i) provide a simpler statutory enhancement, (ii) cover conspiracy offenses, and (iii) clarify the mandatory restitution provisions for these offenses. In part as a response to the Commission's recommendation, Congress passed the Telemarketing Fraud Prevention Act of 1998, which addressed the mandatory restitution and conspiracy recommendations. Pursuant to that Act, in October 1998 the Commission submitted another report to Congress in conjunction with emergency amendments it promulgated the previous month that provide sentencing enhancements for fraud offenses involving sophisticated means or a large number of vulnerable victims.

Each year the Commission also informs Congress's legislative deliberations by responding to hundreds of congressional requests for assistance. These inquiries, both written and oral, include requests for federal sentencing and criminal justice data, analyses of proposed legislation, explanations of guideline operation, technical assistance in drafting legislation, and Commission publications and resource materials.

Conducting Research, Training, and Information Dissemination

The Commission recently has undertaken major research projects on important topics of current interest such as substantial assistance departures, departures after *Koon* v. *United States*, 116 S. Ct. 2035 (1996), money laundering sentencing policy, an examination of sentencing disparity before and after the guidelines, district differences in sentencing immigration offenses, and race and the federal appellate process. The Commission disseminated its research findings at a number of presentations at various criminal justice conferences during the past year. At the Annual Meeting of the American Society of Criminology in the fall of 1998, for instance, Commission staff presented papers on topics such as computer offense conduct, immigration offenses, trends in federal methamphetamine offenses, application of the "Safety Valve" provision to low-level, nonviolent drug offenders, profiling pedophiles in the federal system, and the unique issues in the federal sentencing of juvenile offenders.

In the area of sentencing guidelines training, the Commission continues its commitment to providing high quality training and assistance to judges, prosecutors, probation officers, and defense attorneys. In 1998, the Commission staff provided training on the sentencing guidelines to more than 2,500 individuals including newly appointed district and appellate judges, probation officers, and assistant U.S. attorneys, at 47 training programs across the country, including ongoing programs sponsored by the Commission, the Federal Judicial Center (FJC), the Department of Justice (DoJ), the American Bar Association, and other criminal justice agencies or practitioners.

To further expand the availability of training and information sharing, in 1998 the Commission joined with the FJC and the Administrative Office of the U.S. Courts to launch a satellite television network to provide training on sentencing-re-

lated issues to an even broader audience. The Commission also maintains a telephone HelpLine service to answer case-specific guideline application inquiries from federal judges, probation officers, prosecuting and defense attorneys, and law clerks. The Commission responds to approximately 250 inquiries each month. As part of its efforts to reach out to organizations that are not yet familiar with the organizational sentencing guidelines' emphasis on compliance, self-policing, and crime reporting, the Commission and the Ethics Officer Association (EOA), a non-profit peer organization comprising ethics and compliance officer representatives of for-profit and non-profit organizations, are jointly sponsoring a series of day-long regional forums about implementing these guidelines.

In recent years, the Commission has committed itself to making its information more widely available to the public. Each year since the inception of the guidelines, the Commission has published an updated Guidelines Manual and an Annual Report and accompanying sourcebook of federal sentencing statistics which serve to inform and advance knowledge of sentencing in the criminal justice community. In recent years, the Commission launched two new publications, Guide to Publications and Resources and The Year in Review, and continued to add a variety of publications and sentencing data to its popular Internet web site.

SUMMATION

In sum, we ask for sufficient funding to perform these important statutory obligations and fulfill our important role in combating crime by maintaining an effective, certain and fair sentencing system.

PREPARED STATEMENT OF NEISEN KASDIN, MAYOR, MIAMI BEACH, FL

On behalf of the City of Miami Beach, we are hereby submitting testimony to the Senate Appropriations Subcommittee on Commerce, Justice, State, and the Judiciary to respectfully request the support of this Subcommittee. At a time when the City of Miami Beach is experiencing so many dramatic changes and developments, we believe strongly that we must make an extraordinary effort to address the needs of our at risk juvenile population, to ensure their safety and positive development and to prevent violence. We believe you will find these initiatives are well focused and justified.

The City of Miami Beach is deeply engaged in and financing a series of coordinated activities to link the resources of the City and its Police Department, the Police Athletic League, the schools and community resources, to prevent and reduce juvenile crime and delinquency, and to advance education and training opportunities for at-risk youth. The City faces some very special challenges in addressing these issues. The City also faces a critical shortage of funds for continuance and expansion of its mentoring and Police Athletic League program.

The City of Miami Beach is, in reality, two very different cities. The most well known of these two cities is the glamorous world renown South Beach. Celebrities come here to play, heads of state come here to meet, Pavarotti comes here to sing and the National Football League comes here for its Super Bowl. Millions upon millions of tourists and locals come here every night of the year to enjoy the glittering entertainment of South Beach. The residential population of 90,000 swells to 110,000 or even to 150,000 on some evenings as cars stream across the causeways that connect Miami Beach to mainland Miami. Miami Beach has undergone a rebirth every city dreams about. Business is not just good; it's beyond anyone's wildest dreams. Tourism is flourishing, $150 million hotels are being constructed, millions of dollars are being spent to renovate older hotels, and the movie and entertainment industries are calling South Beach the new Hollywood. Yet, the other never talked about city is one where there is an affordable housing shortage, a large elderly population, poverty and hopelessness of people who have moved to Miami Beach and increasing numbers of poor and working class families who live in public housing next to million dollar condominiums. Miami Beach likely has the most ethnically, culturally, and financially diverse community in the country. All packed into an island of seven square miles.

Miami Beach is not a large city. It is a medium sized city with big city problems. Amidst the glamor, the movie stars and the rich and famous are real kids with real problems. The Miami Beach Police Department has identified four major juvenile gangs that call Miami Beach home. In addition, there are more than 60 identified youth gangs in the metropolitan Miami-Dade county area. South Beach serves as a mecca for these gangs. The attraction is simple. They come here for the same reasons everyone else does. It is "The" place to see and be seen. This causes serious public safety problems as these various gangs encounter one another in a very con-

fined fifteen block area of South Beach. The Miami Beach Police Department's Gang Unit in conjunction with the Miami-Dade County Multi-Agency Gang Task Force devote significant police resources to anti-gang activities in the City of Miami Beach. As evidence of this dedication of resources, in 1998, more than 700 arrests of gang members were made in Miami Beach. The Miami Beach Police Department apprehends more than 1,500 juvenile curfew violators a year. This is the largest number of curfew violators of any police department in Miami-Dade County. Yet, the City of Miami Beach represents less than 5 percent of the population of Miami-Dade County. These figures are completely out of proportion to the population of the city and serve to show the seriousness of the problem.

The City has partnered with the Police Department, the Police Athletic League and the local public schools and has created two very innovative mentoring programs. The first is targeted at high school students who are at-risk and the second, is targeted at 5th and 6th grade at-risk elementary school students. The second program is called the Police Youth Community Assistance Program (PYCAP). Miami Beach Senior High School and the four public elementary schools have very unique student populations. Forty-four percent of the children were born in 70 different foreign countries. This ethnic and cultural diversity presents a myriad of issues. These programs are a unique response to the unique issues caused by this vast diversity. The average child in the high school mentoring program presents a sad picture. The child is at risk by every definition of the word. They were born in another country; their home is a shattered one; they have no extended family; their one parent may not read or write English well if at all and is as much a stranger to our culture as they are; they are in a gang or seriously considering joining one; they are failing in school and therefore skipping class or when in class, being disruptive; they have been arrested or committed crimes, they use or try drugs, they have had sex, often with older persons; and have no positive role model in their life to guide them through the cultural battlefield they face every day. The Police Department's mentoring program places a police officer, one on one, with these at-risk youth. The officer meets with the parent, the teachers and any other important adults in the child's life. The police officer takes an active interest in every aspect of the child's education and after school life. The police officer meets with the teachers, helps arrange tutoring, and more importantly, provides positive role model and adult attention that is so sorely missing.

The PYCAP program targets at risk students at the 5th and 6th grade level. PYCAP is targeted to capture the student, before he or she reaches the national average age of gang membership, 13 years old. The Police Department has two School Resource Officers, who are specially trained in communicating and dealing with students this age and the problems they face. The police officers focus on the students during school hours, teaching skills and life lessons such as teamwork, pride in the community, the importance of education as well as anti-gang and anti-drug messages through the DARE (Drug Abuse Resistance Education) and GREAT (Gang Resistance Education And Training) programs.

Miami Beach is home to the oldest Police Athletic League in Florida. For over 40 years, the Police Athletic League has been an alternative to a life of crime for thousands of disadvantaged children. The Police Athletic League is located in an area of Miami Beach where more than 73 percent of the households are poverty level or below. The mentoring and PYCAP programs go hand in hand with the Police Athletic League. The Police Athletic League provides additional mentoring and other positive sports and educational programs in the important time after school is out. In addition to the mentoring, PYCAP and Police Athletic League programs, the City combats juvenile crime with anti-gang and curfew initiatives, among others. There remains a need to develop a cadre of specially trained police officers to identify and work with these at-risk children. This unique multi-disciplinary approach recognizes that funds spent on prevention are much more efficiently spent in comparison to the larger price incurred when society must deal with juvenile and adult crime. Tragically, the mentoring, PYCAP and Police Athletic League programs are funded solely from donations. Police officers, teachers, administrators and others donate hundreds of hours of their own time to these children. But to really give these children the serious help they need to succeed, we must provide them with the basic skills that most of us take for granted. We must provide more hours with the mentors and tutoring by teachers in a coordinated and comprehensive approach for each child. These programs work; they have withstood the test of time (in the case of the Miami beach Police Athletic League, over 40 years) and they can be duplicated in any city in the country. They only lack the funds to help these children succeed. With the funds requested, the City will be able to dedicate police officers to mentoring and juvenile crime prevention, including important after school programs with the Police Athletic League, on a full time basis. The PYCAP and mentoring programs will be

able to be expanded. They will work exclusively with the children, with the high school and elementary schools, and the children's families to develop a specialized cadre of police officers with resources that effectively coordinate the most successful intervention strategies.

LAW ENFORCEMENT TECHNOLOGY DEVELOPMENT

The Miami Beach Police Department has a strong need to develop and acquire the technological resources and equipment to deal with the unique law enforcement issues it faces on an ongoing basis. Many larger public safety agencies have acquired such capabilities as the sheer size of their jurisdictional responsibilities alone presents them with the law enforcement problems demanding such solutions. However, these large agencies also have the proportionally large budget to accomplish it. The Miami Beach Police Department, however, has a budget proportional to a municipality of 90,000, not the expanded number of tourists and visitors that flock here. As a result, the Department does not have the funding to acquire and develop the technological resources necessary to deal with the unique law enforcement problems that it must face.

The Miami Beach Police Department desires to acquire and develop the technological resources and automated systems necessary to provide the strategic and tactical level support its officers require in order to effectively deal with: Large scale public events of international interest; Public events involving high level government and foreign officials; Public events involving large numbers of nonresidents and Other situations within the City involving the coordination of numerous local, state and national public safety agencies.

Such capabilities would involve an automated command and control system, strategic and tactical real-time computerized mapping capabilities, computer-assisted emergency planning and manpower deployment resources and interfaces to the voice, data communication and information systems of other local, state and national public safety and emergency management agencies. The Police Department's need to interface with these other governmental entities is essential to public safety, effective crime prevention, tracking, solving and overall crime reduction. These needs are greater in Miami Beach than in most other cities because of the worldwide interest in Miami Beach.

Additionally, in order to provide an extension of these vital resources to field level operational personnel, a mobile data system and upgraded voice communications would be implemented providing sufficient data access and communication equipment to mobile command posts, patrol vehicles and other field personnel.

Once again, the City of Miami Beach respectfully requests your support on these highly important objectives.

PREPARED STATEMENT OF SHARPE JAMES, MAYOR, CITY OF NEWARK, NJ

Mr. Chairman and members of the Subcommittee, thank you for giving me the opportunity to submit testimony about a project under your jurisdiction which is critical to the people of Newark, New Jersey. Newark is truly at a crossroads: we are a City with all of the problems of many major urban centers, but we are also a City with vast potential. We have begun to turn the corner—there is a renewed vitality and sense of optimism in Newark. But we are also still ravaged by the problems associated with the illegal drug trade.

The Newark Police Department has developed an innovative program, called Operation NITRO—Narcotics Interdiction To Reduce Open-air Drug Markets—to address the complex issues associated with the sale of drugs and their effect on the City of Newark. It is a narcotics enforcement augmentation program designed to improve the quality of life by reducing the incidence of illegal drug trafficking through aggressive anti-crime operations. A supplemental federal allocation of $2 million is respectfully requested to meet the specialized facility and equipment needs for the ambitious and important project summarized herein.

In scores of cities across the country, the battle against crime has strained police resources to the breaking point, much of which the drug epidemic has fueled. According to the U.S. Department of Justice, three in four people arrested test positive for illegal drugs, regardless of the crime for which they are charged.

The nation's chiefs of police and the American public agree: the use of drugs is a huge problem and growing worse, fifty eight percent of police chiefs say that drug use is a very serious or quite serious problem in their community, and a nationwide household survey echoed these sentiments—fifty two percent of Americans responded the same way. They also recognize that drug use stimulates other crime in their communities. One in two police chiefs regards theft and burglary by drug

users as an extremely or quite serious problem; more than one in three says the same thing about violent crime associated with drug trafficking; and more than one in four concurs when it comes to domestic violence involving drug use.

It is well settled that DRUGS DRIVES CRIME! The COMSTAT process Newark's computerized statistical tool-has revealed that an estimated 80 percent of the crime in Newark is drug related. The communities' primary issues are the open street sales, violence associated with the drug trade, the proliferation of weapons and their use by drug enforcers during street robberies. Inherent in the drug trade is the violent nature of the criminal element associated with trafficking; a significant portion of the drug traffickers have been identified as having violent criminal histories, and most have previously failed to appear in court to answer for their crimes. The single most significant impact law enforcement can have toward reducing the illegal drug trade is a sustained presence; dismantling criminal enterprises by targeting the infrastructure and profit associated with drugs as means of eradication.

Operation NITRO is a concentrated effort designed to address long-term operations through collaborative strategies with identified outcomes and interim measures: proactive street-level narcotics enforcement; search warrants for mid and upper-level drug trafficking networks; asset seizure through civil enforcement; neighborhood problem solving through community interaction; special drug courts to provide preferential treatment for offenders; enhanced involvement from the corrections community to enforce probation and parole violations, and high visibility fear reduction. These efforts will produce a synergistic effect in dealing with persistent offenders by effecting arrests, empowering residents, seizing assets, and controlling the environment conducive to crime. This measure will reassure the citizens of Newark that crime control and quality of life are paramount issues for the Newark Police Department.

Guns and drugs are inseparable—where you find one you will find the other. Violent drug-related street crime can be a source of great tension and uneasiness in a community. Fear of using public spaces and even conducting routine business (e.g., patronizing the local corner store) can become an anxiety-filled experience enough for some to withdraw completely. The need for concerted methods to combat drugs and street crime is a principal concern for the Newark Police Department. Believing that the Department could ever employ enough uniformed officers to completely deter crime is inconceivable. Indeed, if the city allocated the entire municipal budget for this purpose, the police would still fall short of their intended mark. The presence of a police officer is a reassuring sight to the law-abiding citizen and the criminal alike. The potential felon knowing where a police officer is can safely deduce where the officer is not, and thus, be guided accordingly.

With these facts in mind, the Police Department will implement Operation NITRO. A Department element composed of carefully selected and specially trained police officers and supervisors using covert, non-traditional means to suppress drug-related street crime. The synergy of enforcement and apprehension operations will result in a valuable, encouraging and worthwhile contribution to public safety.

The enforcement segment consists of non-uniformed officers being placed into areas where the incidence of narcotics trafficking is greatest. Teams of officers will conduct stakeouts, surveillance, buy/bust operations, search warrants, and street-level enforcement tactics. The apprehension segment consists of teams of uniformed officers stabilizing neighborhoods by conducting follow-up operations in response to intelligence and leads garnered from outside sources, arresting persons wanted on outstanding warrants, and community empowerment via focus groups and neighborhood interaction.

Each of these tactics will be used in response to particular crime/victim/location patterns. The primary source of information will come from the community, bolstered by crime and quality of life data supplied the Performance/Crime Analysis Unit to the COMSTAT process. Secondary sources will be outside agencies (e.g., Essex County Prosecutor's Office, FBI Fugitive Task Force, other law enforcement agencies) and informants. Each will provide specific, detailed data on the types of crimes and perpetrators sought. The primary goal will be to reduce the incidence of drug-related street crime through the effectuation of quality arrests.

The elements of Operation NITRO combine to formulate a cohesive plan, which takes into account the range of Police staffing, facilities, equipment, and outreach needs. Detailed plans have been devised for:

—*Organization and Administration*.—The administrative structure and organizational placement, including staffing levels;

—*Deployment and Tactics*.—Deployment strategies and street tactics, also, the integral nature of Crime Analysis and the data supplied via COMSTAT.

—*Confrontation and Arrest*.—Guidelines for confrontations between NITRO personnel and uniformed members of the Department. Emphasis will be placed on

plainclothes recognition, quick identification and the actions to be taken by both the challenging officer and the challenged officer.

—*Facilities and Equipment*.—The physical location and equipment needs of the program.

—*Special Considerations*.—The methods for maintaining integrity of team members, and legal issues will be explored, including the issue of entrapment. Also, program advertising and public support.

—*Implementation*.—A project time line depicting implementation and milestones.

NITRO will perform two primary functions: plainclothes street surveillance of identified hot spots, and uniformed operations. Officers can assume disguises to adapt to the landscape in order to provide themselves with the anonymity and freedom of movement to pursue identified or suspected drug dealers undetected, and maintain watch unnoticed at probable crime locations. These tactics are designed to result not only in quality arrests but also in the interruption of drug transactions and the prevention of injury to citizens. Care must be taken, however, to avoid the hazards inherent in this type of work.

Two or three modules will generally be assigned to high-incidence neighborhoods within the four commands. Target Zones (TZ) will be established based upon the crime analysis data. All operations will take place within the TZ under the direction of the module supervisor. Operations should not conducted by rote. They should be flexible and susceptible to change as the need or situation arises. As the tours overlap module supervisors should collaborate to devise cooperative initiatives, thus freeing personnel to work in other parts of the city (this is provided no operational plan already exists). The level of work is also dictated by the amount of time each officer will spend in court due to arrests. Module supervisors will be responsible for monitoring manpower and conducting only those operations that can be handled safely.

Specific deployment tactics will further be determined by the scope of the problem in an identified neighborhood. The success of each operation depends, to a great deal, on the imagination and resourcefulness of the module personnel. When a narcotics operation is put in effect, each module will have a minimum of eight members. All members will be encouraged to use their skills in their apprehension efforts, but are reminded to use only those tactics which would be considered constitutionally legal. Considerable classroom instruction and role playing should be conducted on entrapment and other constitutional issues. Careful planning, adequate communication, proper role playing and an efficient back up team are also required. Though potentially hazardous, these operations are a most rewarding means of apprehending street criminals and reducing the incidence of crime.

An emerging concept, that should be employed, that will produce lasting solutions is a crime control feature known as crime prevention through environmental design (CPTED). CPTED principles employ engineers and urban planners to permanently alter the landscape in an effort to redesign a neighborhood. Such measures include rerouting traffic, establishing flow control (one-way streets), permanently curbing streets and vacations. Preliminary discussions have taken place with the Department of Engineering who appear very cooperative in assisting the Police Department with this endeavor. CPTED principles will eventually reduce neighborhood dependency on the police by removing the antecedents to the condition. The corollary that flows from this is more available police resources for patrol and other functions.

The element of plainclothes surveillance requires officers who are highly skilled in the art of observing suspicious or out-of-the-ordinary circumstances. Surveillance tactics are instituted once observations of this sort are made, and, depending upon the episode, may last anywhere from a few minutes to several hours. Similarly, buy/bust operations, reverse operations and long-term undercover operations necessitate patience and the investment of time if the results are to be productive. A thorough knowledge of surveillance techniques, coupled with a vivid imagination, resourcefulness and patience will increase the chance of success. Training in surveillance should be conducted to provide officers with the proper skills for conducting these delicate matters. This approach will increase the likelihood of arrest, the probability of prosecution for a felony, the chance of a felony conviction, and the length of the term for those sentenced.

It must be remembered that surveillance techniques will vary. Effectiveness is proportionate to the effort applied by individual officers. If one member of the team fails to carry out their assignment properly, the time and effort of their colleagues may be for naught. Moreover, if a surveillance operation fails due to poor tactics, not only has the investment of time by NITRO personnel been wasted, but the subject (or location) of the surveillance will have been alerted and will become more devious and elusive in future attempts to break the law.

In an effort to fulfill their objective of effecting high quality arrests while maintaining a low injury rate, NITRO will promulgate guidelines for confrontation and arrest. The primary focus is to prevent injuries arising from narcotics operations, and mistaken identity issues. Because of the size, diversity, and youthful nature of the Department, many experienced officers are entirely unfamiliar with the inexperienced officers, and vice versa. Safety is paramount! The need to quickly identify plainclothes personnel cannot be overstated. Utilizing the "color of the day" method, while not foolproof from the possibility for compromise by the criminal element, the system does have a number of distinct advantages: the bright colors make them highly visible, they are easy to carry, and they are inexpensive. As part of the required training, a series of safety precautions will be discussed to alleviate most of the problems associated with confrontations.

There are two special considerations of the utmost importance to NITRO administrators: legal defensibility of operations and integrity. The primary legal concern for the Police Department is the legal defense of entrapment. If procedures excessively lure or seduce suspects in their conduct as decoys, an apprehended criminal may have the defense of entrapment. Entrapment laws are essentially designed to protect innocent persons from being lured into criminal activity by over-zealous law enforcement officials. Two key components of the entrapment defense are the innocence of the victim and the conduct of the police. One critical distinction is between passive police conduct—simply providing an opportunity for the crime to occur, and active police conduct—soliciting or encouraging the crime. Essentially where the officers merely afford an opportunity to one intending to violate the law, they do not procure the offense to be committed. The offender acts of their own volition and is simply caught in their own devices. It must also be remembered that the defense of entrapment is not available to a person who denies having committed the offense, since the defense is predicated upon the assumption that the act charged was committed. Translated another way this means: It is not a defense that decoys, informers, or undercover operatives are used to present an opportunity for the commission of a crime.

In brief, entrapment will be a valid defense where criminal intent in the mind of the accused was implanted there by the officer, and where active police conduct encouraged the crime. The NITRO Task Force will provide extensive training, literature, and role playing to avoid these mishaps. Detailed tactical guidelines will be promulgated as part of the operating procedures governing the unit.

As with any plainclothes police operation, the susceptibility of corruptive practices by officers and supervisors is possible. Operation NITRO will pride itself on being corruption-free with a reputation for bribery arrests. NITRO administrative personnel will set the perspective for the team by personal example. A great deal of energy will be channeled into integrity control. During the development of training curricula several notable studies should be researched for their valuable insight; ethics will be the major thrust for the integrity campaign. NITRO will constantly be on guard to prevent its members from participating in shakedowns, abusing their authority, engaging in brutality, using racial/ethnic slurs while effecting arrests, and other illegal or improper practices. Complaints will be monitored and RAMS reports will be generated quarterly to audit the team. Some of the measures that will be incorporated into the integrity campaign include: Individual conferences between module supervisors and police officers; Reinforcing the integrity theme at daily roll call training; Periodically reviewing bribery, and official misconduct statutes (particular emphasis will be placed upon this when a bribery arrest is effected); Periodic issuance of integrity bulletins; Inviting guest lecturers such as District Integrity Officers to offer a different perspective on the issue and Ensuring the Chief Commanding Operation Bureau arranges for periodic conferences with the Team supervisors for pep talks.

While the plans for a corruption-free environment are ambitious they are not meant to unduly restrict the effectiveness of the team by creating paranoia in personnel. Nor are they meant to curtail the activities or initiative of creative officers. The element of undercover integrity testing is an option that should be discussed at length with the Police Director and the Division Commander of Internal Affairs.

Advertising and public support for any Police Department initiative are critical to the program's success. The Newark Police Department will advertise Operation NITRO through the Public Information Office and should consist of the following elements: Public Service Announcements on the radio and on cable television; Handouts distributed throughout the city explaining the initiative and its purpose; Locations will include community meetings, tenants' associations and public facilities; Posters will be placed throughout the city in all police Districts, public and private schools, public libraries and at community meetings; and The Citizen's Police Acad-

emy will be utilized to promote this initiative by focusing upon direct contact with the community.

The advertising campaign will augment the establishment of Community Advisory Councils (CAC). CAC's are intended to foster a cooperative and positive police/community partnership. Working together, the police and the community will design strategies specific to local neighborhoods and create a no-tolerance attitude towards illegal drug activity.

Module supervisors will interact with residents and the community groups to encourage a deeper community involvement in reducing narcotics offenses, enhancing crime prevention and improving quality of life. Community Advisory groups will be an integral program component, for narcotics intelligence data, offender identification and identification of community crime problems and concerns.

The establishment of Community Advisory Councils will be initiated through the Office of Community Affairs. Community Affairs personnel will coordinate with the NITRO Task Force Leader to identify neighborhood block groups presently meeting in each District Command under the auspices of the Community Service Officers (CSO). Representatives of contiguous neighborhood block watch groups will form a single CAC consisting of approximately five CAC's in each District. With guidance from the NITRO Task Force Leader, District CSOs will identify community groups and individuals for the formation of the Advisory Council.

PREPARED STATEMENT OF PAULA M. DELANEY, MAYOR, CITY OF GAINESVILLE, FL

On behalf of the City of Gainesville, Florida, I appreciate the opportunity to present this written testimony to you today. The City of Gainesville is seeking federal funds in the fiscal year 2000 Commerce, Justice, State and Judiciary Appropriations bill for an advanced body-worn computer system for the field paramedic to use in decision-support, communications and record keeping. The impact for the entire region is considerable, since this county serves as the regional center for much of rural north Florida's medical care, disaster management, and criminal justice services. The estimated cost of the system is $100,000.

This system has broad application to enhance the quality of treatment for critical trauma patients, mass casualties from all causes, including exposures to biological or chemical weapons, and complex medical illnesses. The potential for development of future uses is immense, following a successful demonstration of integration of the off-shelf components into a useable system for testing. The expected benefits are national, in that the developed system will be replicable at reasonable cost, and will generate widespread support for innovation and development among other users upon demonstration of an effective "standard" system.

Throughout the nation there is widespread concern about events involving weapons of mass destruction (WMD). The Federal government has made available significant funding for the education of first response system personnel on the correct procedures, plans and awareness for effectively operating in such an event. The missing ingredient in all this preparation is making available an easily accessible information and decision-support system for field personnel to effectively manage low frequency but high complexity/lethality events. A major principle in emergency response is that field personnel follow the procedures they have practiced and that effective plans have to be simple enough to implement with minimal changes to normal operations. Technology improvement is the only effective means to create wider development of the sophisticated response needed in these situations.

This is a request for $100,000 in project development money to demonstrate a wearable computer system for field medical personnel. The project integrates some current technologies to provide effective information management, field diagnosis—especially for rare and complex disorders such as chemical toxin exposures or biohazard exposures—and finally records the events in real time to be communicated to expert assistance and recorded for later analysis. This prototype will provide the means for expert systems to be placed in every field medical environment in the nation with a common knowledge base and decision support system. In the rural environments it will provide assistance to medical personnel far from the sophisticated support of trauma centers and specialty physicians. In the urban environment it will assist in properly handling massive emergencies, which are rare, but which require high readiness and complex handling. Such events include mass casualty events from biological terrorism, chemical weapons, or even significant accidental exposures to these agents. They also include medically challenging cases such as thermal burns, poison exposures, and quick-acting illnesses, which threaten vital organ systems.

The Gainesville Fire Rescue Department is the primary applicant. The department is a licensed advanced life-support (ALS) provider for the municipality of Gainesville and a wide urban area surrounding the city. The total population served is approximately 145,000 with an annual emergency call load of 20,000 emergency incidents, 15,000 of which are for emergency medical services (EMS). The department has a Regional Hazardous Materials Response Team providing training and emergency response to an eleven county area of North Florida. Except for its home county of Alachua, these counties are primarily rural with limited critical incident response capability. In addition, the department provides direct medical response services for the Gainesville Police Department's Special Response Team and the Alachua County Sheriff's Special Weapons and Tactics Team (SWAT). Paramedics who have completed the Department of Defense CONTOMS course are utilized in this role for support of high risk warrants and arrests, along with hostage or explosive device crises.

The Gainesville Fire Rescue Department (GFRD) proposes, with the University of Florida's Shands Teaching Hospital Department of Anesthesiology, to purchase off-shelf technology. The hardware (wearable computer, micro-video camera, digital radio interface) and software (speech-to-text, text-to speech, heuristic decision support) will be integrated into a body ensemble to be worn by field paramedics. Current medical and operational plans will be programmed into the computer to begin experiments with field use. This is a demonstration project to produce one limited use version of the device for continued experimental development. Results of the work will be shared as published research papers in medical journals, federal technology sharing publications, and journals common to emergency service providers. The total cost of $100,000 includes $55,000 in estimated hardware/software costs and $45,000 to fund one FTE computer systems analyst/programmer on the staff of the UF Shands Teaching Hospital Department of Anesthesiology.

The need for this project is driven by the fact that the Federal government has already funded the research that created the technologies to be used. There are military educational applications of this technology already being used. There are civil applications in aviation and other complex maintenance operations for machinery. Yet, with the developments thus far, there have not been applications to the field practice of emergency medical care—a discipline that can produce an impressive return on development funding.

This system has broad application to enhance the quality of treatment for critical trauma patients, mass casualties from all causes, including exposures to biological or chemical weapons, and complex medical illnesses. The potential for development of future uses is immense, following a successful demonstration of integration of the off-shelf components into a useable system for testing. The expected benefits are national, in that the developed system will be replicable at reasonable cost, and will generate widespread support for innovation and development among other users upon demonstration of an effective "standard" system.

Although there are various components of this project in development for other purposes, there is no known research that would provide a similar system with national application to emergency field services. Given that the applications of this system are for a number of national priorities, including anti-terrorist operations, trauma treatment, and enhanced rural medical care, it is appropriate that the Federal government fund the initial stages of this research. Demonstration of the feasibility and long-term applications of this technology will bring enhanced commitments of funding from additional partners to continue the research into future years.

Paramedics in the field normally operate under direction of physicians at the emergency department. Caring for critical patients requires attempting to communicate a true picture of events to the physician. The paramedic must currently rely on a remote physician who is receiving limited information, to make an appropriate diagnosis and provide the correct treatment protocol. Yet, within the literature of emergency medicine there are hundreds of algorithms, akin to artificial intelligence, designed to correctly diagnose when complete information is provided in a specific sequence. These heuristic decision-support algorithms are complex and interact with each other. Computers are the only effective means to integrate the many complexities these interactions produce.

Computers could be used with great success in the field except for two primary shortcomings:

First of these is that the paramedic literally has his or her hands full with providing emergency care. (S)he cannot stop administering lifesaving care to enter data into a computer with a conventional keyboard, nor is the physician who is contacted by radio likely to either ask the questions in proper sequence or use the computer systems to furnish proper instructions. Handling hardware demands of a computer

in this environment; outside, in all weather conditions, with poor lighting and dynamic events occurring, simply adds too much complexity to using this vital tool. Fortunately there have been recent developments in wearable computers. These are lightweight modules designed to fit in a belt-worn pack, which are then connected to a headset which has an eyepiece video display (which can also be equipped with a forward-looking video camera to record the wearer's eye view). The other components of the headpiece are a throat voice-activated microphone and earphone that allow two-way voice communication either with the computer or a radio system.

The second shortcoming is similar. Until recently there have not been speech recognition systems that could reliably accept voice input for decision-support or recording of vital information. Today, however, there are several inexpensive speech-to-text and text-to-speech engines for computers, which enabling direct communication with databases and artificial intelligence (AI) systems.

For the paramedic there is no transcriptionist. All records have to be reconstructed after the fact, from memory or from incomplete remote records from dispatcher reports and third parties. Sometimes a patient may be under the care of more than one service provider. This can happen when a rural facility initiates care and the patient must be treated by first responders, followed by advanced providers and finally moved to a higher care level by a third caregiver, such as a helicopter flight crew. In this environment, the continuity of care may be maintained, but the records often become scattered, never reaching the final link in the chain. Incomplete or fragmented records mar most research into what works effectively in the field with paramedics. The use of a wearable computer, which is voice-activated, provides the ideal mechanism to review individual patient care to improve treatment proficiency, quality and training. The addition of a video cameral to that recording provides, literally, the complete picture.

There is the another problem for emergency care systems, probably the most difficult to solve and most in need of solution. When confronted with ambiguous data, indicative of a number of patient conditions, the paramedic must rapidly gather and sort volumes of information, develop a treatment plan and, with guidance from a physician, attempt to restore stability. There are certain situations that are high criticality and low frequency. This means that the paramedic is unlikely to see the condition often, so it is unfamiliar. Simultaneously, the patient condition requires immediate and effective treatment for a survivable outcome. A few of these events include the aforementioned toxic exposures, multiple system trauma, complex rescue situations, and any other accidental or intentional event which leads to rare but lethal injuries.

The City of Gainesville Fire Rescue Department is requesting $100,000 in Federal funding assistance to develop an advanced, body-worn, computer system for the field paramedic to use in decision-support, communication, and record keeping. This system has broad application to enhance the quality of treatment for critical trauma patients, mass casualties from all causes, including exposures to biological or chemical weapons, and complex medical illnesses. The potential for development of future uses is immense, following a successful demonstration of integration of the off-shelf components into a useable system for testing. The expected benefits are national, in that the developed system will be replicable at reasonable cost, and will generate widespread support for innovation and development among other users upon demonstration of an effective "standard" system.

RELATED AGENCIES

DEPARTMENT OF TRANSPORTATION

MARITIME ADMINISTRATION

PREPARED STATEMENT OF THE UPPER MISSISSIPPI RIVER BASIN ASSOCIATION

The Upper Mississippi River Basin Association (UMRBA) is the organization created 18 years ago by the Governors of Illinois, Iowa, Minnesota, Missouri, and Wisconsin to serve as a forum for coordinating the five states' river-related programs and policies and for collaborating with federal agencies on regional issues. As such, the UMRBA has an interest in the budget of the Maritime Administration.

Of particular concern to the UMRBA is funding for MARAD Operations. The President's fiscal year 2000 budget proposal includes $30,930,000 for this account, a reduction of 5.6 percent from the fiscal year 1999 funding level. Among other things, the MARAD Operations budget supports research and development efforts such as design of prototype mooring buoys. Such buoys on the inland waterway sys-

tem allow tows to tie up safely while awaiting lockage, thus avoiding environmental damage that might be caused by mooring to the shoreline. Last year, a prototype buoy was used by the commercial navigation industry and the Corps of Engineers for tows awaiting lockage at Lock and Dam 24 on the Mississippi River. Based upon experience with that test buoy, MARAD, the Corps, and the shipping industry have identified changes that need to be made in the next prototype. Funding for research and development efforts such as these is critical to the safety and efficiency of commercial navigation on this nation's inland waterway system.

In addition, the MARAD Operations account supports MARAD field offices on the inland waterway system, such as the office located in St. Louis, Missouri. The St. Louis office is situated at the confluence of the Mississippi, Missouri, and Illinois Rivers, on which move much of the Midwestern grain destined for international markets. Such field offices are essential for MARAD to maintain its involvement in an increasingly wide variety of interagency and interstate river management issues.

The UMRBA supports adequate funding for the Maritime Administration's Operations account.

NORTH-SOUTH CENTER

PREPARED STATEMENT OF CYRUS M. JOLLIVETTE, VICE PRESIDENT FOR GOVERNMENT RELATIONS, UNIVERSITY OF MIAMI

Mr. Chairman and Members of the Subcommittee, I appreciate the opportunity to submit this statement for the record on behalf of the Dante B. Fascell North-South Center at the University of Miami. The University is seeking your continued support for this nationally recognized center in fiscal year 2000.

Dante B. Fascell North-South Center

The Dante B. Fascell North-South Center, permanently authorized in Public Law 102–138 is the only research, public policy studies, and information center of its type exclusively dedicated to finding practical solutions to problems and policy issues facing the Americas. In carrying out its congressional mandate to promote better relations among the United States and the nations of Canada, Latin America, and the Caribbean, the Center combines programs of public policy, cooperative study, research, and training. The Center's publications constitute a body of scholarly work that is at once timely, non-partisan, and policy-relevant. Publications are clear, accessible, and relevant for diverse audiences, including legislators, government officials, nongovernmental organizations, and the private sector. The Center's Western Hemisphere agenda benefits U.S. citizens by seeking to effect positive change and to address issues of major significance in the Americas.

Research Agenda

The Center responds to a hemispheric agenda that directly impacts the American people in the form of jobs and prosperity, drugs, migration, export opportunities, environmental quality, and the promotion of shared democratic values. Programs foster national and international linkages and partnerships through fellowships and collaborative efforts in research and training. The Center's priority research agenda focuses on vital inter-American issues such as trade and investment, migration, security, democratic governance, civil-military relations, corruption, institutional reform, civil society participation, and sustainable development. Findings of the Center's research reach scholars, policy makers, and opinion leaders in the United States and throughout the Hemisphere through a variety of publications including scholarly books and monographs, the Update and Issues report series, and North-South Agenda papers. This wide range of expertise has distinguished the Center as an invaluable national resource for identifying, analyzing, and understanding the myriad issues that have the potential to impact the United States' future prospects in a region of growing importance to our economic competitiveness and security.

Capacity Building and the New Inter-American Environment

During the decade of the 1990's, the very nature of inter-American relations has changed. The difficult but steady movement of the Hemisphere's nations toward democratization and open markets has transformed the landscape, simultaneously offering tremendous opportunities and challenges for the citizens of the United States. In recognition of the change in inter-American relations, the Center has launched a new set of activities emphasizing the theme of Capacity-Building in the Americas. Under this initiative, the Center will use its own capacity and a series of partnerships to conduct in-country education and training projects with institutions and organizations to plan, design, implement, and evaluate programs that improve the

transparency and accountability of markets and governance throughout the region. Capacity building projects address: (1) ethics and government; (2) judicial and legal reform; (3) telecommunications regulations; (4) financial reform; (5) environmental law; (6) health services; (7) public management; (8) microenterprise development; and (9) civil society participation.

In combination with the Center's research, these "hands-on" projects provide a learning experience with crucial implications for U.S. interests. While the nations of Latin America and the Caribbean now share our vision of political and economic freedom, they in many ways lack the institutions, infrastructure, and human capacity to benefit fully from the promise of democracy and the dynamism of free markets. If U.S. citizens are to realize the enormous potential of expanding markets, new jobs, rule of law, orderly immigration, and reduced drug trafficking, it is precisely these issues that must be addressed. By balancing research and outreach activities with a new and exciting focus on capacity building, the North-South Center will work in the clearest possible way for the tangible benefit of both U.S. citizens and our hemispheric neighbors.

New Public Diplomacy

The policy activities of the Dante B. Fascell North-South Center are conducted with the knowledge that at no other time in the history of inter-American relations have the hemisphere's citizens enjoyed better opportunities to work together to realize the cherished ideals of democratic values, open markets, environmentally sustainable development and social justice. From its inception, the Center has consistently provided opportunities for dialogue among policy makers, nongovernmental organizations, and business interests. Since the 1994 Summit of the Americas in Miami, which formally committed the region's nations (with the exception of Cuba) to democratic governance and the achievement of a Free Trade Area of the Americas by 2005, the Center has been instrumental in bringing non-governmental organizations into the Hemispheric decision-making process.

Congressional outreach is a key ingredient of the Center's mission. Elements of this outreach include providing congressional testimony, inviting senior congressional staffers to participate in various capacities in Center events, sharing strategic assessments and analyses of inter-American issues and events with legislators, and creating a forum in which congressional representatives—particularly those from South Florida—can engage in substantive policy discussions with their constituencies.

The Dante B. Fascell North-South Center has been the foremost institution in bringing together the private sector, NGO's, and government representatives to monitor and evaluate the implementation of the Miami Plan of Action. The Monitoring Implementation of the Summit of the Americas initiative, the only independent monitoring project of its kind, provided an unprecedented opportunity for policy dialogues between the public and private sectors in a non-partisan and academic forum. As the direct result of a series of highly influential white papers resulting from this project, many of the Center's policy recommendations were incorporated into the Plan of Action of the 1998 Summit of the Americas II in Santiago, Chile.

The Center's Diplomatic-Private Sector Roundtable in Washington, D.C. provides an organized policy forum, previously unavailable, for dialogue between hemispheric diplomats and civil society—business, academic, labor, and environmental representatives. The Roundtable meets periodically to share perspectives on issues of subregional trade, education, poverty, and human rights, among others.

With its strategic location in Miami, Florida the crossroads of the Americas; its visible presence in Washington, D.C.; and its hemispheric recognition, the Dante B. Fascell North-South Center is well positioned to further inter-American dialogue and advance the new public diplomacy in a manner that is beneficial to Americans in the North and South.

Policy and Academic Impacts

Programs of research are complemented by rigorous outreach efforts that share the findings of the Center's work with a wide policy, business, and academic audience in the United States, Canada, the Caribbean, and Latin America. Outreach efforts include policy briefings, training programs, media outreach, workshops, public lectures, and publications.

The Center works directly with U.S. policy makers by providing testimony to Congress, briefing Administration and State Department officials on inter-American issues, and contributing to the policy debate by sharing perspectives on a broad spectrum of issues on a biweekly basis in the North-South Center Update. U.S. am-

bassadors to Latin America and the Caribbean routinely request Center briefings prior to assuming their posts.

The Center's policy report, From Talk To Action: How Summits Can Help Forge a Western Hemisphere Community of Prosperous Democracies, published prior to the 1998 Summit of the Americas in Santiago, Chile, was widely read by government delegations to the Summit and several of its recommendations were reflected in the resulting Plan of Action.

Findings of the Caribbean Program's research on subregional integration, trade liberalization and corruption received critical acceptance in the Caribbean policy making community and are reflected in the framework agenda of the Association of Caribbean States.

Trade Programs have played a central role in shaping the public policy debate on competitiveness, hemispheric free trade, and subregional economic integration issues of vital, long-term importance to the United States. The program helps shape workable, free, and fair regional trade agreements.

Center efforts in the area of Civil Society Participation have led to unprecedented opportunities for the private sector and nongovernmental organizations to have meaningful input in inter-American discussions of trade and development issues.

The Environmental Law Program has provided training, capacity building and technical services, comparative legal research and analysis in the area of legal and policy reform. The program has developed an Environmental Law Americas Network to establish a hemispheric network of officials and experts in environmental law, its execution, and compliance.

Research on Democratic Governance has provided important analysis and policy guidance on the effects of economic liberalization on the fragile democracies of the Americas. Timely research on the socioeconomic and political consequences of reforms in the region such as a major study contained in the book Fault Lines of Democratic Governance in Post-Transition Latin America provides a comprehensive and nuanced understanding of the fault lines of democracy in the Americas and supports effective decision making in the United States and throughout the Americas.

The Inter-American Business And Labor Program launched major policy studies and activities centering on the management of privatization in the hemisphere, business-labor cooperation, and U.S. corporate competitive strategy. A recent book, Making NAFTA Work: U.S. Firms and the New North American Business Environment, analyzes the effect of NAFTA on corporate strategies and patterns of U.S. investment in North America.

The Inter-American Management Training Project has trained over 600 executives from small and medium-sized firms over 60 percent from minority business on exporting to Latin American and Caribbean markets.

The Adjunct Senior Research Associates Program provides a mechanism through which the Center functions as an intellectual multiplier. By establishing productive networks among scholars from different countries and from diverse disciplines, the Center successfully promotes technical and scholarly interchange between the United States and hemispheric neighbors.

Results of Center research, published primarily by the North-South Center Press, contribute significantly to inter-American scholarship, offering strategic assessments of a variety of critical inter-American issues. In the last three years, the Center has sold over 15,000 books, many of which have been adopted as textbooks by some of the most prestigious universities in the United States. This body of work is also cited widely in interdisciplinary research on Latin America.

The Dante B. Fascell North-South Center: A Vital National Resource

As the new spirit of cooperation in inter-American relations takes root and flourishes, it presents a unique opportunity for the United States to promote critical democratic ideals such as public accountability, transparency in government, and popular participation in the democratic process through active engagement of civil society. Miami, as host of technical trade negotiations during the first three years of the seven-year process for the Free Trade Area of the Americas, will play a major role in the newly emerging North-South order of close cooperation and partnership. Efforts at democratic consolidation combined with the negotiations for an FTAA will create the framework for inter-American relations for decades to come.

The Dante B. Fascell North-South Center is uniquely positioned, geographically and academically, to create constructive input and play an important role in these processes. With a firm research base, an ever widening network of public and private partnerships in the United States and the rest of the Hemisphere, the Center is uniquely placed to facilitate the constructive development and evolution of cross-border relationships among the nations and peoples of the Americas as they work together to establish a new inter-American architecture. The Center's proven track

record in facilitating dialogue among hemispheric governments, non-governmental organizations, and business interests will be a vital asset for the United States and its citizens in a new era of inter-American relations.

We are pleased to report that we are effectively implementing our fiscal year 1998 and fiscal year 1999 spending and program plan, and making sound progress in expanding both our relevance and assistance to federal foreign policy and trade agencies, and our efforts to diversify our base of public, private, and foundation support. The fiscal year 1999 appropriation was $1.75 million. For fiscal year 2000, given the increasing critical importance of the region, and the Center's ongoing important role, the Administration supports a $2.5 million investment for fiscal year 2000. We respectfully request your consideration of our full $4 million spending plan for fiscal year 2000, especially given the next phase of Latin American relations Latin American trade and ongoing summit activity.

Mr. Chairman, my colleagues and I understand what a difficult year this will be as you determine funding priorities for the myriad programs under your jurisdiction. We hope that you will continue to find the Dante B. Fascell North-South Center a worthy recipient of your support.

SMALL BUSINESS ADMINISTRATION

PREPARED STATEMENT OF MAX SUMMERS, STATE DIRECTOR, MISSOURI SMALL BUSINESS DEVELOPMENT CENTERS

Chairman Gregg and Members of the Committee, I am Max Summers, State Director of the Missouri Small Business Development Center Program. I am here today on behalf of the Association of Small Business Development Centers (ASBDC) which represents the SBDC programs in all fifty states, the District of Columbia, Puerto Rico, the Virgin Islands and Guam.

I would like to thank you Mr. Chairman and the members of this committee for inviting the ASBDC to testify at this hearing on the Small Business Administration's (SBA) fiscal year 2000 Budget request. With me, to assist in responding to any questions the committee may have, are Ms. Jan Fredericks, State Director of the Alaska SBDC and Chair of the Board of Directors of the ASBDC, Mr. Woodrow McCutchen, a former SBDC State Director in Maryland and the District of Columbia who now serves as the Executive Director of the ASBDC, and Donald Wilson, Director of Government Affairs for the Association.

Let me at the outset of my remarks express the appreciation of the Association, the SBDC nationwide network and its 4,500 employees for the nearly two decades of bipartisan support which this program has received from Congress. Congress initiated the SBDC program in 1980. Since then those of us in the program have worked diligently to fulfill the mission Congress envisioned when the SBDC program was created. We are proud of our proven record of cost effective delivery of management and technical assistance to the nation's small business community.

I would like to state for the record that the ASBDC and the SBDC network are solidly committed to helping "open doors" of economic opportunity for individuals and communities in "New Markets". In fact our doors have been opened wide to these constituencies since the program's inception and those constituencies utilize our services every day. As the accompanying charts will show, last year 42 percent of our counseling and training clients were women and 22 percent were minorities. Moreover, approximately one-fourth of our service centers are located in targeted economic revitalization areas such as HUBzones, Empowerment Zones and Enterprise Communities. Nationally, more than 90 percent of our clients, including those from these service areas, report that they are financially unable to pay for counseling received from SBDC's. We urge Congress to remain firmly committed to its historical opposition to such fees.

The SBDC program stands ready to help the administration achieve its goal of 300,000 additional small business clients in fiscal year 2000 if provided with adequate resources. However, to reduce federal funding for this program by nearly 25 percent, as the Administrator has recommended, would result in a real decrease of more than 60 percent of total funds available to serve our small business clients. Congress in 1997 approved an authorization level of $121 million for the SBDC program for fiscal year 2000. If Congress decides that additional small business outreach efforts are necessary, and we believe they are, then the SBDC's established infrastructure of over 1,400 service locations is the most logical vehicle to effectively accomplish that mission.

During the last six years, our nation has been blessed with steady economic growth. We have also faced major economic change. Economic downsizing by cor-

porations, especially in the manufacturing sector, declining agricultural exports, the Y2K crisis, and unprecedented technological change have all contributed to a sharply increased demand on our nationwide SBDC network for counseling and training. Mr. Chairman, this increase in demand has been sharply pronounced in our state of Missouri. I am proud to say that our SBDC has risen to that challenge. This nationwide growth in demand creates a genuine need not only to sustain but also to grow the SBDC program.

Although the SBDC's resources are presently stretched, the program has shown a remarkable capacity not only to meet the congressionally mandated matching requirement, but also to exceed it. The SBDC network nationwide uses its congressional appropriation to leverage tens of millions of dollars from local and state governments, and educational institutions, as well as individuals and corporations in the private sector.

The charts attached to this testimony reflect the SBDC program's documented track record of service delivery to its small business clients. The nation's roughly 23 million small businesses employ over 50 percent of the national workforce and continue to be the driving force behind this country's economic growth and job creation. If we are to continue to enjoy economic growth and prosperity, then America's burgeoning entrepreneurial population must be given the management tools to succeed.

Access to financing is critical to the success of new small businesses. Start up businesses and pre-startup businesses comprise a significant share of our client base. The management training and technical assistance we provide has proven to make a difference. Our clients have a rate of sales growth and employee additions that exceeds the national small business average. And as a result they contribute to the federal treasury at a faster rate of increase than non-SBDC client firms. This is a win/win situation for all concerned. And the economic stability that our clients achieve as a result of our management and training assistance contributes significantly to lower default rates on small business loans.

The SBDC program for two decades now has utilized the dollars that Congress has invested in the program to create a strong and viable infrastructure. The program has developed over 3,400 strategic resource partners including educational institutions, lending institutions, economic development agencies at the state and local level, Chambers of Commerce, etc. Examples of these strategic resource partners include Mayer, Hoffman, McCann Certified Public Accountants in Missouri, ATT Capital Corporation of Georgia, Alabama Minority Supplier Development Council, the Lewiston-Auburn Economic Growth Council of Maine, the Women's Initiative Networking Group in Kentucky, the Idaho Department of Commerce, Hispanic Chamber of Commerce of San Antonio, the Greater Roxbury, Massachusetts Chamber of Commerce, Detroit Edison Works in Michigan, and Wachovia Bank in North Carolina.

This infrastructure and its partnerships are unmatched and would take decades and enormous financial resources for any other program to replicate. Furthermore the SBDC program is the only federal small business management and technical assistance program that is subject to a congressionally mandated certification program. The ASBDC also contracts with an independent consultant for a biennial economic impact assessment of long term SBDC counseling.

Mr. Chairman in summary the SBDC program is the federal government's largest and most successful small business management and technical outreach assistance program. We have an established, proven infrastructure without peer. We have a documented track record of responding to the needs of the communities we serve. Our clients represent the face of those communities, including rural and urban populations, minorities, women and native Americans. We currently assist over half a million small business clients annually. The SBDC network is well positioned to deliver these services to a significantly expanded client base if provided the resources to do so by Congress. This is a commitment we can and do make to this committee today.

SECURITIES AND EXCHANGE COMMISSION

PREPARED STATEMENT OF THE INVESTMENT COMPANY INSTITUTE

The Investment Company Institute[1] appreciates this opportunity to submit testimony to the Subcommittee in support of the fiscal year 2000 appropriations request for the U.S. Securities and Exchange Commission (SEC). The Institute would like to commend the Subcommittee for its prior efforts to assure adequate resources for the SEC.

Mutual funds are very important to middle class Americans seeking to save and invest. Today, more than 77 million investors, in over 44 million U.S. households, own mutual fund shares. These millions of average Americans receive and deserve vigilant regulatory oversight of mutual funds. Given the importance of mutual funds to millions of investors, sufficient funding of the SEC is a priority. The Institute urges Congress to provide appropriations at a level sufficient to ensure that the SEC may fulfill its regulatory mandate.

The Administration's fiscal year 2000 budget proposes SEC funding at a level of $363 million. The Institute supports this level of funding to sustain the SEC's operations, especially those of the Division of Investment Management, which regulates the mutual fund industry.

Adequate financial resources are essential for the SEC to continue its effective regulatory oversight of the securities markets and to carry out important investor protection and awareness initiatives. The workload of the Division of Investment Management has increased significantly due to the implementation of the SEC initiatives to improve mutual fund disclosure enacted last year: the mandatory use of plain English in mutual fund prospectuses; revised, simplified disclosure in mutual fund prospectuses; and fund "profiles," which provide essential information about a particular fund in a concise, less technical manner. These important initiatives will benefit millions of American investors. Sufficient financial resources are also needed for special projects involving investor protection, such as the Director's Roundtable and the Year 2000 conversion project. The Director's Roundtable, held in February, explored the critical watchdog role that independent fund directors play in protecting the interests of fund shareholders. The SEC is presently working toward recommendations to strengthen the current system of fund governance based on information and insight gained from the Roundtable, and expects to promulgate rules to otherwise strengthen the role of independent directors.

The SEC has been actively engaged in the very important work of monitoring the securities industry's progress with Year 2000 compliance and has intensified its efforts in this area during the past year. The Division of Investment Management has formed an independent task force to assess the current status of Year 2000 disclosure and propose steps that the SEC should take to remedy the deficiencies. The SEC is gathering quantitative information from a large number of registrants and conducting examinations of firms that are showing unsatisfactory progress in addressing the problem. The SEC plans to continue its unprecedented efforts to increase the frequency and quality of Year 2000 disclosure made by public and investment companies to maintain investor confidence at the end of 1999.

Finally, adequate funding is essential for routine inspections of investment advisers and fund companies, and for the SEC's ongoing efforts to educate the nation's investors. The SEC has instituted several outreach programs, such as the nationwide "Facts on Savings and Investing Campaign" aimed at increasing the financial literacy of American investors. These types of programs help investors and small businesses to understand capital markets and establish realistic expectations about market performance. This is an integral part of the agency's mission to protect investors.

In order to accomplish these worthy objectives and to continue to function as an effective regulatory agency, we support SEC funding for fiscal year 2000 at the level requested by Chairman Levitt.

We appreciate your consideration of our views.

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[1] The Investment Company Institute is the national association of the American investment company industry. Its membership includes 7,446 open-end investment companies ("mutual funds"), 456 closed-end investment companies and 8 sponsors of unit investment trusts. Its mutual fund members have assets of about $5.662 trillion, accounting for approximately 95 percent of total industry assets, and have over 73 individual shareholders.

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