

**COMMERCE, JUSTICE, SCIENCE, AND RE-  
LATED AGENCIES APPROPRIATIONS FOR  
FISCAL YEAR 2009**

---

**THURSDAY, APRIL 10, 2008**

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

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

Present: Senators Mikulski, Leahy, Feinstein, Shelby, and Alexander.

DEPARTMENT OF JUSTICE

ATTORNEY GENERAL

**STATEMENT OF HON. MICHAEL B. MUKASEY, ATTORNEY GENERAL**

OPENING STATEMENT OF SENATOR BARBARA A. MIKULSKI

Senator MIKULSKI. Good morning, everyone. The Subcommittee on Commerce, Justice, and Science will come to order.

Today, the subcommittee will take testimony from the Attorney General of the United States, Mr. Mukasey. We welcome him for his first appearance here and look forward to a very straightforward, candid conversation.

We have been informed that at approximately 11 o'clock, there will be a series of votes on budget issues affecting our housing foreclosure situation.

We're going to do our best to finish the hearing in the next hour. To that end, I'm going to ask unanimous consent that my full opening statement be in the record. I'll say a few remarks, turn to my able colleague, Senator Shelby of Alabama, who, too, has responsibilities on the floor this morning. We understand our colleague, Senator Alexander, is offering an amendment in 15 minutes on the Senate floor and we know he wants to pose a question to the Attorney General and get an answer in writing from the Department.

This morning is a hearing on the budget for the Department of Justice (DOJ). It is a very important hearing because this year's appropriation, when we pass it, will be the operating budget for the first year of the next president.

We need to understand that the fiscal year begins October 1. We'll get a new president on January 20. That new President will

inherit what we present to him in the operating budget of the Department of Justice.

To that end, we have to be very clear on what our national priorities are. We have to do all we can to work with the Attorney General in restoring the integrity of the Justice Department, improving morale at the Justice Department, and at the same time meeting our very serious domestic responsibilities of: fighting violent crime, protecting women, protecting children, and making sure that the grassroots law enforcement is a partner with the Federal Government. This is what our focus of our hearing will be.

We'll also look at accountability at the Justice Department and make sure that we are stewards of the taxpayers' dollars. We know that the Justice Department has faced many challenges over the last several months. There's been the torture memos, the firing of U.S. Attorneys, the FBI's national security letters being mismanaged and problems with the terrorist watch list, and the reforms called for in the 9/11 Commission report have not been fully implemented.

We're also deeply concerned about the overall budget at the Justice Department. The Justice Department has been cut by 2 percent. That doesn't sound like a lot but when we look at the responsibilities of the Justice Department, we see they have responsibilities ranging from enforcing our antitrust laws to enforcing our civil rights laws as well as the role the Justice Department is supposed play by offering grants to State and local governments.

Number 1, to fight violent crime where there is a terrible surge in violent crime. Violent crime is up, murders, rapes, and other heinous activity continue to rise. We need to make sure local law enforcement is partner with us and we're a partner with them. We're deeply concerned about the slashing cuts to the COPS Program and to the Byrne JAG program.

Then we look at those crimes that are just despicable. Despicable crimes are crimes against children. As a former child abuse worker, I feel very passionate about this. Sexual predators stalking our children, child abuse, and attacks on women continue to plague our communities. So, we do not cut these important programs as the President proposes—we're very concerned about the drastic cuts and the elimination of programs like Adam Walsh, and the Violence Against Women Act proposed by the President.

We note that the YWCA is here, as they always are, standing up for women. We wear our colors with you today in solidarity.

You can applaud but just know that we and the good men up here are in solidarity with you.

We also want to be accountable and we want to look at the grant programs to make sure that every dollar we have counts. No more \$4 Swedish meatballs. We're going to make sure that when we issue those grants, that they are done in a timely manner and subject to rigorous peer-review process.

There are many issues that I will raise in my questioning, but I think it's time now to move to the substance of our hearing and I would turn to Senator Shelby.

## STATEMENT OF SENATOR RICHARD C. SHELBY

Senator SHELBY. Thank you, Madam Chairwoman, and Mr. Attorney General, thank you for joining us here today to discuss your budget with the Department of Justice.

The total Department of Justice budget for the fiscal year 2009 is \$22.9 billion. This is \$500 million or 2 percent decrease below the fiscal year 2008 level.

While the Department of Homeland Security request from the administration has grown seven to 10 percent each year since its inception, the Justice Department request continues to shrink by 2 to 3 percent each year.

The chairwoman and I are concerned about the Justice Department continuing to be the world's premier law enforcement entity with these continuous decreasing budgets.

As I've said in the past, the budget constraints placed upon us will once again force us to make tough decisions. The chairwoman has covered most of the budget in her opening statement, so I won't repeat all that, but I do have a number of issues I think we need to discuss here today.

First, I want to recognize and extend my appreciation to the men and women of the Justice Department who protect this country from terrorism and crime each and every day. We all owe them a debt of gratitude.

As in past years, the administration continues to propose eliminating State and local law enforcement programs which is troubling. These programs are the lifeblood of police departments throughout the Nation. I will join with the chairwoman in rejecting the proposals.

The U.S. Marshals Service, regional fugitives task force, track down and apprehend the dangerous fugitives on our streets. The fugitives are some of the worst of the worst, usually averaging more than four prior arrests per fugitive.

The six regional task forces arrested approximately 95,000 felony fugitives last year. These task forces are proven and multiply. The Marshals Service may be the smallest Federal law enforcement agency but they have arrested more fugitives than all other Federal agencies combined, yet there are no new resources for their efforts in the budget.

The National Center for Missing and Exploited Children, which Senator Mikulski mentioned, estimates there are currently more than 100,000 sex offenders who have failed to register as required under the Adam Walsh Act. These predators are working, attending school, and living in proximity to our children unbeknownst to the parents and law enforcement officials.

The Marshals Service is the lead agency in the enforcement of the Adam Walsh Act. The Congressional Budget Office conservatively estimates it would cost \$220 million over a 5-year period for the Marshals Service to hire 350 new deputy marshals as required by the law, to locate and hunt down these unregistered sex offenders.

John Walsh said the following after the signing of the act, and I quote, "Legislation without the resources to back it up is nothing more than a photo op and yet the Department has requested no

new resources for 2009 to reduce the number of sex offenders from our streets.”

Is this giving sex offenders a free ride? What kind of message does this budget send? The administration also proposes to task the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) with additional Southwest border responsibilities, highlighting cross-border arms trafficking, yet only a paltry \$948,000 out of \$100 million is requested to carry out this mission.

This means that the ATF agents investigating violent crime, arson and gang-related activities will be relocated to the border. The baseline request in this budget doesn't even support the existing missions of the law enforcement agencies in the Department of Justice.

There's no doubt we have a crisis on the Southwest border. Funding the Southwest border enhancement at the levels requested will remove the Drug Enforcement Administration (DEA), ATF, the Federal Bureau of Investigation (FBI) and U.S. Marshals Service from our communities. These communities are already stretched in dealing with increased crime and receive less fiscal support from the Department of Justice.

Mr. Attorney General, it's been brought to my attention that individuals in the National Institute of Justice (NIJ) have attempted to derail the 2006 report language that we requested directing the National Academy of Sciences to conduct an independent forensics study.

Once completed, this study will produce an unbiased and, we hope, independent assessment of the present and future needs of the forensics community, providing a roadmap of best practices.

Current and former employees of the National Institute of Justice, along with lobbyists and contractors, have attempted to undermine and influence the National Academy study. On December 17 and 18 of this past year, the Deputy Director of the National Institute of Justice even convened a counterproductive forensic summit here in Washington. Many of the attendees deemed the summit a huge waste of more than \$300,000 in taxpayers' funds.

Also while investigating this matter, our staff discovered potential conflicts of interest, unethical behavior and a serious void of transparency where lobbyists, including former DOJ employees, were contracted to NIJ to conduct policy-forming studies and surveys. These same lobbyists, while writing these unbiased policies for the Department of Justice, are also representing clients whose business success depends on the results of the studies and surveys that lobbyists conducted.

I'm not so sure the seriousness of this matter has the full attention of the leadership of the Department of Justice. I hope and encourage you to check into this matter.

I would be remiss if I did not express my dismay at the Department's position or lack thereof on the recent passage of the Second Chance Act. In what will be a year of tough budget decisions, numerous re-entry, recidivism prevention, and prisoner education studies and programs were created.

Most of the programs and studies already exist, yet the Department of Justice was silent throughout the process. A lot of us are troubled by section 231 related to prisoner re-entry procedures that

“ensure that priority is given to the re-entry needs of high-risk populations, such as sex offenders and career criminals.

To a degree, I believe in re-entry and any recidivism programs, but in a tight budget year when we have to make choices, I think we should prioritize and ensure that the needs of victims and law enforcement officers are supported before giving any consideration whatsoever to the welfare of criminals.

There are currently more than 70 programs at DOJ. Each program has its own constituency, you know. This legislation provides more welfare and career counseling by pedophiles and career criminals on our bill than we give to victims and most of our children.

Sex offenders, a lot of people believe, cannot be rehabilitated, yet this bill would give them priority in receiving Federal taxpayer assistance to reintegrate into our neighborhoods.

The Department should be extremely proud of its personnel stationed overseas. The ATF, FBI, DEA, Marshals Service, and U.S. attorneys all play vital roles in protecting our country.

I understand the chairwoman has endorsed the efforts to provide Byrne State and local law enforcement funding in the upcoming emergency supplemental bill and Senator Mikulski knows we all have our support.

Last, Mr. Attorney General, you have a lifetime appointment as a Federal judge in the Department of Justice. Since your arrival, morale has risen and we’re seeing signs that you’re having success in the rising shift. I commend you for that and congratulate you for your efforts and your commitment.

Thank you for appearing before us today.

Senator MIKULSKI. Thank you, Senator Shelby. We are not having opening statements by other members, but we want to get to their points quickly, Mr. Attorney General, but we note that Senator Alexander has to leave at 10:20 to offer an amendment on the Senate floor.

Senator, I know you want to just ask your question and that way, it will ensure that your question gets asked, but we’ll save the answer when the Attorney General gets the answers to questions.

Senator ALEXANDER. Thank you very much, Madam Chairman, and thank you for your service, Mr. Attorney General.

I can pose my question in 2 minutes. This is the 1-year anniversary of Nashville’s participation in the 287(g) program whereby local law enforcement officials are trained to identify illegal immigrants. The number identified has risen from 150 to 3,000. The majority of those are transported to Oakdale, Louisiana, through Perry, Alabama, for their bond hearing.

My question is: Given the increase from 150 to 3,000, and given the fact that it would save Federal tax dollars not to transport them to Oakdale, Louisiana, where they have a 26-hour bus ride home, and given the fact that we’d like to process illegal immigrants more speedily, and as an element of fairness to the defendants who have to pay for their own bus ride home, would you be willing to seriously consider placing an immigration judge in Nashville where there are 400 vacant beds in the metro jail and all this could be done more quickly?

I thank the chairwoman for her time and I’ll look forward to a written answer.

Senator MIKULSKI. Thank you very much, Senator Alexander.  
Mr. Attorney General.

Attorney General MUKASEY. Good morning, Chairwoman Mikulski, Ranking Member Shelby, Senator Leahy, Senator Feinstein, Senator Alexander, other members of the subcommittee.

I'm here to present the president's fiscal year 2009 budget for the Department of Justice. I was advised both before the hearing and during the chairwoman's remarks that this will be a somewhat abbreviated hearing and so I'm going to try to abbreviate my own introductory remarks on the fly as I give them so that I don't use up an inordinate amount of time.

But I do want to say that since my nomination was approved by the Senate and I arrived at the Department, I've confirmed what I hoped and expected to find, namely men and women who are talented, who are hard working, who are dedicated to fulfilling the Department's historic mission. As you're aware, the Department is charged with defending the interests of the United States, according to the law, ensuring public safety against threats, both foreign and domestic, and seeking just punishment for law-breakers, assisting our State and local partners and ensuring fair and impartial administration of justice for all Americans.

I have looked for opportunities during my tenure to work with Congress to ensure that the Department is provided the statutory tools and the necessary resources to fulfill those important mandates and I'm here to continue to do that.

The Department relies on funding from this subcommittee to pursue our mission and enhance our efforts in the areas that need it, and I thank you very much for your continued support of the Department.

I very much look forward to continuing to work with each of you this year to advance the budget that will help achieve that mission.

My written statement addresses in detail the Department's budget. Obviously I'm not going to go into the detail that's addressed in that statement.

The total request is \$22.7 billion. Those funds will allow us to accomplish our broadbased mission and to focus on several of the priorities that I've had occasion to discuss in other settings. Those priorities include national security, violent crime, immigration and border security as well as public corruption.

Now, we've advanced enhancements. First, the proposal to increase the resources dedicated to the national security in counterterrorism by \$492.7 million, which includes resources that are necessary to improve the counterterrorism programs that are contained in the National Security Division and the Federal Bureau of Investigation.

Second, the budget dedicates an additional \$100 million to the Southwest Border Enforcement Program. Those funds will provide essential resources, personnel and infrastructure that are required to address illegal immigration, drug trafficking, gun smuggling across the Southwest border.

Third, the budget requests funds to support essential Federal detention and incarceration programs that provide the infrastructure necessary to the Department's law enforcement personnel and pros-

ecutors to carry out those responsibilities. I believe the enhancements there total approximately \$67 million.

As programs, such as Project Safe Neighborhoods and the Southwest border initiative, investigate and prosecute dangerous criminals, the Department has to be ready to keep those individuals in a safe, secure and humane environment that also assures the safety of our staff in those prisons.

And finally, the budget fully funds the base and reflects the Department's strategy to work in partnership with State and local and tribal authorities and to target funding to address the most significant needs in each of our communities. It's our collective obligation to ensure that those resources, whether spent on Federal efforts or in support of our State and local partners, are used wisely and in a way that's calculated to achieve the most significant impact.

Thank you for the opportunity to present this budget, and I thank you for inviting me to be here today. I'm going to try to answer any questions that you might have, including the questions that were posed by Senator Alexander before he had to leave.

[The information follows:]

#### IMMIGRATION JUDGES IN NASHVILLE

The Department of Homeland Security (DHS) is responsible for the detention and transportation of aliens within their custody. Immigration judges are part of the Department of Justice, Executive Office for Immigration Review (EOIR). Immigration judges adjudicate cases of aliens who are placed in removal proceedings by DHS and charged with violations of the immigration laws.

The volume, nature, and geographic concentration of immigration judge caseload is tied directly to initiatives undertaken by DHS. In general, however, not all cases identified under 287(g) programs are cases that necessarily result in a hearing before an immigration judge. In appropriate cases, DHS may elect to use alternatives, such as reinstatement of removal orders against aliens who had previously been ordered removed.

With respect to the location of hearings before an immigration judge, EOIR holds immigration hearings in over 50 immigration courts and numerous other hearing locations. For cases involving detained aliens, immigration hearings can occur at certain federal, state, and local correctional facilities and DHS detention facilities. When the caseload does not support the opening of a full-time, independent court, EOIR works with DHS to maximize immigration judge resources by use of video or telephone conferencing at various hearing locations or scheduling traveling immigration judges to appear on a routine basis.

In fiscal year 2007, over 9,100 cases were received and completed in the Oakdale Louisiana Immigration court, a significant increase over previous fiscal years. Most individuals who are detained for immigration violations in Nashville and who need to go before an immigration judge are ultimately transported by DHS to Oakdale, based on DHS's regional processing plan.

Currently, Tennessee has an immigration court in Memphis with two immigration judges. Cases received in Memphis are adjudicated in a timely manner and include cases of aliens primarily from Tennessee and Arkansas. Individuals detained in Nashville, Tennessee who seek bond hearings may file in the Memphis court for a telephonic hearing. Should DHS begin detaining aliens in Nashville, the Department of Justice would work with DHS to identify the appropriate immigration judge resources needed to adjudicate the cases.

Attorney General MUKASEY. Thank you very much.

Senator MIKULSKI. Thank you very much, Mr. Attorney General.

[The statement follows:]

#### PREPARED STATEMENT OF MICHAEL B. MUKASEY

Good morning Chairwoman Mikulski, Ranking Member Shelby, and Members of the Subcommittee. It is my pleasure to appear before you today to present the Presi-

dent's fiscal year 2009 budget for the U.S. Department of Justice (Department). Before I begin, I would like to thank you for your continued support of the Department's mission and your recognition of the important work that we do.

The Department is charged with defending the interests of the United States according to the law; ensuring public safety against threats both foreign and domestic; seeking just punishment for lawbreakers; assisting our state and local partners; and ensuring fair and impartial administration of justice for all Americans. The Department's ability to pursue this mission is dependent on the funding that supports our operations and allows us to enhance our efforts in the areas that need it.

The President's budget request for the Department in fiscal year 2009 is \$22.7 billion, which will allow us to accomplish our broad-based mission and provide a particular focus on the following critical areas: national security, violent crime, immigration and border security, and public corruption. More specifically, the President's fiscal year 2009 budget request:

- reflects a 6 percent total increase over the fiscal year 2008 enacted budget for law enforcement and prosecution programs;
- increases the resources dedicated to national security and counterterrorism efforts by \$492.7 million;
- enhances the Department's capacity to address violent crime through a strategy to target grant funding to the places and problems that need it most;
- dedicates an additional \$100 million for the Southwest Border Enforcement Initiative to enforce federal laws, including immigration laws, along the border; and
- continues the Department's focus on prosecuting public corruption.

During a time of limited resources and tough decisions, I am grateful that the Committee continues to support the Department's mission and these priorities.

Understanding that our time together is limited, my testimony today highlights key budget priorities that support our efforts to enhance national security and protect our homeland. Although we have a number of key priorities for which we are requesting enhancements, I want to emphasize that one of our goals is also to fund base operations for the Department and its missions. I will also discuss the Department's proposal to target state and local funding in a way that supports these priorities and leverages our limited resources.

First, since the devastating attacks of September 11, 2001, the Department has mobilized its resources to help protect the Nation. In that time, this Committee has strongly and repeatedly shown its support of the Department's efforts in the war against terror. The President's fiscal year 2009 proposal asks this Committee to continue its support by providing the Department with the resources necessary to expand and improve the counterterrorism programs of the National Security Division and the Federal Bureau of Investigation.

Second, the budget seeks funds to improve the Department's ability to combat crime along the Southwest Border. This budget request takes into account the full range of essential resources, personnel, and infrastructure required to address illegal immigration, drug trafficking, and gun smuggling across that border.

Third, the budget requests funds to support essential federal detention and incarceration programs that provide the infrastructure necessary for the Department's law enforcement personnel and prosecutors to carry out their responsibilities. As programs such as Project Safe Neighborhoods and the Southwest Border Enforcement Initiative investigate and prosecute dangerous criminals, the Department must be ready to segregate those individuals from the general population in a safe and secure environment.

Finally, the budget reflects the Department's strategy to work in partnership with state, local, and tribal authorities and target funding to address the most significant needs in those communities. It is our collective obligation to ensure that our resources—whether expended on federal efforts or in support of our state and local partners—are used wisely and in a way calculated to achieve the most significant impact.

NATIONAL SECURITY: PROTECTING THE AMERICAN PEOPLE BY PREVENTING TERRORIST ACTS

As I testified during the Department's oversight hearings earlier this year, since the terrorist attacks of September 11, 2001, the first priority of the Justice Department has been to protect Americans from the threat of international terrorism. All aspects of what the Department does, from budget, to allocation of resources, to policy development and legislative priorities, must continue to reflect this critical aspect of our mission and the reality of the world in which we live. According to the National Intelligence Estimate released last summer, al Qaeda has "protected or re-

generated key elements of its Homeland attack capability” and continues to look for “prominent . . . targets with the goal of producing mass casualties . . .” As a result, the Department must continue to work aggressively to investigate and prosecute terrorists, and we must do so effectively and efficiently. To that end, the Department has expended substantial time, energy, and resources in improving and streamlining the organization and operations of its counterterrorism assets. In just two years, the Department has created and brought into full operation the National Security Division (NSD), which is dedicated to centralizing and improving the Department’s ability to carry out its primary national security functions. Similarly, the FBI has dramatically improved and, in some instances, completely recreated its counterterrorism and intelligence collection activities. These improved efforts have allowed the Department to utilize its resources and its expertise to investigate, thwart, and prosecute terrorist conspiracies more swiftly and more effectively.

The importance of the Department’s national security efforts is reflected in the President’s fiscal year 2009 budget, which requests an additional \$492.7 million to improve the Nation’s counterterrorism capabilities to investigate, identify, track, and dismantle terrorist cells operating in the United States and abroad. Although these funds are allocated for numerous programs and policies, I would like to discuss three particular priorities in the national security realm: (1) providing the National Security Division with the resources it needs to continue its successful and critical operations; (2) providing the FBI with necessary funding; and (3) creating a critical wireless network for law enforcement operations.

#### *National Security Division*

The Department created the National Security Division (NSD) in 2006 to combat terrorism and other national security threats more effectively. NSD has been critical to coordinating the Department’s law enforcement, prosecution, and intelligence functions in the fight against terror. As a result of the nature of its work, the Division’s successes are not always public. But some efforts are, for example the trial and conviction of Jose Padilla in the Southern District of Florida, and the indictment and conviction of several individuals who sought to profit from illegally providing sensitive national security information to China. To ensure the continued viability of this important contributor to the Department’s counterterrorism efforts, the President’s fiscal year 2009 budget requests \$84 million in total resources to maintain the operations of the National Security Division.

#### *Federal Bureau of Investigation*

The men and women of the FBI have provided a visible and vital role in protecting the Nation’s security. Since the attacks of September 2001, the FBI has implemented a comprehensive plan that has overhauled the FBI’s counterterrorism operations, expanded its intelligence capabilities, begun to modernize its technology, and improved its coordination with federal, state, local, and tribal partners. The more than 30,000 agents and professional staff of the FBI work tirelessly to protect this country. They do so from 56 domestic field offices and 60 additional locations around the globe. In recognition of the broad scope of the FBI’s role in protecting the American people, the fiscal year 2009 President’s budget requests \$7.1 billion for the FBI, an increase of 6.77 percent. An investment of \$447.4 million will support the FBI’s intelligence and counterterrorism programs, improve surveillance capabilities, guard against and respond to incidents involving weapons of mass destruction, protect the security of the Nation’s cyber systems, and add 280 new agents and 271 new intelligence analysts.

Investigations, intelligence, and surveillance are the key tools in the fight against terrorism. The fiscal year 2009 President’s budget recognizes the importance of the investigative and intelligence arms of the FBI with an enhancement of \$235.5 million slated for operations focused on identifying and analyzing national security and criminal threats. This amount includes resources for national security investigations; cyber security detection and prevention; and foreign intelligence gathering and operations. To meet the expanding demands to produce and use intelligence to protect the Nation from threats, an additional \$43.4 million will be used to strengthen the FBI’s professional workforce to ensure that it has the critical skills, competencies, and training to fulfill the FBI’s mission. To support surveillance technology, an additional \$88.5 million is requested to sustain operational requirements, including physical and electronic surveillance and collection processing exploitation, analysis and reporting.

Promoting partnerships both here and abroad is critical to the success of many initiatives. Since September 11, the Department of Homeland Security has supported the establishment of approximately 35 operational fusion centers. These fusion centers foster information-sharing between local, state, and federal partners to

identify and assess emerging threats to the United States. The Department of Justice has been an integral partner in these efforts and has dedicated personnel and resources to the fusion centers. Together, we have been able to leverage existing information-sharing tools and resources. The FBI request includes funds to provide secure connectivity to fusion centers. Further, our partners in the war against terror extend beyond our borders and enhancements totaling \$5.7 million will not only provide resources for the fusion center program, but also to expand the Legal Attache program overseas.

Finally, the fiscal year 2009 budget seeks additional funds to improve the FBI National Academy, one of the premier training facilities for law enforcement. An enhancement of \$9.8 million is requested to augment architectural and engineering services, construct roads, and install a new substation to handle an increase in electrical power loads. These improvements will address the training facility's maintenance issues and allow the FBI Academy to focus on its core responsibility of training.

#### *Improved Communications Capabilities*

All of our law enforcement components—especially those involved in national security efforts—need wireless communication capabilities that will enable them to fulfill their responsibilities. The current DOJ radio systems used nationwide are, on average, between 15 and 20 years old. We must modernize this technology, even though doing so is complicated and expensive. When I visited the border in January, I was shown how smugglers have better radio equipment than we provide to our federal agents. For example, these criminals have deployed car-battery operated surveillance equipment to listen to, and track the movement of, our law enforcement agents. Such practices put the lives of our brave men and women in great danger.

To date, our funding has essentially just repaired and maintained our legacy systems. The fiscal year 2009 budget requests \$43.9 million for the creation of an integrated wireless network (IWN) in the Washington, D.C. area. This network will allow the Department to begin modernizing communication technology so that we can effectively and securely communicate across the law enforcement community. The IWN will provide new equipment, better security, an improved range, and better interoperability among the many jurisdictions that protect the National Capital area. The Department intends to implement the IWN on a nationwide basis over the next several years.

#### SOUTHWEST BORDER INITIATIVE

Enforcing the Nation's immigration laws and reducing violent crime are two of the Department's significant priorities. Earlier this year, I had the opportunity to meet some of the prosecutors and law enforcement officers who work every day to secure our borders. For those who work along the Southwest Border, their job is particularly challenging. In addition to functioning as the point of entry of many illegal immigrants coming into this country, the Southwest Border is an access point for smuggling drugs into, and guns out of, the United States.

Reducing crime along the Southwest Border requires a wide variety of personnel, resources, and infrastructure, spanning a number of Department components, including the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), the U.S. Marshals Service (USMS), the Drug Enforcement Administration (DEA), and the U.S. Attorney's Offices (USAO). Investigators and law enforcement personnel are necessary to police the borders and identify and prevent criminal activity, to detain those who are arrested, and to prosecute those who have violated the law. Moreover, resources are needed for the immigration courts that hear a substantial percentage of the matters arising out of the Southwest Border. Each element of this chain is essential to preventing crime along the Border. Without adequate funding for all of these activities, the other activities will suffer. In recognition of the continuing importance of securing our Southwest Border, the President has requested an enhancement of \$100 million for the Department's enforcement and prosecution efforts.

To combat criminal activity on the Southwest Border, the Department will invest resources to prosecute criminals and immigration violators as well as to combat drug and gun traffickers and gangs. The Department is requesting an enhancement of \$20.4 million for the DEA that includes funding for 30 additional agents. DEA has long played a central role in the counternarcotics strategy to combat the violent drug trafficking organizations along our border with Mexico. DEA's strong partnership with Mexico has led to success in drug seizures, money laundering, arrests, and extraditions. This budget request will allow DEA to add investigative and support personnel in locations in close proximity to the Southwest Border for purposes of targeted enforcement operations in the arrival zone. It will also provide funding to

support two additional foreign-deployed Advisory and Support Teams (FAST) and Operation All-Inclusive, the enforcement arm of DEA's Drug Flow Attack Strategy.

The President's budget also requests an enhancement of nearly a million dollars for the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) to address firearms trafficking on the Southwest Border. The impact of firearms related violence has already been felt on both sides of the border in Laredo, Texas and Nuevo Laredo, Mexico. To address such threats, 12 positions are requested to expand ATF's ability to provide oversight in the region and to implement a focused inspection program to identify straw purchasers, traffickers, and non-compliant licensees that are often the source of illegal firearms used by violent criminals. ATF agents have reported that weapons are flooding into Mexico each week from the United States, with a notable percentage linked to drug trafficking organizations. This enhancement to ATF's budget will help control the current illegal firearms trafficking along the Southwest Border.

Increased enforcement operations will likely lead to an increased number of detainees. More detainees means a greater burden will be placed on the U.S. Marshals Service, which apprehends fugitives, transports and manages prisoners, protects witnesses, serves court documents, manages seized assets, and protects federal judges and courts. In just one fiscal year, from fiscal year 2006 to fiscal year 2007, the U.S. Marshals Service prisoner operations along the Southwest Border increased by 9 percent, compared to a 2 percent increase in the other districts. The President's fiscal year 2009 budget requests an additional \$12.7 million for 79 new positions, including 58 Deputy U.S. Marshals to handle the increased workload expected on the Southwest Border.

An increase in detainees also means an added responsibility for the Office of the Federal Detention Trustee (OFDT) to provide more detainees with housing, medical and hospital care, guard services, transportation and other detention-related services. It is anticipated that in fiscal year 2009 OFDT will house more than 200,000 detainees in both Federal and non-federal facilities. To accommodate this anticipated increase, the President's budget requests an additional \$37.6 million for OFDT.

Another \$10 million in enhancements will provide much needed IT equipment for the Executive Office for Immigration and Review (EOIR)'s immigration courts. This new IT equipment will improve court hearing records and will support the Immigration Review Information Exchange System, which will allow mission critical information to be shared with the Department of Homeland Security and other federal agencies. This new digital recording system itself will significantly improve the audio quality of immigration court hearings and will also allow the immigration judges to operate the system through desk-top computers.

With an increase in detainees and immigration court hearings, comes the need for additional prosecutors. To meet this need, the President's fiscal year 2009 budget requests an additional \$8.4 million for the U.S. Attorneys to support 83 new positions, including 50 Assistant U.S. Attorneys who will prosecute cases along the Southwest Border. Prosecutors will be focused on human smuggling, drug smuggling, homicide, robbery, immigration, hostage taking, money laundering, and immigration violation cases. To support the additional attorneys, paralegals will also be hired to help keep pace with the mounting workload which is expected to significantly increase over the 12,000 felony cases filed in fiscal year 2007. This increase is attributed to more Border Patrol agents who are expected to generate an estimated 24,000 criminal immigration cases during the next two years.

The remaining Department enhancements for the Southwest Border Initiative includes support for the Criminal Division's efforts to reduce gang violence; the Office of Justice Programs to provide funding for local prosecutor offices in the four Border States (California, Texas, Arizona, and New Mexico); and the Organized Crime Drug Enforcement Task Force to improve its IT infrastructure and increase attorney resources along the Southwest Border.

#### SUPPORTING ESSENTIAL FEDERAL DETENTION AND INCARCERATION PROGRAMS

Since the beginning of this Administration, the Department has successfully increased its enforcement efforts in several key areas. These enhanced enforcement efforts have led to significant increases in the federal detention and prison populations. For example, through the Project Safe Neighborhoods (PSN) initiative, the Department has doubled the number of prosecutions for federal firearms crimes over the past seven years. As a result of programs such as PSN, the Federal government has taken on defendants who would have been prosecuted and imprisoned by state and local authorities, resulting in harsher penalties. To enable the Department to continue its focus on programs such as PSN, the Department requires additional

funds to support adequate infrastructure to hold those who are arrested and successfully prosecuted. The President has requested \$67.1 million for the fiscal year 2009 budget in order to respond to this need.

I would also like to take the time to thank the Subcommittee for working with the Department so quickly to address the Bureau of Prisons' fiscal year 2008 funding needs. There is still more work to be done, and your continued support is appreciated.

Last fiscal year, 7,436 inmates were added to a Federal Prison System that was already above rated capacity. As a result, the Department needs to increase prison capacity to house the growing prison population. The President's fiscal year 2009 budget requests an enhancement of \$50 million and 16 positions to add 4,000 beds in contract facilities to house low security inmates in fiscal year 2009.

The Bureau of Prisons (BOP) confines offenders in controlled environments of prisons and community-based facilities to help protect society from those who violate the law. As a result of tighter enforcement along the Southwest Border and an increase in conviction rates, BOP estimates that more than 13,000 inmates will be added to the federal prison system between fiscal year 2008 and fiscal year 2009. To prepare and care for these new inmates, an additional \$17.1 million is requested to meet the managed costs of providing security, food, medical care, clothing, utilities, unit management, education, records and maintenance. Health care costs alone have risen from \$9.16 per inmate per day in fiscal year 2001 to \$11.91 in fiscal year 2007 for the more than 200,000 inmates in the Federal Prison System system, which includes 114 minimum, low, medium, and high security facilities.

The request also includes additional funds to recruit, train, and employ essential staff for these facilities. Research has shown that when the inmate-to-staff ratio increases so does the number of serious assaults. The current BOP inmate population exceeds capacity by 37 percent. While BOP has increased the number of beds and improved architectural designs in newer facilities to take advantage of improved technology and security measures, this has not been enough to keep pace with the increasing population. In addition, the ratio of staff to inmates keeps widening. As a result, filling staff positions that have direct contact with inmates is a critical priority.

It is not only the inmate population that has increased, but also the number of pre-sentenced detainees housed in detention facilities. The President's fiscal year 2009 budget, as part of the Southwest Border Initiative, requests \$37.6 million for the Office of the Federal Detention Trustee (OFDT) to handle this increase of pre-trial detainees.

#### SUPPORTING OUR STATE, LOCAL, AND TRIBAL PARTNERS IN THE FIGHT AGAINST CRIME

The Nation's safety depends on the combined work of law enforcement personnel acting at the federal, state, and local levels. The Department significantly values the partnerships it has forged with state and local authorities to investigate and prosecute serious crimes, including matters of national security. We also understand that these partnerships, in some cases, require additional funding to support local participation.

In an effort to utilize its resources and target them effectively to the areas of greatest need, the Department proposes consolidating 70 grant programs into four new competitive grant programs: (1) Violent Crime Reduction Partnership Initiative; (2) Byrne Public Safety and Protection Program; (3) Child Safety and Juvenile Justice Program; and (4) Violence Against Women Grants. Through these combined grant programs, more than \$1 billion will be available in discretionary grant assistance for state, local, and tribal governments.

The President's budget requests \$200 million to fund the Violent Crime Reduction Partnership Initiative to provide necessary funding to those communities who need assistance in responding to violent crime. Many communities continue to struggle with violent crime. To assist our local partners, last fall the Department invested \$75 million in 106 jurisdictions to combat violent crime through multi-agency and multi-jurisdictional partnerships that include at least one federal law enforcement agency. The flexibility to meet the needs of those 106 communities came from the 2007 Joint Resolution, which gave the Department discretion in administering crime fighting funds.

In order to build on the success of that \$75 million investment, the President's fiscal year 2009 budget requests \$200 million for the Violent Crime Reduction Partnership Initiative. The Initiative will address violent crime through multi-jurisdictional law enforcement partnerships like those funded this past fall and will use competitive grants to combat a jurisdiction's specific violent crime problems. The program is designed to address crimes that range from drug trafficking to gang ac-

tivity and to address the crime problems of both large and small communities. In addition to providing necessary funds to those localities that need assistance, the program is designed to retain the flexibility to adjust to changing trends in criminal behavior.

In fiscal year 2009, the President has requested \$200 million for a competitive grant program entitled the "Byrne Public Safety and Protection Program." This grant program will address several critical concerns that confront many law enforcement agencies and the jurisdictions they serve, including reducing violent crime; addressing substance abuse; enhancing law enforcement information sharing efforts; improving the capacity of law enforcement to use forensic evidence and reduce the DNA evidence backlogs; addressing human trafficking; expanding prisoner re-entry initiatives; and improving services to victims of crime. Both government and non-government entities will be eligible to apply for the fiscal year 2009 Byrne program.

With the advent of new technology, we have seen a devastating increase in the number of children that are exploited through the Internet. In order to help address this problem, the Department is proposing the consolidation of several juvenile justice and exploited children programs into one new grant program entitled the "Child Safety and Juvenile Justice Program" for which the President has requested \$185 million. This new grant program will be both flexible and competitive and will focus on reducing incidents of child exploitation and abuse through cybercrimes, improving juvenile justice outcomes, and addressing school safety needs.

The fourth new program is entitled "Violence Against Women Grants" and \$280 million has been requested for this initiative. Like the other grant programs, this one also consolidates existing programs to allow grantees to request funding through a single application to support activities previously authorized under multiple grant programs. Whereas the other three grant programs I mentioned will be administered by the Office of Justice Programs, this one will be administered through the Office on Violence Against Women (OVW). This new grant program will continue to emphasize OVW's focus on enhancing collaboration, measuring effectiveness, and maintaining a sustainability focus related to ending domestic violence, date rape, sexual assaults, and stalking.

In addition to these four consolidated grant programs, the President has also requested funds for the Regional Information Sharing System (RISS); the Crime Victims Fund, the Bureau of Justice Statistics (BJS); and the National Institute of Justice (NIJ).

#### CONCLUSION

Chairwoman Mikulski, Senator Shelby, and Members of the Subcommittee, I want to thank you for this opportunity to present the President's fiscal year 2009 budget. As you know, my tenure in the Department to date has been brief, but over the past several months my knowledge of, and respect for, the men and women who are protecting and serving this country has only grown. And it is with your continued support that they can continue to do their jobs to ensure that justice is served.

Today I have highlighted critical areas that require attention and resources so that the Department can fulfill its mission to enforce the Nation's laws and help protect national security. I hope you agree that these are worthy investments for fiscal year 2009. As always, we are aware that there are tough decisions and challenges ahead and I look forward to working with you as we move forward.

Once again, thank you for inviting me to be here today. I would be pleased to answer any questions you may have.

#### TERRORIST WATCH LIST

Senator MIKULSKI. There are many questions related to national security and also the role of the Justice Department in writing certain legal memos related to everything from wire-tapping and surveillance to torture.

We note that the chairman of the Judiciary Committee is here and we're sure that he's going to have a robust set of questions about these issues.

I have one question related to the investigations surrounding the events around 9/11 and it goes like this. After 9/11, we found out that terrorists came into this country because of the failure of the watch list. The watch list failed because there were too many of

them and they didn't talk to each other, so that if you were a watch list, you essentially were a dysfunctional situation.

Now, 6 years after 9/11, the inspector general recently reported unacceptable errors in the terrorist watch lists. I, the Attorney General, this isn't Senator Mikulski speaking, said DOJ law enforcement agencies do not have a functional system for reporting names to the terror watch list, for taking names off that are inadvertently placed on there or have a similar or identical name to someone we have to keep an eye on. The report notes that the FBI is delayed in reporting names to the watch list by up to 4 months.

Now, we're part of the DNI's coordinating team, the Director of National Intelligence. Would you tell us what role your leadership is playing in ensuring that we have a functional watch list system?

Attorney General MUKASEY. Well, we're playing two roles. One is in attempting to address the concerns that were addressed in the inspector general's report that you mentioned; that is, getting people on the watch list that belong there and getting people off who don't.

The difficulty, as you mentioned, has to do in part with the way names are placed on the watch list and the way names are formulated. There are numerous variations in the spelling and formulations of particular names.

Without getting into details, there are various ways of spelling a particular name. Each of those may have to be entered on the watch list. Each of those may then have to be removed. This is not an easy process, but it's one which we are addressing, both in getting names on the list as well as—

Senator MIKULSKI. But, Mr. Attorney General, I'm just going to jump in here. It's been 6 years since 9/11, 6 years. We've also had tremendous breakthroughs in technology. We understand the difficulties. It's the same difficulty that always existed.

What are we doing to end the difficulty and what are we doing—do you have a set of—do you have a methodology for resolving this problem? Do you have time tables for fixing this problem? Do we have the right people solving this problem?

Every time we turn around, we hear about how hard it is to do it. We know it's hard. If it would have been easy, it would have been done.

Attorney General MUKASEY. The DNI is the principal person who is addressing it. He's the principal person with whom I've had conversations.

It's my understanding that there's an attempt to try to infuse technology to address this, but the fact is that because names are spelled in various ways, it is a difficult thing to make sure that we get everybody on that belongs on and then when somebody has to get off, get all the various formulations of his name off.

They're trying to use technology to the extent that it can be used, but the variations in spelling of the same name which may add up to 6, 7, 8, or 10 variations accounts for the size of the list and accounts also for the difficulty of getting names off.

Senator MIKULSKI. Well, in other words, you say it's the DNI's job. The DNI says that's the FBI's role and then we're back to where we started.

I really do believe that there has to be a very high-level decision with the DNI, you as the Department of Justice, and the FBI and Homeland Security to really get these watch lists undertaken.

#### VIOLENT CRIME

But, listen, I have a short amount of time. I want to talk about violent crime in our communities. Violent crime continues to plague our communities. More than ever, State and local governments need help putting more cops on the beat. Yet, when we look at the Department of Justice's budget, though there's an increase for Federal law enforcement, particularly the FBI, this has essentially been funded by restructuring State and local law enforcement and also eliminating those programs that are important to juvenile justice, the Adam Walsh bill, the Violence Against Women Act.

Fiscal year 2009 eliminates the COPS Program which has been used to put more cops on the beat and better prepare them. It also restructures and eliminates the Byrne grants.

Could you tell us, number one, what is the rationale in eliminating Byrne grants and eliminating the COPS Program which is the cops on the beat, and with the elimination of those programs, then how does the Department of Justice want to be a partner in fighting the surge in violent crime?

We seem to be good at fighting the surge in Baghdad. I'd like to fight the surge in Baltimore.

Attorney General MUKASEY. There have been spikes in violent crime, but I think violent crime generally over the last several years is down, thanks to a focused effort using task forces to address violent crime issues, and we have tried to do that in as focused a way as we can.

What we've tried to do with State and local grants is to put them essentially into four categories: violent crime reduction, public safety and protection grants generally, child safety and juvenile justice, and violence against women, and there's been \$200 million allocated to violent crime reduction, Byrne public safety and protection, a \$185 million for child safety and juvenile justice, and \$280 million to violence against women.

Those are only the grant programs. Our own efforts in that area—and you mentioned enforcing the Adam Walsh Act. We continue to enforce the Adam Walsh Act at the same level at which it was enforced before.

You're correct in pointing out that the budget contains no enhancement for it, but I would point out that it's continuing to be enforced at the level it was before. This is the kind of effort that was addressed by it; that is, enforcing laws that inhibit and restrict and punish exploitation of children. It's something we were doing before the passage of the Adam Walsh Act. There are designated deputy U.S. Marshals in each district to coordinate Adam Walsh Act enforcement, so that potentially those deputy U.S. Marshals in each district can be brought to bear on the program as it may exist in that district. That's the way we're trying to approach it.

Senator MIKULSKI. Well, my time is up. I want to turn to Senator Shelby. I fundamentally disagree with these premises. I think we need a COPS Program, we need a Byrne Program. Last year, we

funded violence against women at \$400 million. It has now been reduced.

Fundamentally, we need to have more people and also one of the great ways to deal with violent crime is through these intervention efforts like we have in the Juvenile Justice Block Grant Program.

I'm going to come back to my questions, if there's time before the vote, but let me turn to Senator Shelby.

#### EXPLOSIVES DATABASE

Senator SHELBY. Thank you, Madam Chairman. Mr. Attorney General, the establishment of the Office for Bombing Prevention was created under the jurisdiction of the Department of Homeland Security to address terrorist explosive threats and for other purposes.

This proposal contains language that would provide yet another explosives database. The Department already has two databases with the ATF and the FBI. If the Department of Justice already has, and we do, two databases, you do, why is it necessary to create yet another explosives database? It seems to be duplication there.

What will the Department of Homeland Security system provide that the Department's current systems do not? I guess basically how many computer databases with similar information do we need before we have so many, because you have two now and you're talking about creating another one. Are you familiar with that?

Attorney General MUKASEY. Well, I'm familiar with the fact because you mentioned it. I can't speak too precisely what would be addressed by the DHS database.

I will say that the ATF and FBI databases, which you mentioned, are vital.

Senator SHELBY. They're very important.

Attorney General MUKASEY. And we appreciate your particular efforts to focus those and to center them in a facility that will enable us to really exploit the information that they gather.

As you know, they are housed in what might perhaps be described, not very charitably, as an enhanced garage in Quantico and they're going to be moved to a suitable facility in Alabama when that's ready and we're deeply appreciative of that because they help not only with explosives analysis here but also improvised explosive devices (IEDs) that we get sent from Iraq and Afghanistan.

Senator SHELBY. Absolutely.

Attorney General MUKASEY. They're very helpful with that.

Senator SHELBY. Well, the FBI's working with the Army on a lot of that, are they not, and the ATF, on a lot of these explosives and provides explosive devices?

Attorney General MUKASEY. We want to continue that and obviously if there's anything that's added by DHS, we're happy to accept it. We think the principal effort should be where it is, namely with ATF, which does a terrific job, and the Bureau.

Senator SHELBY. Will you get your staff to see what they're doing there, and if this is duplication, we need to know?

Attorney General MUKASEY. I certainly will.

[The information follows:]

PROPOSED CREATION OF A DATABASE UNDER THE JURISDICTION OF THE OFFICE FOR  
BOMBING PREVENTION/DHS WITH INFORMATION ON EXPLOSIVES

The Department supports a multi-layered defense to adequately defend against the threat presented by explosives, with each layer reducing the ability of terrorists to acquire and use IEDs. Training is an important component in ensuring a successful defense against IEDs. The Department is not aware of DHS' specific IED training curriculum and cannot comment. State and local agencies also offer varied curriculums on IED training.

Department of Justice bomb databases located at ATF and the FBI are targeted toward investigation of bombing and analysis of explosives cases and forensic information.

ATF's Bomb Arson Tracking System (BATS) is a case management system used by federal, State, and local agencies investigating arsons, bombings, and other explosives incidents. ATF developed BATS to allow law enforcement agencies to solve arson and bombings crimes by tracking and sharing information on these cases and to determine national trends and patterns. The system provides law enforcement and fire service officials with access to information collected in ATF's U.S. Bomb Data Center (USBDC), the repository for all domestic bombing incidents. The USBDC, with an information management system containing more than 140,000 arson and explosives incidents, provides intelligence to ensure the highest degree of investigative coordination throughout the law enforcement community. The USBDC also supports ATF Certified Explosives Specialists (CESs) and Explosives Enforcement Officers (EEOs) who are assigned to the Department of Defense Combined Explosives Exploitation Cells (CEXC) in Iraq.

EXPeRT is the FBI's document management system and electronic reference library for organizing and making available for future reference all the documents, reference material, photos, and other information related to explosives forensic examinations conducted by the FBI Lab Explosives Unit and the Department's Terrorist Explosive Device Analytical Center (TEDAC). The EXPeRT systems contain searchable tables of information on explosives components such as detonators or detonating cord, evidence chain of custody data, or other tables of information that can be linked to the documents and photos in the system based on case ID or other user established criteria. EXPeRT is used within the FBI to share case data and reference material that support forensic exams and investigations, within TEDAC in the DOJ/DOD/INTEL Community to share information.

The DHS Office for Bombing Prevention (OBP) database referenced in proposed legislation already exists as the National Capability Database (NCAD). The DHS database collects and shares information about federal, state, and local law enforcement and emergency service capabilities including bomb squad, dive teams, explosives detection canine teams, and SWAT teams. State and local planners use NCAD to identify gaps and apply "best practices" to improve their security posture and develop multi-jurisdiction plans to respond to emergencies.

ADAM WALSH ACT

Senator SHELBY. Thank you. The Adam Walsh Act, Mr. Attorney General, as you know, was enacted on July 27, 2006. The act directs the Attorney General, you, sir, to use the resources of Federal law enforcement, including the U.S. Marshals Service, to assist jurisdictions in locating and apprehending sex offenders who violate sex offender registration requirements.

The act also deems as a fugitive any sex offender who violates a sex offender registration requirement.

The President's budget that I mentioned earlier does not appear to sufficiently request Marshals Service funding specifically for implementation of the Adam Walsh Act and this is troubling to a lot of us.

Based on the President's budget request, should this subcommittee be concerned that the Department is inadequately prioritizing the need to identify and apprehend absconders from the sex offender registry, given that the risk of recidivism among the pedophiles and sex offenders is so high?

Attorney General MUKASEY. I think, given the Department's historic commitment, which really antedates the Adam Walsh Act, to enforcing crimes of violence against children, as well as the presence in each district of coordinating deputy U.S. Marshals, should provide some reassurance to the subcommittee. I agree that we have to be vigilant about the use of resources to make sure that, to the extent the function of the U.S. Marshals Service is to apprehend fugitives and that's part of the mandate, that they address the fugitives from this registration program and fugitives who commit child molestation offenses generally. That's a scourge and that's always been a priority of the Justice Department historically and will remain so.

Senator SHELBY. How committed are you as the Attorney General, and you head up the Justice Department, to use Federal law enforcement, including the Marshals Service, of course, to apprehend sex offenders?

Attorney General MUKASEY. Senator, I visited the National Center for Missing and Exploited Children in Alexandria and I recommend that to anybody who hasn't seen it because it's a life-changing experience.

We have deputy U.S. Marshals there full time who receive information and get it out to the law enforcement authorities who can use it to apprehend these people. We are and remain very committed and we're happy for your support because we share that concern.

Senator SHELBY. There are a number of Adam Walsh provisions expiring in fiscal year 2009 and they include the following. Given the landmark importance of the Adam Walsh Act and its many provisions, has the Department at this point contemplated a legislative plan regarding these expiring provisions and, if not, will you and will you get back with us?

Attorney General MUKASEY. I will get back to you. I am not particularly familiar with those. I know that we're trying to fund the ongoing ones and to make sure that our deputy U.S. Marshals address the problem that you mentioned.

[The information follows:]

#### ADAM WALSH ACT

Below is a list of the expiring provisions of the Adam Walsh Act. At present the Department is still evaluating the necessity (utility?) of each and anticipates working with authorizing and appropriations committees to ensure that all relevant (necessary?) provisions remain in force before they expire.

Expiring sections of the Adam Walsh Act:

- §126—Sex Offender Management Assistance (SOMA) Program
- §142—Federal assistance with respect to violations of registration requirements
- §621—Pilot program for monitoring sexual offenders
- §623—Sex offender apprehension grants; juvenile sex offender treatment grants
- §625—Grants to combat sexual abuse of children
- §631—Jessica Lunsford Address Verification Grant Program
- §632—Fugitive safe surrender

Senator SHELBY. Thank you.

Senator MIKULSKI. Thank you very much. It was a whole line of questioning that I had hoped we would ask. It's a very serious issue.

Senator Leahy, also the chairman of the Judiciary Committee.

Senator LEAHY. Thank you very much. Attorney General, good morning.

Attorney General MUKASEY. Good morning.

VIOLENT CRIME

Senator LEAHY. Beginning with your immediate predecessor, Attorney General, we have seen the rate of violent crime go up during the past 2 years.

Senator Mikulski has already gone into this to some extent, but I, too, am thinking about this because last month Senator Specter and I had a field hearing in Rutland, Vermont, about small cities and towns and rural crime, and the impact of drugs and violence on them. These are cities and towns that can't fight such kind of crime. It's totally different than what they're used to. We have Federal programs that funded State and local enforcement—the COPS Program, Byrne-JAG Program, Crime-Free Rural States Program—that brought down crime considerably.

The administration has tried to dismantle these, to eliminate them. You announced earlier this year \$200 million in new Federal assistance for State and local law enforcement. That didn't even begin to make up for the billions that are being cut.

I have a difficulty explaining to people in Vermont why we can spend over \$20 billion on the Iraqi Police Force and then we don't even know what happened to their weapons, we don't know where much of the money went, but we have to cut money for a police force in America to pay for a police force in Iraq. And what do I say to them? Are we going to find monies that are going to come back to our own police forces, this money that's been cut, or do we have to just continually send it to the Iraqi Police Force?

Attorney General MUKASEY. I can't address the question of whether money in Iraq is being used effectively or not being used effectively.

What I can say is that we—

Senator LEAHY. Trust me, it's not from every hearing we've had, but go ahead.

Attorney General MUKASEY. I don't know about that. I've visited Iraq, and I saw the rule of law efforts that are being made by our people there and by their people there.

Senator LEAHY. We still can't find a whole lot of the handguns we sent over there. We have no idea what happened to them.

Attorney General MUKASEY. It's a war zone, and I understand that things happen in a war zone that don't happen in a peace—

Senator LEAHY. We have found some of them and they've been used against us, against our forces. Go ahead.

Attorney General MUKASEY. The—we continue to believe in the use of the task force approach toward fighting crime, particularly toward fighting methamphetamine, which is an increasing scourge, particularly in our rural areas, and we've had great success with that.

We believe that organizing the grant allocation program the way that I described initially is the best way to make use of scant resources. We're not pretending that less money is more money, but we're trying to use it as intelligently as we can.

Senator LEAHY. Well, let us work together and work with members of both sides of the aisle here because we've found success in the COPS Program and other programs like that, because with them crime did come down. They are now being cut out and crime's going up. I think there's more than a corollary.

I would also hope that all these inquiries being made, by whether this committee or the Judiciary Committee, that are not being answered, will be answered. We've had no answers to questions we asked after a hearing weeks ago.

#### MONITORSHIP PROGRAMS

I'll tell you one I'm especially interested in. I asked months ago about the lucrative no bid contracts awarded to former political appointees at the Justice Department for monitoring compliance with settlements and deferred prosecution agreements in criminal cases.

According to press reports, these contracts include one funneled by former New Jersey U.S. attorney, Christopher Christy, to his former boss, Attorney General Ashcroft's consulting firm, worth somewhere between \$28 million and \$52 million. The story on the front page of yesterday's New York Times suggests that the Department could use these agreements in the subprime mortgage investigations. Many are concerned that that's nothing more than a get out of jail free card for corporations.

Any chance that I might get an answer to the questions I asked 3 months ago about who got these contracts, their amounts, and how they were rewarded and implemented?

Attorney General MUKASEY. Well, I'm aware of your correspondence and it will be responded to, but I can answer some of your questions now in the order in which you asked them.

[The information follows:]

#### NO-BID CONTRACTS

On May 15, 2008, the Department submitted a letter to Senator Leahy in response to his letters of January 10 and February 26, 2008. The May 15 letter addresses the issues raised in this question, including the process by which monitors are selected. In particular, as noted in the May 15 letter, the current policy governing the selection and use of corporate monitors is set forth in a memorandum dated March 7, 2008, from Acting Deputy Attorney General Craig S. Morford, entitled "Selection and Use of Monitors in Deferred Prosecution Agreements and Non-Prosecution Agreements with Corporations" (the "Monitor Principles"). Section II of that memorandum describes key aspects of monitor selection, including oversight. Among other things, monitor candidates must be considered by a committee, and the Office of the Deputy Attorney General must approve the monitor.

The Monitor Principles are designed to ensure that the monitor selection process produces a high-quality and conflict-free monitor. Political and personal favoritism have no place in this process. Toward that end, the Monitor Principles require, among other things, that (a) Government attorneys must be mindful of their obligation to comply with existing conflict-of-interest guidelines; (b) the Government must create a committee in the Department component or office at issue to consider monitor candidates; (c) United States Attorneys and Assistant Attorneys General may not make, accept, or veto the selection of monitor candidates unilaterally, and (d) the Office of the Deputy Attorney General must approve the monitor.

Attorney General MUKASEY. The issue of grants to monitorship programs was addressed in a March memorandum to all United States attorneys setting forth best practices. It includes a requirement that the Deputy Attorney General monitor who is appointed by a United States attorney. These are—I should add that the com-

pensation under a monitorship program comes not from public funds but comes from the corporation that's being monitored.

Senator LEAHY. I understand that. Mr. Attorney General, I think we're going to have to have another hearing on this because people are losing their pension funds, they're losing their homes and they're losing their investments, and we want them to know that somebody's not being given a sweetheart deal. That's why I urge you to answer.

My time is virtually up, but I would like to ask one more question and feel free to answer what you want on this.

PRE-9/11 PHONE CALL

You recently gave a speech at the Commonwealth Club, at which you made reference to a pre-9/11 phone call from Afghanistan to the United States. Here's what you said. This was an open meeting. "That's the call we didn't know about. We knew there'd been a call from someplace that was known to be a safe house in Afghanistan, and we knew that it came to the United States. We didn't know precisely where it went." You indicated the failure to intercept this was responsible for the deaths of more than 3,000 people on September 11. You also suggested that we didn't intercept this phone call because the Foreign Intelligence Surveillance Act prevented it.

I've gone back through the 9/11 Commission report. Nobody else seems to have known about this call you made or that—

Attorney General MUKASEY. I didn't make the call.

Senator LEAHY. Hmm?

Attorney General MUKASEY. I didn't make the call. I mentioned it.

Senator LEAHY. No, you mentioned the call, but nobody else seems to know about this.

So, can you tell me what the circumstances were on that and why somebody would have stopped it because nobody else seems to know about this call from Afghanistan? You talked about it.

We do know about the Department of Justice failing to even listen to their own FBI agents who told them about these hijackers were learning to fly—Agent Bill Kurtz, among others—have said so—and were told we've got this under control. We know that the Department of Justice wanted to cut the budget on counterterrorism on September 10. We know that a lot of those signals were missed, but nobody seems to know about this phone call you talked about.

Attorney General MUKASEY. The phone call I referenced in—by the way, it was not in the speech. It was a question and answer session following the speech, relates to an incoming call that is referred to in a letter, dated February 22 of this year, from the DNI and me to Chairman Reyes of the House Intelligence Committee, with copies to principal members and the chairman of the Senate Intelligence Committee.

The underlying reference is contained in a joint intelligence report of the House Intelligence Committee and a Senate Intelligence Committee. I'm happy to provide you with a copy of that reference.

Senator LEAHY. Would you, please?

[The information follows:]

## INFORMATION REGARDING A TERRORIST PHONE CALL

The Department has previously clarified the details of the intelligence collection discussed by the Attorney General and provided additional information in a letter dated April 10, 2008 from Principal Deputy Assistant Attorney General Brian Benczkowski to Chairmen Conyers and Scott, a copy of which was sent to Chairman Leahy, among others. A copy of that letter and associated attachments is attached for the Committee's review:

DEAR CHAIRMEN CONYERS, NADLER, AND SCOTT: This responds to your letter of April 3, 2008, in which you discuss press reports regarding a question and answer session following a speech on public corruption where the Attorney General, in response to a question, discussed the Administration's effort to work with Congress to modernize the Foreign Intelligence Surveillance Act of 1978 (FISA).

In his remarks, the Attorney General discussed a pre-September 11, 2001, intelligence collection under Executive Order 12333 of communications between a terrorist facility abroad and one of the 9/11 hijackers. The Attorney General and the Director of National Intelligence have discussed this particular intelligence collection before, in a joint letter they sent to Chairman Reyes on February 22, 2008. In that letter, which is enclosed for your convenience, the Attorney General and the Director of National Intelligence (DNI) explained that because of the nature of the collection, the Intelligence Community missed the opportunity to identify the domestic end of the communication prior to September 11, 2001. This episode is also referenced in the report of the Joint Inquiry by the Senate and House Intelligence Committees into the 9/11 attacks. Some of the confusion regarding the Attorney General's remarks may have arisen from the details provided by the Attorney General of the nature and location of the terrorist facility. We note that while the Attorney General referenced a communication between a 9/11 hijacker and a location in Afghanistan, he was, in fact, referring to communication between a 9/11 hijacker and a terrorist facility located in a different country. Apart from your questions concerning the particulars of the response the Attorney General provided at the Commonwealth Club, your letter appears to question the very premise for the joint congressional and executive branch effort over the past year to modernize FISA. We believe there is a broad bipartisan agreement among Members of Congress that FISA has become outdated in large part because of changes in communications technology and the nature of national security threats facing the country in the past thirty years. This mutual understanding led to the passage of the Protect America Act last year and underlies the continued bipartisan effort to place HSA modernization on a long-term footing. Your letter, for instance, asks whether a FISA order could have been required in 2001, to intercept a communication with a terrorist suspect overseas. Prior to the passage of the Protect America Act, our intelligence officials were frequently required to seek a court order based upon probable cause to target the communications of terrorists located overseas; indeed, this requirement, which was discussed extensively both in public hearings and in closed session, was the primary impetus for the Executive Branch's efforts to modernize FISA. As the Attorney General and the Director of National Intelligence explained in their letter of February 22:

. . . HSA's requirements, unlike those of the Protect America Act and the bipartisan Senate bill, impair our ability to collect information on foreign intelligence targets located overseas. Most importantly, FISA was designed to govern foreign intelligence surveillance of persons in the United States and therefore requires a showing of "probable cause" before such surveillance can begin. This standard makes sense in the context of targeting persons in the United States for surveillance, where the Fourth Amendment itself often requires probable cause and where the civil liberties of Americans are most implicated. But it makes no sense to require a showing of probable cause for surveillance of overseas foreign targets who are not entitled to the Fourth Amendment protections guaranteed by our Constitution. Put simply, imposing this requirement in the context of surveillance of foreign targets located overseas results in the loss of potentially vital intelligence by, for example, delaying intelligence collection and thereby losing some intelligence forever. In addition, the requirement to make such a showing requires us to divert our linguists and analysts covering al-Qa'ida and other foreign threats from their core role—protecting the Nation—to the task of providing detailed facts for FISA Court applications related to surveillance of such foreign targets. Our intelligence professionals need to be able to obtain foreign intelligence from foreign targets with speed and agility. If we revert to a legal framework in which the Intelligence Community needs to make probable cause showings for foreign terrorists and other national security threats located overseas, we are certain to experience more intelligence gaps and miss collecting information.

We are also enclosing public testimony from a senior Justice Department official explaining why FISA, prior to the passage of the Protect America Act, often required a court order to surveil overseas intelligence targets.

Your letter also inquires why FISA's emergency provisions were not an adequate substitute for the authorities the Government has obtained under the Protect America Act (Public Law 110-55). This issue has also been repeatedly addressed by the Executive Branch, most recently in the February 22 letter:

You imply that the emergency authorization process under FISA is an adequate substitute for the legislative authorities that have lapsed. This assertion reflects a basic misunderstanding about FISA's emergency authorization provisions. Specifically, you assert that the National Security Agency (NSA) or the Federal Bureau of Investigation (FBI) "may begin surveillance immediately" in an emergency situation. FISA requires far more, and it would be illegal to proceed as you suggest. Before surveillance begins the Attorney General must determine that there is probable cause that the target of the surveillance is a foreign power or an agent of a foreign power and that FISA's other requirements are met. As explained above, the process of compiling the facts necessary for such a determination and preparing applications for emergency authorizations takes time and results in delays. Again, it makes no sense to impose this requirement in the context of foreign intelligence surveillance of targets located overseas. Because of the hurdles under FISA's emergency authorization provisions and the requirement to go to the FISA Court within 72 hours, our resource constraints limit our use of emergency authorizations to certain high-priority circumstances and cannot simply be employed for every foreign intelligence target. The fact is that not every threat meets the emergency exception because many do not appear to be emergencies until it is too late. Indeed, the job of the Intelligence Community is to obtain intelligence information that permits us to act before an emergency arises, and our intelligence professionals should be authorized to obtain intelligence information in an expeditious and efficient manner. Given the catastrophic nature of the threats we face from foreign terrorists abroad, the Government should not be forced to wait for an emergency before it can take steps to gather information needed to prevent these terrorists from creating such an emergency. It is quite easy to say, after the fact, that the Government could have or should have used FISA to conduct surveillance of a particular overseas intelligence target. If the Government had the requisite probable cause before the fact and could have met the remaining legal requirements of FISA (and known that this particular target among numerous others would turn out to be so important), that might have been possible. But doing so comes at the price of diverting analysts from their primary purpose of tracking terrorist and other foreign threats to drafting probable cause determinations every time they become aware of a new target or that target acquires a new method of communication. Considering the sheer volume of foreign intelligence targets abroad and the speed and agility with which the Intelligence Community must react, this process—as we have learned from experience—is simply not sustainable. This, of course, begs the policy question currently before the Congress: namely, why would we willingly impose these requirements, which impede and at times can prevent effective intelligence collection, on the government when it targets foreigners overseas? As discussed in the letter to Chairman Reyes quoted above, although the probable cause findings required by FISA make a great deal of sense when we target people in the United States, they do not with respect to foreigners in foreign lands. We hope that this letter and the enclosures are responsive to your recent letter and help you understand the critical need for FISA modernization. The passage of legislation to modernize FISA—like the bipartisan bill passed overwhelmingly by the Senate—will help ensure that the Intelligence Community has the tools it needs to protect the Nation.

Sincerely,

BRIAN A. BENCZKOWSKI,  
*Principal Deputy Assistant Attorney General.*

Attorney General MUKASEY. One thing—the one thing I got wrong was the geography. It did not come from Afghanistan. I got the country wrong. But other than that, it was spot on, and I will be happy to provide you with the page.

The point to be made there was not that we could not have monitored their visa but rather that no visa application should have been necessary to monitor a foreign target in a foreign country. I was speaking generally to the desirability of getting a bill passed. As you know, we've had a lot of trouble with that.

But I'd be happy to get you the reference. You're right. It's not in the 9/11—

Senator LEAHY. We don't need visas to monitor foreign source. Attorney General MUKASEY. We shouldn't need it.

Senator LEAHY. We didn't need it then and we don't today. Thank you, Madam Chairwoman.

Senator MIKULSKI. Thank you very much. Senator Feinstein.

#### CUTS TO STATE AND LOCAL LAW ENFORCEMENT

Senator FEINSTEIN. Mr. Attorney General, I just want you to know I totally agree with what Senator Mikulski said. In 13 years on this committee, 15 years in the Senate, have never had more letters from local law enforcement in the State of California of deep concern and here is why.

Your budget cuts local and State law enforcement by 65 percent and since 2002, the administration has slashed the grant programs for State and local law enforcement by 85 percent or \$3.2 billion.

This is enormous. I am having chiefs of police throughout the State of California tell me they're unable to fill the FBI's investigative gap. It's a very serious situation.

In California, 22 drug task forces are going to end if this budget is pursued, and I think not to fund, to slash, to cut out both COPS and Byrne-JAG is an impossible situation for local law enforcement, and this cannot be left to stand.

So, clearly, we've got our job to do in this area, but I want to ask you a question about John Mew's OLC memos.

#### OFFICE OF LEGAL COUNCIL'S MEMO

On April 1, 2008, the DOJ released a March 2003 Office of Legal Counsel (OLC) memo written by John Mew. That memo asserted that President Bush had unlimited power to order brutal interrogations to exact information from detainees. The memo references, on page 8, footnote 10, another OLC memo written by John Mew in October 2001. In this memo, the OLC concluded that the Fourth Amendment had no application to domestic military operations. To date, your Department has refused to declassify and release this memo.

Is the October 2001 OLC opinion still considered binding by the Department of Justice?

Attorney General MUKASEY. That opinion was withdrawn 9 months after it was issued. It is not.

Senator FEINSTEIN. So it is not?

Attorney General MUKASEY. Correct.

Senator FEINSTEIN. It is not operative?

Attorney General MUKASEY. Correct.

Senator FEINSTEIN. Since when has it not been operative?

Attorney General MUKASEY. Since December 2000—you say this is the March 2003 memo?

Senator FEINSTEIN. This is a March 2003 memo.

Attorney General MUKASEY. Has not been—

Senator FEINSTEIN. It's the—it's basically the October 2001 memo.

Attorney General MUKASEY. I can't speak to the October 2001 memo, but the March 2003 memo was withdrawn 9 months after it was issued.

We are aware of Congress' ongoing interest in this matter and oversight interest in this matter and proper interest in this matter and we're looking for ways to meet Congress' legitimate interest and our own regard for both the equities of other agencies that are involved with these memos as well as preserving a deliberative process within the Department that doesn't result in every piece of advice becoming the subject of public debate.

We're trying to work with Congress to arrive at ways to meet your legitimate oversight which we recognize with the release of the 2003 memo.

Senator FEINSTEIN. If you'll excuse me, this isn't a question of oversight. I'm just asking you, is this memo in force, that the Fourth Amendment does not apply to the domestic military?

Attorney General MUKASEY. The principle that the Fourth Amendment doesn't apply in war time is not in force.

Senator FEINSTEIN. It—no. The principle that I asked you about, does it apply to domestic military operations? Is the Fourth Amendment today applicable to domestic military operations?

Attorney General MUKASEY. I don't know of any domestic military operations being carried out today.

Senator FEINSTEIN. I'm asking you a question. That's not the answer. The question is, does it apply?

Attorney General MUKASEY. I'm unaware of any domestic military operations being carried out today. In order for me to—

Senator FEINSTEIN. You're not answering my question.

Attorney General MUKASEY. The Fourth Amendment—

Senator FEINSTEIN. Is this memo binding today?

Attorney General MUKASEY. The Fourth Amendment applies across the board, regardless of whether we're in war time or war peace time. It applies across the board.

Senator FEINSTEIN. Thank you. Appreciate that. Thank you, Madam Chairman.

Senator MIKULSKI. That's a pretty important answer.

Senator FEINSTEIN. Yes, it is, bearing in mind what the history of this is.

Attorney General MUKASEY. With due respect, I don't think it's—there's anything new about the answer because the discussion of which that was a part goes to the suggested inapplicability of the Fourth Amendment as an alternative basis for a finding that searches discussed there would be reasonable.

But in any event,—

Senator FEINSTEIN. But Mr. Mew's contention was that the Fourth Amendment did not apply and that the president was free to order domestic military operations.

Attorney General MUKASEY. Without regard to the Fourth Amendment?

Senator FEINSTEIN. That's correct.

Attorney General MUKASEY. That's not my under—

Senator FEINSTEIN. And you're saying that is not operative?

Attorney General MUKASEY. That is not—

Senator FEINSTEIN. That is not binding?

Attorney General MUKASEY. To my understanding, that is not applicable.

Senator FEINSTEIN. Thank you very much. That's what I wanted to know.

Thank you, Madam Chairwoman.

Senator MIKULSKI. Well, that's something. We're glad to hear you say that. That's something somebody should have told Mr. Rumsfeld.

Attorney General MUKASEY. Respectfully, I don't think it's news.

Senator MIKULSKI. Well, Senator Feinstein and I are also on the Intelligence Committee and Senator Shelby also once chaired it as well as membership and I'm on it now, and there's a lot of issues related to that which we believe now have come to an end, but we're deeply troubled by.

Senator FEINSTEIN. Madam Chairman, if this is true, I have a hard time understanding why the Department of Justice will not declassify that memo.

Senator MIKULSKI. Did we ask for it?

Senator FEINSTEIN. We have asked for it. Chairman Leahy has asked for it on several occasions and we can't seem to spring it loose.

Attorney General MUKASEY. And that was one of the memos that was the subject of my statement that we are trying to figure out ways of making sure that portions of the memos are provided in a way that allows the oversight needs and equities of Congress to be served and yet recognizes the equities of other agencies that may be involved here, wholly apart from the Department, as well as our interests in preserving the deliberative processes, such that people can give us the benefit of their thinking without having their thinking then become the subject of the congressional hearings simply because they offered an idea.

Senator FEINSTEIN. I think we appreciate that. If I may just, Madam Chairman, this memo becomes a linchpin. It's a very important memo and in Intelligence, we've been unable to obtain it. In Judiciary, we've been unable to obtain it.

I appreciate that you're trying to do it and I hope the decision will be forthcoming shortly.

Attorney General MUKASEY. And by trying to do it, I mean actively trying to do it. I don't mean it's down in some pile of papers. It's at the top. It's a priority of mine.

Senator FEINSTEIN. Well, may I ask this? When might we receive it?

Attorney General MUKASEY. When people asked me when I was a judge when a case is going to be decided, my usual response was if I knew that precisely, I would already have decided it. I'm going to try to do it as quickly as I can and I recognize that there's a degree of urgency about this. I have a great deal of urgency about it. I am not—my interests are not served by having this drag on.

Senator FEINSTEIN. Thank you. Thank you, Madam Chairman. I appreciate it.

Senator MIKULSKI. I have a few questions. Mr. Attorney General, I have a few more, and I don't know if my colleagues do before the vote begins.

## DEPARTMENT OF JUSTICE FUNDING

Let me tell you the intent of the subcommittee working this all on a bipartisan basis. We're going to need your help with the Office of Management and Budget (OMB). First of all, when we pass our bill, we want to be sure that there's adequate funds to operate the Department of Justice with the highest level of personnel, not only in terms of volume but in terms of quality, and also to acknowledge what we call the worker bees at the Justice Department, those faithful people, those professional civil servants that every day are implementing the antitrust laws, the civil rights laws, issuing grants, et cetera.

Second, we want Federal law enforcement to be adequately funded. That's the FBI, DEA, the Marshals Service, and the ATF. Senator Shelby has raised issues about the Marshals Service. We know the FBI does very well. We're concerned about the adequacy of DEA and the ATF.

Then there's also the other pillar in local, which is our relationship with State and local law enforcement, and their involvement with the community.

Now, that means that we really want to restore the funding to the Byrne grants and the COPS Programs. We really do want to do that, and it has wide bipartisan support. I've received numerous letters from senators asking us to do that.

Where senators do ask for earmarks, it's usually around fighting gangs, fighting meth, and more technology to make them more effective. That's what the earmark is and usually they go to earmarks because the grants didn't work.

Then there are those other issues related to either prevention or response. That's the juvenile justice block grants and then it is the violence against women which is not only to respond to sexual assault and domestic violence. Those two things are in and of themselves crucial, but it's also the prevention program, the kinds of things that must go on at so many levels, particularly against girls, which goes on in schools, which young boys often in communities where there's no father, no constructive male role model, need to occur, and it's unique.

I remember when the wall came down and new emerging democracies came, they wanted to see how a national justice department worked with the community because they were used to KBG-type stuff. This was fantastic.

So, this brings us to what we need to do. I met with a group called Surviving Parents. These are parents of children who endured the most heinous of crimes. These were children that were kidnapped, bullishly abused and in some instances murdered.

Now let me tell you what they asked for. They asked for, first of all, U.S. Marshals to track down predators. Senator Shelby has just been a stalwart supporter in us working together on that. The other thing that they asked for was this. This was the lapse in technology when DOJ transfers sexual predator technology to a new system.

## SEXUAL PREDATOR TECHNOLOGY

Let me go to my question because, in addition to more marshals to go after the predators, technology is our friend and we understand there's been a very creative and effective program in Wyoming, actually very cost effective, that has been used to identify over 500,000 unique computers that are involved in the trafficking of repugnant movies and images of children, and I don't even want to identify the crimes against the children. They're just too despicable for civilized conversation.

Essentially what we're worried about is DOJ's going to get a new technology system. Wyoming has been working well and we want to be sure that no child or no microchip falls between the cracks.

So, my question to you, because Wyoming has such a great program and has been working so well and was developed in such a cost-effective way, can you promise me that the Wyoming-based system will be fully supported and funded until such time as an equal or better system is in place, so that no matter what, we've got this technology working with local law enforcement to protect against the trafficking against images which in and of themselves, the images, the photographs taken all indicate the most vile, the most vile of child abuse?

Attorney General MUKASEY. I want to respond both to your question and to one point in your preliminary comments.

As far as the Wyoming project, what we are trying to do is transfer that highly innovative technology which is terrific to what's called the RISS System, which is a national system that allows intercommunication between and among various law enforcement agencies. So what we are trying to do is to get that very good innovative technology that was developed in the Wyoming project transferred to a national system and we hope to try to do that.

Senator MIKULSKI. But in the meantime, are we going to keep Wyoming, the Wyoming model going, both operational and funded?

Attorney General MUKASEY. We are going to try to do that and try to—

Senator MIKULSKI. Try, try, try, try. Pardon me. We appreciate the effort, but can we have your word that this, the Wyoming model, will stay operational until such time as the new model moves online?

Attorney General MUKASEY. I have no reason to believe that it won't and you have my word that it has my priority. Those you have.

Senator MIKULSKI. Well, I accept your word. We want to continue to work with your staff. The third—yes, sir? Did you want to comment?

## JUSTICE DEPARTMENT EMPLOYEES

Attorney General MUKASEY. One comment about the general quality of people of the Justice Department. I can't lose an opportunity to point out that the quality of the people at the Justice Department is, person for person, the highest of any group of lawyers that I've ever worked with. That's true of the career people. That's true of political appointees as well and that's what keeps us and me going.

Senator MIKULSKI. What keeps you going?

Attorney General MUKASEY. Their ability and their commitment.

Senator MIKULSKI. Right. Well, we don't dispute that. We want them to have the resources that they need. What we're concerned about is that the bean counters at OMB to fund FBI, which FBI should be funded, they've got really swell programs and eliminated them, and we're running a zero sum game all to play let's pretend that we're going to balance the budget. That's what we're concerned about.

We believe in the Justice Department in the sense that we believe in those folks, just like we believe in these programs. These aren't programs. We're not for the program. We're for the outcome of the program and it's how to do it. We were very, very, very disturbed last year when we had done an absolutely bipartisan bill to run into the President's veto threat. So, we had to meet a veto gun. We had to cut \$3 billion out in this subcommittee. That's where we shave funds from things like weed and seed and juvenile justice block grants. We're for your Department. We wish OMB was. We really do and that's not laying it at your doorstep. You've come in. You're righting the ship. You're trying to do a good job. We have a great deal of respect for you, Mr. Attorney General, but OMB has to believe in this Department as much and we're very frustrated about it and that's what we're trying to get to.

Senator Shelby, did you want to say something?

Senator SHELBY. I just have another question for the Attorney General.

#### RADIOS

In March 2007, the inspector general reported that of the 30,000 Department of Justice radios, 79 percent are not airwave compliant, 95 percent lack federally mandated security, and 73 percent are obsolete. That's troubling.

The report found that this failure to upgrade the Department of Justice's components and antiquated communications represent an unnecessary risk to the safety of agents, among other things.

I've heard cost estimates to seriously address this issue are in the \$20 billion range, which seems high but it's a lot of money.

Do you have any idea or do you have any numbers on what it would cost to upgrade the Department and make it compliant?

Attorney General MUKASEY. What we're asking for in the budget is \$70 some odd million to do the, frankly, spit and bailing wire repair on the current system.

Senator SHELBY. Just keep it going?

Attorney General MUKASEY. Keep it going. But we've also asked for roughly \$45 million for new interoperable radios that allow us to communicate in an encrypted way so that the bad guys aren't listening in on police band radios, so that we can do it in an effective way.

We're on to the problem, and we've—that's the funding that we've asked for to help us to at least begin doing that.

Senator SHELBY. Are current communications, Mr. Attorney General, are the systems in compliance with the presidential narrow band mandate and the National Institute of Standards and Technology security guidelines?

Attorney General MUKASEY. I can't speak to that. I'll get back to you on that.

[The information follows:]

#### COMPLIANCE OF CURRENT COMMUNICATION SYSTEMS

No. The DOJ Inspector General's report on IWN from March of 2007 estimated that 21 percent of the Department's radios are compliant with presidential narrowband mandates and 5 percent are capable of meeting NIST security guidelines. Since March of 2007, the limited funds have been prudently used to improve narrowband compliance to 30 percent and NIST security compliance to 15 percent.

Senator SHELBY. And is the IWN, I-W-N, Seattle pilot project a feasible model for the future?

Attorney General MUKASEY. We believe it is a feasible model and that's the one that we're asking to have funded.

Senator SHELBY. Will you get us some information again on that?

Attorney General MUKASEY. I will get you as much information as I can. That's the one we've been working on. That's the one we want.

[The information follows:]

#### INFORMATION REGARDING THE INTEGRATED WIRELESS NETWORK

The Seattle Blaine pilot is a feasible model for major metropolitan areas with high federal agent user densities. Areas of high user densities typically coincide with scarcity of spectrum resources. While the relative spectral efficiency of trunking radio technologies can be debated in remote or low-density rural areas, high user-density areas always benefit from the implementation of trunking technologies.

A few design criteria from the Seattle Blaine pilot have been re-evaluated and probably would not be implemented nationwide. The criteria include radio tower site improvements and backhaul redundancy. While overall system reliability in a trunked system is improved, nationwide implementation may be too costly. Selective application of redundancy at the most vulnerable system nodes, and site improvements commensurate with the equipment being installed would be the two major deviations from the Seattle Blaine model.

The differences in ease-of-use between conventional and trunking radio are substantial. The WMO continually receives positive feedback from users on the Seattle Blaine IWN system regarding usability and roaming capabilities. The use of trunking technologies is not an explicit stated requirement for IWN, however, we feel the minimal incremental cost (estimated to be 30 percent) is well worth the significant improvement in radio usability and roaming capabilities for many areas, especially in urban settings.

Senator SHELBY. Mr. Attorney General, I know you'd be concerned, but in the event of another attack, absent communications interoperability, which is so important, how will the Federal law enforcement officers communicate with each other? There's got to be—that's got to be a high priority for you.

Attorney General MUKASEY. Only with great difficulty.

Senator SHELBY. So this—to make the interoperability and modernize the whole communications system is a high priority with the Department?

Attorney General MUKASEY. It is a very high priority.

Senator SHELBY. Okay. Thank you, Madam Chair.

Senator MIKULSKI. As always, you're very insightful, Senator Shelby. I mean, it's 7 years after 9/11. We should at least be able to talk to each other.

Senator SHELBY. Absolutely.

## ADDITIONAL COMMITTEE QUESTIONS

Senator MIKULSKI. Just like the watch list. Well, if there are no further questions this morning, Senators may submit additional questions for the subcommittee's official record. We request the Department's response within 30 days.

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

## QUESTIONS SUBMITTED BY SENATOR PATRICK J. LEAHY

## CORRUPTION IN IRAQ

*Question.* You recently traveled to Iraq in February to view first hand the Justice Department's efforts at establishing the rule of law in that country. According to press accounts, you said, and I quote: "I'm encouraged by the work that's being accomplished here . . . My assessment is that the Iraqis are firmly committed to the notion of the rule of law."

But I recently chaired an Appropriations Committee Hearing on fraud, waste, and abuse in Iraq, and the testimony at that hearing made it absolutely clear that corruption in Iraq is rampant, and corruption remains among the most serious obstacles to progress in that country. At the moment, there are more than three thousand pending corruption investigations in Iraq, involving more than \$18 billion lost to fraud, yet the Iraqi government has passed laws and taken other legal actions to immunize its public officials from prosecution and protect those engaged in corruption.

The Special Inspector General for Iraq Reconstruction, the Jones Commission, and the Baker-Hamilton Commission have all been critical of the Administration's lack of effort to improving the Iraqi justice and police system, yet you say you are "encouraged" by what is being accomplished in Iraq.

Do you believe that corruption persists as a very serious problem in Iraq and undermines the rule of law there?

*Answer.* We do believe that corruption persists as a serious problem in Iraq and that corruption of any kind undermines the Rule of Law.

The Prime Minister and other senior Iraqi officials have publicly announced their determination to tackle this problem. Corruption is a hidden crime in which individuals in positions of power or influence are able to extract for themselves benefits that should be reserved for the public. It is no secret that during the Saddam regime, corruption was a way of life for Saddam himself, his family, and favored officials under him. These practices are inconsistent with a democracy and with the Rule of Law because they deny the law the opportunity to govern all actions of the state. Instead, they relinquish that power to those willing to pay. This impropriety is obviously true when a corrupt official's action violates the law, but it is equally true when the corrupt official takes an action that would otherwise have been permitted by the law.

For example, current Iraqi law requires amnesty for many Iraqi prisoners who have been convicted of or charged with certain crimes. We have heard widespread allegations that at some local police stations, processing the necessary paperwork would only happen if the detainee's family produced a substantial bribe. The corrupt act, of course, is not releasing the prisoner, which the law permits and requires; it is delaying that action and making it contingent on private payment, when the law guarantees it as of right. By contrast, the Iraqi government has recently made some high-level arrests in which the evidence suggests that officials released individuals under the guise of the amnesty statute when, in fact, their crimes were so serious that the law did not authorize their release.

The Rule of Law (not to mention the security of the Iraqi people and our troops) is undermined when criminal justice matters proceed in any way other than according to the law itself. The same is true for run-of-the-mill corruption matters, such as no-show jobs at ministries or the diversion of government resources to friends or family of officials. In these cases, as well, self-interest rather than the law is what governs the actions of the state. When the people perceive that actions of any sort are taken for these reasons, they justifiably doubt the integrity of the government, and their own commitment to obeying the law inevitably declines.

*Question.* Exactly what do you find to be encouraging about the current efforts to combat corruption in Iraq?

Answer. As made clear above, we certainly agree that corruption is a very serious problem and that Iraq has a long road ahead of it before it can tackle that problem. Nevertheless, we believe that it is slowly getting better, rather than worsening.

We are guardedly optimistic because the Government of Iraq, often with the assistance and encouragement of the United States, has taken substantial steps to transition to a regime in which corruption is identified and targeted. It bears repeating that under the previous regime, whose final breaths ended barely five years ago, corruption was a staple. We are all anxious that Iraq shed any remnants of that prior regime, including corruption, but as with every other problem, the Iraqi people must work their way through this one.

They appear to be engaged in this process. A few of the reasons we are encouraged include:

- The Commission on Integrity, Iraq's principal anti-corruption investigative agency, has nearly 300 investigators, all of whom have been trained by Department of Justice contract trainers and funded by the Department of State. The Commission has launched more than five thousand corruption investigations. The Commission has plans to expand the number of investigators by more than a third.
- A number of recent arrests of government officials demonstrate that investigators and judges are willing to risk even their personal safety by finding and prosecuting corruption.
- The judiciary is plainly stepping up to the plate. The well-known case against the former Deputy Minister of Health generated an acquittal in early March. The fact that the case was heard at all was an important victory for the independence of the judiciary and the message that corruption and illegal government action would be pursued. But even more significant is that the Chief Prosecutor has appealed the dismissal of the charges to the Court of Cassation.
- Police salaries have been increased, which will in turn increase professionalism and decrease perceived needs to accept illegal gratuities. The Directorate of Internal Affairs in the Ministry of Interior (MOI), which supervises the police, opened 6,652 cases in 2007 against MOI employees, and 1,112 of them were fired. Others were otherwise disciplined.
- In January, Prime Minister Maliki issued an eighteen-point anti-corruption program and has given international attention to anti-corruption efforts—for example, he highlighted them in his speech at the International Compact with Iraq meeting in Stockholm in May.
- New draft laws are pending in the Council of Representatives to better govern the chief anti-corruption entities in the Iraqi government (the Commission on Integrity, the Board of Supreme Audit, and the Directors General from the various ministries).
- At least some parts of the government appear to be taking proactive measures to reduce opportunities for corruption. Chief Justice Medhat al-Mahmoud, whom the statute made responsible for administering the nationwide system for adjudicating claims for amnesty, recognized the likelihood that detainees and their families would face demands for bribes throughout the process. He therefore crafted extraordinarily simple claims forms of only a single sheet of paper and made them widely available, allowing not only detainees but their families to obtain forms at courthouses throughout Iraq. He allowed the forms to be distributed where they would most likely reach those in need, including within prisons. From the very beginning, his view was that if the forms were readily available, they would have no value on the corruption mill. Since the completed forms were then to be given directly to the courts, another opportunity for corruption was squeezed out. Although this is only one small example, it is an encouraging sign that the government recognizes the problem and is trying to address it.
- In March the Government of Iraq signed and ratified the U.N.'s Convention Against Corruption which obligates the country to take action against corruption.

*Question.* Is it encouraging that the Maliki government passes laws to protect public officials from investigation?

Answer. We are not aware of any law that the Maliki government has passed with the aim of protecting public officials from investigation. There is a provision of the Criminal Procedure Code which allows Ministers to stop investigations of all types including corruption. Our Embassy continues to urge the Government to rescind this provision but it remains on the books. The Department of Justice defers to the diplomatic efforts of our Embassy in this regard.

*Question.* Specifically, what is the Justice Department doing to combat the corruption problem in Iraq?

Answer. The Department of Justice's efforts in Iraq are aimed at strengthening Iraq's Rule of Law institutions. The Department of State has created a separate entity at the U.S. Embassy in Baghdad, the Anti-Corruption Coordination Office (ACCO), which is charged with coordinating anti-corruption activities and policies. Anti-corruption principles are a key ingredient of any society living under the Rule of Law, so all Department of Justice employees in Iraq are fully aware that the Department of Justice mission includes assisting ACCO.

There are some specific ways in which the Department of Justice is attempting to do that. The International Criminal Investigative Training Assistance Program (ICITAP) provides capacity building, training, and technical assistance, along with equipment and specialized training for Iraq's Commission on Integrity. The Federal Bureau of Investigation investigates alleged corruption involving the U.S. government (which affects both the Iraqi and the American people) and, through its work with the Major Crimes Task Force, helps Iraqi law enforcement investigate illegal behavior of Iraqi public officials. Department of Justice personnel across Iraq work closely to help build the capacity and enhance the integrity of the courts.

#### BULLET LEAD

*Question.* More than four months ago, in a letter I sent to you that remains unanswered, I expressed my concerns that flawed bullet lead analysis done by the FBI for many years may have led to wrongful convictions. The National Academy of Sciences issued a report in 2005 discrediting bullet lead analysis, and the FBI stopped conducting bullet lead testing that same year. Over the last two years, however, the Justice Department has not taken steps to find or correct the cases where it was misused. As a former judge, I am sure you share my fear that this faulty forensic evidence may have been introduced in the estimated 2,500 cases where it was used. In my letter in November, I asked you to provide the Judiciary Committee with the list of cases where FBI bullet lead analysis was used, and to advise the Committee what steps you've taken to correct any unjust convictions resulting from bullet lead analysis.

Please state whether you have taken any action in response to my letter and explain your response.

Answer. As is discussed in more detail in the response to your November 2007 letter to the Attorney General, in 2005 the FBI sent to the National District Attorney's Association, the National Association of Criminal Defense Lawyers, the Innocence Project, and approximately 300 agencies letters outlining the FBI's decision to discontinue these examinations. The letters were sent so the recipients could take whatever steps they deemed appropriate to ensure no one was convicted based on inappropriate bullet lead testimony.

The FBI has committed to review all testimony provided by FBI Laboratory personnel in bullet lead cases that resulted in convictions in order to determine whether they testified within the scope of the science. Because the FBI performed bullet lead examinations for approximately 40 years, we cannot readily produce a list of all cases in which bullet lead analysis was performed. Because FBI laboratory personnel who conducted bullet lead examinations also conducted other types of forensic tests, the FBI has to examine all files worked by the universe of examiners who conducted bullet lead analysis. That process is ongoing. As of mid-May 2008, the FBI had identified approximately 1,270 cases (covering the period of 1975 to 2004) in which bullet lead analyses resulted in "positive" results that may possibly have formed the basis of trial testimony.

As the FBI Director has testified, the FBI will be working with the Innocence Project (IP) to ensure all appropriate parties are notified. Specifically, as the FBI identifies cases in which bullet lead analysis was performed, we will provide to the IP the FBI file number, the names of the contributor and prosecutor and their contact information, contributor and prosecutor file numbers, the FBI Laboratory examiner's name, the defendant's name, and the FBI's assessment of the appropriateness of the testimony provided. The FBI will also offer the IP copies of the transcripts received from prosecutors. By providing a dual notification track (that is, notification to both the prosecutor and the IP), the FBI is confident that appropriate notification will be made to any defendant who was or may have been adversely affected by inappropriate FBI bullet lead testimony.

*Question.* When can I expect a response to my letter?

Answer. DOJ is completing its response to the letter and will be transmitted to your office presently.

*Question.* According to press accounts, the FBI agreed in November to provide a list of all cases where bullet lead analysis was used to the Innocence Project in order to begin working to identify cases where there may be problems.

Please state whether you support this collaborative effort and explain your response.

*Answer.* In an FBI press release on November 17, 2007, the FBI announced that it has undertaken an additional round of outreach, analysis, and review efforts concerning bullet lead analysis. This has included joint work with the Innocence Project, which has done legal research to identify criminal cases in which bullet lead analysis has been introduced at trial.

The Department of Justice, including the FBI, takes this issue very seriously, and we are developing procedures to ensure that appropriate disclosures are made to the relevant parties. Thereafter, the parties involved can make an assessment of the effect of any potentially erroneous testimony.

*Question.* Has anyone in the Justice Department taken any steps to support or oppose this agreement between the FBI and the Innocence Project?

*Answer.* Please see the response to subpart a, above.

#### UNANSWERED QUESTIONS

*Question.* As of May last year, the Justice Department reported to the Judiciary Committee that there was only one FBI agent assigned to Iraq and one assigned to Kuwait to investigate significant contracting fraud. Since May 2007, has the Justice Department assigned more full-time FBI agents or other federal investigators to work on contracting fraud cases in Iraq and Afghanistan? If not, why not?

*Answer.* The FBI currently has Special Agents (SAs) deployed in Iraq, Afghanistan, and Kuwait to provide full-time support to the International Contract Corruption Initiative, which addresses major fraud and corruption in the war and reconstruction efforts in Iraq and Afghanistan. These deployments are conducted in 120-day rotation cycles and SAs work jointly with the Defense Criminal Investigative Service, Army Criminal Investigation Command Major Procurement Fraud Unit, Special Inspector General for Iraq Reconstruction, and U.S. Agency for International Development, who also have agents deployed to address this crime problem. The FBI's overseas assignments in direct support of this multi-agency initiative are as follows: one SA in Kuwait; one Assistant Legal Attaché and two SAs in Iraq; and two SAs in Afghanistan.

*Question.* In November, I sent you a letter expressing my concerns that flawed bullet lead analysis done by the FBI for many years may have led to wrongful convictions. As you know, the National Academy of Sciences issued a report in 2005 discrediting bullet lead analysis, and the FBI stopped conducting bullet lead testing that same year. But over the last two years, the Justice Department has not taken steps to find or correct the cases where it was misused. As a former judge, I am sure you share my fear that this faulty forensic evidence may have been introduced in the estimated 2,500 cases where it was used. Two months ago, I asked you to provide the Judiciary Committee with the list of cases where FBI bullet lead analysis was used, and to advise the Committee what steps you've taken to correct any unjust convictions resulting from bullet lead analysis. When can I expect a response to my letter? Have you taken any action in response to my letter?

*Answer.* Please see the response to Question 1, above.

*Question.* According to press accounts, the FBI agreed in November to provide a list of where all bullet lead analysis was used to the Innocence Project in order to begin working to identify cases where there may be problems. Do you support this collaborative effort? Has anyone in the Justice Department taken any steps to support or oppose this agreement between the FBI and the Innocence Project?

*Answer.* Please see the response to Question 2, above.

#### E-MAIL AND E-MAIL RETENTION

*Question.* Have you begun any review of the White House's policies on e-mail and e-mail retention?

*Answer.* No.

*Question.* Have you investigated whether in the implementation of those policies there has been noncompliance with laws requiring retention of White House records that belong to the American people?

*Answer.* We are not aware of any facts that would warrant a criminal investigation. The Presidential Records Act is not a criminal statute.

*Question.* Are you going to inquire as to whether there has been an intentional effort to avoid those laws and Congressional oversight?

*Answer.* We are aware of no facts that would suggest that such an inquiry would be warranted.

*Question.* At last week's oversight hearing, you would not agree with me that waterboarding an American citizen anywhere in the world is torture and illegal.

Under what circumstances or with what justifications would you consider waterboarding an American not torture and not illegal?

Answer. As the Attorney General stated during his appearance before the Committee, because waterboarding is not among the practices currently authorized for use in the CIA program, we do not believe that it would be appropriate to answer categorically questions concerning the legality of waterboarding absent a set of circumstances that call for those answers.

*Question.* While the Nisoor Square killings have drawn the most publicity, those shootings were not an isolated event. Blackwater forces have a documented history of shootings in Iraq where civilians have been seriously injured and killed. There were two other shooting incidents in the same month as the Nisoor square killings, where five civilians were killed and fifteen more were wounded. Since 2005, there have been nearly 200 other shootings by Blackwater guards in Iraq, and in more than 160 of those incidents, the Blackwater guards fired first. Is the Justice Department's investigation limited to the Blackwater killings in September, or will the Justice Department also investigate the other shooting incidents by Blackwater and other private security contractors in Iraq? If not, why not?

Answer. As a general matter, the Department does not comment on referrals made to it by other Departments, including State and DOD. In addition to being law enforcement information that the Department generally does not disclose publicly, referral numbers paint an incomplete picture and raise law enforcement sensitive questions that the Department is unable to answer.

*Question.* How many full time prosecutors and agents at the Justice Department are assigned to investigate criminal allegations against private security contractors overseas? What steps have you taken to make sure that shooting incidents by private security contractors in Iraq and Afghanistan are aggressively investigated and prosecuted?

Answer. Most MEJA cases involving private security contractors are initially investigated by the Department of Defense or the Department of State. Department of Justice agents and prosecutors do not typically become involved until those Departments refer a given case to the Department of Justice for criminal prosecution. When MEJA cases are referred to the Department for prosecution, the Department assigns agents and prosecutors as needed from the FBI, the offices of the United States Attorneys, and the Criminal Division.

The Department is committed to investigating and prosecuting criminal acts committed by private security contractors overseas. To that end, we continue to work with the Departments of Defense and State to ensure that there are clear procedures for those Departments to identify and, where appropriate, to refer for prosecution allegations of criminal misconduct involving private security contractors. We are also working with the Congress to explore legislative amendments that would increase the USG's ability to hold private security contractors accountable under federal law.

*Question.* According to press accounts, on January 24, 2008, a federal grand jury in Alexandria issued a subpoena to New York Times reporter Jim Risen reportedly seeking information about his confidential sources for a chapter in his 2006 book, "State of War" focusing on the CIA's alleged efforts to infiltrate and destabilize Iran's nuclear program. Mr. Risen's book also expanded on his reporting about the Administration's warrantless wiretapping for which he and another New York Times reporter won the 2006 Pulitzer Prize. Under the Department's guidelines, a subpoena to the media must be approved by the Attorney General. Did you approve this subpoena? What process was followed by the Department in considering whether to subpoena Mr. Risen?

Answer. Because Federal Rule of Criminal Procedure 6(e) imposes a secrecy requirement on all pending Grand Jury investigations, we cannot answer any questions pertaining to a specific Grand Jury subpoena or specific Grand Jury proceedings. We can say, however, that the Department's internal guidelines concerning media subpoenas, reprinted at 28 CFR 50.10, set out the specific factors to be considered before issuing a subpoena to a member of the media and require Attorney General approval before any such subpoena is issued.

*Question.* The Department's time-honored guidelines, set forth in the Department's "red book"—its guidebook on "Federal Prosecution of Election Offenses"—were revised under the outgoing, discredited leadership group to turn the traditional practice of not bringing last-minute investigations and actions on its head. The policies in the new "green book" provide great latitude for the Department to influence the outcomes of elections. We learned of this shift last year and were made aware of its dangers in investigating the actions of interim U.S. Attorney Bradley Schlozman, who replaced fired U.S. Attorney Todd Graves and brought election-eve

indictments in a highly contested election in Missouri. What steps are you and the Department taking to make sure that there is no repeat of this type of conduct?

Answer. This question includes several components, which we address separately. As an initial matter, earlier this year, the Attorney General circulated a memorandum to all Department employees emphasizing the Department's existing policies with respect to political activities. The memorandum reiterated that "politics must play no role in the decisions of federal investigators or prosecutors regarding any investigations or criminal charges." The Attorney General has also reiterated this message personally on numerous occasions in his meetings with Department personnel.

With respect to the question, there was nothing improper about the timing of the registration fraud indictments in Missouri. Evidence submitted to the Department reflected that the subjects had submitted numerous bogus voter registrations to a get-out-the vote organization. No voters needed to be interviewed; the Department's consultation procedures for such matters were followed; and the charges did not violate the Department's policy against interfering with an ongoing election. This policy focuses on the timing of investigations of alleged voter fraud—not the timing of filing charges that have already been investigated—and discourages overt criminal investigation during the period immediately prior to an election or on Election Day in order to avoid chilling lawful voting activity or interjecting a criminal investigation into an ongoing campaign.

Simply stated, the Department's 1995 election crime manual was revised because it was out of date. The main authors of the 2007 manual are two career prosecutors in the Criminal Division's Public Integrity Section. These senior prosecutors are the Department's experts on election crimes and collectively have over sixty years of experience in the investigation and prosecution of election fraud and campaign financing crimes. The updated draft went through several revisions by its authors. After review and approval by the Section and Criminal Division, the manual was forwarded to other Department components prior to publication. Its authors received no substantive suggestions from anyone outside the Criminal Division.

The 2007 manual incorporates the landmark changes enacted by Congress in the Bipartisan Campaign Reform Act of 2002 (BCRA), and especially the enhanced criminal penalties for campaign financing crimes included in these reforms. It also incorporates the Department's renewed commitment to addressing election fraud and campaign financing crimes that is exemplified by the Department's Ballot Access and Voting Integrity Initiative. The initiative was created in 2002 to increase the Department's efforts to protect voting rights and deter and prosecute election crimes, and recognizes that it does little good to protect a person's right to vote if that person's vote is subsequently diluted or eliminated by fraud.

As in other areas of criminal law enforcement, the effect of vigorous and impartial enforcement of the federal statutes criminalizing various types of election crimes is likely to extend beyond the defendants charged in specific cases and deter others who are considering similar conduct. While this deterrence is not capable of measurement, it remains an important societal and governmental goal. Congress also has recently recognized the importance of deterring crimes. See BCRA § 314(b)(1) (mandating a new sentencing guideline for campaign financing crimes that would reflect "the need for appropriate and aggressive law enforcement action to prevent such violations"). The 2007 manual also incorporates the Department's additional enforcement experiences prosecuting election crimes over the past decade, and recognizes that there are situations where prosecution of an individual act of election fraud or campaign fraud may be warranted. Rather than providing what is in essence a blanket immunity for an individual who commits a federal crime, this approach allows prosecutive decisions to be made on a case-by-case basis, as is the case in other areas of criminal law enforcement.

Moreover, there has been no substantive change in the Department's policy regarding noninterference with elections. For over two decades, the Public Integrity Section and its Election Crimes Branch have counseled United States Attorneys' Offices against taking overt criminal investigative measures involving alleged election fraud, such as interviewing voters or issuing grand jury subpoenas for ballot documents, until the election in question has been concluded and its results certified. This policy reduces the risks of chilling legitimate voting, interfering with the administration of elections by the states, or transforming a criminal investigation into a campaign issue by appearing to legitimize unsubstantiated allegations. Rather than being "watered down" or weakened, the text was expanded in the updated manual to provide additional guidance and assistance as a result of the Department's ongoing criminal enforcement efforts in this area.

Election crimes strike at the heart of our democratic form of government and the Department is committed to the vigorous and impartial enforcement of the federal criminal statutes enacted by Congress to combat these serious crimes.

*Question.* One of the most disturbing features of the Justice Department in this Administration has been the complicity of the Department's supposedly independent and impartial Office of Legal Counsel in providing secret legal memoranda defining torture down to meaninglessness, excusing warrantless spying on Americans contrary to our laws and, more recently, justifying the absolute immunity of White House employees from Congressional subpoenas without reference to a single legal precedent. Jack Goldsmith, a conservative former head of the Office of Legal Counsel who found many of these opinions to be "deeply flawed and sloppily reasoned" rescinded several of the most extreme of them, only to see some reinstated in other forms after his departure. In response to questions from Senator Schumer at your confirmation hearing, you committed to this Committee that you would conduct a review of OLC opinions in several areas, including detention policies, interrogation policies, and policies relating to warrantless wiretapping. Have you conducted this review and in what areas? If not, why not?

*Answer.* As the Attorney General committed in his letter to the Committee, dated October 30, 2007, he has reviewed the Office of Legal Counsel's legal analysis of practices that are currently authorized for use in the CIA's interrogation program. The Attorney General has found those practices to be lawful and has found the Office's analysis and conclusions concerning those practices to be correct and sound. The Attorney General has not found it necessary to go further and to review Office of Legal Counsel opinions, or portions of those opinions, that do not address matters currently before him.

Have you determined that any OLC opinions are suspect? If so, what action have you taken?

*Answer.* No, the Attorney General has reviewed the Office of Legal Counsel's legal analysis of practices that are currently authorized for use in the CIA's interrogation program. The Attorney General has found those practices to be lawful and has found the Office's analysis and conclusions concerning those practices to be correct and sound.

*Question.* Congress cannot legislate in the dark. With this Committee, in particular, that means we must know how the Executive Branch interprets the law on critical national security issues. Yet this Administration has steadfastly refused to provide the Congress with key opinions from the Office of Legal Counsel on electronic surveillance and their interpretation of the laws on torture. Will you commit to providing this Committee, under appropriate security protections, the OLC legal opinions that we have been requesting for years and that we require in order to fulfill our constitutional responsibilities?

*Answer.* The Administration has made extraordinary accommodations in recent months to accommodate Congress' interest in these matters. Highly classified opinions concerning the Terrorist Surveillance Program have been made available to, among others, the Intelligence and Judiciary Committees of both Houses of Congress. As to the CIA's interrogation program, the Intelligence Committees briefed on both the classified details of and the legal basis supporting the program, and unclassified briefings also have been provided to Congress. Since the Attorney General's testimony, the Administration has further accommodated congressional interest in this subject by making available to the Intelligence Committees the classified OLC opinions on the CIA program. In addition, the Administration has made available to the Judiciary Committees three of those opinions, with limited redactions necessary to protect intelligence sources and methods.

*Question.* In 2004, Congress passed and the President signed the Justice for All Act. That bipartisan bill included the Innocence Protection Act, a piece of legislation I worked on for years providing important reforms to help reduce the risk of error in capital cases. A key component of that Act was a grant program for post-conviction DNA testing. The program is named in honor of Kirk Bloodsworth, the first death row inmate exonerated as a result of DNA testing. To ensure that other innocent people avoid the ordeal Mr. Bloodsworth went through and that the guilty are caught and convicted, it is crucial that states receive the funding authorized and appropriated for the Bloodsworth program. Instead, the Department of Justice has interpreted the very reasonable evidence preservation requirements that Congress included for this program so stringently, and contrary to Congress' intent, that all applications to the program have been rejected and not a dime has been awarded. This Committee held a hearing last month on this issue, and the Department's representative assured us that he would work to award the grant money that has been sitting unused these past three years. Will you make sure that the Department does

everything it can this year to get the money appropriated to the Bloodsworth program out to the states that can use it for good?

Answer. Yes. In the fiscal year 2007 postconviction DNA solicitation, in accordance with section 413 of the Justice for All Act and the fiscal year 2006 and fiscal year 2007 appropriations, applicants were required to demonstrate compliance with certain stringent eligibility requirements set by section 413. Language in this year's (fiscal year 2008) appropriation has the effect of allowing the Department of Justice's National Institute of Justice (NIJ) to ease the section 413 requirements with respect to funds appropriated for fiscal year 2006-fiscal year 2008. The fiscal year 2008 solicitation—which was posted on January 22, 2008, and updated in response to concerns expressed in connection with a Senate hearing—accordingly eases the requirements of section 413, in a manner that we believe remains consonant with the policy objectives of section 413.

*Question.* Congress gave the Department an out in this year's appropriations bill that allows the Department to loosen the requirements for the Bloodsworth program. Will you nonetheless make sure that the Department does not ignore Congress's clear intent that states be held to reasonable standards of evidence preservation since money for DNA testing does no good if the evidence is not there to test?

Answer. The fiscal year 2008 solicitation eases the requirements in a manner that we believe remains consonant with the policy objectives of the statute. Under the fiscal year 2008 solicitation to establish eligibility, the chief legal officer of the State must certify that the State “[p]reserves biological evidence secured in relation to the investigation or prosecution of a State offense of forcible rape, murder, or nonnegligent manslaughter under a State statute, local ordinances, or State or local rules, regulations, or practices, in a manner intended to ensure that reasonable measures are taken by all jurisdictions within the State to preserve such evidence.” We believe that this requirement, which includes language derived generally from section 413 of the Justice for All Act itself, calls for a meaningful certification. We will rely on the chief legal officer of each State to accurately assess whether the certification properly can be made based on the State's particular circumstances. We note that the certification template explicitly states that “I am aware that a false statement in this certification may be subject to criminal prosecution, including under 18 U.S.C. § 1001.”

Moreover, the fiscal year 2008 solicitation for these funds puts States on notice that funding in future fiscal years may be contingent on the more stringent requirements regarding evidence retention established by section 413 of the Justice for All Act. In addition, through the DNA and Coverdell programs, NIJ provides significant assistance to States and units of local government to purchase equipment and other resources to provide for retention of biological evidence. Finally, NIJ is studying the extent of evidence preservation in DNA laboratories generally to identify ways to improve evidence storage practices.

*Question.* The Judiciary Committee's hearing last month also looked into Inspector General Glenn Fine's highly critical review of the Department's implementation of the Coverdell grant program for forensic improvements. The Justice for All Act required that states receiving money under the Coverdell program certify that they have an independent entity to investigate allegations of serious negligence or misconduct. Inspector General Fine's report found many problems with the Department's implementation of this provision. Perhaps most astonishing, he found that the Department has taken the legal position that, while agencies must certify they have an independent entity where they can refer allegations of misconduct or serious negligence by forensic labs, the agencies have no obligation to actually refer such allegations for investigation. So they need to have a process, but they do not need to use it. This is clearly contrary the bi-partisan intent of Congress in the Justice for All Act. Why would the Justice Department would take a legalistic position that is so clearly contrary to the intent of the Justice for All Act?

Answer. The Department of Justice agrees that allegations of serious negligence or misconduct in forensic programs should be appropriately investigated. In its recent fiscal year 2008 solicitation for the Coverdell program, the National Institute of Justice strongly encouraged the reporting of allegations of serious negligence or misconduct to the appropriate government entity. The Department is currently working collaboratively with the Office of the Inspector General to further clarify, in the best way possible, the grantees' responsibilities when they receive allegations of serious negligence or misconduct.

*Question.* Do you agree with me that the Justice Department must encourage the reporting of serious allegations of lab misconduct for investigation in order to ensure that any federally-funded forensic labs have the highest level of integrity?

Answer. Yes, the Justice Department believes that allegations of serious negligence or misconduct should be appropriately investigated. Beginning with the upcoming fiscal year 2008 solicitation, Coverdell program solicitations will strongly encourage the reporting of this misconduct.

*Question.* What are you proposing for rural areas and the smaller cities where crime has risen the most?

Answer. DOJ is committed to providing the technical assistance necessary to ensure that applicants need not employ professional grant writers to successfully compete for funding. But more, objective criteria such as crime rates allow communities and grantees to compete on equal footing.

This has been borne out in practice. A total of 18 sheriffs offices were funded in the fiscal year 2007 Targeting Violent Crime Initiative Program—all that applied were successful. While several large sheriffs' offices applied and were funded, many small agencies also applied and received funding (some with as few as 20 or 30 sworn staff). Awards to larger agencies often included support for smaller agencies in the surrounding areas, including sheriffs' offices (showing multi-jurisdictional character was an important factor in this program).

—Tulsa, Oklahoma—the Tulsa Police Department will partner with the Tulsa County Sheriffs Office, the local community services council, the FBI and ATF to address gang- and drug-related gun crime in the greater Tulsa area.

—Wilmington, North Carolina—this town will use TVCI funds to address a violent drug gang problem using long and short term investigative strategies and relying on a partnership with the local FBI task force.

—Moss Point, Mississippi—this Gulf Coast community (population 15,512) will use TVCI funds in addition to building on existing DEA and FBI task forces to address local violence, which appears to be drug- and gang-related.

—Redding, California—this Shasta area community will address local gang problems using TVCI funds in collaboration with federal agency support.

—Lowell, Massachusetts—this suburban community will use TVCI funds to support an analytical, intelligence-driven "Ceasefire" approach to address gun, gang, and drug violence in the community.

—Akron, Ohio—this Midwest community will broaden an anti-gang initiative with Summit County Sheriff's Office and the Greater Akron High Intensity Drug Trafficking Area project. Funds will also be used to support prevention and prosecution of crimes in that area.

—Leech Lake Tribe in Minnesota.

The Bureau of Justice Assistance within OJP also has a program of training and technical assistance designed exclusively for small law enforcement agencies (those with less than 50 sworn staff). This program provides assistance to small departments in developing anti-crime strategies, managing departments, and accessing resources such as grants. This program is administered by the International Association of Chiefs of Police.

*Question.* Will you commit to working with me during the regular fiscal year 2009 appropriations cycle and on the upcoming emergency supplemental appropriations bill to restore the hundreds of millions in funding cuts to the COPS Program, the Byrne grant program, and other programs that have proven effective in cutting crime?

Answer. We appreciate the support shown for the Department by the Senate Appropriations Subcommittee on Commerce, Justice and Science and pledge, consistent with the President's budget request, the Department's assistance to the subcommittee in getting the information it needs to formulate its fiscal year 2009 appropriations bill. If Congress were to pass a supplemental appropriations bill in 2008, the Department would be glad to consider supporting the request so long as it was consistent with Administration priorities.

*Question.* Sixteen years after Congress authorized the National Motor Vehicle Title Information System (NMVTIS), there are still major loopholes in the system that allow crooked mechanics and sellers to "wash" data from car titles that would alert prospective buyers if a car has been totaled in an accident or stolen. Consumers face dangers when they unknowingly buy improperly repaired vehicles with a history of serious damage. An article about airbag scams published last month in Reader's Digest documents several deaths due to nonfunctioning airbags in vehicles whose titles had been "washed" and whose repairs were fraudulent. Due to gaps in NMVTIS reporting, the owners did not know that their cars had been previously totaled, much less improperly repaired. They delay in full implementation of NMVTIS is the result of the Justice Department's failure to issue long-overdue rules requiring insurers and junkyards to provide data about totaled vehicles. Why, when consumer safety is at stake, has the Department failed for over a decade to issue these rules? When will the rules be issued?

Answer. The key to an effective vehicle titling system is the cooperation and participation of all of the states. Since responsibility for the National Motor Vehicle Title Information System (NMVTIS) was transferred from the Department of Transportation (DOT) to the Department of Justice, the Department of Justice has been working with the American Association of Motor Vehicle Administrators (AAMVA) to implement NMVTIS. AAMVA is a nonprofit, tax exempt, educational association representing U.S. and Canadian officials who are responsible for the administration and enforcement of motor vehicle laws. AAMVA has been acting in the capacity of NMVTIS operator since 1992, when DOT was responsible for the system. The focus of the efforts of the Department of Justice and AAMVA has been to set up a working system and to get all of the states to participate in NMVTIS. Unfortunately, many states have been slow to participate because of competing demands on their resources.

Currently, 35 states are actively involved with NMVTIS. Thirteen states are participating fully in NMVTIS, 12 states are regularly providing data to the system, and an additional 10 states are actively taking steps to provide data or to participate fully. The 13 states participating fully in NMVTIS are Arizona, Florida, Indiana, Iowa, Kentucky, Massachusetts, New Hampshire, Nevada, Ohio, South Dakota, Virginia, Washington, and Wisconsin. The 12 states providing regular data updates to NMVTIS are Alabama, Georgia, Idaho, Louisiana, Nebraska, New Jersey, New York, North Carolina, Pennsylvania, Tennessee, Texas, and Wyoming. The 10 states actively taking steps to provide data or participate fully are Arkansas, California, Delaware, Missouri, Montana, New Mexico, Oklahoma, South Carolina, Vermont, and West Virginia. States that participate fully in the system provide data regularly and make NMVTIS inquiries before issuing a new title. These states also send updates to the system when necessary. States that regularly provide data to the system do so through a batch upload process but do not check NMVTIS before issuing a new title. Currently, more than 60 percent of the U.S. vehicle population is represented in the system. The Department of Justice's goal is to have more than 75 percent of the U.S. vehicle population represented in the system by the end of 2008.

The Department of Justice has recently submitted a proposed rule to implement NMVTIS to the Office of Management and Budget. That rule is currently under review.

#### TELECOMMUNICATION CARRIER COMPENSATION

*Question.* We are engaged in a debate in the Senate about this Administration's proposal to grant retroactive immunity to telecommunications carriers who participated in secret warrantless surveillance efforts for more than 5 years in violation of the Foreign Intelligence Surveillance Act, presumably some of the same carriers that later disconnected wiretaps when the bills were not paid. What payments were made to telecom companies to compensate for their participation in surveillance efforts including that which came to know as the President's program and the Terrorist Surveillance Program?

Answer. The Senate and House Intelligence Committees have conducted extensive oversight of operational aspects of the National Security Agency activities described by the President and the 2005 Act now commonly known as the Terrorist Surveillance Program. The Judiciary Committees of both Houses have also been provided with documents, held hearings, and have been briefed on this Program. The specifics of any arrangement between the Government and a telecommunications carrier to provide classified assistance with surveillance efforts cannot be further discussed in an unclassified setting.

*Question.* As of May last year, the Justice Department declined to identify for the Judiciary Committee the number of civil false claims cases that have been referred to or remain pending at the Justice Department, and only identified one case where the Justice Department has joined a qui tam relator in a case involving allegations of contracting fraud in Iraq or Afghanistan. Will you provide the Committee with an update on the status of these unresolved civil false claims cases? Please identify how many false claims cases have been referred to the Justice Department for investigation, how many the Justice Department has joined, and how many cases the Justice Department has declined to join. Also, please identify any new public settlements under the False Claims Act related to allegations of contracting fraud in Iraq or Afghanistan, and briefly describe the facts of these cases.

Answer. As of June 2, 2008, fifty-three qui tam actions have been filed under the False Claims Act against private contractors that provided support for U.S. government activities in the Middle East, including Iraq and Afghanistan. Of these fifty-three cases, the Department has intervened in and is litigating one case, has settled, at least in part, three other cases, and has declined to intervene in another

eighteen cases. The Department continues to investigate the remaining matters. The Department is also investigating a number of non-qui tam matters involving the Middle East that have been referred to the Department by other governmental agencies.

As noted, the Department has resolved three qui tam actions, at least in part, relating to the Middle East, which resulted in four separate settlements. Additionally, the Department has settled one non-qui tam matter under the False Claims Act involving the Middle East. These five settlements are briefly described below:

—Houston-based EGL, Inc., operating as Eagle Global Logistics, a subcontractor for Kellogg Brown and Root, settled for \$4 million on August 6, 2006. The settlement resolved allegations that EGL inflated invoices for shipments under government contracts for support of military operations in the Balkans, Afghanistan and Iraq. This settlement resolved in part a qui tam case that remains sealed.

—In a second settlement arising out of the same sealed qui tam case discussed in the prior paragraph, EGL, Inc. paid the United States in June, 2007, an additional \$300,000 to settle allegations that the company's local agent in Kuwait overcharged the military for rental charges on shipping containers to Iraq for the period from January through June, 2006.

—Force Protection Industry, Inc., of Ladson, South Carolina, agreed on August 23, 2006, to pay the United States \$1.8 million to settle fraud claims related to the manufacture and delivery of armored vehicles for use in Iraq. These allegations were the subject of a qui tam action captioned *United States ex rel. Chomyn v. Force Protection Industry, Inc.*, No. 2:05-1906 (D.S.C.).

—Northrop Grumman settled a voluntary disclosure case on July 18, 2007, by paying \$8 million in connection with deficient testing of night vision goggles and sniper scopes used throughout the military.

—On December 18, 2007, the Department settled with Sioux Manufacturing Corp. for \$1.9 million the allegations in *United States ex rel. Kenner v. Spirit Lake Tribe*, No. 2-06-CV-48 (D. N.D.). This qui tam case alleged that the defendant failed to follow specifications in making protective cloth material for military helmets.

Finally, as noted, the Department is currently litigating one case relating to the Middle East. On June 11, 2007, the United States intervened in the qui tam case captioned *United States ex rel. Dye v. ATK Thiokol, Inc.*, No. 1:06CV39 (D. Utah). The lawsuit alleges that ATK delivered defective illumination flares used in search and rescue, and combat operations critical to the U.S. military, including operations in Iraq and Afghanistan.

---

QUESTION SUBMITTED BY SENATOR BYRON L. DORGAN

TRIBAL JUSTICE FUNDING

*Question.* The Justice Department dedicated 102 Federal Bureau of Investigations agents to investigate violent crimes in Indian country in 1998. Congress provided funding for an additional 30 agents in fiscal year 1999, and an additional 27 agents in fiscal year 2005. As a result of these appropriations, there should be 159 FBI agents dedicated to violent crime in Indian country. However, there are only 114 FBI agents dedicated to Indian country today. Can you please explain this discrepancy?

*Answer.* As of June 2008, there are 104 FBI Special Agents working on Indian Country (IC) matters. Of this total, 30 were appropriated in fiscal year 1997, 30 in fiscal year 1999, and 10 in fiscal year 2005 (the FBI's fiscal year 2005 appropriation included 27 positions, 10 of which were Special Agents). The remaining 34 Special Agents currently working IC matters have been assigned by their respective field offices to address specific IC issues.

---

QUESTIONS SUBMITTED BY SENATOR RICHARD C. SHELBY

*Question.* Is the Department of Justice pleased with all of the DHS charges in present and past budget requests? If so, please explain why. If not, please explain why. Please list all services received from the DHS charge since its inception.

*Answer.* The Department of Homeland Security charges three types of security costs to the Department of Justice (DOJ): basic security charges, building-specific security charges, and reimbursable collections. Basic security charges are required for all Federal Protective Service (FPS)-protected facilities and are based on a per-square footage basis. Building-specific security charges are based on specific security

needs of the building in question. The building-specific security charges are comprised of two elements: operating expenses and amortized capital costs. Building specific charges, whether operating expenses or capital costs, are distributed over all federal users by building or facility in direct proportion to each customer agency's percentage of federal occupancy. Reimbursable collections include any agency-specific requirement or requirement above the building security survey recommendation. We cannot confirm what precise building security measures the Department has in place, as it would jeopardize building security. We are happy to provide this information to you in a more secure manner, however.

## DEPARTMENT OF JUSTICE AGENTS

*Question.* Two years ago (May 2006), the Administration's supplemental budget request included \$2 billion to secure the Nation's border of which only \$20 million, or 1 percent, was for the Department of Justice. Since September 11th, the Administration has increased the number of Border Patrol agents by 122 percent, from 9,000 in fiscal year 2000, to 20,000 in their fiscal year 2009 request.

Provide a detail breakout by bureau the number of agents hired and the percentage increase by each since September 11th.

*Answer.* The following chart indicates the authorized agent levels for the core DOJ law enforcement agencies.

DOJ Component	Fiscal year—				
	Enacted	2008 enacted	Percent 2008 over 2001	2009 President's budget	Percent 2009 over 2001
FBI .....	11,375	13,027	14.5	13,313	17.0
DEA .....	6,080	5,838	-4.0	5,868	-3.5
ATF .....	2,671	2,482	-7.1	2,482	-7.1
USMS .....	2,671	3,412	27.7	3,570	33.7

Reflects direct and reimbursable authorized agent positions.

## OTHER

*Question.* Concerns have been raised with the Subcommittee that S&E funds have been used for construction projects at DEA. Has DEA used any S&E funding for anything other than its intended purpose, without notifying Congress, in the past three years?

*Answer.* DEA has not used any S&E funding for anything other than its intended purpose, without notifying Congress in the past three years.

*Question.* Last year, DEA used the term hiring freeze while soliciting increased funding over the Presidents requested budget. Was anyone hired at DEA last year? Does the Attorney General agree that DEA had an actual hiring freeze? If anyone was hired at DEA, please explain how this is a hiring freeze. If the Attorney General agrees that DEA was in the midst of a hiring freeze and DEA had hired, please explain the Attorney General's position. If the Attorney General disagrees with DEA saying it was a hiring freeze, please explain that position.

*Answer.* DEA did not fill positions that were funded through its base Salaries and Expenses Account. However, DEA did not have to limit hiring for positions funded through the Diversion Control Fee Account. DEA was able to hire a limited number of positions in the Salaries and Expense Account due to funding provided by Congress specifically for new hires. The fiscal year 2007 Joint Resolution included funding for 57 new DEA positions to support the Intelligence Community. Congress also provided funding in the fiscal year 2007 GWOT Supplemental, which allowed DEA to fill 184 positions.

DEA lost 663 employees through attrition (including 251 Special Agents) from August 2006 through December 2007. Over the same time period, DEA hired 281 new employees (including 96 Special Agents), resulting in a net reduction of 382 employees (including 155 Special Agents).

The Department of Justice remains fully informed of DEA's progress in hiring over the past year and a half. The Department has been engaged from the beginning in dialogue with DEA to ensure that the managed hiring initiative is implemented appropriately.

## SOUTHWEST BORDER ENFORCEMENT

*Question.* Two years ago (May 2006), the Administration's supplemental budget request included \$2 billion to secure the Nation's border of which only \$20 million, or 1 percent, was for the Department of Justice.

Thousands of new Border Patrol agents have placed a tremendous strain on the federal criminal justice system and significantly increases the workload of the Department of Justice. The end result is that DOJ agencies must further sacrifice its limited resources to respond to fiscal and human resource pressures created by other federal agencies. Do you really think \$100 million is enough for the Department of Justice when the Border Patrol alone is asking for four times that amount at \$442 million?

Answer. The Attorney General has requested \$100 million in new funding as a part of the fiscal year 2009 budget for the Administration's Southwest Border Enforcement Initiative. If funded by Congress, the new resources will better enable the United States to combat the flow of illegal immigration, drugs, and weapons across our Southwest Border, and to arrest, detain, prosecute, and incarcerate violent criminals, drug offenders, and immigration violators along the Southwest Border. These funds will support the full range of law enforcement operations along our Southwest Border. The requested funds for fiscal year 2009 included enhancements to the Bureau of Alcohol, Tobacco, Firearms, and Explosives, the Drug Enforcement Administration, Interagency Crime and Drug Enforcement, the U.S. Marshals Service, the Office of the Federal Detention Trustee, the Executive Office for Immigration and Review, and the border U.S. Attorneys' Offices. As that list indicates, the issues associated with border enforcement are multifaceted and involve many entities, not only in the Department of Justice but across the Executive Department, as well as the Judiciary. Any legislative responses to issues associated with border law enforcement need to address the system as a whole.

#### FUGITIVE APPREHENSION PROGRAM

*Question.* Provide background on the OIG review on Adam Walsh. In December 2007, the USMS was notified that the Office of the Inspector General was initiating a review of the Department of Justice's efforts to implement the Sex Offender Registration and Notification Act (SORNA), Title 1 of the Adam Walsh Child Protection and Safety Act of 2006. What is the status of this investigation?

Answer. It is an inspection (rather than an investigation) being conducted by the Evaluation and Inspections Division of the Office of the Inspector General (OIG). The purpose of the review is to determine the status of the Department's efforts to prevent convicted sex offenders from committing additional crimes by locating, apprehending, and prosecuting fugitive sex offenders. This inspection is currently in progress.

*Question.* What other agencies in Justice were asked to participate?

Answer. The following offices were asked to participate: The Office of Justice Programs' Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking (SMART); the Federal Bureau of Investigation's National Crime Information Center (NCIC), Crimes Against Children Unit, and Integrated Statistical Reporting and Analysis Application (ISRAA); the Criminal Division's Child Exploitation and Obscenity Section (CEOS); and the Executive Office for United States Attorneys' Transactional Informational Government Accounting System (TIGAS).

*Question.* Who at the Department is coordinating this effort for the Federal Government?

Answer. Paul Price, Assistant Inspector General for Evaluations and Inspections, Office of the Inspector General, is coordinating this inspection at the behest of the Department of Justice's Inspector General, Glenn A. Fine.

*Question.* Provide the statistics on the number of shootings the DEA, ATF, FBI and USMS had in fiscal year 2007 versus the number of fugitives apprehended.

Answer. The USMS apprehended or cleared 75,812 federal fugitives and cleared 84,944 state and local fugitive cases in fiscal year 2007. The USMS had 20 shooting incidents in fiscal year 2007 during fugitive apprehensions. Shooting statistics involving other law enforcement agencies must be obtained directly from DEA, ATF, and FBI.

*Question.* Does the USMS have a plan for the expansion of the USMS Foreign Field Offices and does the Department of Justice support that expansion?

Answer. The USMS has a five-year plan for the expansion of the USMS Foreign Field Offices which was approved by the Director in July 2005 and by a previous Attorney General.

*Question.* What is the long term plan for the International Fugitive Apprehension Program?

Answer. The USMS International Fugitive Apprehension Program five-year plan proposes the establishment of country-specific and regional offices strategically placed in host countries to best address fugitive workload throughout the world. The USMS will determine the most strategic locations to expand the foreign field offices

based on fugitive workload, extradition activity, political factors, and geographic location.

Since the approval of the foreign expansion plan, the Adam Walsh Child Protection and Safety Act became law. Adding the requirements of this new mission may change the order in which new foreign offices are added.

*Question.* The Department was directed in the 2005 conference report to submit a five year plan that included a time-line and cost estimate to open additional international offices that are critical to the USMS fugitive apprehension mission. Provide the Committee with the plan directed in the 2005 Conference report.

*Answer.* The USMS was directed by the Conference Report (H.R. 108-792) accompanying the fiscal year 2005 Consolidated Appropriations Act to submit a five-year plan for the International Fugitive Program. The plan was approved by DOJ and OMB on December 23, 2005 and is attached as submitted.

*Question.* Where is the department in implementing that plan?

*Answer.* The USMS currently has three foreign offices in the following locations: Mexico City, Mexico; Kingston, Jamaica; and Santo Domingo, Dominican Republic.

*Question.* Provide the plan for 2008 and 2009.

*Answer.* No new resources were included in the fiscal year 2008 enacted, but there is a pending request for one position in Mexico in the fiscal year 2009 USMS S&E President's budget request and one additional position in Mexico in the fiscal year 2009 OCDETF budget request for the USMS.

*Question.* How many new foreign offices will be opened by the Marshals to catch international fugitives in the 2009 budget?

*Answer.* The fiscal year 2009 President's budget does not include resources to open a new foreign field office.

*Question.* The Organized Crime Drug Enforcement Task Forces (OCDETF) is funded at \$498 million this year. Most of the funding is for the 1,629 law enforcement personnel including: 1,048 DEA agents, 489 FBI agents, 53 ATF agents, and 39 Deputy U.S. Marshals. The fiscal year 2009 request seeks an additional 6 Deputy Marshals which would bring them up to 45 OCDETF Deputy Marshals. There is a memorandum of understanding (MOU) between the Marshals Service and DEA to work fugitive warrants. Under this MOU, after seven days, most DEA warrants are transferred over to the Marshals Service. No USMS warrants are transferred to DEA. If the Marshals Service is identifying and arresting DEA fugitives, why don't they get more OCDETF resources?

*Answer.* The level of USMS funding within the OCDETF Program is established by the ICDE Appropriations; it is not a matter of discretion for the OCDETF Program. Over the last several budget cycles, OCDETF has gradually requested and received additional resources to expand the USMS's ability to assist in the OCDETF mission. The President has not requested additional new resources, because the USMS's OCDETF resource allocation already takes into account that it will assume responsibility for unexecuted DEA warrants once investigations are completed.

The OCDETF Program provides reimbursable funding for the Drug Enforcement Administration, Bureau of Alcohol, Tobacco, Firearms and Explosives, Federal Bureau of Investigation, United States Marshals Service, United States Attorneys, and the Justice Department's Criminal and Tax Divisions. OCDETF funding augments the direct budgets and appropriations of the participating agencies and these funds are restricted to OCDETF program expenses. The allocation of OCDETF resources among these participating agencies takes into account the level of resources needed to fulfill each agency's role in the handling of OCDETF drug cases. Each OCDETF agency, including the DEA and the USMS, has unique capabilities and expertise that are deployed in individual cases to maximize productivity and avoid duplication of effort. The USMS's contributions, while critical to the success of the mission, are typically more limited than the DEA's in scope and expense. In most OCDETF cases, the DEA's role is to investigate the drug trafficking organizations, and the USMS's role is to find and arrest the traffickers who escape the first round of arrests. Recently, with the addition of new USMS resources, the OCDETF Program has begun using the USMS in a more proactive basis during the initial arrest and take-down process to limit the number of traffickers who become fugitives. The agencies' respective OCDETF funding levels take into account that division of labor and expertise. Warrants are not moved from USMS to DEA as that is not DEA's role in the OCDETF Program.

OCDETF funding allocations developed annually during the regular budget process are included in the President's budget request to Congress each February. The OCDETF resource requests that are submitted are developed within the overall National Drug Strategy and constraints provided by the Department of Justice and the Administration. During this process all aspects of each of the OCDETF components are reviewed with regard to the task force's mission. As the budget environment has

become more restricted, only the highest priority budget increases have been approved. Over the last few years, in recognition of the need for the USMS's unique capabilities and expertise, the OCDETF Program has made it a priority to request increases for the USMS. In fiscal year 2005, OCDETF requested and received 28 new deputies, an increase of 215 percent. The current fiscal year 2009 President's budget includes a request for 6 new deputies, a 17 percent increase including the first full-time deputy who will be assigned to a foreign duty station. The OCDETF Program will continue to request additional deputies until the appropriate balance between investigations, prosecutions, and fugitive apprehensions has been met.

*Question.* How much money has been provided to the Marshals from OCDETF for extraditions?

*Answer.* The OCDETF Program does not specifically designate any of the funding provided to the USMS. Historically, the USMS has not designated any of its OCDETF funding for returning extradited fugitives to the United States and instead has focused its OCDETF funding on its highest priority of identifying, locating and apprehending fugitives, including those that have fled the country. Shifting resources to support the administrative and logistical costs associated with extraditions would greatly diminish fugitive apprehension efforts.

*Question.* Can the USMS use OCDETF funding to support the expansion of the USMS Foreign Field Offices?

*Answer.* Yes. The USMS can use OCDETF funding to help the expansion of USMS foreign field offices. The fiscal year 2009 OCDETF President's budget contains a request for one position for the USMS to expand violent narcotics case fugitive apprehension in Mexico. This is in addition to the aforementioned Mexico position in question right before this one.

*Question.* Can't OCDETF money be used to augment the Foreign Field Office in Mexico City, Mexico and Bogotá, Colombia? If not, why not? Be specific.

*Answer.* Yes, OCDETF money could be used to augment the foreign field offices. There were no program enhancements in fiscal year 2007 and the USMS OCDETF budget decreased in fiscal year 2008. The fiscal year 2009 OCDETF President's budget contains a request for one USMS position to expand violent narcotics case fugitive apprehension in Mexico. The USMS is in the process of initiating a temporary duty assignment to Bogotá, Colombia using OCDETF resources, in conjunction with the Drug Enforcement Administration, to assess the USMS in-country capabilities on fugitive apprehension and extradition efforts. The temporary duty start date is scheduled for the Summer of fiscal year 2008.

*Question.* How many narcotics related or narco-terrorism related extraditions does the USMS do each year?

*Answer.* In fiscal year 2006, 301 narcotics/narco-terrorism related extraditions were completed costing \$1,068,728. In fiscal year 2007, 347 narcotics/narco-terrorism related extraditions were completed costing \$1,166,500.

*Question.* Can funding be utilized from the Organized Crime Drug Enforcement Task Force (OCDETF) to support narcotics related extraditions?

*Answer.* Yes. The USMS has requested \$100,000 in the fiscal year 2009 OCDETF President's budget to support narcotics related extraditions. The USMS has also sought funding through the Asset Forfeiture Program and OCDETF to cover the costs incurred by the USMS for extraditing these targets and will continue to pursue future funding for this essential mission.

*Question.* If so, has it been used for this purpose?

*Answer.* The USMS has not previously used any outside funding resources for this purpose.

*Question.* If not please describe in detail why.

*Answer.* Funding was allocated to maximize performance output. Domestic OCDETF fugitive operations would have been markedly reduced by any spending priority shift to extradition funding.

*Question.* Isn't it true that in fiscal year 2006 and fiscal year 2007 approximately half of the extradition missions were conducted on subjects wanted in major narcotics cases, including criminal indictments filed under the Organized Crime Drug Enforcement Task Force (OCDETF)?

*Answer.* Yes. Please see stats in next question.

*Question.* Specifically in fiscal year 2006, 301 of the 685 missions completed were for narcotics, 72 of which were specifically for OCDETF violators. In fiscal year 2007, 347 of the 772 missions completed were for major narcotics violators, 51 of which were OCDETF cases. How much funding has OCDETF given to the Marshals to support these efforts from fiscal year 2004 to today? Be specific.

*Answer.*

	Positions	Investigators	FTE	Amount
Fiscal year 2004 .....	13	13	13	\$2,125,000
Fiscal year 2005 .....	41	39	27	\$6,345,000
Fiscal year 2006 .....	41	39	36	\$6,932,000
Fiscal year 2007 .....	41	39	39	\$8,447,000
Fiscal year 2008 .....	41	39	41	\$8,272,000
Fiscal year 2009 President's request .....	47	45	44	\$10,221,000

*Question.* Provide a detailed list of all funding provided by OCDETF to support the extraditions and deportations carried out by the Marshals Service.

*Answer.* OCDETF does not limit the activities that USMS can use OCDETF funding for as long as the costs are related to an OCDETF fugitive. The USMS has historically chosen not to allocate OCDETF funding for the logistical and administrative costs of extraditions and deportations.

*Question.* Provide all of the requests since fiscal year 2005 from the U.S. Marshals Service to OCDETF for funding assistance? Be specific as to why each was approved or rejected. Be specific about all higher priorities funded.

*Answer.* As noted in the above response, the OCDETF Program provides the USMS funding on an annual basis through the budget process. This process allows the USMS to submit budget enhancements to the OCDETF Program for inclusion in its annual President's budget request. The details of these requests are pre-decisional and not releasable.

However, since fiscal year 2005, the following program enhancement requests were requested by the Administration for the OCDETF USMS Program: an additional 28 positions and \$4,320,000 in fiscal year 2005 to create OCDETF fugitive apprehension units throughout the nine OCDETF regions and assume responsibility for all OCDETF fugitives; 9 positions and \$2,072,000 in fiscal year 2006 to increase the capacity of the USMS to apprehend OCDETF fugitives; and an additional 6 positions and \$1,714,000 for the USMS to address OCDETF fugitive apprehension by adding a Deputy U.S. Marshal to each of the border Districts; one Deputy U.S. Marshal in Mexico City, addressing the apprehension of OCDETF fugitives that are linked to CPOTs and Gatekeepers; and funding to assist in defraying the costs of extradition incurred by the USMS when bringing a fugitive out of Mexico back to the United States to face prosecution. These requests are on top of the mandatory inflationary cost requests by the Program. When compared to the other OCDETF components' requests, the USMS has grown at a significantly higher rate. Only DEA and USAs have also received enhancements during this time frame. While the USMS OCDETF budget has increased 289 percent since fiscal year 2004, the USA OCDETF budget grew 32 percent, and the DEA OCDETF budget grew only 12 percent.

In addition, during this period the OCDETF Program has relied upon reprogrammed funds from prior year balances to supply requisite funding for short-term, targeted fugitive apprehension missions, called Special OCDETF Response Teams, or SORT Operations. Nearly \$1.2 million in reprogrammed monies were provided to the USMS by the OCDETF Executive Office during this time. The OCDETF Program continues to support the USMS, as they are an integral part of the Program.

*Question.* How much will OCDETF be assisting the marshals with funding in fiscal year 2008?

*Answer.* The USMS resource assistance by OCDETF in fiscal year 2008 is 41 positions, including 39 Deputy Marshals, totaling \$8,272,000.

*Question.* Provide all requests since 2001 made by the Marshals for assistance from OCDETF, how much funding assistance was provided for each request, and the metrics used to determine what requests to support and reject?

*Answer.* See table below.

	Positions	Investigators	Amount
Fiscal year 2001 .....	13	13	\$1,980,000
Fiscal year 2002 .....	13	13	\$2,049,000
Fiscal year 2003 .....	13	13	\$2,095,000
Fiscal year 2004 .....	13	13	\$2,125,000
Fiscal year 2005 .....	41	39	\$6,345,000
Fiscal year 2006 .....	41	39	\$6,932,000
Fiscal year 2007 .....	41	39	\$8,447,000
Fiscal year 2008 .....	41	39	\$8,272,000
Fiscal year 2009 President's request .....	47	45	\$10,221,000

The United States Marshals Service (USMS) plays a significant role in the OCDETF Program. The USMS is responsible for approximately 90 percent of all OCDETF fugitive investigations. Currently, there are over 7,200 OCDETF fugitives nationwide, 32 percent of which are considered leaders in their organization. In fiscal year 2007, the USMS arrested 1,449 OCDETF fugitives—an average of 42 arrests per OCDETF U.S. Marshal FTE, clearing 1,492 warrants by arrest.

When the OCDETF Program began in 1982, the Marshals received an allocation of 13 positions and this allocation remained unchanged for over twenty years. Fugitive apprehension is a critical element of the OCDETF Program's success. However, while other OCDETF member agencies increased their workforce generating many new OCDETF investigations and thereby increased the workload of the USMS, the USMS OCDETF resources remained fixed. In fiscal year 2003, a management study was done on the participation levels of the OCDETF Components which indicated that the level of participation by the USMS should be 113 positions given the current workloads. The OCDETF Program determined that this level of increase needed to be implemented in phased process. The fiscal year 2005 President's request represented the first phase of the process resulting in the USMS receiving 28 new positions a 215 percent increase. Each year since, the OCDETF Program has sought to incrementally increase the USMS to reach the ultimate goal of 113 positions.

#### USMS HISTORICAL OCDETF ENHANCEMENTS

[Dollars in thousands]

Fiscal year	Enhancement requests		Enhancements received	
	Positions	Funding	Positions	Funding
2005 .....	37	\$5,801	28	3,932
2006 .....	67	13,024	.....	450
2007 .....	34	7,181	.....	1,940
2008 .....	20	8,032	.....	(175)
2009 .....	19	4,690	( <sup>1</sup> )	( <sup>1</sup> )

<sup>1</sup> Pending.

*Question.* What are the participation levels in OCDETF among the DOJ agencies? What are the overall percentages that each agency initiates and participates in OCDETF cases?

*Answer.* Please see table below.

AGENCY PARTICIPATION IN OCDEF INVESTIGATIONS

	Fiscal year 2001		Fiscal year 2002		Fiscal year 2003		Fiscal year 2004		Fiscal year 2005		Fiscal year 2006		Fiscal year 2007		Fiscal year 2008	
	Number	Percent														
ATF .....	305	22.8	212	23.5	165	23.4	212	24.0	261	25.6	258	26.7	273	26.9	211	30.1
DEA .....	1,117	83.6	781	86.6	623	88.5	803	91.0	925	90.6	870	89.9	918	90.4	625	89.2
FBI .....	566	42.4	333	36.9	247	35.1	309	35.0	344	33.7	325	33.6	334	32.9	233	33.2
ICE .....	655	49.0	504	55.9	387	55.0	467	52.9	465	45.5	390	40.3	424	41.7	289	41.2
IRS .....	526	39.4	419	46.5	378	53.7	451	51.1	438	42.9	356	36.8	469	46.2	276	39.4
USCG .....	15	1.1	19	2.1	9	1.3	16	1.8	11	1.1	16	1.7	21	2.1	11	1.6
USMS .....	307	23.0	263	29.2	209	29.7	300	34.0	340	33.3	406	41.9	511	50.3	325	46.4
State & Local .....	1,205	90.2	806	89.4	617	87.6	768	87.1	922	90.3	867	89.6	901	88.7	647	92.3

AGENCY SPONSORSHIP OF OCDEF INVESTIGATIONS

	Fiscal year 2001		Fiscal year 2002		Fiscal year 2003		Fiscal year 2004		Fiscal year 2005		Fiscal year 2006		Fiscal year 2007		Fiscal year 2008	
	Number	Percent														
ATF .....	60	4.5	41	4.5	27	3.8	42	4.8	54	5.3	71	7.3	59	5.8	49	7.0
DEA .....	908	68.0	624	69.2	536	76.1	710	80.5	816	79.9	784	81.0	821	80.8	568	81.0
FBI .....	310	23.2	182	20.2	124	17.6	152	17.2	168	16.5	164	16.9	179	17.6	135	19.3
ICE .....	168	12.6	146	16.2	86	12.2	143	16.2	137	13.4	132	13.6	127	12.5	93	13.3
IRS .....	95	7.1	80	8.9	77	10.9	80	9.1	70	6.9	52	5.4	85	8.4	49	7.0
USCG .....	1	0.1	1	0.1	.....	.....	1	0.1	.....	.....	.....	.....	2	0.2	.....	.....
USMS .....	1	0.1	2	0.2	.....	.....	2	0.2	1	0.1	8	0.8	.....	.....	.....	.....
State & Local .....	163	12.2	100	11.1	81	11.5	106	12.0	153	15.0	136	14.0	140	13.8	126	18.0

*Question.* Do they receive adequate/appropriate funding in support of their contributions to the OCDETF program?

*Answer.* Yes, the USMS receives appropriate funding for its participation in the OCDETF Program. The OCDETF Program was established to ensure that an appropriate level of participation from all of its member agencies were directed at the Department of Justice/Administration's highest priority long-term and complex drug trafficking and money laundering investigations so that individual agencies could not redirect these funds to their respective short term priorities. This strategy has been hugely successful with the dismantlement of many of the infamous drug cartels from around the world who once thought they were untouchable by U.S. law enforcement.

This Departmental funding priority is carefully balanced each year during the development of the President's budget against the other priorities within the Department and the availability of new funds. This has become more difficult in recent years due to budget constraints and the war on terror. Given all of these factors, the USMS OCDETF Program has grown at a faster rate than the other OCDETF components in recognition of the increasing USMS serves within the Program.

*Question.* The USMS currently supports the U.S. National Central Bureau of Interpol (USNCB) with management positions in the Alien/Fugitive Division and also holds the current Deputy Director position. What funding does the USMS receive to support this participation?

*Answer.* The salaries, benefits, and overtime of these positions are funded by the USMS salaries and expenses (S&E) base. Over and above the position costs, the USMS receives an annual operating budget of approximately \$44,000 to support the USNCB.

*Question.* How much does the USMS International Extradition Program cost each year and how is the program funded? Provide a detail breakout of the real costs associated with this program by fiscal year from 2006–08 and proposed for fiscal year 2009 and the money actually allocated to this program by the Department.

*Answer.* The International Extradition Program is funded from the operational base of the USMS S&E appropriation. The Department does not directly allocate funding for USMS extraditions. The following table shows historical extradition expenses, not including the salaries and benefits of the USMS participants:

USMS EXTRADITION EXPENSES

[In thousands of dollars]

Fiscal year	Cost of extraditions
2006 .....	2,481
2007 .....	2,705
2008 .....	<sup>1</sup> 3,600
2009 .....	<sup>2</sup> 3,600

<sup>1</sup> Estimate.

<sup>2</sup> Projection.

*Question.* The USMS Extradition Program has increased the number of missions completed every year since 2001. Has there been any comparable increase in personnel to support the increase in workload over that same period of time? Provide a detail list of workload increase and the number of positions increased for this program.

*Answer.* The USMS has the statutory responsibility for conducting all extraditions to the United States from foreign countries, as well as supporting extraditions to foreign countries from the United States. This includes all individuals ordered extradited and/or surrendered, regardless of whether they are wanted by a federal, state, or local jurisdiction. As crime and wanted fugitives become more global, and the efforts of the USMS Domestic and International Fugitive Programs become more successful, the numbers of international fugitives apprehended and extradited to face justice has and will increase. Currently the USMS International Branch is responsible for coordinating all extraditions with the Department of Justice, State Department, and foreign governments. The International Branch has two full-time employees in the Extradition Program: an Extradition Program Manager, and one Extradition Specialist—a position that was initially created in the early 1980's. Personnel who conduct the actual extraditions are most often provided by the local district office where the extradited fugitive is being returned or is being held pending surrender to a foreign authority. The additional cost of the program is primarily due

to the travel expenses of the prisoner and the USMS escorts dispatched to conduct the mission.

USMS EXTRADITION HISTORY

Fiscal year	Total extraditions and deportations
2002 .....	340
2003 .....	521
2004 .....	541
2005 .....	653
2006 .....	685
2007 .....	772

*Question.* What is the impact on the USMS Extradition Program when extradited subjects charged with “extra-territorial” narcotics or terrorism statutes (i.e., 21:959 or 21:960) are returned to the United States?

*Answer.* The primary use of USMS-contracted dedicated flights in the past two fiscal years have been fugitives charged under 21 USC § 959, or “959” indictments. They must be brought back to the United States under escort directly to the demanding jurisdiction. If the U.S. Port of Entry is a location other than the charging district, the subject must be tried in the district of formal entry to the United States. This causes great concern to the Department and U.S. Attorneys as their prosecutors, case preparation, files, agents, and witnesses are usually in the charging district and substantial resources would be needed to move the case to another district. The USMS faces several challenges in performing these extradition missions. For example, if no commercial flights exist from the country of origin, a contracted dedicated flight is the only option. If international flights can be identified from the country of origin, or a country will grant the USMS transit authority for a connecting flight, the USMS will utilize the most cost effective means. Since most of the individuals extradited on “959” indictments are high-level drug traffickers or individuals associated with narco-terrorism, security for the prisoner and escorts is always a concern. These complicating factors increase the average cost of these “959” fugitive extraditions, especially if chartered aircraft are the only option available to support the mission, to an average of three times the cost of a non-959 extradition. The total cost of all “959” indictments completed in one fiscal year has risen from \$53,040 in fiscal year 2004 to \$688,450 in fiscal year 2007.

*Question.* In fiscal year 2007, 53 missions were completed at a direct cost to the USMS of \$688,450 or approximately 25.8 percent of the total extradition budget what is the Department doing to assist the Marshals Service with these spiraling expenses? Be specific.

*Answer.* The Department takes increasing costs into account in determining priorities regarding law enforcement missions.

*Question.* How will the implementation of the new Adam Walsh Child Protection and Safety Act of 2006 affect the USMS International Extradition Program?

*Answer.* The number of extradition missions generated as a result of the Adam Walsh Child Protection and Safety Act (AWA) investigations is expected to drastically affect the Extradition Program. It is believed that many child predators travel internationally in pursuit of the child sex trade. Many of those predators are previously convicted sex offenders who are not in compliance and have failed to report that travel. They could readily retreat to familiar foreign locations once they are the focus of federal apprehension.

*Question.* What is the estimated number of sex offenders who travel internationally to pursue and engage in illegal sex activity?

*Answer.* There is no mechanism at this time to capture how many sex offenders (compliant or non-compliant) travel abroad. The DOJ Child Exploitation and Obscenities Section and the Sex Offender Management Apprehension Research and Tracking (SMART) office are working on guidelines to address the issue.

*Question.* What are we doing to encourage our international partners to increase their commitment to assist us with non-compliant sex offenders who will be charged and eventually located internationally in countries such as Costa Rica, Thailand, Cambodia, the Philippines, and other Far East locations that cater to the underage sex business?

*Answer.* In 2005, the USMS formulated a 5-year plan to expand the number of foreign postings that would help facilitate assistance with pursuing non-compliant sex offenders overseas. Currently, the USMS has a strong relationship with entities

such as INTERPOL, NCMEC, and the Department of State that provides a framework to track and apprehend sex offenders traveling abroad. The USMS will work closely with these departments to create the National Sex Offender Targeting Center (NSOTC). NSOTC will assist law enforcement in tracking sex offenders both domestically and internationally.

*Question.* What is the Justice Department doing to ensure that the Marshals Service has the resources and the manpower in these countries to assist in the hunting down of these predators?

*Answer.* As stated above, the Justice Department works closely with partner agencies to apprehend these individuals overseas and supports the plan developed by the USMS to expand overseas presence to facilitate assistance in the pursuit of non-compliant sex offenders.

*Question.* The Congressional Budget Office (CBO) conservatively estimates that the Marshals Service would need to hire at least 350 new Deputy Marshals to take a lead role in executing a significant number of additional warrants for unregistered sex offenders. CBO estimates it would cost \$25 million year one and \$220 million over a five-year period, including costs for space training, supervision and support staff. What new resources are requested by the Department in fiscal year 2009 to reduce the number of sex offenders from our streets?

*Answer.* USMS actively assists state, local, and tribal territories in tracking and apprehending non-compliant sex offenders. No new resources have been requested for fiscal year 2009 for additional Deputy Marshals in the execution of this mission.

*Question.* If the answer is zero what kind of message does this send?

*Answer.* The USMS wants to send the message that we take our role that is outlined in the AWA very seriously. We want to ensure that the entire law enforcement community is aware that we will assist them in their efforts to track and apprehend non-compliant sex offenders. We want the public to be aware that we are uniting with state and local law enforcement in order to protect our children and our community from sexual predators.

*Question.* Is this giving sex offenders a “free ride”?

*Answer.* The USMS recognizes the danger of having over 100,000 sex offenders roaming our communities with no supervision. There is no toleration of sexual abuse or exploitation by the USMS. USMS actively works with all levels of law enforcement to track and apprehend sexual predators.

*Question.* How many DUSMs would you need to fully implement Adam Walsh?

*Answer.* The USMS will work with DOJ and other agencies within the Administration to determine the appropriate level of resources to address its responsibilities as assigned by the Act.

*Question.* How many are requested in the fiscal year 2009 budget?

*Answer.* USMS resource requests for the AWA were included in the fiscal year 2008 budget submission to Congress; however, it was not part of the enacted appropriation. The fiscal year 2009 USMS President’s budget does not contain any additional resources for sex offender enforcement.

*Question.* The Presidential Threat Protection Act of 2000 authorized the Marshals Service to establish Regional Fugitive Task Forces (RFTFs) to locate and apprehend the most violent federal, state, and local fugitives. Over the years this Subcommittee has provided resources to the Marshals Service to establish six of these task forces. Results have been very impressive. Before there were RFTFs, the Marshals Service apprehended around 46,000 fugitives a year. Five years later, and with six RFTFs, the Marshals apprehended close to 95,000 felony fugitives—an increase of 106 percent. These fugitives are the “worst of the worst,” averaging more than four prior arrests each. Our communities are safer because taking these criminals off the streets prevented 378,000 crimes from being committed. How many new resources are requested in this budget for this program?

*Answer.* The fiscal year 2009 USMS President’s budget contains no enhancements to establish new RFTFs.

*Question.* Even though the Marshals Service arrests more fugitives than all other federal agencies combined, DOJ in this budget request fails to recognize that the Marshals Service is one of its investigating agencies. Why are requests for more investigative resources not provided in this request?

*Answer.* The USMS, in coordination with the DOJ, develop resource requests that reflect the Administration’s priorities across all law enforcement components.

#### JUDICIAL SECURITY

*Question.* The Court Security Act gives new responsibilities to the USMS, yet no additional funds were requested in fiscal year 2009. The Act authorized \$20 million

each year through 2011, but no additional funds are part of the fiscal year 2009 request.

On March 11, 2008, ABC News and CNN reported that threats against federal judges and prosecutors are growing at an alarming rate. Threats against the federal judiciary and prosecutors have increased 69 percent over the past five years. Threats are on track to rise this year for the fifth straight year. The Congressional Budget Office (CBO) conservatively estimates that it would take \$409 million over five years to provide sufficient resources to the USMS to provide increased court security.

If the Marshals Service is under-staffed to perform its core mission of judicial security, how will they meet this mission requirement? Will these agents be pulled from the regional task forces? Provide a detailed breakout of where these manpower resources will come from.

Answer. The USMS will continue to rely on District Security Officers (off-duty or retired law enforcement officers that the agency hires on an hourly or daily basis), overtime, and Deputy Marshals detailed from other district offices to meet mission requirements. Individual district offices are responsible for providing the staffing necessary to meet daily mission requirements; however, USMS Headquarters assists in coordinating travel for out-of-district Deputy Marshals when mission requirements exceed available resources in a district office.

As an example, in fiscal year 2007, 307 out-of-district Deputy Marshals were utilized in order to staff protection details where there was inadequate staffing in the home district. The districts providing the resources then used Detention Enforcement Officers, District Security Officers (who work under personal services contracts), and overtime to meet their individual mission requirements.

Deputy Marshals assigned to a district office may also be pulled as needed from any task force duties, including a Regional Fugitive Task Force, in order to staff critical judicial security missions. Deputy Marshals permanently assigned to Regional Fugitive Task Forces are pulled from their task force duties only in rare or exceptional circumstances, such as post-Hurricane Katrina duties in Mississippi and Louisiana.

*Question.* The Committee understands that the Secret Service has 140 people who analyze threats made against 40 officials. The Marshals Service has 35 people to analyst threats made against 7,700 judges and federal prosecutors. How do you address this disparity?

Answer. The USMS Office of Protective Intelligence (OPI) presently has 25 people to analyze threats made against the 7,700 judges and prosecutors. Both the USMS and the U.S. Secret Service (USSS) proactively investigate threats and inappropriate communications directed at their protectees by conducting protective investigations. The USSS assigns full-time protective details for all of their protectees; however, the USMS does not assign full-time protective details to 7,700 individuals.

If a judge or prosecutor is threatened, the USMS conducts a protective investigation to assess the severity of the threat. If required, a protective response is initiated and a protective detail assigned. Prior to and during the protective response, a Deputy Marshal conducts a protective investigation to mitigate the threat and any danger to the protectee. Judges are protected primarily only when they are at a U.S. Courthouse.

*Question.* Without resources to improve the timeliness of threat assessments, how will you effectively predict who the next attacker is or who the next judicial victim will be?

Answer. The USMS uses a behavior-based approach in conducting investigations. Predicting exactly who the next attacker or victim will be is difficult. USMS relies on statistical analysis to identify probable attackers. Studies have shown that individuals who pose a threat often do not communicate a warning in advance of their actions. Based on these studies, a methodology has been developed to look at a subject's behavior rather than strictly at the substance of what they may be communicating to the protectee or to law enforcement. The methodology includes an analysis of what actions they have taken to carry out an attack, statements they have made to others around them, a subject's individual criminal history, history of approaching possible victims, possession of weapons, and any life-changing experiences the subject may have undergone. When a subject comes to the attention of the judiciary or the USMS, proactive protective investigations pay attention to these indicators in their threat assessments.

Identification of the next attacker or victim can be aided through enhancements in information technology. The threat management database currently used by the USMS was primarily designed for fugitive investigations rather than protective investigations, and as such the search capability and the automated analysis tools specific to protective investigations are limited. Four of the recommendations by the

2007 DOJ Office of Inspector General's (OIG) review of the USMS Judicial Security Process related to improving the threat assessment process and the databases that identify and track potential threats.

An additional information technology tool that is used in the identification of potential attackers or victims is link analysis. The USMS has acquired a link analysis tool to interface with and search numerous USMS databases. A subsequent phase could expand the search capabilities of this analysis to include searches of other agencies' databases, court records, and open source data to aid in the investigation and identification of potential attackers.

*Question.* How many DUSMs would you need to fully implement the Court Security Act?

*Answer.* The USMS will work with DOJ and other agencies within the Administration to determine the appropriate level of resources to address its responsibilities as assigned by the Act.

*Question.* How many are requested in the 2009 budget?

*Answer.* The fiscal year 2009 request does not include any increases for the Court Security Act, but instead anticipates that the USMS will continue to rely on District Security Officers (contract guards with prior law enforcement experience), overtime for existing employees, and Deputy Marshals detailed from other districts to meet the requirements of the Act.

*Question.* What challenges do you face in court security based on the fiscal year 2008 funding levels?

*Answer.* The greatest challenge faced by the USMS is to provide a minimum standard of protection for judges, prosecutors, the court family and the public. Limited resources to address the constant pressure to produce and house more prisoners, investigate and apprehend more fugitives and sex offenders, and investigate and mitigate more risks posed to protectees is a tremendous challenge.

Since 2005, the USMS has updated and appropriately raised the standards for judicial security. The USMS has changed policies and procedures related to everything from threat investigations to personal security details, re-engineering judicial security in the USMS.

To address these challenges the USMS has combined the use of JSIs and PIIs to focus expertise on judicial threat analysis and investigation.

*Question.* List by protectee the number of agents and vehicles assigned to each detail.

*Answer.* Protectee detail information is sensitive information that could reveal USMS staffing levels and lead to security vulnerabilities affecting our protective mission. Therefore, specific details are not released outside the agency. In general, the number of Deputy Marshals and vehicles assigned to a protection detail varies and is determined on a case-by-case basis. The level of protection detail, depending on the severity of the threat, can range from an escort detail of a single Deputy Marshal to a full protection detail of a dozen or more Deputy Marshals. An escort detail is the minimum level of protection and a full protection detail is the maximum level of protection for USMS protective missions.

*Question.* The cost of each protectee detail in 2007, to date in 2008 and the projected year end cost.

*Answer.* The USMS expended \$1,857,000 for the operational cost of protection details in 2007 and \$595,000 to date in 2008 with a projected total of \$865,000 for the entire year. Totals exclude the regular payroll costs of Deputy Marshals.

*Question.* How many agents in each shift of each detail?

*Answer.* All protective details are staffed by Deputy U.S. Marshals. The number of Deputy Marshals and vehicles assigned to a protection detail varies and is determined on a case-by-case basis. The level of protection detail, depending on the severity of the threat, can range from an escort detail of a single Deputy Marshal to a full protection detail of a dozen or more Deputy Marshals. An escort detail is the minimum level of protection and a full protection detail is the maximum level of protection for USMS protective missions.

#### COURTHOUSE RENOVATIONS

*Question.* In 1997, the U.S. Marshals Service proactively designed and implemented a National Security Survey to determine how well our 400 federal courthouses measured up to security standards. Assaults and injuries in cellblocks place Deputy Marshals, pretrial and probation officers, and public defenders at grave risk. These same personnel are routinely exposed to airborne pathogens including hepatitis and tuberculosis due to improper heating and ventilation systems within cellblocks. The risk of escape is high when there are no segregated prisoner movement areas because Deputy Marshals must move prisoners through public corridors,

stairwells, and elevators. Recent estimates suggest that \$88 million would be needed over the next four years to renovate and remedy existing security deficiencies in cellblocks, vehicle sally ports, prisoner elevators, secure circulation areas, and holding cells. Another \$30 million would be needed for cameras, alarms, and courthouse security systems.

The 2009 request provides only \$2 million for construction. A \$2 million request doesn't even cover the inflationary cost of maintenance and minor repairs. How will you allocate the \$2 million to address what is identified as a \$100 million problem?

Answer. The \$2 million included in the fiscal year 2009 request will be used to help meet expenses for those construction and renovation projects that are already in progress and that have the most pressing and immediate needs.

Additionally, the 2009 budget proposes to consolidate the construction account within the larger salaries and expenses account. This proposal will increase the USMS flexibility to reprogram funds to address emergent construction needs and better prioritize funding.

*Question.* Is the safety of the federal judiciary and all its participants a priority?

Answer. Yes, it is the primary role and mission of the USMS to protect the Federal judiciary (28 U.S.C. 566(a)). The USMS Director's priority to "Enhance Judicial Threat Management and Analysis" fully supports the Department of Justice Strategic Goal 3.1.1 to "Protect judges, witnesses, and other participants in federal proceedings, and ensure the appearance of criminal defendants for judicial proceedings or confinement."

*Question.* Is the health and safety of the federal agents who handle these prisoners addressed in this budget request? If the answer is yes explain why.

Answer. The \$2 million included in the fiscal year 2009 request will be used to help meet expenses for those construction and renovation projects that are already in progress and that have the most pressing and immediate needs.

Additionally, the 2009 budget proposes to consolidate the construction account within the larger salaries and expenses account. This proposal will increase the USMS flexibility to reprogram funds to address emergent construction needs and better prioritize funding.

*Question.* When the Administration requests only \$2 million for construction each fiscal year, how long will it take to make sure that all courthouses are up to the latest security standards?

Answer. At \$2 million per year to renovate courthouse facilities, USMS-occupied space will continue to raise National Security Survey scores, which have significantly improved between 1999 and 2007. In 1999, only 21 facilities met minimum standards. In 2002, 65 facilities met minimum standards. In 2006, 94 facilities met minimum standards. This improvement was the direct result of increasing funding in the Construction Appropriation and the S&E funding designated for courthouse security systems. Security scores for USMS facilities increased 4 percent-10 percent in many areas between the 2002 and 2006 surveys. Security scores increased 15 percent-22 percent in major categories between the 1999 and 2006 surveys. The USMS utilizes a National Security Survey (originally developed in 1997 and refined every three years) to prioritize construction and renovation projects.

#### SOUTHWEST BORDER ENFORCEMENT

*Question.* Two years ago (May 2006), the Administration's supplemental budget request included \$2 billion to secure the Nation's border of which only \$20 million, or 1 percent, was for the Department of Justice.

When DHS ICE agents raid a plant and hundreds of illegal workers are detained, who is responsible for transporting these aliens to holding facilities?

Answer. USMS does not participate in the detention of workers charged with administrative violations. However, upon arrest for Federal criminal offenses, DHS ICE agents transport detainees to holding facilities and to their initial court appearances. At the initial appearances, the judge remands detainees to USMS custody after which USMS Deputy Marshals perform all prisoner transports.

*Question.* Why has DOJ not actively pursued reimbursement from DHS entities who summon the U.S. Marshal Service to transport mass amounts of illegal aliens who are detained?

Answer. The USMS will work with DOJ and the affected DHS components to ensure that the proper funding mechanism is in place to fulfill the USMS responsibilities.

*Question.* Are you unaware of the Border Patrol's enforcement efforts? Why does the Department not receive full reimbursement for all Border Patrol arrests that are then handed over to DOJ custody?

Answer. The USMS is aware of the Customs and Border Protection's enforcement efforts that are conducted on the Southwest Border. The USMS will work with DOJ and the affected DHS components to ensure that the proper funding mechanism is in place to fulfill the USMS responsibilities.

The USMS and Customs Border Protection (CBP) are exploring options to integrate the DHS IDENT automated booking system with the DOJ JABS automated booking system. Rather than establish a reimbursable agreement involving funding, the hope is that CBP would provide personnel to work alongside USMS staff on a temporary duty basis to integrate the systems. Providing CBP personnel (both government and contractors) to assist the USMS may be a way to improve interoperability without a reimbursable agreement.

*Question.* ICE is requesting \$30 million more for worksite investigations in areas now where near the Southwest Border. ICE arrests those who violate workforce rules involving document fraud, illegal workers, drug and human smuggling, as well as violent crime. These people are being prosecuted in federal court, which places further strain on DOJ resources and personnel and creates an immediate infrastructure crisis. What new resources are requested in this budget to address this?

Answer. None. At the time the USMS was preparing its fiscal year 2009 budget submission, the scope of ICE worksite enforcement efforts was unknown. The \$12.7 million requested in the fiscal year 2009 budget was based on Southwest Border initiatives alone.

*Question.* When will the Department request resources to respond to other immigration-related enforcement initiatives that are not on the border?

Answer. The USMS will work with DOJ and the Administration to determine the appropriate level of funding for immigration-related enforcement initiatives, including those impacting the interior parts of the country.

#### LAW ENFORCEMENT COMMUNICATIONS

*Question.* In March 2007, the Inspector General reported that, of the 30,000 DOJ radios, 79 percent are not airwave compliant; 95 percent lack federally mandated security; and 73 percent are obsolete. The report found that this failure to upgrade DOJ components' antiquated communications represent an unnecessary risk to the safety of agents. I have heard cost estimates to seriously address this issue are in the \$20 billion range. Do you believe that \$20 billion is a reasonable estimate of the cost?

Answer. No, \$20 billion is not a reasonable estimate. The Department has never asked for nor estimated the size of the program to be \$20 billion. The Department estimates that the implementation of the modernized Integrated Wireless Network (IWN) across the four DOJ Law Enforcement Components—Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), Drug Enforcement Administration (DEA), Federal Bureau of Investigation (FBI), and United States Marshals Service (USMS)—will cost \$1.23 billion over 6 years. Previously submitted estimates were well over \$2 billion for a ten year implementation, but as we have briefed Appropriations staff within the last two months, we have worked with the components to streamline and simplify the implementation to cut cost estimates significantly and to reduce implementation time estimates by 40 percent.

This estimated cost would meet all security and narrowband requirements and improve existing coverage for the four components. In addition there will be operational costs (maintenance of legacy radio systems, maintenance of the modernized IWN, technical refresh, and programmatic support) of \$462 million over the six year period. This O&M funding covers more than just break/fix costs, it also pays for the management of the program, site rental fees, monitoring of the network and most importantly, it covers the expenses of special events such as the Super Bowl and the political conventions.

*Question.* Do the DOJ components have adequate LAND Mobile Radio communications capability to carry out their core missions?

Answer. The components are carrying out core missions with existing legacy LMR equipment. However, this capability is limited by the age of their legacy communications systems. As cited in the March 2007 DOJ Office of the Inspector General Report, the majority of the Department's LMR communications systems are over 10 years old and function in an analog mode rather than a digital mode, which means they have limited functionality and diminished voice communications quality. Most DOJ legacy radio systems: Are not narrowband compliant; do not provide appropriate encryption to protect sensitive information; are no longer supported by the manufacturer; provide little to no interoperability with any other agencies; and cannot facilitate wireless data transfers.

*Question.* Are current communications systems in compliance with presidential narrow band mandates and/or National Institute of Standards and Technology (NIST) security guidelines?

*Answer.* No. The DOJ Inspector General's report on IWN from March of 2007 estimated that 21 percent of the Department's radios are compliant with presidential narrowband mandates and 5 percent are capable of meeting NIST security guidelines. Since March of 2007, the limited funds have been prudently used to improve narrowband compliance to 30 percent and NIST security compliance to 15 percent.

*Question.* Is the IWN [pronounced "I win"] Seattle Blaine pilot project a feasible model for the future?

*Answer.* The Seattle Blaine pilot is a feasible model for major metropolitan areas with high federal agent user densities. Areas with large numbers of agents typically compete for limited spectral resources. These areas would benefit from the implementation of the trunking technology solution implemented in the IWN in Seattle. The Department would like to remind the Committee that the Seattle project was a pilot and as such we expected to learn what worked and what did not work. As a result of our experience there, we now have a plan for where trunking solutions should be implemented, and where it is not cost effective.

*Question.* In the event of another attack, absent communications interoperability, how will federal law enforcement officers communicate with each other?

*Answer.* At the direction of the Congress, DOJ started the 25 Cities High Risk Metropolitan Area Interoperability Project in 2005. This effort is nearly complete and has greatly improved communications capabilities in 25 of America's largest cities. The program encourages the preparation of local communications plans for use in emergency situations, the design and implementation of shared interoperability radio channels, and the standardization of technical solutions that contribute to interoperability. Federal law enforcement officers are able to use, where they exist, the 25 Cities interoperability solutions. More information about the successful, and nearly complete, program can be provided upon request.

Short of an installed and fully functional communications system that allows for seamless interoperability between federal, state, and local users, federal law enforcement officers generally depend upon locally prepared and distributed communications procedures that describe emergency communications practices and protocols that enable, albeit and possibly in a limited fashion, law enforcement and public safety entities to interoperate. In the case of a major unplanned event, officers will generally default to their locally prepared communications plans for interoperability.

Local emergency communications plans often call for the exchange of communications devices between agencies, the setting up of shared dispatch and command centers to facilitate information exchange, the designation of common "hailing" channels, the sharing of re-designated radio channels for various types of emergency communications traffic, the use of pre-planned and/or pre-staged "patching" facilities that can be used to cross-connect radio traffic, and the use of "cached" communications devices which are held specifically for distribution during emergencies.

#### WIRELESS COMMUNICATION PROGRAM

*Question.* Are DOJ component operations and maintenance budgets clearly defined and supported equitably amongst the components?

*Answer.* DOJ component legacy communications systems operations and maintenance (O&M) requirements are funded through budget requests submitted to the WMO for inclusion in the overall Law Enforcement Wireless Communications (LEWC) budget submission. Component O&M budget requests are clearly delineated by specific categories. The WMO centrally manages the LEWC account and provides funding allotments to the Department's law enforcement components which are responsible for the O&M of legacy systems. O&M allotments are dispersed annually (through reimbursable agreements) by the WMO once appropriations have been received. If operating under a Continuing Resolution (CR) or if annual appropriations have not been received, the components will receive incremental allotments based on the availability of funds.

*Question.* Are resources allocated effectively in and amongst the DOJ WMO and the respective components? Are the components receiving adequate support considering the operational size and expense of the WMO?

*Answer.* Yes. The concept of creating a centralized program management office was to save on overhead and redundant expenses. The centralized WMO was conceived of and approved by Appropriations staff. We believe that significant overhead cost savings (nearly \$35 million) have been realized over the past four years.

The WMO currently employs 19 Government and 39 contractor staff across the nation in support of Law Enforcement Wireless Communications (LEWC) to include

the modernized Integrated Wireless Network (IWN) design, deployment, operations and maintenance (O&M). Of the numbers listed above, 1 government (Bothell, WA) and 13 contractor personnel (9—Seattle/Spokane 4—San Diego) support O&M and the Federal Bureau of Investigation (FBI) consolidated dispatch center for the modernized program.

*Question.* If the WMO currently invests a large portion of its budget into the Seattle Blaine IWN pilot isn't that investment at the expense of thousands of failing antenna sites elsewhere? Who makes these investment decisions about priorities?

*Answer.* The Department and the components manage approximately 4,400 radio sites across the country. While a number of these sites are aged and require upgrades, they are not all in danger of failure. In fiscal year 2007, 74 percent of the Law Enforcement Wireless Communications account appropriation was directed to the components for legacy O&M and special requests. For fiscal year 2008 the amount directed to the components increased to 80 percent with additional reallocations pending.

A program of this size and scope requires a solid foundation for moving forward. At the direction of Congress, we have invested a significant amount of time and effort to conduct a full and open procurement and to plan for a multi-year, nationwide system development and deployment program that efficiently leverages our existing base of legacy technologies while ensuring we continue to support ongoing law enforcement communications needs. While at the same time we must manage the major risks inherent within a large scale communications system deployment/conversion program.

The WMO reports to the Department's Chief Information Officer who is ultimately responsible for LEWC investment decisions. However, the components have significant input to the investment decisions through their wireless offices and through their CIOs. These decisions are made with full visibility to the components. In addition, LEWC investment priorities are established and reviewed by the Wireless Communications Board (WCB) which is comprised by senior executives from each of our components. The WCB evaluates the priorities established by each of the component agencies and identifies the recipient based on a consensus of what is in the best interest of the component agencies and what systems are most at risk of jeopardizing agent safety.

The funding allocated in support of the Seattle Blaine IWN pilot and Pacific Northwest Expansion has tested and validated the business goals and objectives necessary to move the program forward from a design, implementation, and operations standpoint. The Seattle Blaine IWN pilot proved the viability (and certain limitations) of the IWN design, technology, site consolidation, site build-out, and implementation process. Significant improvements in communications capabilities and system efficiencies were realized; with dramatic reductions in spectrum resources (50 percent reduction) and facilities (60 percent reduction) needed to meet law enforcement operational requirements. Additionally all of our law enforcement components now have the same (and larger) communications coverage "footprint" across the region.

The Seattle Blaine pilot has been successful and further geographic expansion and system enhancements are regularly requested by the local users. However, due to inadequate funding, we have not been able to fully support such requests. The Seattle Blaine pilot, along with the 25 Cities Program, has proven the effectiveness of federal, state, and local interoperability through the successful execution of many mission critical operations.

*Question.* It has come to the Committees attention that the components have identified this concern and requested reallocation of resources repeatedly. Provide all of the requests for reallocation of resources in this program and the outcome of those requests.

*Answer.* The WMO receives hundreds of funding requests each year from the components. Funding them all is not possible due to limited resources. Recognizing that the components receive 74 percent and 80 percent respectively of the WMO budget for O&M and special projects, the Department is very judicious in funding all component requests. Mindful of the congressional language supporting consolidation of narrowband activities within DOJ, a careful balance is struck between funding plans for the future and continuing to invest in component-specific systems. In July 1998, the U.S. House of Representatives, Committee on Appropriations Subcommittee Report on Fiscal Year 1999 Appropriations Bill stated,

"The Committee supports the consolidation of this activity under the Attorney General, as such a consolidation will ensure maximum coordination and system compatibility . . . Given the scale of the investment that may be required, the Committee believes that any Department of Justice narrowband conversion initia-

tives must be based a comprehensive strategy which achieves the following goals: (1) increased spectrum efficiency; (2) interoperability among all Department components, as well as Federal law enforcement agencies; and (3) maximized efficiencies and savings through shared infrastructure and common procurement strategies. The Committee is concerned that currently, the Department of Justice lacks such a [consolidation] strategy. In fact, the current approach appears to be fragmented and agency-driven, emphasizing individual agency requirements or initiatives, which may or may not accomplish the goals outlined above in the most strategic, and efficient manner. Therefore, the Committee intends that this critical initiative be coordinated and implemented by the Department, rather than through individual DOJ components.”

Working with the components the Department has developed a strategy that satisfies the goals identified by Congress and demonstrated in the IWN Seattle Pilot/Pacific Northwest Expansion and Department procurement strategies. In Seattle and the surrounding area the Department has realized a 50 percent reduction in spectrum and a 60 percent reduction in facilities. These savings have been factored into our overall cost model. The Department has also awarded a Systems Integration contract to General Dynamics to implement the program across the nation. Additionally contracts that facilitate bulk purchases of subscriber equipment (hand sets) have been extremely beneficial in achieving savings to the government.

*Question.* Why is the WMO program management budget two times greater than the components budgets combined?

*Answer.* We do not know the source of the Component budgets you refer to, but we believe a simple match of respective budgets results in an “apples to oranges” comparison. The WMO undertakes a number of network management and financial management functions on behalf of the Components, freeing them of the need to perform these tasks. In addition, the scope of WMO management responsibility spans across all the Components—something for which no individual Component has a similar function.

DOJ was tasked to establish a WMO to consolidate four separate and individually run Component wireless programs, realize operating synergies, and then plan and direct the design, development and implementation of a multi-billion dollar and multi-year advanced network solution. If one compares the WMO’s size to other program management offices at other agencies, the WMO is too small to manage the nationwide deployment effort of a new advanced solution. Because of a lack of funding, the modernization effort is not moving forward at the previously planned pace. The tasks done by the WMO are very different from the tasks of the components.

The LEWC account provides a funding vehicle to manage all DOJ tactical wireless communications through a single established program management office necessary to support a large, nationwide implementation program. This office is charged with planning, implementing, and sustaining a system that replaces the existing tactical communications services operated by DOJ components in fifty states. In addition, WMO centrally manages funding allotments to the Department’s law enforcement components for the O&M of Legacy Communications Systems. The LEWC Joint Program Office (WMO) currently employs 19 Government and 39 contractor staff in support of the modernization design, deployment, operations and maintenance. The component agencies have radio communication offices focused on current mission operations and technical support rather than the IWN modernization.

The components receive the majority of the Law Enforcement Wireless Communications Appropriation. In fiscal year 2007 and fiscal year 2008, this represented 74 percent and 80 percent of the funding, respectively.

*Question.* This budget request primarily funds O&M for TWO radio systems in San Diego and Seattle at the expense of all others. Is it true that the WMO currently employs more full time employees and contractors than three of the four components in support of Land Mobile Radio? What is the justification for this inequity that leaves the smaller component staff managing nationwide radio programs with a fraction of the budget and human resources the WMO uses to manage 2?

*Answer.* We’re not sure of the headcount numbers you refer to, but we believe this may be another case of comparing very different organizations, responsibilities, and scope of operations. The Department indeed manages shared radio systems in San Diego and Seattle. However, the LEWC budget does more than fund two radio systems. In San Diego and Imperial County, CA there are over 7,800 DOJ and DHS radios affiliated with the system. In the Seattle/Pacific Northwest system there are approximately 1,000 radios representing DHS, DOJ, Treasury, and Commerce users. These systems accommodate a far greater number of users and have a larger footprint than individual component systems that serve only the needs of the specific component. In an effort to consolidate operations, the Department has worked with

the FBI and USMS to transition the USMS onto the FBI systems around the country. This effort is 90 percent complete and provides the USMS with enhanced coverage. The remaining components have much smaller systems although deployed around the nation and use different O&M approaches (contracting out or using government FTE).

It is not accurate to compare the WMO to the component offices as they have different missions. Per Congressional guidance, DOJ is trying to streamline maintenance through a central office. Until the modernized solution is rolled out, it is unfair to compare functions of one office to the functions of the mission office. If funding is not going to be provided to modernize the radios, then the role of the WMO should be re-examined. Additionally, many (14) of the contractors in the WMO are working directly in the field for the components, especially in San Diego and Seattle.

The components receive the majority of the Law Enforcement Wireless Communications Appropriation. In fiscal year 2007 and fiscal year 2008 this represented 74 percent and 80 percent respectively. With the funds remaining, the WMO pays personnel salaries and benefits, conducts modernization planning, pays O&M for the Pacific Northwest and San Diego systems, pays NTIA fees, and manages the 25 Cities program and continues the expansion efforts in the Pacific Northwest. In addition, all funding for special events like the political conventions and the Super Bowl come from the LEWC account.

The fiscal year 2009 budget request, and past budget requests, includes much more than O&M for two radio systems. The fiscal year 2009 President's budget request totals \$121,651,000, which continues support of all component legacy systems and operations across the country, including but not limited to, San Diego and Seattle. As important, the fiscal year 2009 budget request has a program increase of \$43 million to (1) begin implementing IWN in the DC metropolitan area and (2) for equipment replacement to address high priority component equipment needs.

*Question.* Do the components have adequate LAND Mobile Radio communications capability to carry out their core missions?

*Answer.* The components are carrying out core missions with existing legacy LMR equipment. However, this capability is limited by the age of their legacy communications systems. As cited in the March 2007 DOJ Office of the Inspector General Report, the majority of the Department's LMR communications systems are over 10 years old and function in an analog mode rather than a digital mode, which means they have limited functionality and diminished voice communications quality. Most DOJ legacy radio systems: Are not narrowband compliant; do not provide appropriate encryption to protect sensitive information; are no longer supported by the manufacturer; provide little to no interoperability with any other agencies; and cannot facilitate wireless data transfers.

*Question.* Are current communications systems in compliance with presidential narrow band mandates and/or NIST security standards?

*Answer.* No. The DOJ Inspector General's report on IWN from March of 2007 estimated that 21 percent of the Department's radios are compliant with presidential narrowband mandates and 5 percent are capable of meeting NIST security guidelines. Since March of 2007, the limited funds have been prudently used to improve narrowband compliance to 30 percent and NIST security compliance to 15 percent.

*Question.* The 2007 IWN OIG audit pointed out, the majority of DOJ Land Mobile Radio Infrastructure is antiquated and failing. Does DOJ have radio communications operability?

*Answer.* DOJ radio communications capability is limited by the composition of the DOJ component legacy communications systems. The Department's LMR communications systems currently in use are over 10 years old and function in an analog mode rather than a digital mode, which means they have limited functionality and diminished voice communications quality. Additional legacy operability challenges faced by components include; federal-to-federal, and federal-to-state interoperability, and lack of support for over the air re-keying (OTAR) security encryption standards. The components have basic capabilities, but do need a modernized system to support their needs.

*Question.* What percentage of DOJ users are not NIST security standard compliant? Be specific.

*Answer.* Currently 86 percent of ATF radios, 91 percent of DEA radios and 84 percent of FBI radios are not compliant with NIST security standards. These percentages reflect an improvement since the DOJ OIG report of March 2007 which reported 100 percent of ATF and DEA radios and 93 percent of FBI radios were not compliant. Updated figures for the U.S. Marshals Service are not available but it is safe to assume that their percentages are similar to the other components. DOJ has consistently reported our lack of compliance in testimony and in staff briefings.

*Question.* Does this mean Federal Agents enforcing federal law and providing domestic security are using encryption that has been compromised and should not be considered secure?

*Answer.* Yes. Our legacy wireless systems employ encryption technology that is out-dated and could be subject to compromise.

*Question.* How do DOJ communications capabilities compare to DHS?

*Answer.* This is a very complicated question and the Department encourages you to ask Department of Homeland Security (DHS) about their capabilities. At a high operational level, both agencies face similar mission challenges. However, there is a significant difference in how the two Departments manage their respective wireless programs. Most notably, DHS funding for its radio programs is not centrally managed by a WMO as done at DOJ. Rather, DHS law enforcement components get their radios funded at the component level, which would typically lead to the individual (and possibly separate) prioritization of investment decisions (something that we were tasked by Congress to remedy with the establishment of our WMO).

It is not clear what type of inter-operability exists between their components and with state and locals. The modernized IWN is being designed to allow for inter-connectivity between DOJ assets, DHS assets and local assets.

*Question.* Is there a central dispatch or information center within DOJ?

*Answer.* As it relates to radio dispatching, the answer is no. As part of the plans for the modernized system, we envision a central network operations center to manage the backhaul networks across the country and to serve as a focal point for support to the agents (and their support staff) in the field.

*Question.* Does DHS have a higher level of operability than DOJ?

*Answer.* Yes. Many of the DHS components have modernized their radio systems in the past five years. We cannot assess how well coordinated or financially effective these investments have been. However, the average age of their typical radio unit is much lower than the typical DOJ radio.

*Question.* Is the IWN Seattle Blaine pilot a feasible model for the future? Is trunking technology a requirement for DOJ?

*Answer.* The Seattle Blaine pilot is a feasible model for major metropolitan areas with high federal agent user densities. Areas of high user densities typically coincide with scarcity of spectrum resources. While the relative spectral efficiency of trunking radio technologies can be debated in remote or low-density rural areas, high user-density areas always benefit from the implementation of trunking technologies.

A few design criteria from the Seattle Blaine pilot have been re-evaluated and probably would not be implemented nationwide. The criteria include radio tower site improvements and backhaul redundancy. While overall system reliability in a trunked system is improved, nationwide implementation may be too costly. Selective application of redundancy at the most vulnerable system nodes, and site improvements commensurate with the equipment being installed would be the two major deviations from the Seattle Blaine model.

The differences in ease-of-use between conventional and trunking radio are substantial. The WMO continually receives positive feedback from users on the Seattle Blaine IWN system regarding usability and roaming capabilities. The use of trunking technologies is not an explicit stated requirement for IWN, however, we feel the minimal incremental cost (estimated to be 30 percent) is well worth the significant improvement in radio usability and roaming capabilities for many areas, especially in urban settings.

*Question.* Given the lack of support from OMB for the DOJ mission can the Department continue to spend \$200 million and seven years building each radio system throughout the country?

*Answer.* Through the IWN program, the DOJ will provision and maintain a range of secure and reliable wireless communications services, including voice, data and multimedia services that support counterterrorism, counterintelligence, law enforcement and emergency response operations. The DOJ IWN strategy will be implemented over a six year period in a series of overlapping phases. The planned six-year, four phase upgrade and replacement of legacy communications systems will include regional design and deployment of the new tactical communications systems and services focusing on urban centers. The cost summary for a six-year IWN deployment is approximately \$200 million per year from 2009–2014.

For fiscal year 2009, OMB was supportive of the Department's IWN program and approved a program increase of \$43 million to address priority radio infrastructure needs. The Department intends to continue working with OMB in future budget cycles to ensure that all Departmental priorities, including IWN, are discussed and addressed.

*Question.* To what degree do DOJ operational personnel and technical program managers influence the direction and decisions of the WMO?

*Answer.* Operational and program management personnel within each component agency formulate requirements and staff those requirements through the respective management chains. Senior managers from each agency participate equally in the DOJ Wireless Communications Board (WCB). All major system deployment decisions are vetted through the WCB. The WMO does not act unilaterally, and in fact takes all major program direction from the WCB, chaired by the DOJ CIO Mr. Hitch.

*Question.* Is there adequate input from the agents in need of the resource?

*Answer.* The component agency headquarter staffs coordinate with their field agents in identifying and defining IWN requirements to the WMO. However, WMO personnel also meet quarterly with local agents using IWN to discuss its status, lessons learned, and operational requirements. When in the field and opportunities arise, the WMO meets as often as possible with current and future IWN users. Also, in September 2007, the WMO hosted the first DOJ Wireless Summit attended by over 100 DOJ and component agency personnel from across the country, ranging from management to technical staff to field agents, to discuss trends in wireless technology, DOJ wireless initiatives, and the future of the IWN architecture and deployment. The summit was a success in accomplishing its objectives with future summits highly endorsed by the component agencies.

*Question.* Is there, or should there be operational oversight/leadership at the WMO?

*Answer.* The Department's Investment Review Board (DIRB) provides oversight of the WMO's investment recommendations/decisions. The DIRB is chaired by the Deputy Attorney General. In addition, the WMO executes the decisions from the Department CIO and Wireless Communications Board (WCB) based on operational priorities as defined by the component agencies and DOJ management. The WMO welcomes participation from the operational users; however, there needs to be one executive oversight body responsible for looking at the set of requirements as a whole and providing direction on what is in the best interest of the Department. The WCB is tasked with assessing Department-wide needs and requirements and making recommendations accordingly.

*Question.* How many operational personnel are currently employed by the WMO?

*Answer.* The WMO employs personnel with backgrounds in program management, budgeting, procurement, and planning. It is not designed to be operational, but it is designed to rely on the components for operational input. The WMO staff includes personnel previously employed by the FBI, DEA, DOD, military, and private industry who experience supporting operations. The WMO is an integrated program office covering all the disciplines required to support a large, nationwide implementation program.

*Question.* Beyond Component surveys what operational oversight of the WMO exists?

*Answer.* The WMO holds a project team meeting on a monthly basis to brief status of all project activities. The components send representatives to this meeting to provide insight as well as oversight on WMO progress. The WMO team reports directly to the Deputy CIO who has day-to-day oversight responsibilities. In addition, the WMO has been subjected to numerous audits from internal and external groups.

*Question.* What law enforcement, operational or tactical communications experience do the employees of the WMO have?

*Answer.* The WMO is tasked with developing a secure wireless, nationwide tactical communications network that addresses federal law enforcement requirements to communicate internal to and across agencies, allow interoperability with state and local law enforcement partners, and meet spectrum mandates and NIST security guidelines. To achieve this task the WMO actively solicits input from its law enforcement components and agents on requirements and operational missions. The WMO is staffed with the requisite experience to oversee and maintain accountability for the design and implementation of a system of systems that will meet the requirements of, and allow the law enforcement agents and agencies to accomplish mission operations.

The WMO has recruited staff from the law enforcement components and the military that have many years of direct experience with component (FBI/DEA) radio communications to include engineering, operations and spectrum management. In addition the WMO has looked outside the Department to DOD, other Departments and industry for certified Project Managers, staff with wireless industry and large scale contracting experience. The WMO also has an Administrative and Financial Staff led by a Certified Public Accountant (CPA) and former auditor to formulate budget strategies and maintain an accurate accounting structure, as well as en-

hance internal controls. The staff also includes an expert in the field of security certification and accreditation to ensure systems are protected to the maximum extent possible. A contracting officer is also assigned to the WMO to assist the program in executing on its acquisition strategies and procurement requirements.

*Question.* Do components have adequate human resources to progress into the next generation of radio communications?

*Answer.* The components are fully aware of the evolutionary changes taking place in the tactical communications marketplace. Since this will be a consolidated system, there will necessarily be changes in business rules and how systems are managed. All of the specific skill sets are not known at this point, but the WMO will provide training for component staff in new technologies as deployed. In the Seattle model, the WMO has hosted infrastructure training for technical staffs as well as subscriber training for the Agents.

One of the reasons for doing a major procurement with a large systems integrator was to leverage the knowledge of the contractor employees as we attempt to build the next generation of radios. Improvements in satellite and data transmission will impact the radios of the future, and therefore the design must look beyond current capabilities.

*Question.* What efforts are being made to leverage existing resources such as JUTNET, other governmental resources, and further consolidation?

*Answer.* We have evaluated Justice Unified Telecommunications Network's (JUTNET) capabilities and assessed the potential to leverage those capabilities. Unfortunately, at this time, there is little potential for JUTNET to satisfy the needs of our wireless networks. JUTNET is currently a data communications system and is not designed to support the voice requirements that would be demanded by our wireless systems. Consequently, the general scope of JUTNET and the communications needs of the modernized IWN are different and lack suitable amounts of commonality to justify re-engineering or otherwise modifying JUTNET. A major strategic goal of the Department's CIO is to effectively leverage our enterprise investments to achieve synergies across DOJ. As JUTNET evolves to support voice services, we will work closely with that management team to ensure we can further consolidate and share IT infrastructure to achieve operations and cost synergies.

To take advantage of possible cost savings while satisfying our operational requirements, the WMO is working with our DEA component to leverage a DEA-recommended Department of Defense network for communications backhaul. The solution is being implemented in the Gulf Coast region. The WMO also works with other Federal partners and, State and Locals to leverage opportunities for sharing communications backhaul and facilities where possible.

The San Diego and Seattle systems are fully consolidated and shared across the components. Our updated IWN Plan (\$1.23 billion versus \$2+ billion) emphasizes and requires re-use of existing radio sites to reduce costs. In the past, one component would pay rent across the street from another component's rented radio site on a downtown skyscraper. The systems use, for example, a single building, antenna system, circuit for connectivity, site license, spectrum and staff resources. With this consolidation of former DOJ component assets in San Diego and Seattle into a single consolidated "system of systems" it is far more reliable, requires fewer radio sites and less O&M is needed to maintain single systems. Wireline circuits are now installed for the benefit of all DOJ components and not the exclusive use of one.

*Question.* Do current cost models and modular budgets adequately address components radio communications requirements? How are radios funded for the hundreds of state and local task force agents?

*Answer.* At the current funding level for LEWC, we believe that the funding level for the old legacy systems and handsets is absolutely inadequate. For all the reasons stated in the questions, the old systems and handsets are at the end of their useful life and "throwing" additional money at these obsolete systems is not a long term (or even intermediate term) strategy. We are rapidly approaching the time when we will not be able to find the replacement parts and service inventory necessary to maintain these networks. A new, more modern, more secure and interoperable solution is needed. The modular budgets spread the existing funding around in an equitable manner, but the funding does not meet the needs of the agents in the field.

The WMO is not responsible nor is it funded to provide radios to task force officers at the state and local level. However, when requests for task force support are given a high priority by the submitting component and the WCB approves, we try to fund radios for use by the task force officers. If we had a modernized system, the locally procured (usually with federal grant dollars) and locally maintained handsets for the locals could work on the federal network (certain channels).

## PAY AND BENEFITS OVERSEAS

*Question.* What efforts has the Department of Justice taken to ensure retention of its best and brightest, particularly in the enforcement agencies out in the field and those agents and employees working outside the United States?

*Answer.* While Department of Justice law enforcement officials working outside the United States may be eligible for certain additional pay or benefits based on the location, the retention incentives available to those employees are the same as the incentives available to those located in the United States.

The FBI continues to use the authorities it received in the 2005 Consolidated Appropriations Act, some of which expire at the end of 2009, to better compete with private industry and improve attrition rates. These authorities include recruitment, relocation, and retention incentives, student loan repayment, and the University Education Program. Recruitment bonuses allow the FBI to competitively recruit employees who possess special qualifications for hard-to-fill FBI positions, relocation bonuses increase the number of employees interested in hard-to-fill positions within the FBI by, in effect, reducing the employee's relocation costs, and retention allowances are used to retain current employees who possess high-level or unique qualifications or who fill critical FBI needs. Retention allowances may be provided on either an individual or group basis to help the FBI retain certain employees or categories of employees, such as intelligence analysts and police officers.

The FBI has also used education benefits to improve the quality and job satisfaction of our workforce. For example, in order to improve our recruitment and retention of Intelligence Analysts, the FBI repaid 359 student loans for these employees in fiscal year 2007. The FBI has also used the University Education Program to fund tuition expenses for current employees seeking to obtain certifications and academic degrees, approving payments for 679 participants in fiscal year 2008.

*Question.* Is danger pay provided to agents and DOJ employees actively working along the Southwest Border?

*Answer.* The FBI's Legal Attaché (Legat) office in Mexico maintains a presence in Mexico City, Guadalajara, and Monterrey, but does not maintain a permanent presence along the Southwest Border. Currently, neither FBI employees assigned to the Mexico City Legat nor those assigned in the United States near the Southwest Border are afforded danger pay. It is the FBI's understanding that DEA personnel working in Mexico have been eligible to receive a danger pay allowance of 15 percent of basic pay since approximately 1991. In April 2008 the FBI's Mexico City Legat asked FBI Headquarters to consider affording danger pay to all FBI personnel in Mexico based on the hostile environment in Mexico, including threats from organized crime fugitives, rebels, and terrorist groups, as well as street and residential crimes. This request is under review.

*Question.* How many computer databases with similar information do we need before we have too many?

*Answer.* Proper utilization of taxpayer funds is important and duplicative government programs should be avoided, however, the DOJ systems are not duplicative with other components/agencies.

*Question.* The Department has continually had problems maintaining the jurisdictional integrity of the agencies it oversees. Namely the ATF and the FBI both have and claim jurisdiction over explosive incidents.

Please explain how having yet another agency involved in explosive incidents is helpful and productive to preventing and solving a terrorist incident?

*Answer.* The Attorney General, in coordination with the Department of Homeland Security, Department of Defense, and others, is currently developing the implementation plan as requested by HSPD 19. While the plan has not been fully developed yet, it will address the Senate's concerns over terrorism jurisdiction and incident management. Additionally, on July 8, 2008, the Director of FBI and the Acting Director of ATF signed a Memorandum of Understanding on ATF/FBI Protocols for Response to Explosives-related Incidents which delineates the roles of each agency when responding to bombing and explosives related incidents. The Department intends to make sure the HSPD 19 implementation plan clearly identifies core Department responsibilities so that the involvement of another agency does not compromise our priorities.

*Question.* If ATF and FBI have trouble sharing this jurisdiction within the Department how will the Federal Government manage yet another?

*Answer.* HSPD 19, when fully developed and implemented, will ensure that all relevant parties within the Federal Government understand their role in explosive events relating to terrorist bombing incidents response. The policy will delineate who has jurisdictional control and the roles of the respective agencies.

*Question.* Be specific in how these events will be managed if both justice agencies and the approximately 22 DHS agencies show up?

*Answer.* HSPD 19, when fully developed and implemented, will ensure that all relevant parties within the Federal Government understand their role in explosive events relating to terrorist bombing incidents response. The policy will delineate who has jurisdictional control and the roles of the respective agencies. Also, DHS' Office of Bombing Prevention is not an operational response organization. The Department has the responsibility for operational response. We are committed to ensuring this important delineation. Therefore, response from a third party is not expected to be an issue.

*Question.* What will the decision process be if all three respond to an incident? Be specific.

*Answer.* The Department is working with the White House and DHS to develop the implementation plan for HSPD 19. When completed, the lines of authority will be clear as to who will have the lead in addressing different types of bombing incidents. At this point and time it is not possible to be overly specific about the decision process if all three organizations respond. For further explanation, see the answer to the next question. However, the Department is sensitive to and fully engaged on this issue with the White House and DHS to ensure our interests are considered and protected as the implementation plan for HSPD 19 is being developed.

*Question.* Identify the role of each in an example when at one incident ATF is the lead, another incident when FBI is the lead and yet another incident when DHS is the lead?

*Answer.* On July 8, 2008, the Director of FBI and the Acting Director of ATF signed a Memorandum of Understanding on ATF/FBI Protocols for Response to Explosives-related Incidents which delineates the roles of each agency when responding to bombing and explosives related incidents. DHS' Office of Bombing Prevention is not an operational response organization. DOJ has the responsibility for operational response. Therefore, the response from a third agency should not be an issue. However, once HSPD 19 is fully implemented, the lines of authority will be reflected as to who will have the lead in addressing different types of terrorist related bombing incidents.

*Question.* If the lines of authority are unclear who will the State and locals call for assistance?

*Answer.* The Department continues to work with the White House and DHS to ensure that the HSPD 19 implementation plan will ensure that clearly defines the lines of authority for differing terrorist related bombing incidents are clearly defined. Once that policy is fully implemented state and local officials will know which agency to contact for assistance during an incident.

*Question.* Why are we paying 2 federal agencies to do research on explosives?

*Answer.* The role of explosives research varies by agency. While it is important to ensure the proper expenditure of taxpayer funds and avoid duplication of efforts it may not be possible for a single agency to do the entirety of explosives research. Within the Department the FBI operates a number of explosives research programs at Quantico as well as at Redstone that address areas such as render safe techniques and bomb disposal. ATF on the other hand manages research projects and programs such as the National Center for Explosives Training and Research (NCETR) as well as post-blast research intended to foster ATF's abilities and techniques for post-blast investigations. The Department, however, is unable to comment on the program activities of DHS and any research activities that might be underway there.

*Question.* Should we transfer this authority to the Department of Homeland Security since it seems to fit their mission statement? Be specific.

*Answer.* No. The Department continues to have legitimate reasons for pursuing explosives research. ATF's research in explosives, for example, is vital to the accomplishment of their mandate. Such research not only benefits ATF in addressing explosives incidents but also enables them to better train state and local organizations as well as the U.S. military in Iraq. It also provides important data that is regularly used in ATF's investigative proceedings. The FBI continues their focus on the development of diagnostic and render safe technologies and tools. The FBI participates with ATF as active members in the DOD Technical Support Working Group (TSWG).

*Question.* Do not agree on the information given out over the secure network? Do not agree on the terrorist explosive tactics? Do not agree on the proper response and handling by the state and locals?

*Answer.* Please provide further clarification as to what this question asks.

*Question.* Homeland Security is going to develop multi-jurisdictional improvised explosive devices security plans for high-risk jurisdictions. Isn't this something that the FBI should be using their JTTFs for?

*Answer.* The Joint Terrorism Task Forces (JTTFs) are operational units, and are not responsible for developing comprehensive response plans. These plans include program areas outside the criminal investigation responsibilities of the JTTF. DHS is responsible for providing input for the National Response Framework, which outlines how the Nation manages response to terrorism incidents. In essence, the efforts of DHS mirror those that were previously performed by the DOJ National Domestic Preparedness Office, which was transferred to DHS in the 2002 Homeland Security Act. The JTTFs, in concert with other relevant elements of the Department of Justice, will work as appropriate to coordinate with the DHS.

*Question.* Section 318 of the bill provides that the Secretary, shall—

“(1) evaluate and assess nonmilitary research, development, testing, and evaluation activities of the Federal Government relating to the detection and prevention of, protection against, and response to explosive attacks within the United States; and

“(2) make recommendations for enhancing coordination of the research, development, testing, and evaluation activities described in paragraph (1).”

Does the Department of Justice believe that this oversight and assistance from the Homeland is necessary?

*Answer.* The Department of Justice has not taken an official position on the Bill. Therefore, we cannot answer this question at this time.

*Question.* What expertise does the Department of Homeland Security have that would give them the expertise to evaluate and assess nonmilitary research, development, testing, and evaluation activities of the Justice Department relating to the detection and prevention of, protection against, and response to explosive attacks within the United States?

*Answer.* The Department of Justice believes it would be inappropriate to comment on the expertise of another federal agency. While multiple organizations across the Federal Government have programs to address this threat, the Department of Justice continues to work with all stakeholder agencies to avoid any redundancy or duplication of effort while best leveraging the unique expertise of each agency.

*Question.* I am concerned to see the Department's position or lack thereof on IED training. It's only a matter of time before terrorists will begin detonating improvised explosive devices in the United States. The ATF and FBI are the premier experts in handling explosives and responding to an explosives incident, yet the Department of Justice is somehow ceding this jurisdiction to a fledgling agency that has endured embarrassing failure after failure.

The Department of Homeland Security failed miserably in handling hurricane response, contracting Coast Guard ships that aren't seaworthy, the virtual fence, baggage-screening systems, the biometric entry-exit tracking system, and now Justice leadership has quietly watch the newly created DHS Office of Bombing Prevention begin seeping into its explosives jurisdiction. The Department of Homeland Security has its hands full with the border, among other problems. I would prefer the world's best and most experienced professionals in the ATF and FBI handle explosive prevention and training.

Why has the Department idly sat by as the Office of Bombing Prevention has grown?

*Answer.* By no means is the Department sitting idly on this issue. In fact, we The Department continue to train State, local, federal and international partners on render safe, post blast, disposal, prevention and detection. Training is an important component in ensuring a successful defense against IEDs. Facilities like the National Center for Explosives Training and Research (NCETR) will continue the Department's efforts in this important component. The Department is not aware of DHS' specific IED training curriculum and cannot comment specifically on that but we are working with the White House and DHS to make sure our interests are protected.

*Question.* The establishment of the Office for Bombing Prevention, is to address terrorist explosive threats, and for other purposes. This proposal contains language that would provide yet another computer database that would provide “a secure information sharing system that allows the sharing of critical information relating to terrorist explosive attack tactics, techniques, and procedures.”

Why is it necessary to create yet another explosives data base?

*Answer.* ATF's Bomb Arson Tracking System (BATS) is a case management system used by federal, State, and local agencies investigating arsons, bombings, and other explosives incidents. The system provides law enforcement and fire service of-

officials with access to information collected in ATF's U.S. Bomb Data Center (USBDC), the repository for all domestic bombing and arson incidents.

To avoid duplication of effort and allow more efficient use of Department resources, the FBI no longer tracks domestic law enforcement bomb incident data. However, in support of its intelligence and counter terrorism missions, the FBI continues to collect bombing-related intelligence and information as well as requests for FBI assistance from other law enforcement agencies. This information is entered into the FBI's enterprise case management system; all data is eventually archived.

EXPeRT is the FBI's document management system and electronic reference library for organizing and making available for future reference all the documents, reference material, photos, and other information related to explosives forensic examinations conducted by the FBI Lab Explosives Unit and the Department's Terrorist Explosive Device Analytical Center (TEDAC). EXPeRT is used within the FBI to share case data and reference material that support forensic exams and investigations, within TEDAC in the DOJ/DOD/INTEL Community to share information.

DOJ's explosives data and information sharing systems (EXPeRT, and BATS) are now hosted, or in the alternative hyperlinked, on the Law Enforcement Online (LEO) portal.

The DHS database referenced in proposed legislation already exists as the National Capability Database (NCAD). The DHS database collects and shares information about federal, state, and local law enforcement and emergency service capabilities including bomb squad, dive teams, explosives detection canine teams, and SWAT teams. State and local planners use NCAD to identify gaps and apply "best practices" to improve their security posture and develop multi-jurisdiction plans to respond to emergencies.

*Question.* Is this an agency looking for a mission?

*Answer.* The Attorney General is the chief law enforcement officer of the United States with the duty to protect, deter, prevent and respond to terrorist attacks. Missions and functions of DHS are mandated in other laws. DOJ cannot address the missions currently assigned to the Department of Homeland Security.

*Question.* Doesn't the Department already maintain 2 databases related to explosive incidents?

*Answer.* ATF maintains the Department's sole database on arson and explosives incidents. ATF's Bomb Arson Tracking System (BATS) is a case management system used by federal, State, and local agencies investigating arsons, bombings, and other explosives incidents. The system provides law enforcement and fire service officials with access to information collected in ATF's U.S. Bomb Data Center (USBDC), the repository for all domestic bombing incidents.

To avoid duplication of effort and allow more efficient use of Department resources, the FBI no longer tracks domestic law enforcement bomb incident data. However, in support of its intelligence and counter terrorism missions, the FBI continues to collect bombing-related intelligence and information as well as requests for FBI assistance from other law enforcement agencies. This information is entered into the FBI's enterprise case management system; all data is eventually archived.

EXPeRT is the FBI's document management system and electronic reference library for organizing and making available for future reference all the documents, reference material, photos, and other information related to explosives forensic examinations conducted by the FBI Lab Explosives Unit and the Department's Terrorist Explosive Device Analytical Center (TEDAC). EXPeRT is used within the FBI to share case data and reference material that support forensic exams and investigations, within TEDAC in the DOJ/DOD/INTEL Community to share information.

DOJ's explosives data and information sharing systems (EXPeRT, and BATS) are now hosted, or in the alternative hyperlinked, on the Law Enforcement Online (LEO) portal.

*Question.* Does the FBI or ATF system already do this? If not, why not?

*Answer.* The DHS database referenced in proposed legislation already exists as the National Capability Database (NCAD). The DHS database collects and shares information about federal, state, and local law enforcement and emergency service capabilities including bomb squad, dive teams, explosives detection canine teams, and SWAT teams. State and local planners use NCAD to identify gaps and apply "best practices" to improve their security posture and develop multi-jurisdiction plans to respond to emergencies.

*Question.* The Administration has indicated that one of its priorities surrounding the violence occurring along the SWB is to stop the flow of firearms into Mexico.

While interdiction at the border is one way to deal with the problem, it seems that we also need to identify and disrupt the sources of these weapons.

What is the Department doing to ensure that illegal firearms trafficking investigations are a priority along the SWB?

Answer. Since 1972, because of its specific statutory authorities over firearms and explosives, ATF has played a strategic role in addressing violent crime along the Southwest Border—investigating criminal organizations that traffic firearms and explosives from the United States into Mexico and regulating Federal firearms licensees (FFL) and Federal explosives licensees (FELs). In April 2006, ATF created Project Gunrunner to enhance resources and focus efforts strategically on the Southwest Border to deny firearms, the “tools of the trade,” to criminal organizations in Mexico and along the border and to combat firearms related violence affecting communities on both side of the border.

Intelligence gathered by ATF and other domestic Federal law enforcement entities strongly suggests that drug trafficking organizations have tasked their money laundering, distribution and transportation apparatuses—all of which reach across the border into the United States—to acquire firearms for illegal transfer back to Mexico for use in facilitating narco-trafficking and other criminal activities. ATF has developed an extremely effective real-time intelligence and evidence sharing network with the Mexican government. Given current circumstances and increasing volume, however, the system has been overwhelmed on both sides of the border.

ATF is working with Mexican officials to increase their current usage of ATF's eTrace system. eTrace provides web-based access to ATF's Firearms Tracing System to allow law enforcement both domestically and internationally the ability to trace firearms seized in connection with criminal investigations. From fiscal year 2006 to fiscal year 2008, ATF has experienced more than a 100 percent increase in the number of trace requests from Mexico. With the deployment of eTrace to the nine consulates and the eventual implementation of Spanish eTrace, these numbers should continue to increase in the coming years. ATF's goal is to deploy eTrace software to all 31 states within the Republic of Mexico.

Under Project Gunrunner, ATF has approximately 148 special agents dedicated to working firearms trafficking investigations on a full time basis and 56 industry operation investigators (IOI) responsible for conducting regulatory inspections of FFLs. ATF is also expanding its presence at the El Paso Intelligence Center (EPIC) which serves as the central repository and “clearinghouse” for all weapons related intelligence collected and developed by ATF's field personnel and attaches in Mexico as well as by all other Federal, State and local law enforcement entities involved in narcotics interdiction and investigation along the U.S./Mexico border.

ATF's industry operations strategic plan under Project Gunrunner includes an outreach component to both the firearms industry and law enforcement at the Federal, State, and local level. ATF's outreach includes firearms seminars conducted within the border region to educate the firearms industry concerning schemes associated with firearm trafficking. An integral part of this outreach is ATF's “Don't Lie for the Other Guy” public awareness campaign that educates both FFLs and the general public on their responsibilities as it relates to purchasing firearms. ATF also partners with the National Shooting Sports Foundation (NSSF) on a retailer education program that includes a public awareness component with public service messages warning persons not to purchase firearms for others. Plans are underway to take this initiative to several cities along the Southwest Border. ATF also continues to provide training on SWB gun trafficking to law enforcement agencies both in the United States and abroad.

ATF is pursuing funding to establish firearm trafficking groups within each of its four border field divisions. The groups would be staffed by one group supervisor, eight special agents, two IOIs and one investigative analyst. These trafficking groups would be fully dedicated to firearm trafficking investigations. ATF is also seeking funding from the Organized Crime Drug Enforcement Task Force (OCDETF) Executive Office for five positions to expand ATF's Gun Desk at the El Paso Intelligence Center (EPIC)—three intelligence research specialists (IRS), one investigative analyst and one full-time special agent. An additional four IRS positions have been requested to support the field divisions on the Southwest Border. The team at EPIC will coordinate with the IRSs in the field divisions to gather, analyze, and disseminate intelligence from ATF investigations targeting firearms trafficking cases that involve OCDETF CPOT- and RPOT-linked along the Southwest Border. The teams will also liaison with all participating agencies at EPIC to ensure intelligence gathered is coordinated.

ATF is further collaborating with the Mexican government by deploying special agents to U.S. Consular offices in Mexico City and Monterrey, with additional deployments planned for Hermosillo, Baja California, Ciudad Juarez, and Tijuana in the near future, if funding is available. In this way, ATF will be able to work directly with Mexican counterparts, taking advantage of real-time intelligence that will benefit drug-related firearms trafficking investigations on both sides of the border. Intelligence sharing and transnational collaboration will provide valuable addi-

tional resources for ATF and its law enforcement partners. Those resources will be directed to identifying violent gangs and firearms traffickers that are also associated with OCDETF targets.

*Question.* The Committee was under the impression that determining technology to be used in the field by bomb squads was part of the role for the Hazardous Devices School. How will this new initiative at the Dept of Homeland Security merge with the efforts of the FBI and the ATF?

*Answer.* The Department of Justice is unable to comment on another Department's initiatives. The Hazardous Devices School (HDS) is not designed to serve as a research and development agency; however, the HDS is integral to the identification and transmission of operators' requirements and assists in the test and evaluation of emerging technologies developed through the efforts of the DOD Technical Support Working Group (TSWG) and others. TSWG is an interagency and international research and development organization focused on short term, quick turn around, fielding of equipment to meet operators' requirements. Both FBI and ATF, as well as OBP, are members of the TSWG and the National Science and Technology Council for Counter IED Research. As it stands, the Department continues to determine the technology best suited for bomb squad field use.

*Question.* How much has the taxpayer already expended to create and maintain the current 2 systems?

*Answer.* The cost to the taxpayers for the creation and maintenance of ATF's current database system is \$13.8 million, with the first database being created in 1996.

QUESTIONS SUBMITTED BY SENATOR MITCH MCCONNELL

*Question.* What are the authorized and the current staffing levels for the Bureau of Prisons facilities within the Commonwealth of Kentucky, including FMC Lexington, USP Big Sandy, FCI Ashland, FCI Manchester, and USP McCreary?

*Answer.*

	S&E Authorized Level	S&E Current Staffing Level
FMC Lexington .....	501	430
USP Big Sandy .....	385	337
FCI Ashland .....	289	258
FCI Manchester .....	308	273
USP McCreary .....	376	330

*Question.* What are the current inmate-to-staff ratios at each of the Bureau of Prisons facilities within the Commonwealth of Kentucky, including FMC Lexington, USP Big Sandy, FCI Ashland, FCI Manchester, and USP McCreary?

*Answer.* The current (June 5, 2008) inmate-to-staff ratios are as follows:

	Ratio
FMC Lexington .....	3.9 to 1
USP Big Sandy .....	5.2 to 1
FCI Ashland .....	6.0 to 1
FCI Manchester .....	6.1 to 1
USP McCreary <sup>1</sup> .....	3.8 to 1

<sup>1</sup> USP McCreary is transitioning from Medium Security to High Security Programming. The inmate population will continue to increase until the transition is complete and thereby increase the Inmate to Staff Ratio.

*Question.* What are the authorized, optimal, and minimally-safe inmate-to-staff ratios at each of the Bureau of Prisons facilities within the Commonwealth of Kentucky, including FMC Lexington, USP Big Sandy, FCI Ashland, FCI Manchester, and USP McCreary?

*Answer.* The Bureau of Prisons (BOP) does not have an optimal or minimally safe inmate to staff ratio, particularly for individual prisons. For fiscal year 2007, the BOP's inmate to staff ratio was to 4.92 to 1, whereas 10 years ago, this ratio was at 3.57 to 1.

*Question.* What steps is the Bureau of Prisons taking to increase security and safety at each of its facilities within the Commonwealth of Kentucky, including FMC Lexington, USP Big Sandy, FCI Ashland, FCI Manchester, and USP McCreary, regarding current staffing levels and inmate-to-staff ratios?

*Answer.* Ensuring the safety and security of all facilities including the facilities in Kentucky is the highest priority of the Bureau of Prisons (BOP). The BOP en-

asures institution security through a combination of factors that include the classification of inmates based on risk factors; physical security features at BOP's institutions, including the structure of inmate living quarters, security technologies, and perimeter security measures; internal controls for inmate movement and accountability; direct staff supervision of inmates; and inmate involvement in correctional programs.

The graduated classification system allows the BOP to assign an inmate to an institution in accordance with his or her likelihood of engaging in disruptive behavior. Inmates who require high levels of security are confined in higher-security facilities. Inmates who are able to function with relatively less supervision, without disrupting institution operations or threatening the safety of staff, other inmates, or the public, are confined in lower security level institutions.

Architecture and security technology also help maintain the safety and security of BOP institutions, and the BOP continues to evaluate and add technological innovations to increase the physical security of facilities. To facilitate direct supervision of inmates, structural barriers between staff and inmates are minimized where possible, and staff offices are located near the areas where programs and services are delivered. Staff circulate freely and constantly through all areas of the institution, continually interacting with inmates. This promotes a more normalized environment within an institution and places staff in a better position to observe inmate behavior. Frequent and constructive interaction and communication between staff and inmates is critical to ensuring security, maintaining accountability, and managing inmate behavior. Staff are encouraged to talk with and be available to inmates and to be receptive to inmate concerns. Most institutions also rely on closed-circuit cameras and monitors to augment staff observation of inmates.

*Question.* Why has the Bureau of Prisons facility at USP McCreary not staffed certain security towers while its stun/lethal fence remained incomplete and non-operational? What steps to ensure the safety of staff, inmates, and the community has the Bureau taken while the towers remain unstaffed?

*Answer.* The BOP is piloting a stun-lethal fence system at seven of its high security facilities. During the construction phase of these fence systems, Wardens have established adequate procedures to provide perimeter security. At USP McCreary, the Warden determined that while the stun-lethal fence is being installed, the certain towers will continue to be staffed to control access to and from the institution. In addition to this, perimeter patrols are being used for perimeter security. It should be noted that electrified fence systems have been in operation at several state correctional facilities for a number of years, and their perimeter security is very similar to those established at Bureau institutions.

*Question.* On March 14, 2008, Bureau of Prisons Director Harley Lappin testified before the U.S. House of Representatives Committee on Appropriations, Subcommittee on Commerce, Justice, Science, and Related Agencies. In response to a question from U.S. Representative Hal Rogers of Kentucky, Director Lappin described his concern about an increase in the severity of incidents of violence or disorder as the Bureau's inmate-to-staff ratio has worsened. He testified that the Bureau seeks to identify perpetrators and shift them into higher-security institutions. Given current staffing levels and inmate-to-staff ratios, what steps is the Bureau taking to ensure the security and safety of the staff, inmates, and community affiliated with the higher-security institutions that receive the violent inmates? What steps is the Bureau taking to retain and recruit staff at the higher-security institutions?

*Answer.* As with the Department's answer to your previous question, ensuring the safety and security of staff, inmates, and the public is the highest priority of the Bureau of Prisons. The BOP ensures institution security through a combination of factors that include the classification of inmates based on risk factors; physical security features at our institutions, including the structure of inmate living quarters, security technologies, and perimeter security measures; internal controls for inmate movement and accountability; direct staff supervision of inmates; and inmate involvement in correctional programs.

The graduated classification system allows the BOP to assign an inmate to an institution in accordance with his or her likelihood of engaging in disruptive behavior. Inmates who require high levels of security are confined in higher-security facilities. Inmates who are able to function with relatively less supervision, without disrupting institution operations or threatening the safety of staff, other inmates, or the public, are confined in lower security level institutions.

Architecture and security technology also help maintain the safety and security of BOP institutions, and the BOP continues to evaluate and add technological innovations to increase the physical security of facilities. To facilitate direct supervision of inmates, structural barriers between staff and inmates are minimized where pos-

sible, and staff offices are located near the areas where programs and services are delivered. Staff circulate freely and constantly through all areas of the institution, continually interacting with inmates. This promotes a more normalized environment within an institution and places staff in a better position to observe inmate behavior. Frequent and constructive interaction and communication between staff and inmates is critical to ensuring security, maintaining accountability, and managing inmate behavior. Staffs are encouraged to talk with and be available to inmates and to be receptive to inmate concerns. Most institutions also rely on closed-circuit cameras and monitors to augment staff observation of inmates.

BOP staffs are a key component to effective security and inmate management. Regardless of the specific discipline in which a staff member works, all BOP employees are "correctional workers first." This means that everyone is responsible for the security and good order of the institution. All staff are expected to be vigilant and attentive to inmate accountability and security issues, to respond to emergencies, and to maintain a proficiency in custodial and security matters, as well as in their particular job specialty. This approach allows the BOP to maximize emergency preparedness and to operate in the most cost-effective manner (with fewer correctional officers) and still maintain direct supervision of inmates.

Finally, the BOP operates a broad variety of programs to keep inmates constructively occupied and provide them opportunities to learn important skills. Research has shown that keeping inmates productively involved in appropriate correctional programs and activities is critical to ensuring both a safe and secure prison and public safety. Correctional programs and activities reduce inmate idleness and the stresses associated with living in a prison, and these programs are important to public safety by assisting inmates to return to the community as productive, law-abiding citizens.

*Question.* What steps is the Bureau of Prisons taking to increase security and safety at each of its facilities within the Commonwealth of Kentucky, including FMC Lexington, USP Big Sandy, FCI Ashland, FCI Manchester, and USP McCreary, regarding the transfer of non-English-speaking or bilingual violent inmates (including gang members) from other regions of the country and the attendant need to monitor inmate communications in foreign languages for threats to staff and institutional security?

*Answer.* Ensuring the safety and security of our staff, inmates, and the public is the highest priority of the Bureau of Prisons. The BOP ensures institution security through a combination of factors that include the classification of inmates based on risk factors; physical security features at our institutions, including the structure of inmate living quarters, security technologies, and perimeter security measures; internal controls for inmate movement and accountability; direct staff supervision of inmates; and inmate involvement in correctional programs.

During July 2007, the Bureau of Prisons established a Blanket Purchase Agreement to provide foreign language translation services for all institutions. The agreement incorporates language proficiency standards, security background requirements that the translators must meet, and an aggressive turnaround response time requirement (ordinarily two business days) for the contractor to complete the translation and return it to the Bureau of Prisons.

At the same time guidance was provided to all institutions that all social communications (correspondence and telephone calls) for inmates meeting specific identified criteria, one of which was disruptive group affiliation or gang involvement, would be translated if written in foreign language. Social correspondence prepared in a foreign language by identified inmates would be held, translated and analyzed for intelligence value prior to mailing out of the institution. Incoming correspondence written in a foreign language would also be held, translated and analyzed for intelligence value prior being delivered to the inmate. Audio recordings of telephone calls are currently translated after the calls occur, but a new agreement currently under development will include the ability for simultaneous translation of inmate telephone calls.

#### SUBCOMMITTEE RECESS

Senator MIKULSKI. This subcommittee stands in recess until Wednesday, April 16, at 2 p.m., when we'll take testimony from the Director of the FBI.

We thank the Director for coming and for his forthcoming statements and look forward to working with his team.

This subcommittee stands in recess.

Attorney General MUKASEY. Thank you very much.

Senator MIKULSKI. As the prerogative of the Chair, the subcommittee's officially recessed. We would thank the advocates from the Y for coming today.

I'm going to ask my staff, and I'm sure the Shelby staff would join, so that they can have a brief conversation with you and bring you up to date on what our efforts will be, but we thank you for your advocacy and, most of all, we thank you for the hundred years of good work empowering women and fighting racism and bigotry in our society.

God bless you.

[Whereupon, at 10:56 a.m., Thursday, April 10, the subcommittee was recessed, to reconvene at 2 p.m., Wednesday, April 16.]