

**COMMERCE, JUSTICE, SCIENCE, AND RE-
LATED AGENCIES APPROPRIATIONS FOR
FISCAL YEAR 2011**

THURSDAY, MAY 6, 2010

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

The subcommittee met at 10:17 a.m., in room SD-192, Dirksen Senate Office Building, Hon. Barbara A. Mikulski (chairwoman) presiding.

Present: Senators Mikulski, Leahy, Feinstein, Lautenberg, and Murkowski.

DEPARTMENT OF JUSTICE

ATTORNEY GENERAL

STATEMENT OF HON. ERIC H. HOLDER, JR., ATTORNEY GENERAL

OPENING STATEMENT OF SENATOR BARBARA A. MIKULSKI

Senator MIKULSKI. Good morning, everybody.

This is the Commerce, Justice and Science Subcommittee on Appropriations and we will come to order. Today, we review the budget for the Department of Justice and take testimony from the very able Attorney General Eric Holder. After Mr. Holder completes his remarks and we have our questioning, we will also hear from the Inspector General Glenn Fine. As everyone knows, it is the practice now of this subcommittee at every hearing to listen to the Inspector General.

I want to note the fact that though Senator Shelby is not here, it is because the Banking Committee is deliberating the financial service reform on the floor. Because he is the ranking member, he is required to be there. With unanimous consent, we will put the Shelby statement into the record.

[The statement follows:]

PREPARED STATEMENT OF SENATOR RICHARD C. SHELBY

Thank you, Madam Chairwoman. And thank you, Attorney General Holder, for joining us to discuss the Department of Justice and its fiscal year 2011 budget request.

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

The fiscal year 2011 budget request for the Department of Justice is \$29 billion. This is a \$1.5 billion, or 5 percent increase, over the fiscal year 2010 request. Via the Second Chance Act, the Department of Justice is requesting \$140 million to edu-

cate and mentor terrorists, pedophiles and career criminals—while requesting minimal funds for reducing the DNA backlog and tracking the monsters that abducted and sexually assaulted Adam Walsh, Elizabeth Smart, Dru Sjodin, Polly Klaas, Jessica Lunsford, and others like them.

Minimal progress has been made in funding and implementing the Adam Walsh Act and a long term and efficient plan for reducing the DNA backlog by increasing public crime lab capacity is nonexistent.

How can we look into the eyes of the parents of these children and tell them DOJ and the administration are prioritizing criminals' re-entry into society over funding the Adam Walsh Act?

In a perfect world flush with resources I would be supportive of funding the Second Chance Act, but the very idea of taking money from victims and law enforcement officers to educate and comfort terrorists, pedophiles, and career criminals is once again, an abomination.

General Holder, on March 6 of this year, President Obama appeared on the 1,000th episode of America's Most Wanted and told John Walsh, "We're going to do everything in our power, as long as I'm in the White House and as long as I'm the father of two girls, to make sure that we're providing the States the support they need to make this happen."

The President went on to tell Mr. Walsh that the White House had increased the number of Deputy U.S. Marshals dedicated to Adam Walsh cases from 300 to 400, increased AWA funding by 23 percent, and how important it is for the administration to build up the Marshals Service as it was something we want to do in our Federal budget.

I regret to say that the President misinformed John Walsh. In reality, the Marshals Service will have a total of 177 operational and support personnel solely dedicated to Adam Walsh Act enforcement in fiscal year 2010, which is the most they've ever had. This subcommittee, not the White House, added the 105 dedicated personnel that the president credited himself with.

In addition to the 177 personnel, 237 Marshals Service investigators support Walsh Act implementation on a collateral basis. This means Walsh activities are only a portion of their many duties as they are also responsible for protecting judges, tracking down non-sex crime fugitives, and transporting prisoners. In my 6 years of being on this subcommittee, the administration has never requested an increase for the Marshals Service purely dedicated to this mission.

In 2008, Senator Mikulski and I included the first ever funding of \$17 million for Adam Walsh enforcement in a war supplemental funding bill. In 2009, we increased this funding by another \$5 million. In 2010, the President simply requested funding to keep Deputy Marshals on board, with no increase. We said that is not good enough, and provided a \$27.5 million increase above the President's extremely modest request of \$15 million in 2010. The President has not requested an increase for Adam Walsh Act enforcement, but instead is taking credit where the Congress saw the need and provided the resources. I would hope that the White House would correct the record and take the initiative to provide more funding for the Marshals Service to protect children from predators, instead of taking credit for the job Congress has done. I would suspect Mr. Walsh hasn't heard a word from anyone in the administration since the President used him for lip service and airtime.

One issue it seems that both the Department and the subcommittee agree on is the importance of the National Center for Missing and Exploited Children (NCMEC) and their continuing leadership in combating the exploitation of children. DOJ continues to support NCMEC thru the Missing Children grants we have appropriated and, by all accounts, there continues to be a strong and unique partnership serving the interests of our most innocent victims of crime. I am concerned, however, that the administration's budget reduces the Missing Children's account—the pool from which NCMEC and other child safety nonprofits must compete—by \$10 million. I hope we can work together to increase that level of funding to insure that NCMEC receives the continued support it needs and that we are able to also help others in this area. We should be growing the pie for helping organizations that combat missing and exploited children rather than shrinking it.

The President also told John Walsh he wanted to provide support to State and local officials for DNA testing because they are strapped for some of the basic resources. Saying, "that we're going to get support, bipartisan support from Congress on this issue, because it's so important to every family across America and there are just too many horror stories reminding us that we're not doing enough."

Mr. Attorney General, I would first start this initiative by having senior program managers at the National Institute of Justice who are responsible for DNA solicitations and being accessible to State and local crime labs to show up for work more than 3 days a week. I would also direct NIJ to stop writing grant solicitations cater-

ing to their for-profit DNA vendor friends that have had carte blanche access to NIJ for too long. DOJ should be more diligent in ensuring that components serving State and local law enforcement agencies have representatives that are accessible and accountable to the State and local labs they are entrusted to support.

Our Government forensic labs need to continue to build their capacity to adequately serve the justice system, and have used NIJ funding to make great strides in decreasing backlogs. I know that in my State, the Alabama Department of Forensic Sciences has continued to make it a focus of theirs to build capacity in an effort to ensure backlogs don't recur once they're addressed—and they have been very successful. They have erased the backlogs in drug chemistry and toxicology analyses, and consistently reduced the DNA backlog, even as they have expanded their services. By building their capacity, Government labs can process cases efficiently, expand their services, and start to test evidence from unsolved petty and property crimes, as ours has in Alabama.

Recently in my hometown of Tuscaloosa, a cold case violent sexual predator was identified almost 20 years later as a rapist of a University of Alabama graduate student. This case would never have been solved without DNA and a dedicated lab which focused on building their capacity to efficiently analyze unsolved cold cases. The long term solution to forensic backlogs is building capacity for Government labs and not in the continual outsourcing to private companies who incite victims and victims groups and mislead law enforcement agencies, for the sake of a profit.

The perceived atmosphere of cronyism with private vendor labs at NIJ is retaliatory and do as I say. If State and local crime labs disagree with NIJ on DNA policy, they should not be fearful of retaliatory actions by NIJ because they expressed their expert opinions. I have expressed this sentiment before to you and the previous administration about this unethical behavior yet no concrete actions to address this injustice have occurred. The culture of NIJ succumbing to influence and policy suggestions by for-profit labs began almost a decade ago with NIJ employees wanting to graduate into the private sector to double and triple their salaries. Evidence quality is paramount in forensics and the highest quality work is done in Government labs.

Continual outsourcing to private labs creates a residual holding pattern. While the seemingly quick fixes of loosening DNA technical review standards and private labs having access to the DNA database sounds like a quick fix to the backlog solution, the long term results could be detrimental to the integrity of cases, the database and the welfare of victims and law enforcement. NIJ funding should be focused on building the capacity of Government labs to address the current backlogs, and more importantly, to provide the Government lab with the infrastructure to insure these backlogs don't recur. NIJ should not be focused on providing a bailout or setting up a welfare system for the private DNA labs at the taxpayer's expense.

Lastly about DNA, I wrote a letter to the FBI director expressing concern about undue pressure being put on the FBI to change existing DNA policy, citing correspondence from private vendor labs. I am told that as recently as this week, a Member of Congress mentioned multiple times by the DNA vendor in that correspondence, threatened to change the FBI's DNA policy by legislation if the FBI didn't do so on their own.

Mr. Attorney General, for the sake of the integrity of the criminal justice system and the Department of Justice, it would behoove you to heed the concerns and needs State and local crime lab directors who are actual DNA experts—not Members of Congress, their staff, for-profit DNA company sales executives, lobbyists, former NIJ employees, movies stars, and group advocates who have no DNA training or experience. The President's fiscal year 2011 budget fails to fund the critical needs that the Attorney General identified and requested funding for in his request to the Office of Management and Budget during the budget process.

For example, the budget proposes over \$300 million in enhancements for national security—but that amount is substantially less than the \$478 million the Department requested from OMB. In fact, OMB initially recommended only \$173 million for national security, a mere 36 percent of the Department's request.

When Director Mueller of the Federal Bureau of Investigation testified 3 weeks ago, he verified that the President's fiscal year 2011 budget would cut their terrorism fighting capabilities. For every new dollar proposed by the White House for the FBI to fight terrorists, \$6 of current counterterrorism fighting capability are cut.

Additionally, the White House does not believe the assessment of its own Department of Homeland Security that terrorist use of improvised explosive devices—IEDs—remains the greatest threat to the United States. If the White House believed that assessment, it would not have proposed to cancel \$99 million Congress appropriated to the FBI for the construction of necessary facilities to forensically and technically exploit IEDs and terrorist bomb-making materials.

Terrorist use of explosive devices continues to be a key threat to the United States. In just the past few months, we have seen an attempt to blow up a Northwest Airlines flight, a plot to blow up bombs in New York City subways, and plots to blow up Federal buildings in Texas and Illinois. This past weekend alone in New York's Time Square demonstrates terrorists' abilities to use explosive devices in major metropolitan U.S. cities. On an almost daily basis, we read about terrorists and insurgents using improvised explosive devices to injure and kill U.S. and coalition troops in Afghanistan and Iraq. Our embassies and consulates in Pakistan, Yemen, and other countries have been targeted by terrorist bombers.

As Director Mueller stated in a letter to you Mr. Attorney General, dated December 2, 2009:

"The OMB recommendation does not recognize the value of biometric information gleaned from recovered and seized IEDs and related materials to the intelligence and homeland security communities. In one recent instance, a TEDAC latent print examiner enhanced and then searched a latent fingerprint initially developed by DOD examiners in theater from an IED/weapons cache and determined the individual had since been legally admitted to the United States. Previous searches of the latent print image by DOD examiners failed to associate the print with any individual. TEDAC is responsible for and uniquely positioned to provide both tactical support to the war fighter and strategic support to homeland security. Given the President's renewed commitment to Afghanistan, it makes more sense to act to quickly establish a permanent TEDAC facility that can serve as the hub for tactical in theater forensic and technical exploitation capacity in support of the war fighter and as a strategic homeland security resource to protect against terrorist use of explosives at home".

I believe the administration is putting you, Mr. Attorney General, in a no-win situation, by having you defend their inept decision—a decision made by non-accountable bureaucrats at OMB. I know that cancelling TEDAC funding was not your decision. I also know that both you, and Director Mueller, appealed that decision, yet the administration cut the very funding that the FBI Director said he believed was necessary to ensure that the FBI has the tools and the facilities necessary to respond to the terrorist threat this Nation faces. It is clear from the request that OMB is not relying on the people who actually have to fight terrorism when it is making decisions regarding the threat this country faces.

Today, the Quantico TEDAC is overwhelmed. For the 56,000 boxes of IEDs and materials received since 2004, 37,000 are awaiting processing. The FBI estimates that 86 percent of the backlog contains critical information like biometric intelligence, fingerprints, DNA, and so forth that would assist the U.S. military, the intelligence community, and the Federal law enforcement in identifying terrorists.

The United States needs to prepare for this threat and the proposed rescission of these funds only tells me—and this subcommittee—about the lack of understanding by the administration of the terrorist threat. While the administration may choose to look the other way combating the terrorist explosives threat, we will not.

TEDAC would ensure that the tactical information and intelligence gained from analysis of improvised explosive devices and the biometric identification data obtained from fingerprints and DNA is shared with U.S. intelligence, homeland security, and law enforcement agencies.

This funding would have mitigated the impacts of the TEDAC workload on the FBI laboratory—both the workload of today and for future conflicts. What we do know is that there is not enough capacity at the current laboratory facility to support both the criminal functions of the FBI lab and the TEDAC mission. As a result, turnaround times for completing examinations have grown and more and more FBI field offices are submitting evidence to State and local labs for processing.

The FBI laboratory should have the capacity needed to support its traditional forensic mission in support of law enforcement and support TEDAC. This is not a choice of doing one or the other; both must be done.

The TEDAC forensic capability will satisfy the needs for an enduring U.S. Government capability, as well as provide a "surge" capacity for the FBI laboratory in the event of a major domestic incident or crime problem.

Finally, the TEDAC facility will also provide the FBI with a back-up forensic capability in the event the Quantico facility is ever rendered inoperable. The current FBI laboratory at Quantico is a single point of failure within the FBI; there is no current back up location to perform that critical work.

I believe the record shows that the proposal by OMB to cancel TEDAC funding is unwise, and I think it is very ill-timed. The threat from terrorist use of explosives is significant, real, and I believe enduring.

Unfortunately national security and terrorism are not the only areas where the President's budget fails the Department of Justice. The Bureau of Prisons, through the Department, sought \$875 million in additional funding for prisons and incarceration. The President's budget proposes \$422 million but \$237 million, not requested by the Department but included in the OMB passback, was added to the Department's budget to buy and renovate a prison in Illinois to potentially house the terrorists currently incarcerated at the perfectly functioning Guantanamo Bay Detention Facility.

Apparently, OMB believes over-paying the State of Illinois for a vacant, decade-old, facility is a higher priority than providing the FBI with the forensic and technical capabilities necessary to combat terrorist use of explosives. If ever we needed an example of misguided priorities, this ranks near the top of the list.

The administration would like communities to believe it is committed to eliminating gangs and gang violence, yet OMB proposed eliminating the FBI's National Gang Intelligence Center and reducing the number of FBI Safe Streets task forces, DEA mobile enforcement teams, ATF violent crime impact teams, and U.S. Marshals task forces focusing on arresting fugitives.

At a time when drug cartels infiltrate the ranks of foreign law enforcement—thus risking joint U.S. and foreign efforts to stem the flow of drugs into our country—OMB even proposed reducing DEA's program to vet and train foreign police officers so we have trusted partners to work with overseas. I find this unconscionable, given the current border violence in Mexico.

Thankfully, many of these misguided OMB proposals and suggestions were successfully appealed by you Mr. Attorney General, and for that we are all grateful, but, those proposals should never have been on the table in the first place. OMB should rightfully be embarrassed to have even put them forward.

Basically, the President's budget request for the Department of Justice is lacking all of the critical needs that the Department identified and proposed to OMB. I believe it is important and necessary for the subcommittee to bring those unfilled needs from out of the shadows and into the light. If we are to enact a budget that meets the Department's critical requirements, we must be able to consider their needs outside the President's budget. To do less would be a disservice to our constituents and to the Department.

I will close with a further quote from the FBI Director that I believe sums up this request accurately, "At a time when the Nation remains engaged in a long-term conflict with those who advocate the use of terror against the United States, the OMB policy guidance and funding recommendations for fiscal year 2011 simply do not make sense. Even in a constrained budgetary environment, the administration must ensure adequate funding for one of its most basic responsibilities—that of protecting the country and its citizens from hostile attack."

Our role is not to rubber stamp the President's budget—we did not do that for President Bush and we will not do that for President Obama. Given the tight budget situation we face, these budgets decisions will not be an easy task. But, I believe the subcommittee is up to meeting that challenge and I look forward to working with you Madam Chairwoman to undo the damage done to the Department's budget by the bureaucrats at OMB.

Senator MIKULSKI. We will ensure that Senator Shelby's questions will be forwarded to you, Mr. Holder, and we will protect all the rights that Senator Shelby has as the ranking member.

This morning, we are going to discuss the Justice Department's 2011 budget request, and we will be examining how we strengthen national security, counterterrorism, and also protect the safety and security of U.S. citizens and prudent use of the taxpayers' dollars.

We welcome Mr. Holder, who brings the experience of a career prosecutor, experience in the private sector, but also he, himself, has worked diligently on the protection of the public from terrorism and violent crime as an Assistant U.S. Attorney.

I have three priorities that I will be examining with the Justice Department today. No. 1, national security, which is how the Department of Justice is keeping America safe; also, community security, or what the Department of Justice is doing to keep our communities safe from violent crime, gangs, and drug dealers, and what the Department of Justice is doing to keep our families safe,

whether it is against mortgage fraud or the despicable stalking of sexual predators.

As the Chair of the Commerce, Justice, and Science Subcommittee, I want to make sure the Department of Justice has what it needs to carry out its mission and its mandate to protect the country from predatory attacks, whether they occur by terrorists in Times Square or in our neighborhoods. And hey, in Times Square, it was in both. We have worked to put dollars in the Federal checkbook to be able to do that.

As we review President Obama's request, we note that the request is for \$29.2 billion, a \$1.5 billion increase over the 2010 omnibus level. The five highlights of the budget include safeguarding our Southwest border for \$584 million. That is pursuing and dismantling the drug cartels and the smuggling of illegal narcotics, guns, and human beings.

The other is the funding for State and local law enforcement, where we worry that the blue line is getting thinner and needs all the help it can get in the local communities, because all crime fighting begins with the locals.

And I must say, as we will be hearing about the Times Square incident this morning, the fact that local vendors cooperated—"see something, say something." Also, the New York Police Department [NYPD] was right there on the job, moving as swiftly as they could because they were there and they had the right training and the right equipment and then were backed up by Federal agents. It worked, I think, the way it should, and we look forward to hearing about that.

But also there is the rise of white collar crime, and this subcommittee believes that that crime, too, needs to be followed through with investigation and prosecution and jail, if necessary, particularly in the area of mortgage fraud and the financial scheming and scams that goes on.

Last, but not at all least, we are here to also look out for the civil rights of our people and that enforcement. Previous administrations have cut funding for local law enforcement by 50 percent. We don't want to do that. We want to make sure that the crime rates don't rise. We want to get crime rates down. We want to get unemployment rates down, and this subcommittee wants to do its part.

This budget invests \$3.4 billion in State and local and tribal partners and looks forward to working with our local communities. Last month, we heard about the partnership with the FBI, and we reviewed this extensively with the FBI Director. We believe those joint task forces, whether it is on violent crime, terrorism, or mortgage fraud, are the way to go. We look forward to your budget on that.

I know we have started late, and I just want to make one other emphasis, which is on protecting women and children. We really salute the Obama administration for increasing funds in the Violence Against Women programs. We know that when the hotline was created in the Judiciary Committee, and Senator Leahy played such an important part in that, along with our Vice President—we now know over 1 million women have called that hotline, and they have either been saved from death or danger. That is as important as standing sentry against any other attack.

And the protection of children—as a former child abuse social worker, there is nothing as vile as a crime against a child. So we want to make sure we have the right resources for you to be able to do the job.

There are other issues related to Guantanamo Bay, the purchase of the Illinois prison, the detention of prisoners. But we are fortunate this morning to also have the Chair of the Judiciary Committee, and I know he will have his own particular questions—he is someone who has been very vigorous in the area of the Justice Department—Senator Leahy.

I am going to ask unanimous consent that my full statement go into the record.

[The statement follows:]

PREPARED STATEMENT OF SENATOR BARBARA A. MIKULSKI

Good morning and welcome the fifth hearing of 2010 of the Commerce, Justice and Science (CJS) Subcommittee. Today, the CJS Subcommittee will continue our fiscal year 2011 oversight hearings by welcoming Attorney General Eric Holder and Justice Inspector General Glenn Fine, who will be speaking to the subcommittee a little later. Thank you both for joining us today.

We have a very positive relationship with Attorney General Holder. He brings to the Department the experience of a career prosecutor and is dedicated to protecting the American public from terrorism and violent crime.

Today, we will discuss how the Justice Department's fiscal year 2011 budget request strengthens national security and counterterrorism; protects the safety, security and rights of U.S. citizens; and how the Department ensures that it uses taxpayer dollars wisely.

As chairwoman, I have three priorities when examining the Justice Department. The first is community security. What is the Department of Justice doing to keep our families and communities safe? The second is national security. How is the Justice Department keeping America safe? And third are oversight and accountability. How is the Department of Justice ensuring our tax dollars are spent wisely?

As chairwoman of CJS, I want to make sure that the Department of Justice has what it needs to carry out its mission and mandate to uphold the rule of law, and to protect this country from predatory attacks by terrorists and in our neighborhoods. I have fought to put dollars in the Federal checkbook to support the Department's efforts to combat terrorism and violent crime. I also want to make sure that the hard working, dedicated individuals who are responsible for carrying out this mission have the resources and support they need.

The President's budget request for the Department of Justice in fiscal year 2011 is \$29.2 billion, a \$1.5 billion, or 4.6 percent, increase above the 2010 omnibus level. Highlights of this new budget request include: \$535 million to fight mortgage fraud and white collar crime by targeting the scammers and schemers who prey on hard working, middle class families; \$3.4 billion to make sure State and local law enforcement are not walking a thin blue line and have a full force to fight violent crime and drug trafficking; \$584 million to safeguard our Southwest border by pursuing and dismantling drug cartels that smuggle illegal narcotics, guns and humans along the border; \$387 million to tackle civil rights abuses and discrimination, and go after criminals who are motivated by hatred and bigotry; and \$1.7 billion to strengthen national security and counter terrorism threats, which includes stopping cyber crooks from hacking into U.S. networks and identifying, tracking and defeating terrorist sleeper cells operating in the United States and overseas.

We can't have strong, economically vibrant communities unless they are safe. So I want to know how the Justice Department is protecting Americans at home. The previous administration cut funding for local law enforcement by 50 percent. Local communities were left scrambling to fill public safety funding gaps, and crime rates began to rise for the first time in 12 years.

This subcommittee and the current Justice Department have locked arms to reinvest resources in our State, local and tribal partners, and are committed to making sure violent crime rates drop. This budget request invests \$3.4 billion in our State, local and tribal partners. It supports both proven and innovative crime prevention strategies that help communities with police recruiting, hiring and training; task forces to target drugs, gangs and violent crime; and to combat sexual assault and violence against women. We need to make sure our police have a full team to com-

but increased violence in communities so they can target crime hot spots and focus on gangs, gun violence, assault and drug rings.

I want to know if the fiscal year 2011 request is enough to protect hard-working families and their homes against the outrageous predatory practices and deceptive lending schemes that have swept across the country. Last month we heard from FBI Director Robert Mueller, who testified that during 2009 over 60,000 cases of mortgage fraud were reported in the United States, nearly 10 times as many in 2002. During that same period, financial institutions wrote off \$500 billion in losses because of fraud in the sub-prime mortgage industry. But the FBI is not the only agency at Justice tackling these cases.

The Justice Department's fiscal year 2011 request has \$535 million to combat financial fraud, which is \$97 million above the fiscal year 2010 level of \$438 million. It provides funding to hire 143 new FBI agents, 157 new attorneys and 45 new specialized staff to bring the total number to over 2,000 agents, 2,600 attorneys and 150 specialized support staff at the Justice Department dedicated to investigating and prosecuting complex financial cases. I want to know how this funding and coordination will better help law enforcement catch the scammers who have caused Americans to lose their homes, life savings and dignity.

Attorney General Holder, I know you are committed to keep children safe from abuse, sexual predators and cyber stalkers. The Justice Department's request of \$336 million focuses resources of the Federal Government on child predators like a laser to catch sexual deviants who use the Internet to stalk children, break up child pornography and prostitution rings, and track down, arrest and prosecute child molesters.

However, the U.S. Marshals Service plays a critical part of the Adam Walsh Act but received no additional funding in the fiscal year 2011 request for this purpose. The Marshals arrest the worst of the worst sexual predators and track down over 100,000 unregistered fugitive sex offenders. Last year, our subcommittee provided \$72 million for the Marshals, which included \$27.5 million to hire 150 new Deputy U.S. Marshals to track down and arrest fugitive sex offenders. I want to learn why the Department's fiscal year 2011 request does not include additional funds for the Marshals Service to hire more deputies for this work.

We are waging a global war on narcotics and violence on four fronts: the U.S.-Mexico border, Afghanistan, Colombia and our own neighborhoods. The most immediate danger is the drug gangs operating along the U.S.-Mexico border. These gangs are fighting for control of drug trafficking routes into the United States and now maintain drug distribution networks in more than 230 cities in 45 States. Every day we hear reports of deaths and violence seeping across the U.S. border and spreading outward to the rest of the country. Last year, over 7,000 drug-related homicides occurred along the Southwest border.

The Justice Department's fiscal year 2011 request includes \$584 million, a \$122 million increase over fiscal year 2010 level of \$462 million, to hire 29 new agents and 58 attorneys. These resources will be used to target and dismantle drug cartels that smuggle illegal narcotics, guns and humans along the border, and terrorize citizens and neighborhoods with fear and intimidation. I want to know if the funds requested are sufficient to support tough work of the DEA, ATF, Marshals, FBI and Federal prosecutors in shutting down the flow of firearms into Mexico and stop drugs coming into the United States from Columbia and Mexico.

The major area of controversy in this budget request is how the Department implements President Obama's plan to close down the Guantanamo Bay detention facility and determine the fate of roughly 200 detainees currently held in U.S. military custody there. The fiscal year 2011 budget includes two major requests for post-Guantanamo activities: \$73 million for security costs to hold civilian trials on U.S. soil for the five detainees who are proposed to be tried in Federal courts; and \$237 million to buy, renovate and open a prison facility in Thomson, Illinois, which President Obama has designated as the preferred location to house detainees. It is worth noting, however, that Congress will first have to change restrictions to allow detainees to be transferred for detention.

I want to know how the Justice Department will address the additional risk for these high threat trials on U.S. soil and what unique costs are associated. Are these costs sufficient to keep communities safe wherever trials are held? And I want to know more about the Department's plans for the Thomson prison, even if Congress does not make changes to allow detainees to be housed there.

Finally, I want to know how the Justice Department is improving accountability of taxpayer dollars so that every dollar spent to secure our communities is a dollar well spent. Both Senator Shelby and I have required that the Justice Department have internal checks to combat waste, fraud and abuse by prohibiting funds for lavish banquets, controlling cost overruns and requiring the Inspector General to do

random audits of grantees. I want to know what steps you have taken to put these guidelines into practice to restore fiscal responsibility and accountability. As chairwoman of CJS, it is my responsibility to act as a good steward of taxpayer dollars. Spending excesses will not be tolerated.

Given all of the Justice Department's important roles and responsibilities, we must ensure that it has the resources it needs to protect the lives of 300 million Americans. But we also want to make sure that the Justice Department is a good steward of taxpayer dollars and that every dollar we spend to keep our Nation safe is a dollar well spent.

Attorney General Holder, I thank you for your leadership and I look forward to continuing our work together to make a safer, stronger America.

Senator MIKULSKI. And I would like to turn to the Attorney General.

STATEMENT OF HON. ERIC H. HOLDER, JR.

Attorney General HOLDER. Well, good morning, Chairwoman Mikulski, Senator Leahy, Senator Lautenberg.

Thank you for this opportunity to discuss the President's fiscal year 2011 budget for the Department of Justice and to provide an update on the Department's progress, its key priorities, and also our future plans. I appreciate your recognition of the Department's critical mission, and I look forward to your continued partnership and support.

When I appeared before this subcommittee last May, I set forth several goals for the Department—to protect our Nation's security, to reinvigorate the Department's traditional missions, and to restore integrity and transparency at every level of the Department's work. I also pledged that under my leadership, all decisions and policies would be based on the facts, the law, and the best interests of the American people, regardless of political pressures or political consequences.

Almost 1 year later, I am pleased to report that the Department has made, I believe, historic progress in meeting these goals. Although new challenges and demands have emerged, the thousands of men and women who serve the Department have advanced efforts to protect our country, to enforce our laws in a nonpartisan manner, to defend our interests in court, and to ensure the strength and the fairness of our justice system.

The President's fiscal year 2011 budget request for the Department of Justice, which totals, as you said, \$29 billion and includes \$2 billion in program enhancements, will enable the Department to build on the progress that has been achieved over the last 15 months.

Now during this time, we have enhanced our national security programs and capabilities. We have strengthened efforts to support our most vulnerable communities, safeguard civil rights in our workplaces, housing markets, voting booths, our border areas, and also to protect our environment.

In light of last week's oil spill in the Gulf of Mexico, I want to note that the Justice Department stands ready to vigorously enforce the laws that protect the people who work and reside near the gulf, the local wildlife, the environment, and the American taxpayers. I recently dispatched a team of attorneys to New Orleans to monitor the oil spill, and the Department will continue to provide critical legal advice and support for the agencies that are involved in the Federal response.

As part of our focus on securing our economy and combating mortgage and financial fraud, the Department is now spearheading the Financial Fraud Enforcement Task Force that President Obama launched last year. And in collaboration with the Department of Health and Human Services, we have made meaningful progress in combating and deterring healthcare fraud through the Healthcare Fraud Prevention and Enforcement Action Teams, also called the HEAT teams.

Through this initiative, we have brought the full resources of our agencies to bear against individuals and corporations who illegally divert taxpayer resources for their own profits. Just last week, this work resulted in a \$520 million settlement, the largest-ever amount paid by a company in a civil-only settlement of off-label pharmaceutical marketing claims. And over the past 15 months, the Justice Department has recouped more than \$2.8 billion in healthcare fraud cases through the use of the False Claims Act, money that will be fed back into the Federal coffers.

Now, the President's budget request will enable the Department to build on these achievements and to continue making progress in meeting its responsibilities. Let me assure you that in distributing and using these funds, we will think carefully and we will think strategically. And we will act to ensure accountability and transparency, just as we have in managing the billions of dollars that have recently been recovered.

The investments requested in the President's budget would allow us to continue aggressively pursuing and prosecuting financial and healthcare fraud; to expand the Community Oriented Policing Services hiring program, the COPS program; to reduce violent crime and drug trafficking; to assist our State and local and tribal law enforcement partners; to ensure that detention programs are adequately funded and that effective prison and jail reentry programs are available; to protect civil rights; to combat international organized crime; and to enforce immigration laws.

Now, as you all know, the Department is currently working with agencies across the Federal Government and with Congress to support comprehensive immigration reform in a way that keeps faith, as President Obama has said, with our heritage as both a Nation of immigrants and a Nation of laws.

The budget would also allow the Department to strengthen its critical national security work. As you have seen, \$300 million in program increases have been requested to help strengthen national security and to counter the threat of terrorism. These resources will enable us to expand on the progress that we have made in the last year.

Due to the vigilance of our law enforcement and intelligence agencies, we have succeeded repeatedly in identifying and averting nascent plots. On Monday, Faisal Shahzad, a naturalized United States citizen born in Pakistan, was arrested in connection with his alleged role in last Saturday's attempted car bombing in Times Square. On Tuesday, he was charged with acts of terrorism transcending national boundaries, attempted use of a weapon of mass destruction, and other Federal crimes. If convicted, he faces a potential life sentence in prison.

During ongoing questioning by Federal agents, Shahzad has provided useful information, and we will continue to pursue a number of leads as we gather intelligence relating to this attempted attack. Although this car bomb failed to properly detonate, this plot was yet another reminder that terrorists are still plotting to kill Americans.

In February, Najibullah Zazi, a key participant in the plot to bomb New York City's subway system, pleaded guilty to terrorism violations. Less than 2 weeks ago, we secured another guilty plea from one of Zazi's co-conspirators and revealed the role of senior Al-Qaeda leaders in ordering the plot. Three others have also been charged as a result of our investigation.

These attempted attacks are stark reminders of the threats that we face as a Nation and that we must confront. For the Department of Justice and our partners in the national security community, there is simply no higher priority than disrupting potential attacks and bringing those who plot them to justice.

In the Shahzad and Zazi cases, that is exactly what the dedicated Federal agents, law enforcement officers, and Justice Department prosecutors, along with their State and local partners, and particularly the NYPD, what we achieved through exemplary investigative efforts. It is in America's best interest to ensure that these public servants have the resources necessary to continue their outstanding work.

In this time of unprecedented challenges and new threats and ongoing war, your support will be critical in helping the Department meet its goals and our obligations. As we move forward, I look forward to working with all of you as well.

Once again, I thank you for inviting me here today, and I am now happy to answer any questions that you might have.

[The statement follows:]

PREPARED STATEMENT OF HON. ERIC H. HOLDER, JR.

Good morning Chairwoman Mikulski, Ranking Member Shelby, and members of the subcommittee. Thank you for the opportunity to meet with you today to discuss the President's fiscal year 2011 budget for the U.S. Department of Justice (Department) and the Department's key priorities. I appreciate your recognition of the Department's mission, and I look forward to your continued support of the important work that we do.

When I appeared before this subcommittee last May, I set forth several goals for the Department: to protect the security of the American people, restore the integrity of the Department of Justice, and reinvigorate the Department's traditional missions. Most importantly, I made a commitment to make decisions based on the facts and the law, regardless of politics.

Almost 1 year later, I'm pleased to report that we are on the right path to achieving these goals. Although unprecedented challenges and new demands have emerged, the Department remains committed to the promises that I made to this subcommittee and to the American people.

The President's fiscal year 2011 budget request for the Department of Justice, which totals \$29.2 billion and includes \$2 billion in program enhancements, will enable the Department to continue its progress in fulfilling our key objectives. The budget provides the Department with the resources necessary to protect our national security, bolster our traditional missions, and prevent and reduce crime in tandem with our State, local, tribal and community partners. These investments would support and enhance the Department's essential national security and counterintelligence programs, our vigorous efforts to prevent, investigate and prosecute financial, mortgage and healthcare fraud, and our prosecutor-led, intelligence-driven strategy to protect our Southwest border.

The budget would also provide funding for an expansion of the Community Oriented Policing Services (COPS) hiring program and resources for the Department's efforts to ensure that prison and detention programs are adequately funded and effective prisoner re-entry programs are available.

STRENGTHEN NATIONAL SECURITY

The budget requests \$300.6 million in program increases to help strengthen national security and counter the threat of terrorism. The request includes \$219.3 million in increases for the FBI and \$7.8 million in increases for the National Security Division (NSD).

We are working day and night to protect the American people. Due to the vigilance of Department of Justice professionals, working in partnership with other law enforcement and intelligence agencies, we have uncovered and averted a number of serious threats to domestic and international security. Recent arrests in New York, Chicago, Springfield, Dallas and Philadelphia are evidence of our success in identifying nascent plots and stopping would-be attackers before they strike.

One of the most serious terrorist threats to our Nation since September 11, 2001, was the attempted attack by Najibullah Zazi, who recently pled guilty to three criminal charges in connection with a plan to bomb New York City's subway system in September 2009. In addition to Zazi, four others have been charged in connection with this plot. This attempted attack on our homeland was real, it was in motion, and it would have been deadly. Because of careful analysis by our intelligence agents and prompt actions by law enforcement, we were able to thwart this potentially devastating plot.

AGGRESSIVE PURSUIT OF FINANCIAL FRAUD

As we reinvigorate our traditional law enforcement mission, the Department has placed a distinct focus on financial crimes. The Justice Department is engaged in an aggressive effort to combat financial fraud and market manipulation. The President's fiscal year 2011 budget requests an increase of \$234.6 million to restore confidence in our markets, protect the Federal treasury and defend the interests of the U.S. Government.

In addition, the Department of Health and Human Services (HHS) requests an increase of \$60.2 million specifically for DOJ components involved in the investigation and litigation of healthcare fraud cases. This increase will further the efforts of the Health Care Fraud Prevention and Enforcement Action Team (HEAT) initiative.

The budget request would improve the Department's ability to collect debts, enforce tax laws and prosecute fraud and will maximize the benefits of the Federal Government's investment of resources through the American Recovery and Reinvestment Act of 2009. It would also continue to enhance the Department's efforts to help protect American savers and investors, the national financial market, and the U.S. Treasury.

REDUCE VIOLENT CRIME AND DRUG TRAFFICKING

Violent crime and drug trafficking continue to demand a significant Federal response. Although violent crime has not increased in recent years, the share of crimes that require Federal resources continues to grow as regional street gangs increase their involvement with national and international gangs and drug trafficking organizations. The Department requires significant resources to meet these challenges through its prosecutor-led, intelligence-driven strategy to address the inter-related threats of violent crime and drug trafficking. This budget requests an increase of \$121.9 million to reduce the threat, incidence and prevalence of violent crime and drug trafficking. For fiscal year 2011, a total of approximately \$5 billion is dedicated to target these problems, including \$1 billion for Federal law enforcement to help address violent crime and \$4 billion for Federal drug enforcement and prosecution efforts.

We remain committed to eliminating the threat posed by Mexican drug cartels plaguing our Southwest border and will continue to coordinate with the Department of Homeland Security and international, Federal, State and local agencies to ensure that we effectively and efficiently reduce the influence and violence of these cartels.

In addition, this budget supports several programs in place to protect the Southwest border, including a significant expansion of and investment in the Organized Crime Drug Enforcement Task Force program, which is a centerpiece of the Department's drug enforcement and counternarcotics efforts. The budget includes resources for Project Gunrunner, the Bureau of Alcohol, Tobacco, Firearms and Explosives' (ATF) Southwest Border Firearms Trafficking Enforcement program, as well as fo-

rensic support for law enforcement activities in tribal communities. Further, the budget will expand operational capabilities at the Drug Enforcement Administration's (DEA) multi-agency El Paso Intelligence Center (EPIC) by enlarging the facility to accommodate additional participating agency personnel and by improving intelligence exploitation abilities along the Southwest border.

In addition, resources to assist DOJ's State, local and tribal law enforcement partners combat violent crime and drugs are requested within the Department's grant programs.

ASSIST STATE, LOCAL AND TRIBAL LAW ENFORCEMENT

The budget requests a \$722.5 million increase for State, local and tribal law enforcement assistance programs, bringing total grant program funding to \$3.4 billion. The Department continues to maintain key partnerships with State, local and tribal officials and community members. These partnerships include the COPS hiring grant program, which enables State, local and tribal police agencies to increase the number of officers available to advance community policing, with a goal to prevent and reduce crime. In addition, many grant programs are provided through the Office on Violence Against Women (OVW), such as the Sexual Assault Services program and the Legal Assistance for Victims program, which provide communities with the opportunity to combat sexual assault and other forms of violence against women.

Several new programs are requested in fiscal year 2011 for the Office of Justice Programs (OJP), including the new Byrne Criminal Justice Innovation program, smart policing, and smart probation initiatives. The budget includes funding to continue the implementation of the Adam Walsh Act of 2006, which established national standards for sex offender registration and notification. Resources are also requested to assist children exposed to violence, as well as enhancements to expand criminal justice research and statistical data gathering efforts.

PROTECT CIVIL RIGHTS

Throughout its history, the Department of Justice has helped safeguard the civil rights of all Americans by targeting discrimination through investigation, litigation, outreach, technical assistance and training efforts, and by providing guidance to Federal, State, local and tribal agencies. The President and I have recommitted the Department to performing this historic role. In fiscal year 2011, we will build on the progress made in fiscal year 2010 to restore the Department's unparalleled role in protecting civil and constitutional rights.

The fiscal year 2011 budget requests an increase of \$19.8 million to protect civil rights and vulnerable populations. This increase will allow the Department to strengthen its focus on enforcing fair lending and housing laws, preventing employment discrimination, protecting voting rights, and prosecuting hate crimes. It will also expand resources for protecting children from exploitation, tracking convicted sex offenders, recovering missing and abducted children, and combating human trafficking and sex tourism.

COMBAT INTERNATIONAL ORGANIZED CRIME

International organized crime poses unprecedented threats to our country's national and economic security. These threats include attempts by organized criminals to exploit our energy and other strategic sectors, support for terrorists and hostile governments, orchestration of cyber and intellectual property crimes, and efforts to manipulate our financial, securities, and commodities markets.

The budget includes \$15 million in program increases that will allow the Department of Justice to continue implementing the Law Enforcement Strategy to Combat International Organized Crime ("IOC Strategy"), which the Attorney General's Organized Crime Council adopted in April 2008 to modernize law enforcement's approach to international organized crime. This funding will support a unified strategy to dismantle international crime organizations that have become exponentially more sophisticated and provide for expansion of the OCDETF Fusion Center to accommodate the International Organized Crime Intelligence and Operations Center (IOC-2).

MAINTAIN PRISONS, DETENTION, PAROLE AND JUDICIAL AND COURTHOUSE SECURITY

As a result of successful law enforcement policies, the number of criminal suspects appearing in Federal court continues to grow, as does the number of individuals ordered detained and ultimately incarcerated. The budget requests \$527.5 million in program increases that will allow the Bureau of Prisons (BOP), Office of the Federal Detention Trustee (OFDT), U.S. Parole Commission (USPC) and U.S. Marshals

Service (USMS) to continue to protect society by confining offenders in the controlled environments of prisons and contract- or community-based facilities as well as by offering self-improvement opportunities to offenders that will assist them in becoming law-abiding citizens and reduce the likelihood of recidivism. Additional resources are also requested to acquire and activate high- and medium-security beds to manage the most challenging inmates in our custody.

The BOP operates 115 Federal prisons and contracts for low security prison beds to confine more than 215,000 inmates in fiscal year 2010; BOP projects that the Federal prison population will increase by approximately 7,000 inmates in fiscal year 2011. Therefore, program enhancements included in the fiscal year 2011 budget provide \$523.2 million in new program funding to support increases in BOP and OFDT operations. These additional funds will allow OFDT in particular to support an average daily detention population of approximately 62,100, to increase detention bed space in the Southwest border region, and for increased prisoner transportation and medical costs associated with the rise in average daily detention population.

In addition, these program enhancements increase funding to support Second Chance Act initiatives and re-entry programs, including expanded re-entry transitional housing, BOP inmate correctional programs, and the District of Columbia Recidivism Reduction and Re-entry Enhancement, a new program that will be implemented by the USPC in fiscal year 2011.

Finally, resources are requested to enhance the law enforcement efforts of the USMS, primarily its Special Operations Group (SOG), which supports USMS and other agencies with a rapidly deployable force of tactically trained officers. SOG provides tactical support for any incident involving the judiciary, district operations and witness security operations. The President's budget also annualizes into the USMS base additional positions approved in fiscal year 2009 (201 positions) and fiscal year 2010 (700 positions) to support immigration enforcement, particularly along the Southwest border. The positions will also be used to expand Adam Walsh Act enforcement.

ENFORCE IMMIGRATION LAWS

The Department maintains substantial responsibilities with respect to immigration, including enforcement, detention, judicial functions, administrative hearings and litigation, among others. The Department's Executive Office for Immigration Review (EOIR) serves as the front-line presence nationwide in immigration matters overseeing the immigration court and appeals process.

In recent years, however, the Department's resource enhancements have not kept pace with those received by the various immigration components of DHS. EOIR's immigration court caseload continues to increase to unsustainable levels as a result of DHS' heightened enforcement efforts. The caseload grew 30 percent between fiscal year 2004 and fiscal year 2009—from 300,000 to 390,000 new matters coming to EOIR for resolution each year. The number of new cases is expected to exceed 400,000 annually by 2011.

An additional \$11 million requested in 2011 is therefore needed to address the caseload increases emanating from DHS programs, including the Secure Communities Initiative and the Criminal Alien Program. These resources are necessary to improve the current immigration system and to ensure that the Nation's approach to immigration enforcement is balanced, reasonable, effective, and humane.

Similarly, the Civil Division's Office of Immigration Litigation (OIL) also plays a crucial role in upholding the enforcement actions of DHS and EOIR. OIL provides the Government with the best possible defense in district court cases and challenges to removal orders filed in circuit courts by illegal aliens, many of whom are criminals. As DHS enforcement activities expand with the implementation of the Secure Communities Initiative, OIL can expect aliens to continue to petition their removal decisions in circuit courts. The fiscal year 2011 budget maintains the current staffing levels for OIL.

ENSURE PUBLIC SAFETY IN TRIBAL COMMUNITIES

The Department of Justice is deeply committed to working with tribal governments to improve public safety in tribal communities.

We are working to put resources in place quickly and efficiently to help American Indian and Alaska Native communities help themselves. The budget requests \$448.8 million in total resources to assist tribal communities. It maintains the increased number of Assistant U.S. Attorneys in Indian Country that the Department is adding in 2010 as a result of the support of members of this subcommittee. In addition, the President's fiscal year 2011 budget includes funds (provided by the Department of the Interior) for 45 new FBI agents to support law enforcement efforts in Indian

Country. The President's fiscal year 2011 budget provides \$67 million under the COPS Office, \$140.7 million under the Office of Justice Programs, and \$47.9 million under OVW for tribal initiatives. Within this amount, the President's budget includes a 7 percent set-aside—\$42 million—from the COPS hiring program to support the hiring of tribal law enforcement personnel; a 7 percent set-aside—\$139.5 million—from OJP for Indian Country efforts; and statutory set-asides totaling \$42.9 million for certain OVW programs. These set-asides, combined with numerous Department of Justice programs designed exclusively for tribal communities result in a total request of \$255.6 million for Department of Justice grant programs in tribal communities.

There are over 56 million acres of Indian Country and more than 560 Federally-recognized Indian tribes. The Major Crimes Act provides Federal criminal jurisdiction over certain specified major crimes if the offender is Indian, while tribal courts retain jurisdiction for conduct that might constitute a lesser offense. Federal investigation and prosecution of felonies in Indian Country cannot be deferred to a local jurisdiction and therefore Federal law enforcement is both the first and only avenue of protection for the victims of these crimes.

CONCLUSION

Chairwoman Mikulski, Ranking Member Shelby, and members of the subcommittee, I want to thank you for this opportunity to discuss the Department's priorities and detail new investments sought for fiscal year 2011.

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 protect our national security. I hope you will support me in the execution of these worthy efforts. As always, we are aware that there are tough decisions and challenges ahead, and I look forward to working with you as we move forward.

Once again, thank you for inviting me here today. I am pleased to answer any questions you might have.

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

We are going to proceed this morning in terms of arrival. We also note the chair of the Judiciary Committee. I am going to ask some questions and reserve my right for a second round to be sure that members who have really demanding schedules have their opportunity.

Obviously, the Times Square bombing attempt is in the news. There are those who will raise issues related to the reading of Miranda rights and so on. That is not my focus. My focus is the questions to you related to the way it worked and the way you feel you have the resources for it to continue to work.

As press accounts report, vendors saw a smoking car. They said something. NYPD arrived. They took the actions they were supposed to. Then Federal officials came in. You can relay that story.

My question to you is, is that the correct way? You can't have an FBI agent on every corner, but you can have police officers on many corners. First of all, I think it is amazing that this man was apprehended in 53 hours and 24 minutes.

Attorney General HOLDER. Yes, that was.

Senator MIKULSKI. I think we really have to congratulate law enforcement for that. The watch list is a different bag. Talking to me about the watch list is like fingernails on a blackboard. But let us talk about what our law enforcement did, both State and local, up the chain, and then, what did it take to do that? And do you have the resources to make sure, whether it is in Los Angeles or Baltimore, et cetera, that we have these security mechanisms and people?

Attorney General HOLDER. I think that the success of that effort is a direct result of the joint efforts that we have between the Federal Government and our State and local partners. The work that

the FBI did in New York with the New York Police Department, as well as our counterparts at the Department of Homeland Security—I think all of that combined for making our attempts to disrupt that plan successful.

And that is why the budget focuses on getting money to these joint terrorism task forces and getting money to our State and local partners. I think what you said is exactly right. We have to use our State and local counterparts as force multipliers. They are the people who are going to be most familiar with the communities in which they operate. There are far more of them than there are Federal law enforcement officials. And without their assistance, without their partnership, we will not be as successful as we were in foiling this plot.

COPS PROGRAM

Senator MIKULSKI. So what is it then, do you feel—do you want to elaborate on your Community Oriented Policing Services [COPS] program, your Edward Byrne Memorial State and Local Law Enforcement Assistance Grant Program [Byrne grants]? Do you feel that it is because of this? Or do you feel that police departments, where there is high risk of threat, New York obviously being one, L.A.—we know the list—Washington, DC, that there needs to be specialized training? What do we need to do, to put in the budget, so that we can deploy people in communities and ensure that they have the right training and the right equipment?

Attorney General HOLDER. Well, I think we have to—

Senator MIKULSKI. Because it is just not putting somebody in a uniform on the street. It is like boots on the ground in urban neighborhoods. They have to be trained and equipped.

Attorney General HOLDER. Right. There are a number of steps. We have to certainly first support the hiring of State and local law enforcement officials. For the COPS hiring program, we have a fiscal year 2011 request for \$600 million. That is up \$297 million from this year. So that is the first step, to get these people on the force.

But the point you make is an excellent one—that simply having them there is not sufficient. They have to be adequately trained. They are interacting with their Federal counterparts in these joint terrorism task forces. The training opportunities that we can make available, and the knowledge that we can glean from them in the interaction that we have during training, are invaluable.

We have built upon the \$1 billion that was in the Recovery Act that was dedicated to the COPS program to try to make sure that we have a constant level of support for our State and local partners, both in terms of hiring, and with regard to the specialized training that is needed in dealing with these terrorism cases.

Senator MIKULSKI. Aren't you cutting the COPS program by \$100 million in the President's request?

Attorney General HOLDER. I am not—

Senator MIKULSKI. The fiscal 2011 budget request provides for \$690 million. In 2010, there were \$792 million. Mr. Holder, why don't you check that out with your team?

Because I know this subcommittee—on a bipartisan effort, if there is one thing we really do support it is the COPS program and

the Byrne grants. I think, as we look at the Justice Department, that is where everyone is on either side of the aisle, because every community needs it. Why don't we take a look at that and see and come back to it?

Attorney General HOLDER. Yes. The numbers that I have show us increasing the amount pretty substantially from about \$298 million to \$600 million in terms of COPS money, COPS hiring. Again, as I said, that is built on top of the \$1 billion in money that was dedicated from the Recovery Act.

But we will certainly work through those numbers and share them with you.

[The information follows:]

The COPS fiscal year 2010 enacted budget includes four programs (Sex Offender Management Assistance, the National Sex Offender Registry, the Bulletproof Vest Program, and the DNA Backlog Program) administered by the Office of Justice Programs (OJP) that are being requested under OJP's appropriation in fiscal year 2011. If the amounts requested for these four programs totaling \$186 million are added to the \$690 million requested for COPS in the fiscal year 2011 President's budget, it results in an adjusted total of \$876 million, or an increase of \$84 million above the fiscal year 2010 COPS enacted level. It is important to make this comparison for the same array of programs to appropriately evaluate the COPS fiscal year 2010 enacted budget versus the fiscal year 2011 request.

Senator MIKULSKI. Right. Because I think the point that I am making is, let us make certain that there is no reduction of support for the COPS program and also for the Byrne grants, which allows them to get what they need, depending on the needs of the local communities.

But I want to be sure that we accommodate as many people as we can. I will come back to my questions.

Senator Leahy, we are so glad to have the chair of the Judiciary Committee here.

TIMES SQUARE BOMBING

Senator LEAHY. Thank you. Thank you and I apologize that I am going to have to leave because the committee is going to be having a mark-up.

Attorney General, I called Commissioner Ray Kelly to applaud the New York Police Department for their work on the Times Square bombing, and I have spoken to you. I applaud you and the Department of Justice and the FBI for what they have done. It is one of those things where it is nice to see everybody working together.

I should also applaud the citizens who—in this case, the vendor—who saw something suspicious and reported it to the police. The police reacted immediately, and we won't go into all the things you were able to do in tracking phones and everything else in this hearing. It was pretty remarkable to see all the pieces come together.

I was rather surprised to hear Members of Congress criticize law enforcement for doing what law enforcement has always done since the Miranda decision came down in giving Miranda warning to the suspect. Now the fact that you had to give Miranda warnings, which is required, did that, in any way, hinder your investigation?

Attorney General HOLDER. No, it did not. As we have seen in prior investigations, the giving of Miranda warnings has not de-

terred people from talking to us. And Mr. Shahzad is, in fact, continuing to cooperate with us.

Senator LEAHY. In fact, wouldn't it be safe to say—and you can rely on your own experience as a prosecutor even before you were Attorney General. Certainly, I rely on mine. Isn't it safe to say that there are many, many, many cases where a person has given a great deal of information about a crime they have committed after they have been given the Miranda warning?

Attorney General HOLDER. That is absolutely correct. It is not conferring a right on somebody or treating them in a special way. It is allowing us to make sure that statements that they give to us are going to be admissible in court.

If you look at what we have done in the recent past, the following people have been given their Miranda warnings and have, after that, continued to cooperate—David Headley, Colleen LaRose, Jamie Paulin-Ramirez, Bryant Neal Vinas, Daniel Boyd, Dylan Boyd, and Zakariya Boyd. Even after getting Miranda warnings, Mr. Zazi and his co-conspirator, Umar Farouk Abdulmutallab, ultimately cooperated. All of these people received Miranda warnings and still ultimately decided to speak with the Government.

Senator LEAHY. Again, I can think back even to murder cases where I prosecuted, and now you are dealing with far more serious cases where, again, people are given a Miranda warning, and they went ahead and gave the information. But you also have then, as you said, the ability to use the statements in court.

Now since taking office, I believe, and Madam Chair, wearing my hat as chair of the Judiciary Committee, I have seen you use all the options available to try terrorist suspects, including Federal criminal courts, military commissions. Since September 11, there have been over 400 terrorism-related convictions in Federal court. There are hundreds of terrorists locked up in our prisons, over 400.

Now there have been three people convicted in military commissions. I think the new manual for military commissions was issued last week. Without putting words in your mouth, is it safe to say that Federal courts know what they are doing when they are handling these kinds of cases?

Attorney General HOLDER. I will use those words. We want to make sure that we use all the tools that we have available to us in trying to prosecute this war. If you were to take from us the ability to use the Federal courts, you will weaken our ability to win this war. You will weaken the strength of this Nation.

We have to have the ability to use the Article III courts, the reformed military commissions, our military power, and our diplomatic power. We need to have all of these tools so that we are successful in this fight against Al-Qaeda and others who would do this Nation harm.

BP OIL SPILL

Senator LEAHY. In an entirely different thing, in the wake of the recent disastrous oil spill in the Gulf of Mexico, there are reports that BP was requiring that fishermen who volunteered to help clean up the spill to waive their right to sue BP. These fishermen are out of work because of the BP spill.

There are also reports that BP was offering settlements capped at \$5,000 to residents facing damage from the spill if they give up their right to sue. These are people facing financial ruin, a lifetime of building up their fishing operations being wiped out. Are there ways the Government might make the fishermen, the small business owners, the residents, and other victims of the oil spill whole immediately, while still holding those responsible for the spill, like BP and Halliburton and what not, holding them ultimately liable?

Attorney General HOLDER. Well, that is one of the reasons why I dispatched a task force of lawyers—the head of our Civil Division, the head of our Environmental and Natural Resources Division, along with other lawyers—to get down there to make sure that we protect the Federal Government's rights with regard to the costs that will potentially be incurred in this cleanup and to make sure those costs are borne by BP. But also to ensure that the residents in that area, the business people in that area, maximize their opportunities for recovering whatever monies they can. It is my understanding that BP has backed off on that effort to get people to sign waivers, and I think that is the appropriate thing to do. Trying to get people to sign away their rights for a mere \$5,000 when the damage that they might have would far exceed that is clearly the wrong thing to do.

Senator LEAHY. Thank you very much.

Thank you, Madam Chair. And I apologize for having to leave.

Senator MIKULSKI. I think we are very fortunate to have the chair of the authorizing committee of Judiciary and the Intel Committee here because of the work of the FBI, so much now because of the anti-terrorism issues. And we are going to really ask our two authorizing chairs to look at this budget, and we welcome their advice and their insight as we put this together.

Senator Lautenberg, you were the second to arrive.

Senator LAUTENBERG. Thank you, Madam Chairwoman.

Senator MIKULSKI. And then we will go to Senators Murkowski and Feinstein.

Senator LAUTENBERG. Thank you, Madam Chairwoman.

And welcome, Attorney General Holder. I say thank you for the leadership that you have provided to the AG's operation. Everyone knows how energetic and positive your leadership has been, and we are grateful to you.

One of the things that have happened in the world that we live in now is with the internationalization of everything, with the instant communications, electronic access to data has changed the world. We are ever more threatened, in my view, by terrorist attack, and confirmed by, though a bumbling one last week, the fact of the matter is that—and it is posed as a question as well as a statement. And that is, you know, the State of New Jersey. You know it very well; it has a 2-mile stretch from the airport to the harbor deemed to be the most dangerous 2-mile stretch in the country as a target for terrorist attacks.

And yet we are so lean. I wish we could be mean. But we are lacking in resources. And the fact that we have an expansion of the COPS program, Attorney General, is terrific. It is very helpful to us. My State, like so many, is without—almost without resources. In Atlantic City, New Jersey, a prominent place, we dropped, ter-

minated 59 cops, 59 cops out of the police force, a huge number. And some part of that can be redeemed by the COPS program that we have here, have seen here today.

Mr. Holder, this suspect spent around 5 months recently in Pakistan, came back, and talked about bomb making, training in Waziristan. Were DOJ and FBI looking at this fellow at all times prior to the attempted bombing?

TIMES SQUARE BOMBER

Attorney General HOLDER. This is an ongoing investigation and we are in the process of looking at indices and files to see exactly what we knew about this gentleman and when we knew it. I am a little at a disadvantage, because this is an ongoing investigation, and there are leads that we are still pursuing, so I'm constrained from getting into too much detail about what we know at this point. Some of that serves as the basis for things that are in the process and that are ongoing.

But, in answer to your question, we are in the process of trying to determine exactly what we knew about him and when.

Senator LAUTENBERG. Well, I want to get to a key issue as far as my agenda is concerned, and I ask this. It was reported that the Times Square bomber left a loaded handgun in his car at JFK as he tried to make his escape. The State of Georgia, the State legislature recently passed a bill that would allow people to carry a loaded gun into an airport.

Do you support allowing people to carry loaded guns into an American airport, this one happening to be the largest in the world?

Attorney General HOLDER. We certainly have the Supreme Court's decision in *Heller* that says that the Second Amendment is an individual right. We have to respect the Supreme Court's decision in that regard.

That doesn't mean, however, that that right is one that is absolute, and we have to balance that individual right against our collective security. And there has to be a way in which if there is a tension, we try to resolve that tension.

The notion that people could bring guns to airports, especially given the Al-Qaeda focus on the use of airplanes as terrorist tools, is one that, to me, is very worrisome. I would hope that we would try to keep guns away from the very instruments that Al-Qaeda and other organizations successfully used on September 11 and continue to try to use in the present, and I suspect will seek to use in the future as well.

Senator LAUTENBERG. Mr. Holder, last month, John Bedell wounded two Pentagon police officers before he was shot and killed. At least one of the handguns was linked to a private gun show sale.

I brought the legislation to the Senate when Vice President Gore was in that position, and he broke a tie, 51-50, for us to close the gun show loophole, to shut down these dealers that don't have to ask your name, who you are, where you are, anything. Would you recommend Congress acting to close the gun show loophole once and for all?

FIREARM BACKGROUND CHECKS

Attorney General HOLDER. We are committed to keeping guns out of the hands of people who should not have them. We know that people who have access to these guns have committed any manner of crimes. We have certainly seen a disproportionate number of gun crimes in our inner cities and in other places, the incident that you described being among them.

We want to make sure that we take advantage of the tools and make sure that, as I said, we are keeping guns out of the hands of people who should not have them.

Senator LAUTENBERG. Thank you for that "yes" answer.

I authored the juvenile mentoring program. It created one-on-one mentoring for a modest cost for at-risk youth. During a brief hiatus that I had away from the Senate, the program was de-authorized. Now I plan to reintroduce that legislation for authorization of this program in coming weeks.

Do you see any value to that program, to the mentoring? I don't know how familiar you are with the results that we had in terms of crime prevention and giving our youth an alternative to gangs.

JUVENILE MENTORING

Attorney General HOLDER. That is exactly the approach that we have to take. We have to understand that crime fighting happens not only by police officers and by prosecutors. Crime fighting happens in schools. It happens through mentoring. There is a direct correlation between schools that work, between mentoring efforts and between high levels of employment. All those things counter crime and are good crime fighting measures.

We have to get beyond the notion that crime fighting only happens through people in uniform or through people who are lawyers who act as prosecutors. We have look at the social conditions that tend to breed crime, and if we want to keep the crime rate down, we have to deal with those underlying social conditions. Mentoring is one of the key ways in which you do that.

I saw this when I was a judge here in the D.C. Superior Court. There were too many young people, especially young men, who came before me who had no man in their life. Women did a great job in trying to raise these young guys, but I think that mentoring, especially of young men, is a critical thing in our successful crime fighting efforts.

Senator LAUTENBERG. Thank you.

Thank you, Madam Chairwoman.

Senator MIKULSKI. Thank you, Senator.

Next I will call on Senator Murkowski, and then Senator Feinstein.

Senator MURKOWSKI. Thank you, Madam Chairwoman. Thank you.

And welcome, Attorney General Holder.

Attorney General HOLDER. Good morning.

9TH CIRCUIT VACANCY

Senator MURKOWSKI. Good morning to you. I have a question for you about a vacancy that we are looking at in the 9th Circuit. An-

drew Kleinfeld, who has been Alaska's sole judge on the 9th Circuit, has notified the President that he is going to be retiring from active service in mid June, June 12.

Now, by my reading, that will place the 9th Circuit out of compliance with the U.S. Code, 28 U.S.C. 44(c), which requires that there shall be one circuit judge in regular active service appointed from the residents of each State in a circuit. So my question to you is whether or not you understand, as I do, that this requirement under 28 U.S.C., that Judge Kleinfeld's seat must, in fact, be filled by another resident of the State of Alaska.

And if you agree with that, can you tell me how the process to fill that vacancy is moving ahead?

Attorney General HOLDER. We are trying to fill vacancies that exist in all of the circuit courts, as well as the district courts, as quickly as we can, working with elected officials in all of those States, including reaching across the aisle to our Republican colleagues to get names of qualified people. This President is committed to appointing and putting on the bench qualified people who are non-ideological in their views.

One of the things I will certainly look at, having just had it brought to my attention, is that vacancy. We will interact with you if there are suggestions that you have. The White House counsel is chiefly responsible for the organization of our effort on judicial nominations. The Justice Department works with the White House counsel's office in vetting and identifying possible candidates. We will do that as quickly as we can to ensure we fill that seat as quickly as we can.

Senator MURKOWSKI. Well, we appreciate the expediency. But again, I just will remind you that that is the only seat that is occupied by an Alaskan, and as I read the U.S. Code, it does require that there be an appointment from the resident of each State. So we would like to work with you on that not only ensuring that it is filled quickly, but in consultation with members of the Alaska delegation. We appreciate that.

We also have a U.S. district judge who has announced that he is going to be taking senior status next year, and I will assume, but I guess I should ask it by way of a question that the administration's plan to consult with the Alaska delegation will be very similar to what we are talking about with the 9th Circuit vacancy?

Attorney General HOLDER. Yes. That is the way in which we have operated. We have talked to the Senators in the States where those vacancies have occurred. As I said, we have reached across the aisle. We are always open to suggestions that Senators have, be they Republican or Democrat, and we try to get the best people that we can for these vacancies.

I am troubled that, in at least some of our district courts and some of our circuit courts, the number of vacancies is getting alarmingly high. We need to move as quickly as we can both in nominating people and getting them confirmed in the Senate. There are a number of judges, I think, who have kind of lingered in the Senate, either in the Judiciary Committee or on the floor—I think mainly on the floor—awaiting votes.

And so, I would hope that, in a spirit of bipartisanship, we can get those people votes and get them on the bench so they can serve the American people.

Senator MURKOWSKI. We appreciate that. I want to talk just a little bit more about the 9th Circuit. I have long been of the opinion that the 9th Circuit covers far too much territory. Its caseload is too heavy. It is understaffed. The judges of the 9th Circuit are being asked to spend a lot of time away from their families to hear cases in far-flung States that make up the circuit, and I have long supported a split of the 9th Circuit into two circuits.

The question to you this morning is whether or not you see any justification in maintaining the 9th Circuit in its present form, and what is the administration's view on the legislation to split the 9th Circuit. Senator Ensign had legislation introduced this year. We have worked with him in the past. If you could just address the workload and the situation as to how the 9th Circuit could best and most efficiently operate?

Attorney General HOLDER. I think the 9th Circuit does present unique problems, both in its geographic size and the workload that it has. I think we want to look at those two issues, and make a determination about whether there is any need for some reconstruction or some reconfiguring.

This is something that I have not really focused on in the recent past, but I know I have certainly read articles and had conversations about that possibility. We will certainly want to work with Congress in looking at the workload and the geographic dispersion of the 9th Circuit in making the appropriate determination.

Senator MURKOWSKI. Appreciate that.

Thank you, Madam Chair.

Senator MIKULSKI. Senator Feinstein. Senator Feinstein is the chair of the Intelligence Committee and also is an outspoken person on the funding for the Office of the Federal Detention Trustee fund [detainee trust fund] that is often skimpy and spartan. We ask local jurisdictions to hold the prisoners that are Federal and then don't pay the bill. So I hope you ask some of those questions.

Senator FEINSTEIN. Well, thank you very much, Madam Chairwoman. I appreciate it.

NARCOTICS CONTROL

I want to ask a question in my capacity of Chairman of the Senate Caucus on International Narcotics Control, and we have been spending some time looking at both Afghanistan and Mexico and the cartels. And you could say that there is eruption in Mexico in the cartels, and you could say that there is major eruption in Afghanistan with the Taliban increasingly taking over drug lab activities, transportation of narcotics, and in effect, transforming themselves into a narco-cartel, which I happen to believe will be the result.

We have found that as much as \$169 million comes from a single heroin trafficker in a 10-month period in Afghanistan. At present, the Drug Enforcement Administration [DEA], which has units to address this type of narco-terrorism, does not have the manpower to stand up or devote full-time operations in Afghanistan.

I think they have been very effective. I have talked with former agents, Mr. Braun, others, about operations in southern Afghanistan and believe that for a fraction of our national investment in that country, a DEA unit could, in fact, be dedicated to removing narco-terrorists from the battlefield in direct support of the administration's top priority.

So I am asking the distinguished chairman to add money either in this bill or to try to put it in a 2010 supplemental to stand up a new terrorism investigations unit at DEA's Special Operations Division to focus on Afghanistan. Would you support such an effort?

Attorney General HOLDER. Yes, the DEA has been particularly effective in Afghanistan. At the end of fiscal year 2010, we expect to have a permanent staff of about 81 DEA positions in Afghanistan.

The reality is that, given the nature of the problem that you accurately describe, additional DEA agents, prosecutors, and people from the Marshals Service could all help with regard to the fight against the narcotics trade—which helps fuel the Taliban—and also help that nation in its efforts to adhere to the rule of law.

We have to view this comprehensively. The point that you make about the need for expanded DEA resources in Afghanistan is exactly right.

Senator FEINSTEIN. Second question. Yesterday, at the request of Senator Cornyn, I chaired a hearing of the Caucus on International Narcotics Control, particularly on drug violence in Mexico and the implications for the United States. And what appears to me is that kidnappings in the last 3 years are up substantially. They are in southern California. They are in Arizona. Stash houses are up, and home invasions are up.

And I think that has really fueled the Arizona law, which I think is an unfortunate law, but nonetheless, I understand the fear that people have. The question becomes, have you looked at beefing up even more the law enforcement effort in these particular areas, and if so, what is Justice prepared to do?

Attorney General HOLDER. We have deployed Justice Department resources from the Bureau of Alcohol, Tobacco, Firearms and Explosives [ATF], from the DEA, from the FBI along the border. I am concerned about the level of violence that we have seen increase pretty dramatically, even in the last 3 to 4 weeks. We are going to make sure that we keep a sufficient presence both in Mexico and along the border and that we work with our State and local partners in those affected areas along the border to keep the violence level as low as we can.

The efforts that our Mexican colleagues and President Calderon have taken are heroic. We have to make sure that we are supportive of those efforts. We have to, as I said, make sure that we maintain and increase our presence within Mexico, but also maintain that presence along the border.

We have deployed ATF agents there on a rotating basis. And I think one of the things we are going to have to consider, given the violence level that we see in Mexico and a concern about that spilling over, is to perhaps make that presence permanent.

Senator FEINSTEIN. Just one of the things that came up yesterday, a captain by the name of Martinez, 24 years experience, Chula Vista Police Department. They got a grant, and what they began to do is really develop intelligence. A lot of these kidnappings in Mexico related to somebody in the United States, the person in the United States won't call up and say, "My relative has been kidnapped," but they will talk about it.

They pick up this talk, so they are able to go in and make an arrest in concert with Mexican police or prevent something from happening, and I think that is a very good effort.

Additionally, the El Paso Intelligence Center [EPIC], my understanding is that DEA has requested funding for an expansion and renovation project to enlarge the existing EPIC facility since 22 of the agencies are planning on adding personnel. Is that something that is critical, in your view?

Attorney General HOLDER. Yes, I think it is. For us to be successful in this effort, we need to gather as much intelligence as we can. We need to be able to process that intelligence. We need to have the enforcement agencies co-located so that they can all make use of that intelligence and then efficiently deploy the resources that they have.

The Department's request for fiscal year 2011 seeks really significant resources to combat violence along the Southwest border, and one of the ways in which we can do that is by supporting EPIC, which is a critical part in our efforts.

Senator FEINSTEIN. Would you allow me one more question, Madam Chairwoman?

Senator MIKULSKI. Absolutely. I think this is absolutely critical and was going to be part of my second round. Please.

Senator FEINSTEIN. Thank you. You are a good sport. I appreciate it.

Let me ask a couple of Miranda questions because I am seeing and reading—

Senator MIKULSKI. Oh.

Senator FEINSTEIN [continuing]. Everything that is going on.

Senator MIKULSKI. We'll, wait a minute.

MIRANDA RIGHTS

Senator FEINSTEIN. Is it true that every American has the right under the Fifth Amendment to a Miranda warning?

Attorney General HOLDER. Yes. The Supreme Court in the *Dickerson* case, *Dickerson v. United States*, when Chief Justice Rehnquist was alive, in a 7–2 decision, said that the Miranda warnings were of constitutional dimension and struck down a Federal statute that tried to get around the earlier Miranda ruling that was first established by the Warren court. The Rehnquist court said that the Miranda warnings were of constitutional dimension.

Senator FEINSTEIN. So this is now well established, that every American, under the Fifth Amendment, has this right?

Attorney General HOLDER. That is the way in which the Supreme Court has interpreted it.

Senator FEINSTEIN. Is there any exception?

Attorney General HOLDER. Yes. There are exceptions to Miranda, and that is one of the ways in which we conduct our interrogations of terrorism suspects. It is what we did with Abdulmutallab, and it is what we did with Shahzad.

Senator FEINSTEIN. Could you concentrate on the national security exception?

Attorney General HOLDER. Yes. It is called the public safety exception. It comes from the *Quarles* case, *New York v. Quarles* and allows a police officer or a Federal agent to question a suspect, a potential defendant, or a terrorist, in order to protect the public safety, and ask questions such as, "Are you acting alone? Are there other bombs that we need to be worried about? Are there other people flying in who are going to be helping you?"

To ensure the public safety, we are allowed to ask those questions without giving Miranda warnings. With Abdulmutallab and Shahzad, we made extensive use of the public safety exception before a decision was made to give them the Miranda warnings.

Senator FEINSTEIN. Now, a difficult question. According to process and precedent, about what is the vicinity of time that that—you call it the public safety, I call it a national security—exception can last?

Attorney General HOLDER. That has not really been defined by the courts. It is not a prolonged period of time. I will say, without getting into too much detail, that it has been publicly reported that with Abdulmutallab, there was a 1 hour interrogation period under the public safety exception. Useful, valuable intelligence was gained in that 1 hour.

A lot of people have said you only spoke to him for about an hour, they say 50 minutes, without recognizing that in that period of time, qualified, experienced FBI agents can elicit really substantial amounts of information. Again, without getting into too much detail, with regard to Shahzad, the questioning under the public safety exception far exceeded the amount of time that we had with Abdulmutallab.

Senator FEINSTEIN. Is it fair to say that process and precedent take that to around 3 to 6 hours?

Attorney General HOLDER. The courts have never said exactly.

Senator FEINSTEIN. The courts have not said.

Attorney General HOLDER. They have not said how far you can go.

Senator FEINSTEIN. Prior use?

Attorney General HOLDER. I think that as long as you are asking questions, appropriate questions, probing about public safety issues, I think the courts are generally going to be supportive. And we have asked those questions, I think, appropriately, minding the dictates of the Supreme Court in the *Quarles* case. And as I said, with regard to Shahzad, we really made use of that exception to elicit a very substantial amount of information from him before the decision was made to give him his Miranda warnings.

SHAHZAD INTERROGATION

Senator FEINSTEIN. Could Shahzad be declared an enemy combatant, and if that were to be the case, could he retain counsel and overturn the decision?

Attorney General HOLDER. He could certainly retain counsel in whatever forum he was in to try to challenge the decision to not give him his Miranda warnings.

Senator FEINSTEIN. What would be the likelihood of his succeeding?

Attorney General HOLDER. I am obviously an advocate here, but on the basis of the way in which the interrogation was done here and the care with which it was done, I don't think he would be very successful.

Senator FEINSTEIN. You do not?

Attorney General HOLDER. No.

Senator FEINSTEIN. Everything I have seen says he would have a high chance at being successful in—because he is an American, and that seems to me to be a heavier prior right.

Attorney General HOLDER. Oh, I am sorry. I didn't hear the question. No, what I was saying is that he would not be successful in trying to say that the interrogation that was done was done inappropriately. That is what I was saying. He would not be successful in that.

Senator FEINSTEIN. Oh, all right. But in other words, declaring him an enemy combatant would not void his basic rights?

Attorney General HOLDER. Again, the courts have not totally weighed in on all of these areas, but the courts have indicated that there are certain basic rights that are going to apply no matter what forum you are in. There was a very big misconception that somehow or other terrorists have far greater rights in the Article III courts than they would in the military commissions.

Under the reformed Military Commissions Act, there are substantial procedural rights that defendants have. It is one of the reasons why this administration feels comfortable using either military commissions or the Article III courts. There is not a distinct advantage that people get if they are in the Article III courts. We have successfully prosecuted close to 400 people who were charged with terrorist offenses in the Article III venue.

Senator FEINSTEIN. All right. Thank you, General.

Thank you, Madam Chairwoman.

Senator MIKULSKI. Absolutely. We could pursue this line of questioning, but we have another witness, and I have one other substantive question and then something related to Maryland. Then we will go to the inspector general.

Mr. Attorney General, one of the issues that we are deeply involved in, whether it is the Judiciary Committee, the Intel Committee, or Appropriations, is cybersecurity. And we regard this as one of the greatest threats facing the United States of America. And as we examine it, for example, in the task force that I am on, we are looking at governance, technology development to maintain the cyber shield, the development of a workforce to be able to be involved in this, and the issue of civil liberties.

My question goes to the Justice Department. In the area of governance and civil liberties, there are new definitions that are going to have to be developed because, essentially, the mother ship of most knowledge on protection lies with the National Security Agency whose job is to protect .mil and our military assets. But there

is .gov. There is .com. There are the financial services. There is the power grid.

I am not going to go into the policies today. That will be a subject of other hearings in other fora. But has the Justice Department been tasked by the White House to begin to look at what are some of the laws pertaining to governance and also the laws of civil liberties, where we have defined Foreign Intelligence Surveillance Act [FISA] rules, we have defined firewalls, which the military can't. What about the role of the private sector seeking help from Government? Do they go to Homeland Security, which doesn't have a lot to offer right this minute? If they do, are they getting it, really, from the .mil. So could you share with us what you have been tasked to do?

CYBERSECURITY

Attorney General HOLDER. Well, we certainly are tasked with the responsibility of making sure that the Internet, which is a great tool, is used in appropriate ways. One of the things that we are tasked with is making sure that it is not used in a criminal way by people who would perpetrate frauds, or by terrorists who would use it to spread their ideology and potentially radicalize people, or in an operational way.

We are also tasked with the responsibility of making sure that we do this in such a way that people who are on the Internet are protected.

Senator MIKULSKI. Mr. Attorney General, I am not asking that. I am asking about the law and the fact that every report that has been issued says the law is now either gray, dated, or nonexistent on this. We have Mr. Schmidt, a very capable professional, the White House czar. We don't know who in the hell is in charge. That is No. 1.

No. 2, there are these issues where the private sector is really apprehensive about the ongoing attacks on them. Google comes to the National Security Agency. That is really new ground. So we want to, as we look at this, protect. We have to have a kind of legal framework, also, to be able to define what the parameters are for various sectors in our Government, how do we maintain the current structure? Do we look at it? Have you been tasked to examine this in a comprehensive way?

Attorney General HOLDER. We are working with our counterparts in various parts of the executive branch and with the White House to deal with the issues that you have raised. We are concerned about intrusions. We are concerned about privacy, for corporations, as well as individuals. We also want to make sure that the laws that we have on the books are up to date to deal with this new reality that we confront.

Senator MIKULSKI. That is right.

Attorney General HOLDER. Many of these laws that we try to apply in this cyber age are not necessarily consistent with the threats that we face in a variety of contexts. What we have tried to do is to look at the laws as they exist. We have people within the Justice Department, in our Criminal Division and in other parts of the Department, who are always coming up with sugges-

tions that we take to the White House. We would obviously work with Congress.

Senator MIKULSKI. I will be honest, Mr. Holder. I am not looking for suggestions. I am looking for a comprehensive effort tasked by the White House to the Attorney General's office that says you have got to put a team together and look at this and give the White House a report and give the Congress a report to see if we have to move in a direction. I don't want to get lost in semantics.

Or is it kind of, we look at it in one area and we look at it in another, because that has been the problem.

Attorney General HOLDER. Well, again, I would say that there is a comprehensive effort, run through the White House and in conjunction with the other branches.

Senator MIKULSKI. But you are the President's lawyer. You are America's lawyer. Any new legal framework must come from the advice, counsel, legal memos, et cetera, from the Attorney General's office, or am I wrong?

Attorney General HOLDER. No. We certainly play a substantial role in that. Bills that go through, suggestions that are made, all have to be vetted in the Justice Department to make sure that they are legal, and our Office of Legal Counsel looks at proposed legislation in that regard.

Senator MIKULSKI. Well, I would like your team to talk more extensively to Senator Feinstein and me and about something we might ask of the President. I don't want a line item and an appropriations committee directing it. But there needs to be clarification of governance, and there has to be clarification and perhaps a new law in this new world that we have to protect the American people.

You did a great job. When I say "you," I mean everyone that got the Times Square bomber. There could be somebody out there right now that has got their eyes on the grid or any number of other things. We have to have our legal framework.

Meeting with entrepreneurs, they are stealing our secrets from the Patent Office. They are raiding our ideas. I mean, the private sector needs all the help that it can get, and we have certain constrictions that have served us well in the past. So we want to maintain privacy. We want to maintain civil liberties, but we also don't want to be operating in an area where, in our desire to protect the people, we have inadvertently made them or our entrepreneurial enterprises vulnerable.

So why don't we talk more about that, involving the Intel and Judiciary Committee on this?

Attorney General HOLDER. That is fine.

Senator MIKULSKI. Senator Murkowski, I understand you have another question?

Senator MURKOWSKI. I do, Madam Chairwoman, just one question. And this follows up on some of the comments that have been made about the Times Square bomber, the recognition that in conjunction with the Federal, the State, and the local law enforcement individuals on the scene. It was an effort that we recognize and kind of in view of the fact that we have got National Police Week beginning next week, I think that it is a testament to the work and the coordinated efforts that go on. We appreciate that.

But as good as that was, I think there is a lot of concern out there about why the suspect was not apprehended until the jet has pulled away from the gate. I come from a State where we all fly, and we have got a level of scrutiny at our little airports in some pretty remote and out of the way places where people feel like the level of scrutiny and surveillance is just over the top, and they look then at an individual that has all—has triggered all the flags.

You know, you have purchased the ticket with cash. You purchased it just immediately before the flight, international flight, all of the indicators. One really has to wonder, where was the failing here? What happened with this watch list? And Senator Mikulski has used the terminology the watch list is like nails on a blackboard. I think that gets all of us charged up as we talk about that.

But we really do have to wonder, okay, why was he not taken into custody at the screening point, at the gate, or in the jetway? It makes you wonder whether or not there is a lapse in communication then between the FBI and the Transportation Security Administration [TSA] or perhaps between the FBI and other law enforcement agencies that are working at the airport.

So the question to you this morning is whether or not you are satisfied with the way that this take-down went or whether there are ways that we can improve on this? And then, secondly, whether the take-down of a fugitive onboard an aircraft presented safety risk to the other passengers on the airplane? So if you can just speak to that end of this issue.

TIMES SQUARE BOMBER ARREST

Attorney General HOLDER. In direct response to your question, I am never satisfied, even with an operation like this one, which I think we all have to understand was successful. The person who was responsible for placing that bomb in Times Square was apprehended in a relatively short period of time.

Now I don't take too much from that. We were successful here. That does not mean that we don't have to continue to be vigilant. There are going to be other attempts, and we are going to have to make sure that we are up to the task.

We were successful here, but am I satisfied? No. We have to always look at our failures, our successes, and figure out ways in which we can, in the next occasion, be even better. The TSA has already announced that it is going to make changes with regard to how often airlines are required to look at changes that are made on the no fly list. It was 12 hours. They are going to move it down to 2 hours. If that change had been in effect, it is possible that he would have been caught before he got on the plane.

Senator MURKOWSKI. Can I ask you about that, though? Because I have been one, you know, you purchase a ticket at the last minute to go home. I purchase it on my credit card. It is not cash, and yet I am subjected, even as a United States Senator, I am subjected to the full-on screening because I have purchased a one-way ticket at the last minute.

Tell me why, given all of the red flags again, in this particular instance, why we were relying only on that watch list, on that no fly list? Was there not sufficient information to cause further questioning?

I mean, I think people are really concerned about how he was able to board that aircraft and have that aircraft actually leave the jetway before we were successful in apprehending him. And we are pleased that he was stopped, but we all have to wonder, how did he get on that airplane?

Attorney General HOLDER. As I said, we have to look at this successful operation and determine how we can do it better the next time. But again, I go back to the fact that the foundation here is the effort to determine who was responsible for the placement of that bomb and his apprehension. We were successful in doing that in a relatively short period of time.

With the screening that people go through, he was not necessarily a danger while on the plane. He went through all of the metal detectors. The information that was passed to TSA was done under a system that is now in the process of being changed, in recognition of the fact that as we look, even preliminarily, back on what happened with regard to him, we already have noticed that there are things that we need to calibrate in a different way. Those changes have already been announced and are being instituted.

Senator MIKULSKI. I would like to help the Senator from Alaska out. We are really grouchy about the watch list and what happened. We are really proud of law enforcement because they knew where to go. But when you have a bomber that we know is loose in America, we often presume they want to get out of America. So there should have been a significant kind of red alert for the methods for leaving the United States of America, particularly when you are in New York. You either go north or you get on an airplane.

So the northern border should have gone on red alert. TSA should have gone on red alert. Some of these questions, Senator, I think are also appropriate for the Secretary of Homeland Security. That is the TSA part.

But the President of the United States was volcanic after the Christmas Day bomber and ordered significant reforms. Once again, the watch lists seem to be dysfunctional. Are you in charge—who is in charge of the watch—who is in charge of watching the watch lists, that they really do watch? And who is in charge of the watch list, making sure we use the watch list?

Attorney General HOLDER. The information that we were concerned about him was shared many hours before he actually got to the airport. What I would say is this. As I indicated to Senator Murkowski, we learned from the experiences that we have had. Changes have already been instituted with regard to the watch list. If we were faced with a similar situation again, I suspect that we would detect him earlier than we did.

But as I said at the press conference, I was never worried about whether or not we were going to apprehend him, given all that had been done, the surveillance we had of him, and the advance notice we gave to the airports to look out for him. As a result of that notification, or those notifications, he ultimately was apprehended before he left the country.

Senator MURKOWSKI. Madam Chair, can I just ask?

Senator MIKULSKI. Yes, because I do have to move on to the inspector general.

Senator MURKOWSKI. And this is just very quickly, and it is promptly from something that you have said. We have instituted in this country this AMBER Alert when a child goes missing, and there is a network around the Nation—

Senator MIKULSKI. Right, and it has worked well.

Senator MURKOWSKI. And it has worked very successfully well. It would seem to me that if we can have a system like that when a child is missing, that when an incident happens in New York, that instantaneously there is an alert that goes out again to all of the exits, whether it is the border exits or the airports, and it just seems to me that we can be doing more.

So I look forward to working with you, Attorney General, and certainly you, Chairwoman.

Senator MIKULSKI. First of all, I want to thank you for the question. Second, the President has got to give us a TSA nominee that we can confirm, and then we have to stop screwing around with holds so that we can confirm them. I think it would go a long way. TSA needs permanent, vigorous leadership. You are not the head of TSA.

But I bet the President is pretty proud of one group of Government, but after the Christmas Day bomber, he did order significant reforms. And the watch list issue and the TSA issue do not seem to have been one of the areas that have quite clicked in. But that is not for today.

We are going to excuse you. We have so much to talk about, from the “third war” border on our Southwest border to the war that is going on against our children. We have a terrible situation in Maryland with another violent death on a college campus. All these things we could talk about. But your Justice Department is working hard with locals on so many fronts, and we want to say thank you.

I do want to raise an issue specific to Baltimore and to Maryland. You might recall, Mr. Attorney General, that a young police city fire cadet, Rachael Wilson, died tragically in a training exercise 2½ years ago. They have filed for the appropriate Federal benefit, and the Public Safety Officers Benefit Program, it took a long time to even get a hearing and to get the AG’s attention.

Now, there was a hearing on January 20. There was additional information. It has now been 90 days since the hearing. The family has had no contact. They are really frustrated. It is one thing to lose someone you love in a training accident. The government failed her then, and we cannot let government fail her now.

I am not commenting on the outcome of the decision, but I would like a well-paced decisionmaking process and contact with the family. Could I have your assurances that you will look into that?

RACHAEL WILSON

Attorney General HOLDER. You have my personal assurance that I will look into that. The concerns that you have raised are ones that worry me as well. People who put their life on the line in order to protect the rest of us are owed a special obligation, and the families, the survivors of those people, are deserving of special attention.

I will make sure that I examine where that case is, and, to the extent that I can speed it along, I will do so, or work with you if there are legislative ways in which this matter might be ultimately resolved. However we can do it, I pledge to work with you.

Senator MIKULSKI. Thank you. And I appreciate that. I know you will bring sensitivity and expedition to this.

Thank you very much. And you are excused.

Attorney General HOLDER. Thank you.

Senator MIKULSKI. And we look forward to working with your team.

We are now going to call up Mr. Glenn Fine. As Mr. Fine comes to the table, we want to note he is the inspector general of the Department of Justice. He was confirmed in December 15, the year 2000. He has worked there and has an extensive history.

He has worked in the Office of the Inspector General [OIG] ever since 1995. So we just want to thank him, first of all, for his service, and as you could see, there was so much we had to go over, and the vote also delayed it.

But Mr. Fine, it is the hope of this subcommittee that we function in a very fiscally prudent way. And we look forward to your testimony in terms of what you think are things the subcommittee needs to be aware of in the area of management that we could encourage management reforms, if appropriate, and then also where you think we could have better spending.

STATEMENT OF HON. GLENN A. FINE, INSPECTOR GENERAL

Mr. FINE. Thank you, Chairwoman Mikulski and members of the subcommittee.

I appreciate your inviting me to testify about the Office of the Inspector General's oversight work related to the Department of Justice. In my testimony today, I will focus on significant challenges facing the Department as you consider its fiscal year 2011 budget request.

Overall, I believe the Department has made progress in addressing many of its top challenges, but improvement is needed in important areas. First, the Department has made progress in its highest priority—counterterrorism. But the Department continues to face challenges in this area.

For example, last year, the OIG issued an audit report examining the FBI's practices for making nominations to the consolidated terrorist watch list. A failure to place appropriate individuals on the watch list or a failure to place them on the watch list in a timely manner increases the risk that these individuals are able to enter or move freely within the United States.

Our review assessed the accuracy of the watch list and the timeliness of entries made to the watch list. We found that the FBI did not consistently nominate known or suspected terrorists to the consolidated terrorist watch list and did not update or remove watch list records, as required by FBI policy. In response, the FBI has made progress in addressing our recommendations, including the development of a training course to ensure that all FBI counterterrorism personnel are familiar with current FBI watch list procedures, improving internal controls to ensure that known or sus-

pected terrorists are nominated to the watch list, and also ensuring that watch list records are modified or removed as required.

While the Department's highest priority is counterterrorism, it must also focus attention on its traditional law enforcement functions, including the investigation and prosecution of financial crimes, cyber crimes, and violent crimes. One critical issue for the department is how to allocate its resources among these competing demands.

For example, the OIG has regularly reviewed how the FBI allocates and utilizes its personnel resources. An audit we issued last month determined that in 2009, the FBI had used 26 percent of its field agents on counterterrorism matters while it used 51 percent on criminal matters.

Our review determined that the FBI actually used its field agents in line with the allocations it had made to its highest national priority, including counterterrorism. However, we found that the FBI used fewer field agents than it had allocated to some other national priorities, including gangs and criminal enterprises, white collar crime, and violent crime.

In order to maximize the effect of its resources in counterterrorism and in other areas, it is important that the Department components coordinate effectively with each other. One of our recent reviews found that jurisdictional disputes occurred between the FBI and ATF in explosives investigations and that both maintained separate and uncoordinated explosives-related databases and training programs.

In pursuing its counterterrorism and law enforcement missions, the Department must also balance its responsibility to protect individual civil rights and civil liberties. This issue was highlighted by several reviews we conducted regarding the FBI's widespread misuse of national security letters. In response to our recommendations, the FBI and the Department have taken action to seek to ensure that such misuse does not recur.

Restoring confidence in the Department is also an ongoing challenge. In the past several years, the Department of Justice has faced significant criticism for alleged misconduct in prosecutions, the dismissal of certain U.S. attorneys, and politicization in the hiring of career attorneys. While these issues involve a small number of the many important responsibilities the Department handles, they can affect public confidence in the objectivity of the Department.

The Department also faces challenges each year in managing the award of more than \$3 billion in grant funds. This challenge was heightened when the Recovery Act provided the Department an additional \$4 billion in grant funding. The Department must distribute this large amount of grant funding quickly and effectively monitor the use of these grant funds while continuing to manage its other grant programs.

The Department also has ongoing challenges in managing information technology systems and in ensuring that its IT planning, development, and security measures maximize the effectiveness of these expenditures. A major challenge in this area has been the FBI's development of its Sentinel case management project.

The OIG has issued a series of reports examining the FBI's ongoing development of Sentinel. In our latest report, we identified significant concerns about the progress of Sentinel. The cost of the project is rising, and the completion of Sentinel has been delayed. While we believe that Sentinel can succeed, it will take close scrutiny and careful oversight by the FBI to minimize any further schedule delays and budget increases and to ensure that the final product meets users' needs.

My testimony also discusses other challenges for the Department, such as safely and economically managing the Bureau of Prisons' rising Federal inmate population.

In conclusion, the Department has made progress in addressing many of its top management challenges, but further improvements are needed in important areas. The Department must maintain its focus on counterterrorism while effectively pursuing its traditional law enforcement duties, protecting civil rights and civil liberties, restoring public confidence in the Department, providing effective oversight of the billions of dollars in grant awards each year, ensuring safe and economic detention facilities, and effectively managing information technology and financial management systems.

PREPARED STATEMENT

These are difficult tasks which require constant attention and strong leadership by the Department. To aid in this effort, the OIG will continue to conduct vigorous oversight of Department programs and provide recommendations for improvement.

That concludes my prepared statement, and I would be pleased to answer any questions.

[The statement follows:]

PREPARED STATEMENT OF HON. GLENN A. FINE

Madame Chairwoman, Senator Shelby, and members of the subcommittee: Thank you for inviting me to testify about the Office of the Inspector General's (OIG) oversight work related to the Department of Justice (Department). In my testimony today, I will discuss some of the top challenges facing the Department as you consider its fiscal year 2011 budget request. My comments are based on the many reviews the OIG has conducted during recent years and on the general insight we have gained through our work in the Department.

Overall, I believe the Department has made progress in addressing many of its top challenges, but improvement is needed in some areas.

COUNTERTERRORISM

Over the years, the Department has made progress in addressing its highest priority—counterterrorism. The Department underwent a transformation following the September 11 terrorist attacks, when its highest priority shifted from traditional law enforcement concerns to counterterrorism. While the Department has been effective at reorienting its priorities to focus on counterterrorism, the Department continues to face challenges in this area.

For example, last year the OIG issued an audit report examining the FBI's practices for making nominations to the consolidated terrorist watchlist. This watchlist is used by frontline Government screening personnel to determine how to respond when a known or suspected terrorist requests entry into the United States. A failure either to place appropriate individuals on the watchlist or to place them on the watchlist in a timely manner increases the risk that they are able to enter and move freely within the United States. Our review of the consolidated watchlist was the third in a series of audits assessing the accuracy of the watchlist and the timeliness of entries made to the watchlist. Our audit concluded that the FBI did not consistently nominate known or suspected terrorists to the consolidated terrorist watchlist and did not update or remove watchlist records, as required by FBI policy.

In our audit report, we made 16 recommendations to the FBI to improve its administration of the watchlist, and the FBI concurred with all of the recommendations. The FBI has made progress in addressing the recommendations, fully implementing 9 of the 16, including the development of a web-based refresher training course to ensure all FBI counterterrorism personnel are familiar with current FBI watchlist procedures and the establishment of additional internal controls within the watchlist process to ensure that known or suspected terrorists are nominated to the watchlist and that existing records are modified or removed as required. The FBI is in the process of implementing the other recommendations.

Another issue we have reviewed regularly is the FBI's allocation and utilization of its personnel resources. In past reviews, we found that the FBI was using significantly more field agent resources than it had allocated for counterterrorism matters, and was using significantly fewer field agent resources than it had allocated for non-terrorism matters.

In a follow-up review we released this month, we again assessed the FBI's allocation and management of its personnel resources. Our audit determined that in fiscal year 2009, the FBI had used 26 percent of its field agents on counterterrorism matters, while it used 51 percent on criminal matters. This is a significant change from fiscal year 2001 when the FBI used 13 percent of its field agents on counterterrorism matters and 72 percent on criminal matters.

Our review determined that between fiscal years 2005 and 2009, the FBI used field agents in line with the allocations it made to its highest national priorities, including counterterrorism, counterintelligence, cyber crime, and civil rights. However, we found that the FBI used fewer field agents than it had allocated to some other national priorities, including gangs and criminal enterprises, white collar crime, and violent crime.

We also determined that the FBI continued to experience substantial gaps between the number of intelligence analyst positions allocated and utilized between fiscal years 2005 and 2009. FBI officials stated the rate of attrition and time it takes to hire applicants affected the FBI's ability to fill vacant intelligence analyst positions.

In addition, our audit determined that the FBI had improved in how it managed its personnel resources. For example, the FBI established a Resource Planning Office to oversee the allocation and utilization of personnel resources and established other initiatives to manage its resources. However, the FBI had not formalized all of the policies and procedures related to its resource management initiatives and did not fully integrate them into FBI operational practices. This contributed to inconsistent execution of some initiatives by FBI operational divisions and field offices.

The OIG report provided 10 recommendations to assist the FBI in its resource planning and allocation decisions, including recommendations that the FBI require operational divisions to regularly examine resource utilization and that the FBI establish policies, procedures, and guidelines that formalize resource management initiatives. The FBI agreed to implement these recommendations.

Another area that affects national security is the FBI's ability to timely translate the large amount of foreign language materials it regularly collects. In previous audit reports on the FBI's foreign language translation program, we found that large amounts of audio material collected for FBI counterterrorism and counterintelligence operations were awaiting translation. In a follow-up audit issued in October 2009, we concluded that the FBI continued to have significant amounts of unreviewed foreign language materials in counterterrorism and counterintelligence matters. However, data on the exact quantity of unreviewed material is imprecise, partly because the FBI still does not have an automated means for accurately assessing the amount of material it collects for translation. In addition, we found that the FBI continues to fall short in meeting its linguist hiring goals, resulting in a decrease in the number of FBI linguists since 2005, at the same time there has been an increase in the amount of material collected for translation.

The OIG made 24 recommendations to assist the FBI in improving the management of its foreign language translation program. The FBI agreed with our recommendations and is taking steps to implement them, and the OIG will continue to monitor the FBI's performance in this important area.

Counterterrorism efforts can also be affected by coordination issues between Department components. We conducted a review of coordination between the FBI and the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) in responding to explosive incidents. In our October 2009 audit, we found that jurisdictional disputes continued to occur between the FBI and ATF in explosives investigations. Despite an Attorney General memorandum in August 2004 and a 2008 Memorandum of Understanding between the FBI and ATF, the allocation of investigative authority between the two agencies remains unclear, and disputes between the agencies have

continued regarding which agency should be the lead agency on explosives investigations.

For example, our audit found that FBI and ATF investigators sometimes raced to be the first Federal agency on the scene of an explosives incident, and disputes have occurred when one agency arrived first and the other agency believed the explosives incident fell within its lead agency authority. These disputes can delay investigations, interviews, and crime scene processing; confuse local first responders about which Federal agency is the Federal lead on explosives matters; and undermine Federal and local relationships.

We also found that the FBI and ATF still maintain separate explosives-related databases to manage laboratory forensic reports, incident reporting, and technical explosives-related information and intelligence, and the FBI and ATF separately operate their explosives-training facilities and programs. In addition, ATF does not participate in the majority of Joint Terrorism Task Forces led by the FBI. Likewise, the FBI does not fully participate in ATF-led Arson and Explosives Task Forces.

Our audit made 15 recommendations to the Department, FBI, and ATF to improve explosives-related coordination. The Department appears committed to implementing these recommendations, and has established four working groups, composed of representatives from the Deputy Attorney General's Office, the FBI, and ATF, to address the recommendations and to resolve jurisdictional disputes.

We are currently conducting several reviews that involve other aspects of the Department's efforts to address counterterrorism challenges. For example, we are assessing whether the Department is prepared to fulfill its responsibilities in response to a weapons of mass destruction attack, including whether Department field offices are prepared to carry out a coordinated response if such an attack occurs in the Washington, DC area.

PROTECTING CIVIL RIGHTS AND CIVIL LIBERTIES

Meeting the Department's counterterrorism responsibilities is a difficult task, but in this mission the Department must also balance its responsibility to protect individual civil rights and civil liberties.

The need for the Department to pursue the appropriate balance was highlighted by several reviews we conducted on the FBI's use of national security letters. We first reported on the FBI's widespread misuse of national security letters in 2007 and issued a second review in March 2008. Our third report, issued in January 2010, examined in detail the FBI's use of so called "exigent letters" and other informal requests to obtain telephone records without legal process. We found widespread misuse of these exigent letters and other informal requests for telephone records.

For example, contrary to the statements in the exigent letters, many of the FBI investigations for which the letters were used did not involve emergency circumstances and subpoenas had not been sought for the records. In addition, the FBI engaged in widespread use of other more informal requests for telephone records from communication service providers, in lieu of appropriate legal process or a qualifying emergency. The FBI asked for and obtained telephone records through requests made by e-mail, face-to-face, on post-it notes, and by telephone. The FBI also obtained telephone records using a practice referred to by the FBI and the providers as "sneak peeks." Our report described other troubling practices regarding FBI requests for telephone records, including improper requests for reporters' telephone records, inaccurate statements made by the FBI to the Foreign Intelligence Surveillance Act (FISA) Court, and improper use of administrative subpoenas.

In addition, our report analyzed the various attempts made by the FBI to address the misuse of exigent letters. We concluded that from 2003 to March 2007 when we issued our first report, the FBI repeatedly failed to ensure that it complied with the law, Attorney General Guidelines, and FBI policy when obtaining telephone records from the on-site communications service providers.

By contrast, we found that after we issued our first report in March 2007 the FBI took appropriate steps to address the difficult problems that its exigent letters practice had created. For example, the FBI ended the use of exigent letters, issued clear guidance on the use of national security letters and on the proper procedures for requesting such records, and provided training on this guidance.

Our report also assessed the accountability of FBI employees for these improper practices and made 13 recommendations to ensure that past abuses do not recur. We believe that the FBI is taking the recommendations seriously, but additional work remains in this area. For example, the FBI's Office of Integrity and Compliance was established after issuance of the OIG's March 2007 national security letters report to detect and correct non-compliance with the rules governing FBI inves-

tigative authorities. The OIG intends to review the work of this office to determine whether it is operating effectively. In addition, the Department has yet to issue final minimization procedures concerning the retention of information obtained through national security letters. While a Department Working Group has developed recommendations for minimization procedures, the procedures have not yet been issued in final form.

In short, while the Department's counterterrorism responsibilities are its highest priority, the Department faces the ongoing challenge of balancing individual civil rights and civil liberties as it seeks to protect national security.

RESTORING CONFIDENCE IN THE DEPARTMENT

In the past several years, the Department of Justice has faced significant criticism for alleged misconduct in prosecutions, the dismissal of certain U.S. Attorneys, and politicization in the hiring of career officials. While these issues involve a small number of the many important responsibilities the Department handles and involve only a small percentage of the Department's dedicated workforce, they can affect confidence in the objectivity and non-partisanship of the Department as a whole. Restoring confidence in the Department is an important and ongoing challenge.

In 2008 and 2009, the OIG and the Department's Office of Professional Responsibility (OPR) issued three joint reports which substantiated serious allegations of improper politicization in the hiring processes for career attorney positions in the Department's Honors Program and Summer Law Intern Program, in hiring for career positions by staff in the Office of the Attorney General, and in hiring lawyers for career positions and making other personnel decisions in the Civil Rights Division. Another joint OIG/OPR report issued in 2008 concluded that the process used to remove certain U.S. Attorneys in 2006 was fundamentally flawed, and the oversight and implementation of the removal process by the Department's most senior leaders was significantly lacking.

In response, the Department has taken steps to address the problems we found in these reviews. For example, the Department returned the responsibility for hiring career attorneys from politically appointed officials to the Department's career management officials, and the Department has provided training to these selecting officials on inappropriate considerations in hiring. The Department also developed new briefing and training materials for Department political appointees which emphasized that the process for hiring career attorneys must be merit based.

In addition, the Department has faced criticism about the conduct of its prosecutors in several recent prosecutions, including the prosecution of former Alaska Senator Ted Stevens. After a jury trial, the Department moved to dismiss the indictment of Senator Stevens because the Department had concluded that certain information should have been disclosed to the defense for use at trial. The Department's handling of this case created concern about the prosecutors' conduct, and Federal judges in other districts also have questioned whether the Department is adequately adhering to professional standards of conduct and addressing concerns of prosecutorial misconduct.

In response to the concerns about attorney conduct, the Department has taken a variety of actions. In June 2009, a Department working group appointed by the Deputy Attorney General produced a report reviewing the Department's discovery and case management policies, procedures, and training, and made recommendations for improvement. In response to that report, the Department conducted a training conference at the National Advocacy Center in October 2009 on criminal case management and discovery for newly designated "discovery trainers" from all United States Attorneys' Offices. The discovery trainers were required to present mandatory training to all Assistant U.S. Attorneys in their districts on discovery issues. In January 2010, the Department provided guidance to prosecutors concerning best practices on discovery in criminal cases. The guidance set forth an approach for prosecutors to follow in gathering, reviewing, and producing discoverable information in a timely manner. In addition, the Department created the position of National Criminal Discovery Coordinator to oversee the ongoing training process for prosecutors on discovery issues, to assess the need for additional improvements, and to ensure continued implementation of the reforms.

In short, we believe that restoring confidence is a continuing challenge for the Department. The Department needs to ensure that the diligence, hard work, and sound ethics of the overwhelming majority of Department employees are not undermined by the few but highly visible incidents of potential misconduct. While the Department's leadership, both at the end of the past administration and during this administration, has taken important steps to confront this challenge, the Department must remain focused on this important issue.

FINANCIAL CRIMES, VIOLENT CRIME AND CYBER CRIME

While the Department's highest priority is counterterrorism, it must also focus attention on its traditional law enforcement functions, including the investigation and prosecution of financial crimes, cyber crimes, and violent crimes.

The investigation of financial crimes, including mortgage fraud, white collar crimes, healthcare fraud, and grant and procurement fraud, is an important priority. The Department recently created the Financial Fraud Enforcement Task Force, an inter-agency initiative aimed at implementing a coordinated and proactive approach to investigating and prosecuting financial crimes. The Task Force is composed of representatives from a broad range of Federal agencies, regulatory authorities, Inspectors General, and State and local law enforcement. For the Task Force to be effective, the Department needs to ensure effective collaboration with these partners, with private industry, and with consumers.

In addition to the growing problem of financial crimes, the Department faces significant new challenges in combating cyber crime. Rapid technological advances and the widespread use of the Internet make cyber crime more challenging to detect and deter. For example, recent estimates suggest that identity theft is one of the fastest growing crimes in the United States and that it affects an estimated 10 million Americans annually. In addition to financial losses, identity theft victims suffer tremendous inconvenience and emotional trauma when attempting to repair damage to their names or credit histories.

The OIG recently assessed the Department's efforts to combat identity theft. Our audit found that the Department had not adequately coordinated its efforts to combat identity theft, and that to some extent identity theft initiatives had faded as a Department priority. We determined that the Department did not have its own internal strategy to combat identity theft and had not appointed any individual or office to have responsibility for coordinating the Department's overall identity theft efforts. We also identified problems with the Department's data collection efforts on identity theft investigations and with the notification of victims of identity theft. Our audit concluded that additional leadership is needed to ensure that the Department's efforts to combat identity theft are coordinated and given greater priority.

The Department must also ensure that it places appropriate emphasis on combating violent crime, and that it coordinates its efforts in this area. For example, as noted previously in my testimony, we found that the FBI and ATF are not adequately coordinating their explosives-related investigations and operations.

Similarly, a review we issued in November 2009 concluded that two Department gang intelligence and coordination centers have not significantly improved the coordination and execution of the Department's anti-gang initiatives. Administered by the FBI, the National Gang Intelligence Center (NGIC) is a multi-agency center that develops and shares gang-related information. However, NGIC has not established a centralized gang information database as directed by statute due to technological limitations and operational problems, and has not shared gang intelligence and information effectively with other law enforcement organizations. The National Gang Targeting, Enforcement, and Coordination Center (GangTECC), administered by the Criminal Division, is a coordination center for multi-jurisdictional gang investigations, but we found that the lack of an operating budget prevents GangTECC from providing essential coordination and outreach. We recommended that the Department consider merging the two centers or ensure that their activities are better integrated. Because of the prevalence of gang violence, it is critical that the Department of Justice take swift action to improve the coordination of its anti-gang initiatives. The Department has recently informed us that it is progressing toward establishing a formal working agreement to collocate NGIC at the Organized Crime Drug Task Force fusion center and GangTECC at the Special Operations Division, and may begin moving personnel in early summer. We will continue to monitor the Department's actions to improve the coordination and effectiveness of its anti-gang operations.

Another area of increasing concern is violent crime along the Southwest border. The OIG is reviewing ATF's implementation of Project Gunrunner, ATF's initiative to reduce firearms trafficking to Mexico and associated violence along the Southwest border. Our review follows another OIG review, completed in September 2009, which examined ATF's planning, hiring, staffing, and allocation of resources for Project Gunrunner.

Apprehending violent fugitives is critical in the effort to address violent crime. The United States Marshals Service (USMS) is the Federal Government's primary agency for apprehending violent fugitives. In July 2005, the OIG reported that the USMS had increased its apprehension of violent fugitives by 51 percent from fiscal year 2001 to fiscal year 2004 and also increased the efficiency of its apprehension

efforts. However, the increase in violent Federal fugitives at large outpaced the USMS's progress, rising 3 percent from fiscal year 2001 through fiscal year 2004. In response to recommendations in the OIG report, the USMS increased the number of regional fugitive task forces (there are now seven); established performance measures and goals related to the apprehension of violent fugitives; and established requirements to ensure that warrants for violent offenders are entered into the Warrant Information Network within one business day.

Another aspect of the challenge of addressing violent crimes relates to the Department's efforts to implement the requirements of the Sex Offender Registration and Notification Act to help identify, arrest, and prosecute sex offenders who violate registration laws, and to help improve the quality of information available to law enforcement and the public about registered, non-compliant, and fugitive sex offenders. In a report issued in December 2008, we found that the Department's efforts have led to more investigations and arrests of fugitive sex offenders. However, the registries that make up the national sex offender registration system were missing records; existing records often failed to identify known fugitives; and the records often did not contain sufficient information to enable law enforcement or the public to accurately identify registered, non-compliant, or fugitive sex offenders. Since our report, the FBI has modified the National Sex Offender Registry so that it now reflects the fugitive status of registered sex offenders, initiated quality control audits of the State sex offender registries that contribute records to the registry, and started providing the USMS with data from the registry for use in USMS fugitive sex offender investigations.

It is also important that the Department ensures that it is taking full advantage of forensics tools available for the investigation and prosecution of violent crime. To that end, the OIG is examining the FBI's efforts to reduce its backlog in the forensic analysis of DNA samples. We are finding a continuing backlog that can affect the investigation of violent crimes.

RECOVERY ACT FUNDING AND GRANT MANAGEMENT

The Department faces challenges each year in managing the award of more than \$3 billion in grant funds. In addition to these grants, the American Recovery and Reinvestment Act of 2009 (the Recovery Act) provided the Department an additional \$4 billion in grant funds to award. The management and oversight of these Recovery Act funds is a significant challenge for the Department which must distribute this large amount of grant funding quickly, monitor the use of these funds, and continue to manage its annual grant programs at the same time. Moreover, despite the significant influx of Recovery Act money and the expansion of the Department's grant programs, the number of grant administrators who award and oversee grant programs has not significantly increased.

Effective monitoring by each of the Department's grant-making agencies is crucial to the early identification and correction of problems among the Recovery Act grant recipients.

The OIG is conducting a series of audits of the Department's Recovery Act grant award programs. For example, we reviewed the Office of Justice Program's (OJP) selection of grants in the Edward Byrne Memorial Justice Assistance Grant Program, and found that the Department generally awarded these grants in a timely and transparent manner. In addition, the OIG is completing reviews of the administration of Recovery awards for the Office of Community Oriented Policing Services (COPS) Hiring Recovery Program, Office of Violence Against Women (OVW) programs, the Office for Victims of Crime programs, and Bureau of Justice Assistance Grants for Correctional Facilities on tribal lands. These programs represent \$3.8 billion of the Department's approximately \$4 billion in Recovery Act grant funding. As each of these audits progressed, we issued interim reports and informed the Department of any concerns related to transparency of the grant process, allocation of grant funds, interagency coordination, and improving grant management. We intend to continue to monitor and issue reports on these grant programs.

At the same time the Department faces the challenge of overseeing the infusion of Recovery Act funding, it must continue to focus on making timely awards of its regularly appropriated grant funds and in maintaining proper oversight over grantees to ensure the funds are used as intended. Several recent OIG reviews demonstrate the difficulties the Department has faced in the past in ensuring proper management of its grant funds. In September 2009 the OIG issued a report that raised concerns about the fairness and openness of OJP's National Institute of Justice's (NIJ) practices for awarding tens of millions of dollars in grants and contracts from fiscal year 2005 through fiscal year 2007. Our audit, which was requested by this subcommittee, found that the NIJ's process for reviewing grant applications—

including initial program office reviews, peer reviews, documentation of program office recommendations, and documentation of NIJ Director selections—raised concerns about the fairness and openness of the competition process.

In addition, we found that several NIJ staff involved in the grant award process had potential conflicts of interest when participating in the approval process for certain grants. We also determined that the NIJ did not adequately justify the sole-source basis for some non-competitively awarded contracts and could not demonstrate that these contracts were exempt from the competitive process. We made nine recommendations in this report to improve NIJ's grant process, and the Department agreed to implement them.

We believe that the Department has taken some significant steps toward improving its grant management process during the past 2 years. For example, in May 2008 the Department issued a memorandum directing OJP, COPS, and OVW to document all discretionary funding recommendations and decisions. In addition, OJP has made progress in staffing its Office of Audit, Assessment, and Management (OAAM), a unit intended to improve internal controls and streamline and standardize grant management policies and procedures. However, we believe that OJP needs to ensure that our audit recommendations regarding a particular grant program will be implemented throughout all applicable Department programs, rather than only in the specific program the OIG audited.

To help the Department meet its grant management challenges, the OIG drafted a guide entitled, "Improving the Grant Management Process." This document, which was based on our prior work regarding grant management issues throughout the Department, provides 43 recommendations and examples of best practices that granting agencies should consider adopting to minimize opportunities for fraud, waste, and abuse in awarding and overseeing both Recovery Act and non-Recovery Act grant funds. The Department has taken positive steps in response to the recommendations in this document. For example, OJP is more aggressively identifying and working to mitigate risks among individual grantees by assessing each potential grantee's risk during the grant-award process and imposing on high-risk grantees special conditions that provide a range of potential sanctions, including the withholding of funds. OJP also is working more closely with the OIG and now meets with the OIG on a quarterly basis to discuss grant issues.

We believe that the Department is demonstrating a commitment to improving the grant management process, and we have seen significant signs of improvement. However, considerable work remains in ensuring effective grant management of the Recovery Act funds and the billions of dollars awarded annually in Department grants.

INFORMATION TECHNOLOGY SYSTEMS PLANNING, IMPLEMENTATION, AND SECURITY UPGRADES AND SECURITY

The Department faces ongoing challenges in managing the more than \$2 billion it annually spends on information technology (IT) systems and in ensuring that its IT planning, development, and security measures maximize the effectiveness of these expenditures.

One of the major challenges in this area has been the FBI's ongoing development of its Sentinel case management project. This project is intended to upgrade the FBI's electronic case management system and provide the FBI with automated workflow processes. The OIG has issued a series of reports examining the FBI's ongoing development of Sentinel. In March 2010, we issued our sixth report in this series.

In this latest report, we identified significant concerns about the progress of the FBI's Sentinel project. Specifically, because of continuing issues regarding the usability, performance, and quality of Phase 2 of the Sentinel project that was delivered by Lockheed Martin to the FBI, on March 3, 2010, the FBI issued a partial stop work order to Lockheed Martin for portions of Phase 3 and all of Phase 4. In addition, the stop work order returned Phase 2 of the project from an operations and maintenance phase to a development phase.

As a result, the cost of the Sentinel project is rising and the completion of Sentinel has been delayed. In a previous report, we had noted that Sentinel's overall completion date had already been postponed to September 2010, which was 9 months later than originally planned, and the total projected cost was \$451 million, \$26 million more than originally planned. Because of the recent problems with Phase 2 of Sentinel and the stop work order, the FBI currently does not have official cost or schedule estimates for completing Sentinel. But the FBI has now acknowledged that Sentinel will cost more than \$451 million and that Sentinel will likely not be completed until 2011.

Our report noted that the FBI has taken several steps to improve Sentinel's chances for success, including the use of independent assessments, performed by other contractors of the primary contractor's deliverables. However, our report identified major issues that the FBI needs to address. For example, the FBI does not have a documented strategic plan outlining how it will transfer remaining case file data from its Automated Case Support system to Sentinel. We also noted our concern that the FBI has either discontinued or delayed some of the internal assessments of Sentinel's progress that it previously was performing on a routine basis, which could compromise the FBI's ability to perform real-time evaluations of the project's development and apply appropriate risk management strategies.

Given the importance of Sentinel to the future of FBI operations, our recent report concluded that the FBI must ensure that its revisions to Sentinel's budget, schedule, and requirements are realistic, achievable, and satisfactory to its users. The FBI must also ensure that users' concerns and perspectives are integrated into all phases of the remaining development of Sentinel. While we believe that Sentinel can succeed, it will take close scrutiny and careful oversight by the FBI to minimize any further schedule delays and budget increases and to ensure that the final product meets users needs.

We believe that the Department has made some progress in planning for other new IT systems, but it still faces challenges of delayed implementation, deficient functionality, and cost overruns in IT systems. Historically, the Department's components have resisted centralized control or oversight of major IT projects, and the Department's Chief Information Officer (CIO) does not have direct operational control of Department components' IT management. We believe the Department should enhance the CIO's oversight of the development of high-risk IT systems throughout the Department.

Several of our audits identified concerns about the development of critical Department IT systems. For example, last year an OIG audit report examined the Department's progress toward developing the Litigation Case Management System (LCMS). The LCMS project was intended to develop an IT infrastructure for storing case information, managing it centrally, and making it available to the approximately 14,500 authorized users in the Department's 7 litigating divisions. Our audit found that the LCMS project, which the Department began in 2004, was more than 2 years behind schedule, approximately \$20 million over budget, and at significant risk of not meeting the Department's requirements for litigation case management.

Our audit concluded that both the Department and its contractor shared responsibility for the significant delays and budget overruns in this project. We urged better oversight of this project to minimize or avoid further schedule and cost overruns. In response to our report, the Department has expressed a strong commitment to implementing the LCMS and to fully adopting our recommendations. However, the implementation of LCMS is still struggling.

Another example of delays in implementing a new IT system involves the FBI's efforts to implement a Laboratory Information Management System for the FBI Laboratory, which the FBI has been working on since 1998.

As the Department develops its new IT systems, it also must ensure the security of those systems and the information they contain. The Department must balance the need to share intelligence and law enforcement information with the need to ensure that such information sharing meets appropriate security standards.

A December 2008 OIG audit found that the Department lacked effective methodologies for tracking the remediation of identified IT vulnerabilities. Our report made four recommendations to assist the Department in its efforts to address such vulnerabilities. Since the issuance of our report, the Justice Security Operations Center (JSOC), which provides real-time monitoring of the Department's networks to detect vulnerabilities and threats, became fully functional, and now covers all of the Department's components. The JSOC mitigates threats and vulnerabilities by blocking known threats from accessing the Department's systems and creating real-time alerts to components for immediate remediation as issues arise. In addition, the Department has developed an inventory of all IT devices on the Department's networks, updated annually, to ensure that monthly scans adequately cover the Department's entire IT environment. As part of our follow-up efforts, we intend to initiate an audit of the JSOC that will review its capabilities to detect and respond to intrusion incidents and communicate computer-intrusion efforts.

Portable IT media continues to pose IT security risks in the Department and across Government. In an effort to assess the Department's efforts to safeguard information stored on portable devices, the OIG recently conducted audits of both the Civil Division's and the Criminal Division's laptop computer encryption program and practices. These audits found that a significant percentage of the laptop computers owned by contractors working with the Civil Division and the Criminal Divi-

sion were not encrypted, and the contractors were not notified of Department laptop encryption requirements. In addition, we found that 25 percent of the Criminal Division laptops that we tested had sensitive data but did not have encryption software installed and did not have operating system passwords enabled. We asked the Department to ensure that all components are aware of the findings of our reports and also ensure that laptops are properly encrypted, even though our audit findings were directed at the Civil and Criminal Divisions.

In sum, the Department must closely manage its IT projects to ensure the systems are cost-effective, well-run, secure, and able to achieve their objectives.

DETENTION AND INCARCERATION

The Department's responsibility to safely and economically manage its rising Federal inmate and detainee populations is a challenge that has significant budget implications. The Federal inmate population has dramatically increased over the past 30 years, from fewer than 25,000 inmates in the Federal Bureau of Prisons' (BOP) custody in 1980 to more than 210,000 inmates in 2010. Approximately 83 percent of these inmates are confined in BOP-operated facilities, with the balance housed in privately managed or community-based facilities and local jails. Overcrowding continues to be a serious concern in BOP facilities.

In addition to issues presented by overcrowding, the BOP must address other safety threats, including staff sexual abuse of prisoners. Staff sexual abuse has severe consequences for victims, undermines the safety and security of prisons, and in some cases leads to other crimes. For example, Federal correctional workers who are sexually involved with prisoners have been subject to extortion demands and may be more easily pressured to violate other prison rules and Federal laws. Compromised personnel who have sexually abused prisoners also have been found to have provided contraband to prisoners, accepted bribes, and committed other serious crimes in an effort to conceal their sexual involvement with Federal prisoners.

In a September 2009 review, we concluded that the Department and the BOP both need to take additional steps to effectively deter, detect, investigate, and prosecute staff sexual abuse of Federal prisoners. Allegations of criminal sexual abuse and non-criminal sexual misconduct at BOP institutions more than doubled from fiscal year 2001 through fiscal year 2008. Yet, our review found that deterrence and detection of staff sexual abuse are hampered by the practice at some BOP prisons of automatically isolating, segregating, or transferring victims, which inmates often regard as punitive. We also concluded the BOP needs to improve staff training, inmate education, and program oversight on sexual abuse of inmates. In addition, we found that some Department prosecutors have a general reluctance to prosecute certain staff sexual abuse cases, and we concluded that training Federal prosecutors on the detrimental impact of staff sexual abuse on inmates, other prison staff, and prison security would improve the Department's effectiveness in prosecuting these cases.

The Prison Rape Elimination Act of 2003 requires the Department to promulgate national standards for the detection, prevention, reduction, and punishment of sexual abuse in detention facilities by June 2010. The Department is now engaged in creating these standards.

The OIG is also reviewing other aspects of the BOP's efforts to handle its difficult mission of housing inmates in safe, secure, and cost-efficient facilities. For example, the OIG is currently examining the BOP's strategies and procedures for hiring correctional officers. In another review, we are investigating allegations that the BOP failed to adequately address concerns that staff and inmates at several BOP institutions were exposed to unsafe levels of lead, cadmium, and other hazardous materials in computer recycling operations. We also are conducting a follow-up audit of the BOP's efforts to manage inmate healthcare.

In addition to the BOP's challenges, the Department must also provide adequate and economical housing for the increasing number of Federal detainees taken into custody by the USMS. Over 50,000 Federal detainees awaiting trial or sentencing are housed each day by the USMS, primarily in jails under contract with the USMS. The Department's Office of the Federal Detention Trustee (OFDT) oversees the USMS's detention activities and manages the budget for housing USMS detainees. For fiscal year 2011, the OFDT is requesting over \$1.5 billion to pay for housing, transporting, and providing medical care for detainees.

The USMS places the majority of its Federal detainees in space leased from State and local governments, with the remaining detainees housed in BOP facilities or in private correctional facilities. The USMS maintains contracts, known as Intergovernmental Agreements (IGA), with about 1,800 State and local facilities to house its detainees. Over the years we have found problems with the manner in which the

per diem charges that the Department pays for each detainee (also known as a jail-day rate) are determined and with the Department's monitoring of the charges. Increases in these charges can have an enormous affect on the OFDT's budget. We are now conducting another audit of OFDT's process for identifying and negotiating fair and reasonable per diem rates.

In addition, the Department plays an important role in integrating released inmates back into society and attempting to reduce recidivism by providing grants to State and local agencies, law enforcement, and community groups for prisoner re-entry programs. We currently are auditing the Department's design and management of its prisoner re-entry initiative grant programs. This audit will assess whether the Department has an effective system for monitoring grantees and for determining whether the grantees are meeting program goals.

FINANCIAL MANAGEMENT

Our audits have found that the Department has made significant improvements in its financial reporting. At the same time, there is an increasing demand for financial accountability and transparency throughout the Federal Government, and the need for accurate, near real-time financial information continues to present a significant management challenge for the Department.

In fiscal year 2009, the Department again earned an unqualified opinion and improved its financial reporting. For the 3rd straight year, the financial statement audit did not identify any material weaknesses in the Department's consolidated financial statements. Additionally, Department components reduced significant deficiencies in their financial statements from 14 in fiscal year 2008 to 8 in fiscal year 2009. The Department deserves significant credit for these efforts.

Similar to past years, however, much of this success was achieved through heavy reliance on contractor assistance, manual processes, and protracted reconciliations done for quarterly and year-end statements. We remain concerned about the sustainability of these ad hoc and costly manual efforts.

The decentralized structure of the Department also presents a major challenge to obtaining current, detailed, and accurate financial information about the Department as a whole because there is no one single source for the financial data. The Department currently uses six major accounting systems that are not integrated with each other. In some cases, the Department components' outdated financial management systems are not integrated with all of their own subsidiary systems and therefore do not provide automated information necessary to support the need for timely and accurate financial information throughout the year. As a result, many financial tasks must be performed manually at interim periods and at year end. These costly and time-intensive efforts will continue to be necessary to produce financial statements and to satisfy other financial requirements until automated, integrated systems are implemented that readily produce financial information throughout the year.

The Department has placed great reliance on the implementation of the Unified Financial Management System (UFMS), which is intended to replace the six major accounting systems currently used throughout the Department. This unified system is expected to address many of the Department's financial management automation issues. The UFMS is intended to standardize and integrate financial processes and systems to more efficiently support accounting operations, facilitate preparation of financial statements, and streamline audit processes. It also will enable the Department to exercise real-time, centralized financial management oversight. We support the Department's implementation of the UFMS and believe the system can help eliminate the weaknesses in the Department's current disparate financial management systems.

CONCLUSION

In sum, the Department has made progress in addressing many of its top management challenges, but improvements are needed in important areas. The Department must maintain its focus on counterterrorism while effectively pursuing its traditional law enforcement duties, protecting civil rights and civil liberties, restoring public confidence in the Department, providing effective oversight of the billions of dollars in grant awards each year, ensuring safe and economic detention facilities, and effectively managing information technology and financial management systems.

These are difficult tasks which require constant attention and strong leadership by the Department. To aid in this effort, the OIG will continue to conduct vigorous oversight of Department programs and provide recommendations for improvement.

This concludes my prepared statement, and I would be pleased to answer any questions.

Senator MIKULSKI. Well, thank you very much, Mr. Fine. And as I said earlier when we welcomed you to the table, you have been at Justice since 1995. Am I correct, sir?

Mr. FINE. That is correct, yes.

Senator MIKULSKI. So we really want to thank you for your service, and we would like to thank the entire staff of the inspector general's office for the work that they do. As you can see, I intend to be a watchdog and a reformer in terms of the administration.

You know, it is not whether you are for big government or small government, but are you for smart government? And I think we are in alignment here.

I am not going to ask questions about Sentinel, but I am going to thank you for bringing that forward as an issue. Well before this hearing, this Chair and staff have been actively involved with both the Director of the FBI, the contractor, and so on to make sure that the original purpose—that Sentinel does happen and happens the way it is supposed to happen, within appropriate budget parameters. We are not going to go back to the boondoggle that we had with the previous attempt.

Now you heard today from the exchange by Senator Murkowski, and even me, with the Attorney General, about this watch list issue. In your testimony, you say that the FBI needs to do more. You talk about in your audit report that you had made 16 recommendations to the FBI, and they have improved 9. But we are all deeply troubled by this watch list, and the watch lists don't seem to be working the way they were intended.

And you know the story. In this case, this man got on this plane when there was actually active hot pursuit going on. At the same time, I know in my own State, there is a prominent business man who travels to the west coast every single week at the same time, getting on the same plane. Everybody knows him because of the regularity of his habits. Because of his last name, he is on a list, and he has to go through it like he just arrived in the country and is paying cash for every single thing in the world.

So those are two sides of the coin. Do you have any further thoughts on how we could make this more effective, or, in light of what has happened over the last couple of days, where some things work well in a spectacular way and others really raise some flashing yellow lights, like the watch list?

WATCH LIST REFORM

Mr. FINE. We have done a series of reviews on the watch list, and we have had concerns about it. Both areas that you talk about, making sure that people, appropriately, are put on the watch list in a timely fashion, in an accurate way, and also that people who shouldn't be on the watch lists are taken off.

We found problems with the FBI getting people on quickly and also accurately putting them on. In fact, our review found that 15 percent of the FBI terrorism investigations we reviewed had failed to nominate terrorism suspects to the consolidated watch list. That is unacceptable because it increases the risk that these people can move about freely. So we think that needs to be done more quickly.

We think, also, the information needs to get to the front-line screeners who need it in a quicker fashion, both the Customs and Border Patrol people and the individuals at the airport. And one of the things that we looked at a long time ago was the issue of secure flight and who was going to actually be doing the screening of the people on the manifest of the airplanes.

And now it is with the airlines. My understanding, it is moving toward the TSA who will take over that responsibility. And hopefully, with that, there will be more expeditious, quicker, and effective screening of those passengers before they get on a plane.

GRANT DISBURSEMENT

Senator MIKULSKI. Well, in light of what has happened, I think there are going to be a lot of recommendations, and we would welcome your views on that.

Let us go to the issue of grant disbursement. We want it to be fair, meet criteria, and be done in a timely way. We have asked them to do, what—I think you said \$3 billion?

Mr. FINE. It is \$3 billion each year for the Department.

Senator MIKULSKI. That is like 10 percent of the Government's funding. And I know at another hearing, our colleague Senator McCaskill raised issues about how, in the previous administration, the Byrne grants were handled and so on. So I am not here to finger point. I am here to pinpoint.

Are there things that we need to encourage through the appropriation process, a way that to improve the grant disbursal, the grant management process?

Mr. FINE. I think there are some things that the Department can do to improve and that this subcommittee can spur the Department to do. I think it is important to get that money out, but it has to be used effectively, and there has to be monitoring of where that money goes.

So we need to have a fair and open process. There has to be documentation about why we are giving it to one person or the other, not simply discretionary, subjective views, and that when it goes out there, there has to be training to how it is to be used. There also has to be an assessment of whether there are high-risk grantees that need extra monitoring and extra training to ensure that that money is used appropriately.

OJP, the Office of Justice Programs, has an office audit assessment management. That should be an internal screening mechanism to go out and do monitoring to make sure the financial reports are in, to make sure that the money is used for its intended purposes and it is being effective, and I believe OJP has made progress in beefing up that office. But it ought to do more of that.

It shouldn't wait for the OIG to come in and find problems. It ought to prevent the problems in the first place, find problems on their own, and not wait for an outside entity like the OIG to find problems. So I think that is a critical area—

Senator MIKULSKI. Could I chime in? Do you think it is an issue related to staffing, training, or culture?

Mr. FINE. I think it is all of the above, all of those. It has not been staffed up adequately, I don't think. I think the culture has been, in the past, to get that money out quickly, but not to ensure

that it is being used appropriately. I think that is changing with the new head of OJP. But I also think that there needs to be training on that money as well, to not simply expect that it will be used appropriately.

Senator MIKULSKI. You know what I have found, and you heard me raise some of the issues with making sure we have law enforcement that is not only putting “boots on the ground.” We often in Congress will provide money for staff, but then not for training or for technology that maximizes the efficacy of what they are doing. Would you say that this is an area we should focus on, which is not only the adequacy of people, but that we really look at training and the—well, of course, the technology issues in the Government are a whole other one. But would you concur with that?

TRAINING AND OVERSIGHT

Mr. FINE. Yes. I think there does need to be adequate training, and I think that is a core function of what these grant-making entities need to do. Not simply to get that money out there, but to train people on how it is to be used and how it is to be used effectively.

It only takes a small percentage of that \$3 billion to be held back for adequate management and oversight to have effective use of it, and I think there ought to be a small percentage of that to go for effective management, to go for training, to go for adequate oversight internally by the Department of Justice and also by the Office of the Inspector General. So I think that is an important thing that should be considered in the appropriations and makeup of those grant programs.

Senator MIKULSKI. Well, thank you. There are other issues that we want to talk about as well with you, particularly in the area of the detention of prisoners. And you very rightfully brought forward that when we have the responsibility of holding people in an incarcerated situation, the issue of violence against prisoners, and then concurrently also violence against prison officers is deeply troubling. I am going to ask my staff to talk with you in more detail about that.

But you know, I want to ask a question where it sounds like Senator Barb Mikulski meets Senator Tom Coburn. One of the areas where we absolutely agree is where the Federal Government provides funds, but we end up in conferences where it is 66 bucks per person to provide bagels. And I was at a community fair, and there was something that someone gave me a little plastic shopping bag with the name of an agency, not a Federal agency head, and said, “Here, enjoy it. You paid for it.”

Well, that is not what I go to my taxpayers to ask them to do. There are a lot of—and that is where we get a bad rep. You know, that is where, quite frankly, some of the folks who are cranky with government have every right to be cranky.

You know the famous \$4 Swedish meatball? I think there was some extravagant spending at conferences and so on. How does the inspector general see getting a grip on that?

I mean, I do believe in conferences. Gosh, you go to the gang conference that we have in Maryland with the support of the U.S. Attorney and all of us at the local level, and they really do share information and further those important relationships that are so

critical in law enforcement for rapid response and so on. But you know, 66 bucks for a bagel breakfast is a little high.

Mr. FINE. You are absolutely right, and I think at the request of this subcommittee, I believe, we did a review of conference expenditures of the Department and found those abuses. And you don't need lavish spreads to have an effective conference, and we were very concerned by that.

We found, as you point out, a cost of \$4 meatballs. We found cost of sodas; a can of soda would cost \$4.55 that they would charge for one can of Coke. And it was just over the top.

As a result of our review, the Department has implemented oversight procedures. They make sure that the funding for meals is at a reasonable level. They make sure that there are alternative locations sought to see that it is done in an economic fashion. They look at the per diem cost. You have to get Department approval for non-Federal facilities.

So I think there have been reforms made as a result of the issues that were brought to the table. But you are absolutely right. You don't need that kind of funding or that kind of excess to have an effective conference, and I think the Department of Justice understands that and has gotten a handle on that. We are actually continuing to—we are doing a follow-up review, actually about to initiate one right now to see what reforms have been made. Have they been effective, and do they have a handle on this?

Senator MIKULSKI. Well, we estimate that we won't be marking up our bill, of course, until June, waiting for the House. But we will look forward to your report, if it comes again, and that is all part of our smart government initiatives, and again, I am for conferences or the kinds of meetings that occur. I think that is the only way you can do training, and—I think you would concur in your many years at Justice—where law enforcement, particularly at the State and local level, can come together and forge those relationships that work so well.

After the terrible events of 9/11, our local law enforcement around the Beltway, meaning Maryland, Virginia, and the District, I think developed much closer relationships. And then, along comes something like the terrible sniper case. Remember that?

Mr. FINE. Absolutely.

Senator MIKULSKI. You are a local guy. But because they knew each other, talked with each other, trusted each other, we didn't have to Federalize our response. Because they had been trained, equipped, and trusted, we were able to bring that sniper to justice.

And so, I believe in the training and the camaraderie that comes from collaboration and training, but we have to be prudent.

So I am going to say thank you, and we want to have ongoing other conversations with you, and please, you have to know we really do appreciate the work of the Attorney General, and if you could convey that to your staff, I, and speaking for Senator Shelby, who himself is a watchdog on these issues, we would very much appreciate it.

Thank you.

Mr. FINE. Thank you very much.

Senator MIKULSKI. Before I conclude, I want to reiterate the fact that Senator Shelby wanted very much to be here, and he, too, sir,

might have additional questions for you. And we invite his staff, if there are any others.

ADDITIONAL COMMITTEE QUESTIONS

If there are no further questions, the Senators may submit additional questions to the subcommittee. We request the Department of Justice's response within 30 days. Now because of so many controversial issues in the subcommittee pertaining to both the administration of justice, the space committee, we reserve the right to hold ongoing hearings as we do our due diligence on this year's appropriation.

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

QUESTIONS SUBMITTED TO HON. ERIC H. HOLDER, JR.

QUESTIONS SUBMITTED BY SENATOR BARBARA A. MIKULSKI

FINANCIAL FRAUD—PREDATORY LENDING

Question. The collapse of the subprime mortgage market has brought about an explosion of mortgage fraud cases all across the United States. Predatory lenders destroy families and communities, and undermine faith in financial systems. The Justice Dept's financial fraud workload is sure to increase as more predatory lenders are exposed.

Last year, this subcommittee gave you \$438 million to hire 54 new agents, 165 new attorneys and 142 new professional support staff dedicated to investigating financial fraud, bringing the total number working on this problem to over 4,000 Federal personnel. We need to continue this surge in financial fraud investigations.

How many more agents, forensic accountants and analysts will you need to address the mortgage fraud workload?

Answer. Congressional support in prior fiscal years has greatly enhanced the FBI's ability and capacity to address mortgage fraud. In the 12 month period between October 1, 2008 and September 30, 2009, the FBI obtained 494 mortgage fraud convictions. On June 18, 2010, Operation Stolen Dreams, a 3½ month sweep was concluded which, with the assistance of 7 participating Federal agencies, has thus far resulted in 863 indictments and information and 391 convictions.

However, the scope of the criminal threat, as well as the resources available to address it, continues to require the prioritization of investigations. In fiscal year 2010, over 68 percent of the FBI's 3,045 mortgage fraud cases involved losses exceeding \$1 million per case. In addition, the FBI anticipates it will receive over 75,000 Suspicious Activity Reports (SARs) in fiscal year 2010, an increase of over 241 percent since 2005. FBI intelligence, industry sources such as the Mortgage Asset Research Institute (MARI), and recent reports by the special inspector general of the Troubled Asset Relief Program (SIGTARP) predict an increase in foreclosures, financial institution failures, regulatory agency/independent auditor fraud referrals, and governmental housing relief fraud. These risk-based indicators of mortgage fraud indicate that even prioritized investigations will persist or grow in fiscal year 2011 and beyond. Therefore, the nature of the criminal problem, the prolonged economic downturn, increased foreclosures, and continued profitability of mortgage fraud may increase mortgage fraud workload, which may, in turn, require the investment of FBI resources to address the threat.

The FBI has approximately 358 Special Agents, 26 Intelligence Analysts and 39 Forensic Accountants/Financial Analysts devoted to investigating mortgage fraud matters in fiscal year 2010. The administration's fiscal year 2011 request includes another \$75 million for 367 positions (143 agents) to combat white collar crime and mortgage fraud. Like all criminal matters, the FBI makes every effort to implement new and innovative methods to detect and combat mortgage fraud, and focuses on the most egregious cases to address mortgage fraud crimes.

Question. Will you be able to add agents to conduct these investigations, even as you lose criminal agents to counterterrorism work?

Answer. While it is accurate that the FBI moved criminal investigative resources to counterterrorism in the months and years immediately following September 11, 2001, more recently the FBI has reallocated resources from lower priority white col-

lar criminal programs to address the growing mortgage fraud problem. The FBI has more than 358 Special Agents addressing mortgage fraud, and many of those resources have come from other lower priority white collar crime investigations. For example, since fiscal year 2007, the FBI has doubled the number of mortgage fraud investigators, leaving only 106 Special Agents available to investigate the approximately 1,900 remaining financial institution fraud cases. As previously mentioned, congressional support, specifically for mortgage fraud, in prior fiscal years has greatly enhanced our capability; however, the scope of the criminal threat, as well as the resources available to address it, continues to require the prioritization of investigations.

Question. What new training will you need to give agents and analysts to investigate predatory lenders?

Answer. Predatory lending occurs primarily during the loan origination process, and the FBI is continuing to investigate loan origination fraud. Therefore, the FBI will continue to educate analysts, investigators, and accountants on ways to identify and investigate schemes where industry insiders target vulnerable populations, and how to address this and other loan origination schemes. Successfully addressing the problem will require understanding the ways to identify where origination fraud has occurred, what factors leave a community vulnerable, and which techniques can be best employed to mitigate the threat. In addition to new training that will be developed, the FBI continues to provide regular training to new and experienced agents and regularly shares information on best practices, emerging trends, and successful sophisticated techniques with its law enforcement partners. For example, the mortgage fraud training courses focus on proactive intelligence, basic mortgage fraud investigative tools and resources, and enforcement measures that can be used to efficiently and effectively combat mortgage fraud. The training also provides an understanding of the mortgage lending process, including the entities, paperwork, and regulatory agencies involved. These training classes include industry and law enforcement experts, such as the Department of Housing and Urban Development—Office of the Inspector General and the Federal Deposit Insurance Corporation, to educate agents, analysts, and forensic accountants on the various types of mortgage fraud schemes, including predatory lenders.

Question. How can you better help State and local officials investigate predatory lenders?

Answer. As mentioned previously, addressing loan origination fraud where a vulnerable population is exploited by industry insiders is largely a matter of identifying and understanding who is vulnerable, how they are targeted, and the best means of mitigating that vulnerability. The FBI uses its 23 mortgage fraud task forces and 67 mortgage fraud working groups not only to pool resources to investigate the crime problem, but also to share valuable intelligence. By expanding these partnerships and building on our current successes, the FBI can continue to work with state and local officials to address this crime problem.

HEALTH CARE FRAUD

Question. Now that the historic healthcare reform legislation is law, we must do more to combat healthcare and insurance fraud that cost U.S. citizens more than \$60 billion annually.

We need to make sure law enforcement has the resources it needs to investigate these crimes and prosecute the scammers.

What roles is the Justice Department already playing in healthcare fraud investigations and prosecutions?

Answer. The Department of Justice (DOJ) has been both investigating and prosecuting healthcare fraud for many years, working with the Department of Health and Human Services (HHS) to root out waste, fraud, and abuse from the Federal healthcare system.

While the FBI does the majority of the criminal investigative work, the Department's Civil Division investigates *qui tam* relator cases and the Civil Rights Division investigates violations of the Civil Rights of Institutionalized Persons Act (CRIPA), 42 U.S.C. § 1997. In addition to these investigatory roles, the Civil Division, Criminal Division, Civil Rights Division, and U.S. Attorneys Offices all prosecute healthcare fraud.

Specifically, the Department's efforts to combat healthcare fraud are as follows:

United States Attorneys

The 93 United States Attorneys and their assistants, or AUSAs, are the Nation's principal prosecutors of Federal crimes, including healthcare fraud, and each district has a designated Criminal Health Care Fraud Coordinator and a Civil Health Care Fraud Coordinator. Civil and criminal healthcare fraud referrals are often made to

United States Attorney's Offices (USAOs) through the law enforcement network described herein, and these cases are usually handled primarily by the USAOs, although civil cases are sometimes handled jointly with the Civil Division. The other principal source of referrals of civil cases for USAOs is through the filing of *qui tam* (or whistleblower) complaints. These cases are often handled jointly with trial attorneys within the Civil Division, but may be handled solely by the USAO. USAOs also handle most criminal and civil Federal appeals.

The Executive Office for United States Attorneys' Office of Legal Education (OLE) trains AUSAs and other Department attorneys, as well as paralegals, investigators, and auditors in the investigation and prosecution of healthcare fraud. For example, in 2009, OLE offered a Health Care Fraud Seminar for AUSAs and Department attorneys, which was attended by over 100 attorneys, as well as a Medicare Fraud Strike Force Seminar and an Affirmative Civil Enforcement Conference, including healthcare fraud issues, for paralegals, auditors and investigators.

USAOs play a major role in healthcare fraud enforcement by bringing affirmative civil cases to recover funds wrongfully taken from the Medicare Trust Funds and other taxpayer-funded healthcare systems as a result of fraud, waste, an abuse. Civil AUSAs, similar to their criminal counterparts, litigate a wide variety of healthcare fraud matters including false billings by doctors and other providers of medical services, overcharges by hospitals, Medicaid fraud, and kickbacks to induce referrals of Medicare or Medicaid patients, fraud by pharmaceutical companies, and failure of care allegations against nursing home owners.

Civil Division

Civil Division attorneys pursue civil remedies in healthcare fraud matters, working closely with the USAOs, the HHS/Office of Inspector General (OIG), the FBI, the Department of Defense, and other Federal and State law enforcement agencies. Civil Division attorneys investigate and litigate a wide range of healthcare fraud matters, including allegations that Medicare and Medicaid providers and suppliers (e.g., hospitals, doctors, skilled nursing facilities, pharmaceutical and device manufacturers) overcharged the Government for healthcare services or goods, or, that they billed for goods and services that were not provided or not medically necessary. Oftentimes, these allegations are linked to allegations that the doctors and others were paid kickbacks or other remuneration to induce referrals of Medicare or Medicaid patients in violation of the Anti-Kickback Act and Physician Self-Referral laws. The Civil Division also investigates a wide range of pharmaceutical and device fraud, including allegations of drug price manipulation and illegal marketing activity that caused the Medicare and Medicaid programs to pay for drug uses that were not medically accepted indications (i.e., they were neither approved by the FDA nor supported by applicable drug compendia, medical literature, or accepted standards of medical practice).

In addition to its recovery efforts, the Civil Division provides training and guidance in connection with pharmaceutical and device fraud matters. Given the nationwide scope of the defendants' conduct, as well as the complex legal and factual issues in these cases, the Civil Division plays a critical role in coordinating both investigative efforts and the legal positions taken by the Department.

Lastly, the Elder Justice and Nursing Home Initiative coordinates and supports law enforcement efforts to combat elder abuse, neglect, and financial exploitation. The Initiative supports law enforcement efforts by maintaining an information bank of Elder Justice related materials (including briefs, opinions, indictments, plea agreements, subpoenas templates); funding medical reviewers, auditors, and other consultants to assist Department attorneys and AUSAs in their nursing home and/or long term care facility cases; hosting quarterly teleconferences with Department attorneys and AUSAs across the country to discuss issues or developments in connection with our nursing home and failure of care cases; and coordinating nationwide investigations of skilled nursing facilities.

Criminal Division

The Criminal Division supports criminal healthcare fraud litigation and inter-agency coordination, which is carried out primarily by two of its sections: the Fraud Section and the Organized Crime and Racketeering Section (OCRS).

The Fraud Section initiates and coordinates complex healthcare fraud prosecutions and supports the USAOs with legal and investigative guidance and training, and trial attorneys to prosecute healthcare fraud cases. Beginning in March 2007, the Criminal Division's Fraud Section working with the local USAOs, the FBI, law enforcement partners in HHS, and State and local law enforcement agencies launched the Medicare Fraud Strike Force in Miami-Dade County, Florida to prosecute individuals and entities that do not provide legitimate healthcare services, but

exist solely to defraud Medicare and other Government healthcare programs. Since 2007, the Department and HHS have expanded the Strike Force to seven locations.

In addition to healthcare fraud litigation, the Fraud Section also provided legal guidance to FBI and HHS agents, health program agency staff, AUSAs and other Criminal Division attorneys on criminal, civil and administrative tools to combat healthcare fraud; provided advice and written materials on patient medical record confidentiality and disclosure issues, and coordinated referrals of possible criminal HIPAA privacy violations from the HHS Office for Civil Rights; monitored and coordinated Department responses to legislative proposals, major regulatory initiatives, and enforcement policy matters; reviewed and commented on healthcare provider requests to the HHS/OIG for advisory opinions, and consulted with the HHS/OIG on draft advisory opinions; worked with CMS to improve Medicare contractors' fraud detection, referrals to law enforcement for investigation, and case development work; and prepared and distributed to all USAOs and FBI field offices periodic summaries of recent and significant healthcare fraud cases.

The Criminal Division's Organized Crime and Racketeering Section (OCRS) supports investigations and prosecutions of fraud and abuse targeting the 2.8 million private sector health plans sponsored by employers and/or unions, including schemes by corrupt entities that sell insurance products. Such private sector group health plans are the leading source of healthcare coverage for individuals not covered by Medicare or Medicaid. OCRS also provides strategic coordination in the identification and prosecution of domestic and international organized crime groups engaged in sophisticated fraud posing a threat to the healthcare industry.

Civil Rights Division

The Civil Rights Division pursues relief affecting public, residential healthcare facilities, and has established an initiative to eliminate abuse and grossly substandard care in public, Medicare and Medicaid funded nursing homes and other long-term care facilities.

The Special Litigation Section of the Civil Rights Division is the sole Department of Justice component responsible for enforcing the Civil Rights of Institutionalized Persons Act (CRIPA). CRIPA authorizes the investigation of conditions of confinement at State or local residential institutions (including facilities for persons with developmental disabilities or mental illness, and nursing homes) and initiation of a civil action for injunctive relief to remedy a pattern or practice of violations of the Constitution or Federal statutory rights. The review of conditions in facilities for persons who have mental illness, facilities for persons with developmental disabilities, and nursing homes comprises a significant portion of the program. The Special Litigation Section works collaboratively with the USAOs and HHS.

Federal Bureau of Investigation

The FBI is the primary investigative agency involved in the fight against healthcare fraud that has jurisdiction over both the Federal and private insurance programs. With healthcare expenditures rising at three times the rate of inflation, it is especially important to coordinate all investigative efforts to combat fraud within the healthcare system. More than \$1 trillion is spent in the private sector on healthcare and its related services and the FBI's efforts are crucial to the overall success of the program. The FBI leverages its resources in both the private and public arenas through investigative partnerships with the HHS/OIG, the FDA, the DEA, the Defense Criminal Investigative Service, the Office of Personnel Management, the Internal Revenue Service and various State and local agencies.

On the private side, the FBI is actively involved with national groups, such as the National Health Care Anti Fraud Association (NHCAA), the Blue Cross and Blue Shield Association and the National Insurance Crime Bureau, as well as many other professional and fundamental efforts to expose and investigate fraud within the system.

Healthcare fraud investigations are a priority within the White Collar Crime Program Plan. FBI field offices throughout the United States have proactively addressed significant healthcare fraud through coordinated initiatives, task forces, and undercover operations to identify and pursue investigations against the most egregious offenders, which may include organized criminal activity and criminal enterprises. Organized criminal activity has been identified in the operation of medical clinics, independent diagnostic testing facilities, durable medical equipment companies and other healthcare facilities. The FBI is committed to addressing this criminal activity through disruption, dismantlement and prosecution of criminal organizations.

Question. What new responsibilities does the historic Patient Protection and Affordable Care Act place on the Justice Department when it comes to healthcare fraud?

Answer. The Affordable Care Act did not place additional responsibilities on the Department of Justice as it relates to enforcement. However, the act did provide additional tools for the Department of Justice and made the following changes to existing Federal law which will assist the Department's efforts to prosecute healthcare fraud:

- Directs the Sentencing Commission to increase the Federal sentencing guidelines for healthcare fraud offenses, by 20–50 percent for crimes that involve more than \$1,000,000 in losses;
- Updates the definition of “healthcare fraud offense” in the Federal criminal code (18 U.S.C. § 24(a)) to include violations of the anti-kickback statute, the Food, Drug and Cosmetic Act, and certain provisions of the Employee Retirement Income Security Act, allowing these important healthcare offenses to be more vigorously enforced. These changes will:
 - Make the proceeds of these offenses subject to criminal forfeiture,
 - Render obstruction of an investigation of these offenses a crime,
 - Include these offenses as specified unlawful activity for purposes of money laundering, and
 - Authorize the use of administrative subpoenas for the production of documents;
- Clarifies that a violation of the anti-kickback statute constitutes a violation of the False Claims Act. This will ensure that all false claims resulting from illegal kickbacks are themselves illegal, even if the claims are submitted by an innocent third-party and not directly by the wrongdoers themselves;
- Revises the False Claims Act public disclosure bar narrowing the categories of public disclosures, revising the definition of an original source, and eliminating the jurisdictional nature of the bar;
- Clarifies that the term “willful” under the healthcare fraud statute (18 U.S.C. § 1347) does not require proof that defendants either had knowledge of that particular statute or had specific intent to violate that law. The act clarifies that “willful conduct” in this context does not require proof that the defendant had actual knowledge of the law in question or specific intent to violate that law;
- Provides the Department of Justice with subpoena authority for investigations conducted pursuant to the Civil Rights of Institutionalized Persons Act, allowing the Government to better protect the health and civil rights of individuals living in institutional facilities;
- Amends a key obstruction statute (18 U.S.C. § 1510) so that obstruction of criminal investigations involving administrative subpoenas under the Health Insurance Portability and Accountability Act of 1996 is treated in the same manner as obstruction of criminal investigations involving grand jury subpoenas;
- Directs the Attorney General or designee to participate in the Elder Justice Coordinating Council, Chaired by the Secretary of HHS;
- And appropriates additional HCFAAC mandatory funds.

Question. What is the Health Care Fraud Prevention and Enforcement Action Team (HEAT) initiative and what role does the Department of Justice play in it?

Answer. On May 20, 2009, Attorney General Holder and Secretary Sebelius announced the Health Care Fraud Prevention and Enforcement Action Team (HEAT), a new effort with increased tools and resources, and a sustained focus by senior level leadership to enhance the collaboration levels between the Departments of Justice and Health and Human Services. With the creation of the new HEAT effort, the Department of Justice and HHS enhanced our commitment to fighting Medicare Fraud as a Cabinet-level priority for both this Department and HHS. HEAT, which is jointly led by the Deputy Attorney General and HHS Deputy Secretary, is comprised of top level law enforcement agents, prosecutors and staff from the Justice Department and HHS and their operating divisions, and is dedicated to joint efforts across Government to both prevent healthcare fraud and enforce current anti-fraud laws around the country.

The mission of HEAT is:

- To marshal significant resources across Government to prevent waste, fraud and abuse in the Medicare and Medicaid programs and crack down on the fraud perpetrators who are abusing the system and costing us all billions of dollars.
- To reduce skyrocketing healthcare costs and improve the quality of care by ridding the system of perpetrators who are preying on Medicare and Medicaid beneficiaries.

- To highlight best practices by providers and public sector employees who are dedicated to ending waste, fraud and abuse in Medicare.
- To build upon existing partnerships that already exist between DOJ and HHS like our Medicare Fraud Strike Forces to reduce fraud and recover taxpayer dollars.

Another key HEAT objective is to improve and expand information and data sharing procedures between HHS and the Justice Department so that law enforcement has access to critical data and information on a near “real-time” basis in order to identify patterns of fraud and abuse more rapidly, increase efficiency in investigating and prosecuting complex healthcare fraud cases, and turn off funding and profits to those who may be defrauding the system.

The Attorney General and HHS Secretary have instigated several HEAT initiatives.

Significantly, the Medicare Fraud Strike Force has been expanded to a total of seven cities. The HHS/OIG implemented cutting-edge electronic discovery tools to maximize investigative efficiency in the processing and review of voluminous electronic evidence obtained during the course of our healthcare fraud investigations. The Centers for Medicare and Medicaid Services (CMS) launched several projects designed to improve the Durable Medical Equipment (DME) provider enrollment process, Medicare Parts C and D compliance and enforcement activities, and compliance training for providers to prevent honest mistakes and help stop potential fraud before it happens. Finally, the CMS has several new authorities to help State Medicaid officials conduct audits, monitor activities and detect fraud. One example is the authority to establish a Medicaid Recovery Audit Contractor (RAC) program.

In addition, CMS and law enforcement agency representatives, such as members of the Civil and Criminal Divisions, the United States Attorneys’ Offices (USAOs) and Executive Office for the United States Attorneys (EOUSA), the FBI and HHS/OIG, meet on a periodic basis through numerous local or regional healthcare fraud working groups and task forces. EOUSA and CMS also sponsor a monthly national conference call during which Assistant United States Attorneys from all districts have the opportunity to interact directly with CMS representatives, receive timely reports on CMS operations, and obtain answers to questions related to specific issues regarding current investigations. The Departments also convene interagency staff-level working groups as needed to develop mutual proposals for improving our healthcare fraud fighting capabilities.

Each Department routinely enlists senior staff from the other to participate in staff training programs, thereby encouraging the free-flow of shared expertise and accessibility. Since 2007, the Department of Justice’s Criminal Division and HHS/OIG have provided an opportunity for HHS/OIG counsel to serve 6 month details to gain experience managing criminal healthcare fraud investigations and trial experience in Federal court with Criminal Division colleagues. In addition, attorneys from HHS/OIG have been detailed to U.S. Attorneys’ Offices as Special Assistant U.S. Attorneys to provide USAOs with additional prosecutorial resources.

Question. The Department’s efforts to combat healthcare fraud are funded by the Health Care Fraud and Abuse Control account, administered by HHS. The fiscal year 2011 request is \$272 million for these activities.

Do you believe more funding is needed to stop fraud in Medicare, Medicaid and other healthcare benefits programs?

Answer. As it relates to healthcare fraud enforcement, the Department has received sufficient increases in recent years to allow it to adequately investigate and prosecute healthcare fraud.

The fiscal year 2011 President’s budget request includes a discretionary increase of \$250 million for the Health Care Fraud Abuse and Control account. The Department of Justice’s portion of this increase is \$60 million, which will provide a total of \$90 million in discretionary resources for the Department in fiscal year 2011. In addition to the fiscal year 2011 discretionary increase, the Department will also receive \$61.9 million in mandatory funding, provided through the Health Care Fraud Abuse and Control Account. This amount includes \$6.7 million in additional funding provided through the recently enacted healthcare legislation.

In fiscal year 2011, the FBI will receive \$128.8 million in mandatory funding made available through the Health Insurance Portability and Accountability Act of 1996.

In sum, the Department will receive \$280.7 million in fiscal year 2011 in reimbursable funding to support healthcare fraud investigations and prosecution, if Congress funds the discretionary HCFAC request. This represents a 33 percent increase over the Department’s fiscal year 2010 efforts, and will allow the Department to deploy additional Medicare Strike Force Task Forces, fund additional pharmaceutical

and False Claims Act litigation, and address civil rights violations as they relate to healthcare fraud.

TASK FORCES—STATE AND LOCAL LAW ENFORCEMENT

Question. Joint Terrorism Task Forces (JTTFs) are teams of Federal, State and local law enforcement and intelligence agencies working together to identify and respond to terrorist threats at the local level. There are now more than 100 JTTFs led by the FBI, with over 4,500 task force participants.

The crucial work done by these teams has been front and center this week to investigate this past weekend's failed bombing attempt in Times Square. Their efforts, along with the New York Police Department and other Federal law enforcement and intelligence agencies, led to the swift capture of the suspect responsible for what could have been a deadly attack on Americans.

How beneficial are the Task Forces in responding to terrorist threats? What unique role do they play in terrorism investigations?

Answer. The participation of State, local, and Federal law enforcement partners on JTTFs creates a "force multiplier" benefit. By having State and local officers and participants from other Federal, State, and local agencies, the JTTFs are able to address many more cases than the FBI could handle alone.

The FBI is faced with a formidable task that experience has shown is best achieved through the utilization of the vast resources and personnel dedicated to task forces. The JTTFs cover thousands of leads in response to calls regarding counterterrorism-related issues. These leads address potential threats to national security and require a significant amount of coordination and resources.

Overall, greater interaction and cooperation between FBI Special Agents and their counterparts exist due to the task force concept, which has led to a more focused, integrated and resource-conscious approach to counterterrorism investigations.

Question. Will their role be expanded in the future?

Answer. In recent years, the FBI has expanded the number of JTTFs within the United States to promote interoperability and better leverage Federal, State, and local agencies and their resources. There are currently 104 JTTFs across the United States in 56 FBI field offices and 48 FBI Resident Agencies. The total national staffing level of Federal, State and local officers, including FBI personnel, is 4,492. Currently, there are 656 State and local agencies that participate on JTTFs nationwide. In addition, JTTFs include representatives from the U.S. Intelligence Community, Departments of Homeland Security, Defense, Justice, Treasury, Transportation, Commerce, Energy, State, Interior, and others. The FBI anticipates that the level of Federal, State, and local participation on the JTTFs will grow in the future to more effectively and efficiently address emerging threats.

Question. What additional resources would you need to expand the program?

Answer. The FBI anticipates that the level of Federal, State, and local participation in the JTTFs will continue to grow in the future. This growth will result in the need for an increased allocation of funding to reimburse Federal agencies for their participation on the JTTFs, as well as to State and local agencies for overtime costs, funding for equipment, funding to lease additional vehicles, and rent and renovation funding required in connection with the assignment of additional personnel to the FBI JTTF locations.

STOPPING CHILD PREDATORS

Question. The Adam Walsh Act gives the U.S. Marshals Service the authority to treat convicted sex offenders as fugitives if they fail to register. It also directs the Marshals to assist jurisdictions locate and apprehend these individuals. There are roughly 135,000 non-compliant offenders in the United States. The Marshals Service estimates they need a dedicated force of 500 deputies to fully implement the Adam Walsh Act.

In March, President Obama appeared on "America's Most Wanted" to pledge increased funding and personnel for enforcement of the Adam Walsh Act. The President highlighted that "it is very important for us to build up U.S. Marshals' capacity. That is something we want to do in the Federal budget . . . my expectation is that we will get support, bipartisan support, from Congress on this issue because it is so important to every family across America."

How many Deputy U.S. Marshals are currently dedicated full-time to Adam Walsh Act enforcement?

Answer. In fiscal year 2010, the USMS had 177 positions dedicated full-time to Adam Walsh Act (AWA) enforcement (132 of the positions are Deputy U.S. Marshals (DUSM). When USMS received the fiscal year 2010 appropriation, USMS revaluated the current Adam Walsh Act positions and increased the number of DUSMs

for AWA enforcement. Of the 177 positions, the USMS placed 66 new and re-assigned 20 existing Senior Deputy U.S. Marshals to districts throughout the United States to coordinate AWA enforcement activities.

Question. Why didn't DOJ seek additional resources in the fiscal year 2011 budget request for the Marshals Service to hire more deputies for this work?

Answer. The Adam Walsh Child Protection and Safety Act is landmark legislation that considerably enhances the Department's ability to respond to crimes against children and vulnerable adults and prevent sex offenders who have been released back into the community from victimizing other people. In fiscal year 2011, the administration is requesting \$336 million for Adam Walsh Act related activities, an increase of \$20 million (6.3 percent) to support implementation of the act. The fiscal year 2011 funding will enable the Department to continue existing base operations; manage expanding program workloads; provide grants to States to offset costs associated with implementing the act; and provide administrative, policy, and technical assistance for State and local government.

The Department appreciates the recent statement by the President on "America's Most Wanted" pledging increased funding and personnel for enforcement of the Adam Walsh Act. President Obama highlighted that "it is very important for us to build up U.S. Marshals' capacity. That is something we want to do in the Federal budget . . . my expectation is that we will get support, bipartisan support, from Congress on this issue because it is so important to every family across America."

Question. Do you plan to stand behind President Obama's commitment for more resources for Adam Walsh Act enforcement in the upcoming fiscal year? If so, will the fiscal year 2011 budget request be amended to include this support?

Answer. The Department and the USMS fully support the mandates of the Adam Walsh Act and appreciate its importance to this subcommittee. We stand ready to use the resources, both monetary and nonmonetary, to ensure the safety of the public.

The fiscal year 2011 President's budget requests \$336 million for the Department to implement Adam Walsh Act related activities, an increase of 6.3 percent over the prior year. The Department is not aware of any pending supplemental requests or budget amendments that would direct additional resources to the Department specifically to enforce the Adam Walsh Act. However, most of the activities authorized by the act are already performed as part of the Justice Department's traditional mission. In most instances, for programs where the act authorized specific funding levels, the Department is spending at or above those levels.

SECOND CHANCE ACT

Question. We have to look at the whole crime problem in a holistic way. We need to look at what ways can we prevent people from becoming criminals and we need to figure out how to make prisoner re-entry into regular society more successful than it has been in the past.

The Second Chance Act became law in 2008. Since then, our subcommittee has provided \$125 million for State and local offender re-entry programs with the goal of reducing criminal recidivism. President Obama's fiscal year 2011 request includes another \$100 million for Second Chance Act programs, but does not specify which of those programs it intends to fund.

Last year, this subcommittee specified funding for several different Second Chance Act areas, like adult and juvenile offender reentry, family-based substance abuse treatment, and grants for mentoring and transitional services. What specific programs authorized by that law do you propose to fund in fiscal year 2011?

Answer. The President's fiscal year 2011 budget request includes \$100 million for the Second Chance Act, which is the same amount appropriated in fiscal year 2010. The fiscal year 2011 request specifies three allocations from the \$100 million:

- \$9.0 million to implement section 111, Reentry Courts, which authorizes the creation of State, local, and tribal reentry courts to oversee the reentry process—including monitoring, supervision, case management, service provision, and community involvement.
- \$10.0 million under section 112, Prosecution Drug Treatment Alternatives to Prison (DTAP), to provide grants to State and local prosecutors to develop, implement, or expand qualified drug treatment programs that are alternatives to imprisonment.
- \$1.7 million under section 245, Reentry Research, to develop and implement an ongoing reentry and recidivism statistics program.

Of the remaining \$79.3 million from the fiscal year 2011 President's budget request, OJP plans to continue support for priorities such as adult and juvenile demonstration programming, pre- and post-release mentoring programs, and targeting

risk factors for recidivism through treatment strategies such as family treatment and treatment of offenders with co-occurring disorders. Funding will also provide ongoing support for the National Reentry Resource Center. OJP will continue to seek input from stakeholder groups and to consider guidance from Congress to determine the allocation of the funds.

Question. What benefits do you as a law enforcement officer see in providing robust funding for re-entry programs?

Answer. The Department sees tremendous benefit in providing funding for reentry programs because the aim is to ensure that those returning to our communities have an opportunity to contribute to the success of society and do not commit additional crimes. The challenges associated with offenders' reentry from jails and prisons are daunting; a significant number experience substance addiction, job and housing instability, mental illness, health problems, and a host of other problems. The Department's approach to reentry is a research-driven process which has shown that providing offenders a broad range of services when they leave incarceration helps ensure their successful transition to the community. Successful reintegration strategies translate into public safety gains in the form of reduced recidivism and victimization, improved community safety, and the long-term reintegration of formerly incarcerated individuals as productive members of their families and their communities.

TIMES SQUARE BOMBING ATTEMPT

Question. Just 53 hours passed from the time Faisal Shahzad's (pronounced Fazel Sha-zod) car was smoking in Times Square until he was arrested. Press reports indicate Mr. Shahzad was cooperating both before and after he was read his Miranda rights.

First, is he still cooperating with investigators and what new information are we learning?

Answer. Faisal Shahzad is no longer cooperating with investigators. He pled guilty and has been sentenced to life in prison.

Question. How were the FBI, DOJ, and NYPD able to turn this around in such a remarkably short period of time? In other words, why was this investigation and arrest so successful?

Answer. The investigation of the Times Square bombing attempt was able to come to a swift conclusion due to the dedication and professionalism of all agencies involved. Specifically, the New York Police Department and FBI's New York Field Division were able to quickly obtain the Vehicle Identification Number of the SUV, despite efforts by Shahzad to obscure the number.

Investigative leads were sent to various divisions to identify the last known owner of the vehicle. The results of these efforts provided a series of additional leads which ultimately led to the identification of the last owner of the vehicle used in the Times Square attack. Using information provided by this individual, FBI's New Haven Field Division was able to conduct toll analysis to ultimately identify Faisal Shahzad from Department of Homeland Security's Customs and Border Protection (CBP) records.

In addition to this effort, a canvass of New York fireworks distributors linked Shahzad to a location where he purchased fireworks used to construct the vehicle-borne improvised explosive device. Investigators obtained computerized records from this location, which showed that Shahzad made the purchase of several large fireworks and used his Connecticut driver's license to verify his age. This driver's license photograph was subsequently shown to the previous owner of the SUV used in the attack, and she verified that Shahzad had purchased the vehicle.

Based on this timely information, the FBI's investigators were able to quickly refine their search and focus on Shahzad as the perpetrator of the attempted attack in Times Square.

Question. Press reports also indicate that Mr. Shahzad was nominated for the "No-Fly" list on Sunday, yet he was still able to board a flight to Dubai on Monday. What caused this to happen? Has the U.S. Government still not learned its watchlisting lessons from the failed Christmas Day bombing attempt?

Answer. Faisal Shahzad was nominated for placement on the Transportation Security Administration's "No-Fly" list mid-day on Monday, May 3, 2010, and was placed on the "No-Fly" list shortly thereafter. At the time Shahzad was nominated, airlines were required to update their databases with U.S. Intelligence Community watchlisting information every 24 hours. This update was typically performed by the airlines at the end of each day. Emirates Airlines had not yet updated their system with the latest watchlisting information when Shahzad purchased his ticket and boarded the plane the evening of May 3, 2010. An additional review of the flight

manifest by the Customs and Border Protection National Targeting Center (NTC) identified the presence of a No-Fly subject on the plane. The NTC immediately contacted Customs and Border Protection Officers located at JFK, and directed them to contact the airline immediately to ensure that the aircraft did not depart prior to their arrival at the gate. Upon arrival, CBP Officers removed the passenger from the aircraft. As a result of this investigation, foreign airlines are now required to update their watchlisting information within 30 minutes of receiving a new or revised "No-Fly" list from TSA. Additionally, TSA anticipates that all airlines required to implement Secure Flight will do so by the end of this calendar year.

Question. Press reports state Mr. Shahzad received some training in Pakistan. Is there a terrorist group responsible for his training? If so, who? When was the training provided? What cooperation have we received from Pakistan on this investigation?

Answer. Shahzad received training from the terrorist group Tehrik-e-Taliban Pakistan (TTP). He attended a TTP training camp in North Waziristan from December 2009 to January 2010, where he obtained 4 to 5 days of explosives training.

The Pakistan authorities have been very helpful in this investigation and have taken the attempted attack on the United States very seriously.

FUNDING FOR TERRORIST TRIALS

Question. One of the major obstacles facing our bill this year is the debate over the transfer of Guantanamo Bay detainees to the United States to stand trial. The fiscal year 2010 CJS conference agreement included language to restrict Guantanamo Bay detainees from coming into the United States except for prosecution. In November 2009, you announced your intentions to bring five 9/11 terrorist suspects to New York City for trial. As we all know, that plan is now in limbo.

The President's fiscal year 2011 request for the Justice Department includes what I consider now to be placeholders. The request includes \$73 million for security-related or associated with civilian trials, but the location of the trials is now unknown.

How does the Justice Department plan to address the additional risk for these high threat trials on U.S. soil?

Answer. The development of the funding request in the fiscal year 2011 President's budget took into account the additional security requirements associated with these high threat trials. The request reflects the additional law enforcement officers and infrastructure requirements needed to manage the risk associated with these trials. Specifically, the funding will be used to harden cell blocks, courthouse facilities, and housing facilities, to increase electronic surveillance capability, and to provide protection for judges and prosecutors.

Question. What unique costs are associated with these trials compared to other trials held in Federal courts?

Answer. The category of costs for these trials would be similar to other trials held in Federal courts. These categories include prisoner housing and transportation, courthouse security and litigation costs. However, the security requirements associated with trying these suspects are higher than most other trials, increasing the cost. For example, for these trials, the Department anticipates needing additional funding to harden cell blocks, courthouse facilities, and housing facilities, to increase its electronic surveillance capability, and to provide increased protection for judges and prosecutors.

Question. Are these costs sufficient to keep a community safe wherever trials are held?

Answer. The funding requested in fiscal year 2011 reflects the resources needed to address the additional security requirements associated with these trials. The additional security requirements take into consideration the safety of the communities.

Question. The only 9/11 terrorism case tried in U.S. courts was that of Zacarias Moussaoui. It cost taxpayers millions of dollars and took over 4 years to convict him. The \$73 million in the budget would only cover trial-related costs in fiscal year 2011. What costs have you estimated for the following years? What factors would make costs increase over the first year estimate?

Answer. As reflected in the President's budget request, the Department anticipates the costs for future years to be similar to fiscal year 2011, with adjustments for pay raises and other annualization costs. In developing the fiscal year 2011 budget request, many assumptions were made, including the location of the trials.

Question. If you decide to prosecute more Guantanamo Bay detainees in U.S. Courts, there will an additional strain on U.S. Marshals whose mission is to protect judges, transfer detainees and secure courtrooms. Will this strain on resources compromise U.S. Marshal's mission? How will this new mandate affect other Marshal priorities, such as tracking down and arresting fugitive sex offenders?

Answer. No, these prosecutions will not compromise the USMS's mission to protect judges, transfer detainees, and secure courtrooms. However, resources will be needed to cover the anticipated extraordinary costs associated with these trials, including: additional security measures for the judiciary, the courtroom, the courthouse, and the assistance of local law enforcement in assisting with the large crowds and high media interest.

The Department does not anticipate that these prosecutions will affect other USMS priorities. The fiscal year 2011 President's budget includes \$72.8 million for the Department's anticipated increases in security and prosecutorial costs associated with high security threat trials. The requested resources would finance a variety of functions, including transportation and prisoner production, prisoner housing, security, litigation, and other costs associated with high threat trials.

COURTHOUSE SECURITY

Question. A recent inspector general's report found "critical deficiencies" in the Justice Department's ability to protect Federal judges and prosecutors as threats against them escalate. The number of threats against court officials has more than doubled since 2003, rising to 1,400 in the last year, but the number may be significantly higher.

The U.S. Marshals Service has primary responsibility for ensuring the safety and security of more than 2,000 Federal judges and 5,000 court personnel. The Executive Office for U.S. Attorneys, U.S. Attorneys' Offices and the FBI are also involved in responding to threats.

Are Federal judges and prosecutors counseled before a threat occurs about the security options provided by the Marshals Service and the Executive Office for U.S. Attorneys?

Answer. Yes, the U.S. Marshals Service (USMS) provides security presentations for members of the Judiciary in a variety of official forums, including Judicial Nominee Briefings, New Chief Judge Orientations, judicial conferences, and annual judicial security training in each district. The judiciary has also been provided with a judicial security DVD, entitled Project 365—Security Starts with You. This DVD clearly presents the importance of reporting of threats and inappropriate communications on a timely basis to USMS, as well as the ramifications of not doing so.

U.S. Attorney's Office employees are provided security information during the annual judicial security training provided to the court family agencies in each of the districts. The USMS also provides security briefings at U.S. Attorney and District Office Security Manager conferences. At these conferences, the USMS explains that threats are not limited to judges and that any member of the court family is susceptible to receiving a threat. In addition, the USMS participates in interactive "webinars" regarding security that are coordinated by the Executive Office for U.S. Attorneys.

Question. What is the Justice Department doing to address the inspector general's recommendations for improved threat responses to ensure the safety of judges, court officials and their families?

Answer. USMS has updated the training materials provided to the Judiciary and U.S. Attorneys to further emphasize the importance of quickly reporting threats and inappropriate communications, as well as the ramifications of not doing so. USMS is upgrading its Threat Management Information System (TMIS) to allow for faster searches and searches on larger data sets.

In addition, the USMS has directed all of its district offices to send notification letters to local law enforcement agencies informing them if a Federal judge resides within their jurisdiction. These notification letters request that the judges' information be added to the local 911 system and that the local USMS office be contacted immediately for any emergencies reported at a judge's residence.

Question. The Department requests \$42 million, a \$4 million increase over last year, to hire 12 new Deputy Marshals and support courthouse security. Are more resources needed to ensure the safety of all employees of the Federal judiciary and U.S. Attorneys? What gaps in security measures are still present?

Answer. In the fiscal year 2011 President's budget, the USMS requests \$42 million for Tactical Operations, a \$5 million or 14 percent increase over the fiscal year 2010 appropriation. This increase will support 14 additional positions (including 12 Deputy U.S. Marshals) for the Special Operations Group, which supports USMS and other agencies with rapidly deployable, highly trained law enforcement officers. These resources will strengthen the USMS's ability to prevent and respond to terrorist and other attacks against the Federal judiciary and protected witness.

Question. Is there a central location for the Federal judiciary and U.S. Attorneys to report threats? What formal protocols have you put in place to ensure that the

Executive Office for U.S. Attorneys, U.S. Attorneys' Offices and the FBI properly coordinate investigations with the Marshals Service? What funds are requested in their respective budgets to carry out their roles in protecting judges and prosecutors?

Answer. The local USMS district office should receive information on all threats. This information is then forwarded to the USMS Threat Management Center within the Judicial Security Division at Marshals Service headquarters. In addition, the USMS, the FBI, and EOUSA work well together and will continue to seek ways to improve the security of Federal judges and prosecutors. The USMS, FBI and EOUSA are in the process of formalizing Memoranda of Understanding that will define the roles and responsibilities of each organization in protecting Federal judges, U.S. Attorneys, and Assistant U.S. Attorneys. The USMS fiscal year 2011 President's budget requests \$440 million for Judicial and Courthouse Security. The request is a 3.2 percent increase over the fiscal year 2010 enacted budget.

SOUTHWEST BORDER VIOLENCE—DEA

Question. I continue to have concerns that the current resources for the Department of Justice to combat violence along the border are inadequate. If the current wave of violence in the border States cannot be contained, cartel-related crime will most likely expand to major metropolitan areas, including areas like Atlanta, Chicago and even Baltimore.

The explosion of violence in Mexico and along the southern border is caused by a limited number of large, sophisticated and vicious criminal organizations—not by isolated individual drug traffickers. The Department's fiscal year 2011 request includes \$584 million to support investigations and prosecutions relating to border violence.

How concerned should communities along the border—and throughout the United States as a whole—be about cartel-related violence?

Answer. To date, the cartel-related violence in Mexico has not spilled over into the U.S. border communities. In fact, by and large, violent crime in many of the U.S. border cities is lower now than it has been in recent years. (See the Federal Bureau of Investigation Uniform Crime Report).

Despite the relative safety and security in the U.S. communities, however, the Department of Justice is acutely aware of the escalation of violence by drug cartels, gangs, and other criminal organizations just over our border with Mexico. This violent activity is not solely an international threat; it is a national security issue for the United States. The Department of Justice is firmly committed to preventing and responding to spill-over violence as aggressively as possible.

The root cause of the explosion of violence just south of our border is the conflicts within and among a limited number of sophisticated, transnational criminal organizations. These hierarchical, Mexico-based cartels are responsible for smuggling into the United States most of our Nation's illegal drug supply. While the cartels' primary business is drug trafficking, they also sponsor a panoply of other crimes that support their illegal operations. These other crimes include extortion, torture, murder, corruption of public officials, sheltering of wanted fugitives, kidnapping and human smuggling, laundering of illicit criminal proceeds through the existing financial system and through bulk cash smuggling, and the illegal acquisition, trafficking, and use of firearms and explosives.

The Merida Initiative is the administration's four-pillar strategy to help bring security to Mexico. It focuses on: (1) Disrupting the capacity of organized crime to operate; (2) institutionalizing capacity to sustain rule of law; (3) creating a 21st century border structure; and (4) building strong and resilient communities. The Department of Justice plays a key role in implementing pillars one and two.

The Department of Justice plays a primary role and brings to bear its special expertise in taking down Mexico's organized, multi-faceted criminal enterprises. The Department's view—based on decades of experience in investigating, prosecuting, and dismantling organized criminal groups, such as the Mafia, international terrorist groups, and domestic and transnational gangs—is that the best way to fight large scale criminal organizations is through prosecutor-led, intelligence-driven, multi-agency task forces that blend the strengths, resources, and expertise of the complete spectrum of Federal, State, local, and international investigative and prosecutorial agencies. Through their participation in such task forces, the Department's prosecutors, together with its component law enforcement agencies—the DEA, ATF, the FBI, and the USMS—give the Department the capacity to carry out the full range of activities necessary to succeed against these organizations.

The Department has embraced a proactive model to achieve these comprehensive goals, in which we develop priority targets through the extensive use of intelligence.

Sharing information, we build cases, coordinating long-term, extensive investigations to identify all the tentacles of a particular organization. Through sustained coordination of these operations, we are able to execute a coordinated enforcement action, arresting as many high-level members of the organization as possible, disrupting and dismantling the domestic transportation and distribution cells of the organization, and seizing as many of the organization's assets as possible, whether those assets be in the form of bank accounts, real property, cash, drugs, or weapons. Finally, we prosecute the leaders of the cartels and their principal facilitators, locating, arresting, and extraditing them from abroad as necessary. In this effort, we coordinate closely with our Mexican counterparts to achieve the goal: destruction or weakening of the drug cartels to the point that they no longer pose a viable threat to U.S. interests and can be dealt with by Mexican law enforcement in conjunction with a strengthened judicial system and an improved legal framework for fighting organized crime.

In most places, along the border and throughout the country, the Department of Justice-led, multi-agency Organized Crime Drug Enforcement Task Force (OCDETF) provides an effective mechanism for law enforcement agencies from within the Department of Justice, from elsewhere in the Federal Government (including the Departments of Homeland Security and Treasury), and State and local law enforcement, to combine with Federal prosecutors to form a "virtual task force" for the purpose of investigating and prosecuting a particular high-value drug trafficking organization. In certain key locales, OCDETF has established actual, brick-and-mortar co-located Strike Forces, for the pursuit of the highest level traffickers of drugs, guns, and money. For instance, the Department uses the OCDETF Strike Force concept to target all the organized crime activities of the drug cartels—not just those crimes directly related to the drug trade. By further leveraging and coordinating the investigative expertise and jurisdiction of law enforcement agencies outside the drug enforcement area, the Department tasks the Strike Forces to disrupt and dismantle every area of the cartels' infrastructures and undermine their ability to operate successfully in any illegal activity.

On a local level, each Strike Force co-locates law enforcement resources that are supplemented by one or more on-site Assistant United States Attorneys. Working through the Strike Force structure, specifically the co-location and intensive and early prosecutorial involvement, ensures that the Department capitalizes upon the proven synergy of these Strike Forces to maximize the effectiveness of long-term investigations of these organizations. The synergy created by co-locating the diverse expertise of Federal, State, local, and tribal law enforcement agencies with prosecutors from the U.S. Attorney's Office, has had demonstrable success against major criminal organizations operating throughout the country. It is for this reason that the Attorney General and Deputy Attorney General make use of the flexibility to call upon and leverage the resources of the already successful multi-agency task forces around the country, including the OCDETF Strike Forces, High Intensity Drug Trafficking Area (HIDTA) Task Forces, DEA task force groups, FBI Safe Streets Task Forces, FBI Border Corruption Task Forces, FBI Hybrid Task Forces, ATF Violent Crime Impact Teams (VCITs) and ATF Gunrunner Impact (GRIT) Teams, drawing upon the expertise of all of the agencies that contribute to them.

It is for this reason that the Obama administration secured an additional \$600 million in supplemental funding for Southwest border enforcement, including \$196 million for the Department of Justice. This money will be used to fund the most-effective, intelligence-driven law enforcement and prosecutorial initiatives focused specifically on the violence created by the cartels. For example, the supplemental funding allows ATF to deploy seven new Gunrunner Impact Teams—community focused initiatives that target and disrupt the illegal flow of firearms across the border into Mexico; it supports the creation of five new FBI hybrid teams—which target kidnapping and violent crime; as well as additional DEA analysts, U.S. Marshals deputies, and prosecutors.

These additional resources will bolster a number of enhancements to U.S. civilian law enforcement efforts in the Southwest border region to ensure that the United States is doing all that it can to safeguard the population there and deter illegal flows in both directions across that border. The Department of Justice's key recent enhancement efforts include:

- Two new DEA Southwest Border Enforcement Groups created in El Paso and Phoenix and 25 new DEA intelligence analyst positions added to key cities;
- The deployment of two FBI Border Corruption Task Forces in Del Rio and Houston;
- A surge of ATF agents to Arizona to target gun trafficking to Mexico;
- Increased funding through the OCDETF Program to support targeted Southwest border investigations and prosecutions through its co-located Strike

- Forces, increasing the presence of ATF, FBI, USMS, and Assistant U.S. Attorneys in those Strike Forces as well as providing needed operational funding, and, additionally, to hire 41 new OCDETF prosecutors to implement the U.S. Attorneys' Offices' Southwest border Prosecutorial Initiative;
- Two hundred new U.S. Marshal Service positions, including Deputy U.S. Marshals and Asset Forfeiture Criminal Investigators at the Southwest border to increase fugitive apprehension and cross border violent crime response; to identify and seize the financial assets of the cartels; to increase court security and prisoner operations; and to investigate and mitigate security threats and improve security awareness for judiciary and other court personnel;
 - The hiring of nearly 50 additional Department of Justice attorneys to prosecute drug and arms trafficking and bulk cash smuggling by the Mexican cartels, as well as the addition of five Department of Justice attorneys to focus solely on extradition requests from Mexico;
 - Planned expansion of the El Paso Intelligence Center (EPIC) to include additional staffing to collect, analyze and disseminate intelligence and support law enforcement operations against a broad array of transnational threats.
 - Increased cooperation with United States and Mexican law enforcement to target money laundering and bulk cash smuggling, including \$50 million in Department of Justice grants to Federal, State, and local law enforcement and the hiring of a Department prosecutor dedicated exclusively to targeting money laundering cases in and to Mexico;
 - The resumption of the Department's asset-sharing of forfeited proceeds with the Mexican Government as a result of successful bi-lateral criminal investigations; and
 - Enhanced U.S. forensic analysis and support for Mexican prosecutions of drug traffickers.

The safety of these border communities—and indeed, the impact on cities throughout the United States—remains of paramount importance to the Department of Justice. We look forward to partnering with Congress to ensure that we can best contain and curtail the wave of violence spreading throughout the border communities in Mexico.

Question. How is the Department working with the Mexican Government to dismantle these violent cartels?

Answer. The Department of Justice is working aggressively in partnership with the Government of Mexico on a number of fronts to dismantle violent Mexican drug cartels through a two-prong strategy that focuses on advancing the rule of law in Mexico, as well as criminal investigations and prosecutions. The two sides of our work are vital to disrupting and dismantling the cartels.

CRIMINAL INVESTIGATIONS AND PROSECUTIONS

The Department of Justice's focus on criminal investigations and prosecutions includes U.S. based efforts targeting the cartels; work in partnership with our Mexican counterparts; as well as extradition of many of the worst criminals who have fled to Mexico to avoid prosecution in the United States.

The Department's Strategy for Combating the Mexican Cartels, issued by the Attorney General in January 2010, is premised on the notion that a large share of the violence, drug trafficking, and other criminal activity occurring along the Southwest border is perpetrated by a relatively small number of hierarchical criminal organizations. The Department believes that the most effective mechanism to attack those organizations is the use of intelligence-driven, prosecutor-led, multi-agency task forces, that simultaneously attack all levels of, and all criminal activities of, the operations of the organizations. The Department's Strategy is executed through such task forces, with the Organized Crime Drug Enforcement Task Forces (OCDETF) Program and the Special Operations Division (SOD) serving the primary coordinating functions.

The key objectives of the Department's Strategy are to:

- Increase the safety and security of U.S. citizens throughout the United States by enforcing violations of Federal law that have a particular nexus to the threats posed by the Mexican Cartels, i.e. drug trafficking, money laundering and bulk cash smuggling, firearms trafficking, and corruption.
- Reduce the flow of narcotics and other contraband entering the United States.
- Reduce the flow of illegal weapons, ammunition, explosives, and currency exiting the United States and entering Mexico.
- Strengthen Mexico's operational capacities and enhance its law enforcement institutions.

- Increase bilateral cooperation between Mexico and the United States on fugitive capture and extradition activities.
- Increase intelligence and information sharing to achieve focused targeting of the most significant criminal organizations.
- Improve case building through interagency coordination, leveraging the expertise and authority of each investigative and prosecutorial agency.
- Maximize the effectiveness of prosecution by locating, arresting, extraditing, and trying all levels, including most importantly the leadership, of these criminal organizations, and disrupting and dismantling the organizations' domestic transportation and distribution cells.
- Coordinate enhanced enforcement initiatives to address "downstream" impacts on judicial security, court and detention operations, prison management and fugitive apprehension.

The DEA-led, multi-agency Special Operations Division (SOD) targets the communications devices the criminal organizations' leaders use to communicate with each other. SOD actively supports multi-jurisdictional, multi-national, and multi-agency electronic surveillance investigations, coordinating overlapping investigations and ensuring that tactical and operational intelligence is shared between law enforcement agencies. In addition, the OCDETF task force model, including in particular its co-located Strike Forces, is the Department's model platform for law enforcement agencies from within the Department of Justice, from elsewhere in the Federal Government, and State and local law enforcement to combine with Federal prosecutors to investigate and prosecute the largest and most dangerous Mexico-based criminal organizations.

For example, OCDETF Strike Forces have been key participants in some of the most successful SOD-coordinated operations responsible for striking some of the hardest blows against the major Mexican CPOTs, such as Operation Xcellerator, a multi-agency, multi-national effort beginning in May 2007 that targeted the Mexican drug trafficking organization known as the Sinaloa Cartel. This Cartel is responsible for bringing tons of cocaine into the United States through an extensive network of distribution cells in the United States and Canada. Through Operation Xcellerator, Federal law enforcement—along with law enforcement officials from the Governments of Mexico and Canada and State and local authorities in the United States—delivered a significant blow to the Sinaloa Cartel. In addition to the arrests of 781 persons, authorities seized more than \$61 million in U.S. currency, 12,000 kilograms of cocaine, 1,200 pounds of methamphetamine, 17,000 pounds of marijuana, 1.5 million Ecstasy pills, and other illegal drugs. Also significant was the seizure of 191 firearms, 156 vehicles, 4 aircraft, and 3 maritime vessels.

Similarly, Project Reckoning, announced in September 2008, was a 15-month, SOD-coordinated OCDETF Strike Force operation that severely damaged the Gulf Cartel. It was one of the largest and most successful joint law enforcement efforts ever between the United States and Mexico. Project Reckoning resulted in 869 arrests in the United States and Mexico, plus the seizure of more than 17,000 kilograms of cocaine, 82,000 pounds of marijuana, 1,000 pounds of methamphetamine, 960 weapons, 324 vehicles, 6 maritime vessels, and \$139 million in U.S. currency and other assets. Perhaps most importantly, Project Reckoning led to the indictment against the three top leaders of the Gulf Cartel.

Project Coronado, announced in October 2009, was a 44-month SOD-coordinated investigation involving multiple OCDETF Strike Forces that targeted the violent Mexican drug trafficking organization known as La Familia. Through Project Coronado, 1,254 persons were arrested in at least 19 States in the United States, and law enforcement authorities seized more than 2,000 kilograms of cocaine, 19,000 pounds of marijuana, 3,900 pounds of methamphetamine, 269 vehicles, 5 maritime vessels, 389 weapons, 5 clandestine drug labs, and more than \$73 million in U.S. currency and other assets.

Finally, in the largest single strike to date against Mexican drug cartels, on June 9, 2010, 429 persons were arrested in 16 States as part of Project Deliverance, a 22-month, SOD-coordinated multi-agency investigation involving eight OCDETF Strike Forces that targeted the transportation infrastructure of Mexican drug trafficking organizations in the United States, especially along the Southwest border. More than 3,000 agents and officers operated across the United States to make the arrests, seizing \$5.8 million, 17 pounds of methamphetamine, 112 kilograms of cocaine, 2,951 pounds of marijuana, 141 weapons and 85 vehicles. During the entire course of the operation, Project Deliverance has led to the seizure of more than 74.1 tons of illegal drugs and has inflicted a debilitating blow to the network of shadow facilitators and transportation cells controlled by the major Mexican drug cartels. In addition to 2,266 arrests overall, Project Deliverance operations have resulted in the seizure of \$154 million in currency and other financial assets, and 1,262 pounds

of methamphetamine, 2.5 tons of cocaine, 1,410 pounds of heroin, 69 tons of marijuana, 501 weapons, and 527 vehicles.

In addition to our U.S. based efforts, the Department participates actively in the broader U.S. Government effort to provide assistance to Mexican authorities to further their efforts to investigate, capture, and prosecute, or extradite to the United States for prosecution, leaders and other key members of Mexico's most dangerous and powerful drug cartels. The Department continues to conduct bilateral investigations with the Mexican Government, to coordinate the sharing of intelligence information that is beneficial to both Mexico and the United States and to provide training in investigations to Mexican law enforcement and prosecutors. We also are assisting the Mexican Government to establish drug enforcement institutions, such as a nationwide intelligence center focused on organized crime, including drug trafficking, and we are conducting training programs in a variety of subject areas that are discussed further below. These efforts include the establishment of a dedicated unit within our Office of International Affairs to handle evidence requests from Mexico, including requests pertaining to drug trafficking cases, as well as a unit assigned to work with Mexican officials on their requests for extradition from the United States.

Finally, the Department of Justice is aggressively seeking extraditions of significant targets from Mexico for prosecution in the United States. Beginning only weeks after his inauguration in December 2006, President Calderon began extraditing high-profile criminals to face criminal prosecution here, beginning with the notorious head of the Gulf Cartel, Osiel Cardenas-Guillen. The Calderon administration has since extradited several other significant drug traffickers, including large-scale marijuana trafficker Miguel Caro-Quintero (whose brother Rafael Caro-Quintero was prosecuted in Mexico for his role in the 1985 kidnapping, torture, and murder of DEA Special Agent Enrique Camarena), and Vicente Zambada-Niebla. In 2009, the United States saw a record number of extraditions from Mexico, culminating in 107 in 2009, up from 12 in 2000.

ADVANCING THE RULE OF LAW

The Department is now also deeply involved in the rule of law work that Mexico has undertaken under the Merida Initiative, a multi-year program that aims to improve law enforcement capabilities to identify, disrupt, and dismantle transnational drug trafficking organizations and organized crime. We currently have a number of senior Federal prosecutors stationed in Mexico City to work on rule of law issues with their Mexican counterparts. Our work in Mexico runs the gamut from high-level advice on criminal code reform—as Mexico moves forward on its own decision to create a more adversarial system—to practical training on investigations and prosecutions. To date, working with U.S. Federal law enforcement agencies and the Department of State, we have trained over 5,500 individuals at all ranks—at the State and Federal level—and in the executive and judicial branches and are on target to train over 9,000 by the end of 2010.

Mexican prosecutors, in turn, are working with our Department of Justice prosecutors on case development, evidence collection, trial advocacy, money laundering, and asset forfeiture. The Department of Justice and the U.S. Agency for International Development are training judges, prosecutors, and law schools on oral trials. We also have engaged in specialized training, such as offering a symposium on prosecuting complex crimes, training Mexican prosecutors and investigators on how to meet extradition challenges in the United States, and facilitating meetings between U.S. and Mexican prosecutors to more efficiently and effectively prosecute sex trafficking cases involving both countries. We are also partnering with law enforcement and prosecutors in Colombia and have sent Mexican prosecutors and law enforcement officers to train in tandem with their Colombian counterparts on code reform, strengthening internal affairs and corruption investigations, and creating effective witness protection programs. Through this work, our primary goal is to ensure that Mexico is a true partner in this fight.

Question. What additional resources would you need to expand investigations and prosecutions along the Southwest border given the escalating violence?

Answer. Funding provided in the 2010 Emergency Border Security Supplemental Appropriations bill will allow us to increase the level of investigations and prosecutions. With the \$196 million provided, the Department will be able to surge Federal law enforcement officers to high crime areas in the Southwest border region by funding more than 400 new positions and temporarily deploying up to 220 personnel. Specifically, Justice funding would increase the presence of Federal law enforcement in the Southwest border districts by adding seven ATF Gunrunner Teams, five FBI Hybrid Task Forces, additional DEA agents and Deputy U.S. Mar-

shals, equipment, operational support, and additional attorneys and immigration judges. Justice funding also would support additional detention and incarceration costs for criminal aliens in coordination with DHS enforcement activities. In addition, the supplemental provides funding to support Mexican law enforcement operations with ballistic analysis, DNA analysis, information sharing, technical capabilities, and technical assistance.

DHS–DOJ DISPARITY ALONG THE SOUTHWEST BORDER

Question. On April 19, Senators McCain and Kyl released a 10-point plan to increase security along the Southwest border. The plan proposes adding resources to the Department of Homeland Security, particularly Border Patrol, but not for Justice Department components that share many of the border protection responsibilities.

Many Southwest border districts are already operating at capacity, particularly the Marshals Service and Office of Detention Trustee, in terms of space to hold detainees. Adding more resources without balancing the request to include DOJ agencies could lead Southwest border districts to the breaking point.

Does the administration believe there is parity between DHS and DOJ along the Southwest border?

Answer. The administration is working to ensure that there is parity between DHS and DOJ on the Southwest border. Any increase in Department of Homeland Security (DHS) enforcement activity has a “downstream” impact on workload and resource requirements that affect the rest of the criminal justice system, including both DOJ and the Judiciary. A principal area of concern along the Southwest border is the existing capacity of the prosecutorial, judicial, detention and incarceration components to respond to increased efforts by law enforcement. Currently, the annual number of apprehensions outpace: prosecutorial capacity for criminal cases involving illegal immigration, drug trafficking, border violence and gangs; litigation and adjudication capacity for immigration cases moving through the Federal courts; detention capacity for the criminally accused as they move through the criminal justice system; and incarceration capacity for the criminally convicted after they are sentenced.

Additional funding directed at certain critical chokepoints could make matters worse if it is provided without considering the entire scope of Southwest border requirements. These chokepoints include: limits in human capital, training and facilities for new personnel (both operational and administrative); and infrastructure and other physical constraints along the Southwest border, particularly USMS cellblock/courthouse space, detention/incarceration beds, and tactical support resources. Outside of the DOJ, the limited number of courtrooms, judges, magistrates, and other members of the judiciary further restrict the Federal Government’s ability to increase prosecutorial caseload and process larger numbers of offenders in the justice system, despite increases in the scope and scale of criminal threats along the Southwest border.

Question. How would DOJ component agencies (Marshals Service, Office of Detention Trustee, U.S. Attorneys’ office, etc.) be affected if Operation Streamline is expanded to all districts along the Southwest border?

Answer. The capacity of the criminal justice system in the Southwest border region presents a very real impediment that needs to be addressed before Operation Streamline can be expanded beyond its present scope. These impediments include the physical constraints of courthouses along the border, including the number of defendants that can be housed and processed in a given day; the number of judges, magistrates, and other judicial personnel; and the number of detention beds where defendants can be housed in reasonable proximity to a given courthouse. Presently, courthouse structures in the region are inadequate to process large numbers of additional defendants. Moreover, USMS and USAO would need additional resources in order to process an increase in defendants. Even increasing the number of Deputy U.S. Marshals and Assistant U.S. Attorneys at courthouses (particularly in Tucson, Arizona and San Diego, California), would be insufficient to process the increase in defendants likely to arise from expanding Operation Streamline.

Increased Department of Homeland Security (DHS) enforcement activity in the Southwest border region would have a “downstream impact” on workload and resource requirements in other ways as well, affecting the rest of the criminal justice system, including DOJ and the Administrative Offices of the U.S. Courts (AOUSC). For example, felony drug arrests and subsequent additional investigations would likely increase, resulting in the need for additional DEA agents and support staff, and the need for additional attorney and intelligence analyst personnel deployed as part of the Organized Crime Drug Enforcement Task Forces Program. Further, ad-

ditional ATF personnel would be needed to address gun trafficking arrests and investigations. In addition, Operation Streamline would increase the fugitive warrant workload, which in turn further impacts the USMS. The workload of other parts of the system, including the Executive Office for Immigration Review and the Civil Division's Office of Immigration Litigation, would also increase. As stated previously, AOUSC would likely require additional courthouse space, judges, magistrates, and other judicial personnel to accommodate pressures resulting from the increased DOJ investigative and prosecutorial workload.

Question. Can DOJ provide this subcommittee with a detailed report about the resources needed if Operation Streamline was expanded to all Southwest border districts?

Answer. Operation Streamline has been viewed as a consequence-based prosecution initiative in which many U.S. Customs and Border Protection (CBP) apprehensions are criminally prosecuted. Operation Streamline is currently in place in some form in several sectors in the Southwest border region. However, even in those sectors where Operation Streamline is in place, many of the programs have a "daily cap" in terms of prosecutions based on resource limitations of Department components and Federal courts. For example, although CBP arrests several hundred individuals each day in the Tucson, Arizona Sector, only 70 cases per day are prosecuted under the auspices of Operation Streamline. This number is capped at 70 cases due to resource limitations of the U.S. Marshals Service cellblock and personnel, courtroom space, availability of court personnel, and detention bed space.

In order to implement Operation Streamline across the entire Southwest border region in a true zero-tolerance form, Department components and the Federal court system would need additional resources, such as:

- Additional personnel would be needed by the U.S. Marshals Service, the U.S. Attorneys Offices, and the courts.

- Additional resources for the Federal Prisoner Detention Fund would also be required.

- Additional construction funding would be needed to exponentially enlarge cellblock space in all Southwest border U.S. Courthouses.

At this time, the Department cannot provide a detailed report about the resources needed Government-wide if Operation Streamline was expanded to all Southwest border districts. Many of the Department cost inputs fluctuate. For example, detention costs are dependent on both detainee population levels and per diem jail rates. These levels and the average per diem jail rate would fluctuate as the immigration workload shifted to other border zones with less stringent immigration enforcement policies. Other factors impacting costs, also unknown, include time in detention (which is at the discretion of the courts; average sentence terms from Operation Streamline cases have not been uniform across Operation Streamline locations) availability of bed space, as well as courthouse and cellblock space limitations.

Funding provided in the 2010 Emergency Border Security Supplemental Appropriations bill will allow us to expand our investigations and prosecutions. With the \$196 million provided, the Department will be able to increase the presence of Federal law enforcement in the Southwest border districts by adding seven ATF Gunrunner Teams, five FBI Hybrid Task Forces, additional DEA agents and Deputy U.S. Marshals, equipment, operational support, and additional attorneys and immigration judges and to support additional detention and incarceration costs for criminal aliens in coordination with DHS enforcement activities.

AFGHANISTAN—FIGHTING NARCO-TERRORISM—DEA

Question. The Drug Enforcement Administration plays a critical role in combating narco-terrorism in Afghanistan. It is helping the Afghan Government establish drug enforcement institutions and capabilities needed to enforce the rule of law. This means successfully identifying, disrupting, and dismantling major drug trafficking organizations that fuel the insurgency and profit from the narco-economy.

Afghanistan's heroin production is a world-wide threat, accounting for 93 percent of global supply. As DEA expands operations in Afghanistan, the focus will be on high value targets, including members of the Taliban, who use the heroin trade to fund insurgents' attacks on U.S. and coalition military forces.

What is DEA's current role in Afghanistan? How do you expect those operations to be expanded in the future?

Answer. DEA supports U.S. national security policy goals in Afghanistan through close partnership with the Office of National Drug Control Policy, the Departments of State and Defense and other elements of the interagency to carry out the U.S. Counternarcotics Strategy for Afghanistan. DEA works directly, bilaterally, and multilaterally with host nation and regional counterparts to identify, investigate,

and bring to justice the most significant drug traffickers in Afghanistan and the region.

The Taliban and other insurgent groups continue to receive substantial funding from the Afghan and regional drug trade. Their monies fuel attacks on U.S. and coalition military personnel and interests. The drug trade is also the major driver of corruption in Afghanistan, and distorts the legal economy. DEA directly supports Afghan counternarcotics efforts in the following ways:

- Advisory support for host nation counterparts through enforcement groups in Country and Resident offices;
- Intelligence Support;
- Financial Investigations—DEA leads the interagency Afghan Threat Finance Cell (ATFC);
- Sponsorship of a Sensitive Investigative Unit (SIU);
- Communications Intercept Program—Technical Investigative Unit (TIU);
- Advice on legislation needed to enforce drug laws; and
- DEA's Foreign-deployed Advisory Support Team (FAST) partners with Afghan Counternarcotics Police (CNP-A) and U.S. Special Forces to conduct high-risk missions in southern Afghanistan to disrupt narco-insurgent networks, deny revenue and implement the Rule of Law.

As DEA completes its expansion in Afghanistan to nearly 100 personnel, our investigations will extend outward from Kabul to key provinces of Afghanistan. DEA's five enforcement groups will operate jointly with their counterparts in the CNPA's vetted units from forward operating bases and will continue to pursue investigative and interdiction activities in support of the U.S. Counternarcotics Strategy.

Question. How are DEA's activities coordinated with those of the U.S. and Afghan military?

Answer. DEA coordinates with the Departments of State and Defense as a member of the Ambassador's Country Team, through close cooperation with the Department of State Bureau for International Narcotics and Law Enforcement Affairs (INL) and representation in the Interagency Operations Coordination Center (IOCC), and by direct liaison with U.S. Forces—Afghanistan (USFOR-A). A key point of coordination is the list that the interagency (with DEA participation) has compiled of Afghan High Value Targets (HVTs)—the most significant traffickers in Afghanistan. HVT designations focus DEA's investigations and alert U.S. military personnel to the value of such individuals. At present DEA has identified 13 HVTs, all of whom have ties to, or are members of, the Taliban. The HVT list is constantly reviewed and updated by DEA in coordination with other U.S. and Coalition elements. DEA plans and executes civilian-military operations supporting the USFOR-A's campaign strategy together with subordinate military units under this command. DEA does this in Kabul through the IOCC and in southern and western Afghanistan through direct liaison at Regional Command South, the I Marine Expeditionary Force (Forward)(I MEF (Fwd)) in Helmand, the Combined Joint Special Operations Task Force Afghanistan (CJSOTF-A), and through the Combined Joint Inter-Agency Task Force Nexus (CJIATF-N) in Kandahar, Afghanistan.

Question. DEA plays the lead role in investigating and alerting U.S. military about High Value Targets and has already identified 13 such individuals who are members of the Taliban or have close ties to the Taliban. Does DEA have the resources it needs to continue to track down these high value targets?

Answer. DEA's counter-narcotics activities in Afghanistan remain closely linked to the overall Afghan security situation and capacity of the Counternarcotics Police of Afghanistan. As these improve, so will DEA's ability to impact high value drug traffickers.

DEA's Afghanistan expansion established the staffing and resources needed to track down HVTs. DEA fully obligated the fiscal year 2009 supplemental expansion funding transferred from the Department of State prior to its expiration on September 30, 2010. In September 2010, the State Department transferred \$8.5 million to DEA to support Afghanistan operations during the first quarter of fiscal year 2011. Continued funding of DEA's operations in Afghanistan in fiscal year 2011 will ensure that this effort continues without interruption.

RACHAEL WILSON CASE—PUBLIC SAFETY OFFICERS' BENEFITS

Question. In February 2007, Baltimore City Fire Cadet Rachael Wilson died tragically in a live-burn training exercise. Two and a half years later, her children were denied compensation under DOJ's Public Safety Officers' Benefits program. Since then, the family filed a timely appeal, which I asked be heard and decided expeditiously. The appeal was heard on January 20, 2010, and the independent hearing officer asked for significant additional information, which was provided by February

5. Now, more than 60 days after providing that information and 90 days after the appeal hearing, the family has yet to receive any communications from the hearing examiner, despite repeated requests by the family's attorney and my office.

This family has already suffered so much and endured too many delays. They deserve a timely response from the Justice Department—something that they have never received at any point throughout this process. It is appalling and unacceptable to treat a family in such a cavalier and unresponsive manner. Tragic incidents like Ms. Wilson's death should not be met with endless delays and outright bureaucratic hostility.

What is the status of this claim? What is the Justice Department doing to get a determination on this appeal for Ms. Wilson's family?

Answer. On October 22, 2010, the Public Safety Officers' Benefits (PSOB) Office provided the family of fallen Fire Cadet Rachael Wilson with notice that the claim had been approved.

Question. What are you doing to address the Office of Justice Programs' (OJP) ability to promptly and efficiently process claims that are on appeal?

What problems does OJP face when determining whether or not to award benefits on appeal, and how do those add to delays?

Are the difficulties in processing claims and making determinations for awards in the appeals process small, unrelated issues that come up on a case by case basis, or are there signs of larger systematic issues?

Answer. We are fully committed to finding new ways to increase the efficiency and effectiveness of the PSOB appeals process. In fiscal year 2010, the PSOB Office brought on-board two new paralegals to increase the administrative support for PSOB appeals; retained a cadre of medical reviewers to conduct medical reviews nationwide; and have plans underway to add additional hearing officers, to prevent any wait time for the assignment of hearing officers to new appeals.

A hearing officer's consideration of a PSOB claim is *de novo*, allowing survivors the opportunity to have a hearing and submit new information that may not have been available when the claim was determined by the PSOB Office. Delays often arise due to claimants' difficulty in obtaining additional information from agencies and medical entities; in many cases, limits on claimants' availability for hearings and their challenges encountered in obtaining counsel also cause delays in the process. For these reasons, the hearing officers work together with the claimants to try to move the claim forward as expeditiously as possible, using subpoena power where necessary to help obtain information that will assist in determining the claim. When a hearing officer determines that the claim should be approved, the BJA Director reviews the approval determination and, if finding no cause to decide it differently, approves it without delay.

Difficulties in making determinations for PSOB benefits in the appeals process arise on a case-by-case basis, based on the unique facts and complexities of each case, and are not inherent to the process. Many cases move very quickly, while others take longer to resolve.

Question. Independent contractors are routinely hired by the Department of Justice as Hearing Officers to review claims that were initially denied and the claimant chooses to appeal, such as the Wilson case.

What criteria does OJP use in hiring those contractors?

What oversight and review do independent hearing officers receive from the Justice Department?

Answer. By regulation, hearing officers "may be appointed from time to time by the [BJA] Director, to remain on the roster of such Officers at his pleasure." The BJA Director appoints qualified individuals who have the requisite skills to fact-find and analyze relevant information and to apply the law faithfully and fairly; understands the PSOB program and the public safety field; and who have the capacity to work sensitively and compassionately with survivors and injured disability claimants.

All PSOB hearing officers are assigned an attorney from OJP's Office of the General Counsel who serves as a legal advisor to provide advice on all questions of law relating to the appeal. The PSOB Office and the Office of the General Counsel together monitor the progress and track the workflow of the appeals, reassigning cases as necessary and providing additional administrative support, to help ensure timely processing of the appeals. The hearing officers submit draft determinations for review to the legal advisors to check for legal accuracy. The hearing officers then submit their final determinations to the BJA Director, the PSOB Office, and OJP's General Counsel. If the hearing officer denies the claim, not only may the claimant appeal to the BJA Director, but the BJA Director, on his own initiative, may review the entire claim and issue a final agency decision. If the hearing officer approves the claim, this triggers a mandatory review of the determination by the BJA Direc-

tor, who may leave the hearing officer's determination undisturbed, or issue his own decision.

CURBING LAVISH SPENDING

Question. Under the previous administration, we were shocked and outraged to learn of lavish spending at the Justice Department. There was one instance when the Department spent \$1.4 million to host a single conference, and another report of spending \$4 on Swedish meatballs.

In the wake of such extravagant spending, Senator Shelby and I required the Justice Department to create uniform guidelines on conference spending to prevent further debacles at the Justice Department. This requirement was right in line with the inspector general's recommendation that internal checks were needed at the Department to avoid such irresponsible spending.

Attorney General Holder, under your leadership, what steps have you taken to ensure that the Justice Department is following those new requirements to avoid lavish spending and cost overruns so that the American people's tax dollars are not being squandered?

Answer. The Justice Management Division issued policy guidance in April 2008 on Conference Planning, Conference Cost Reporting, and Approvals to Use Non-Federal Facilities. The Assistant Attorney General for Administration issued a memorandum to the Department's Component Heads in June 2008 and the Deputy Attorney General issued a similar memo in May 2009 highlighting the importance of fiscal responsibilities with respect to conferences sponsored by the Department. The following bullets were included in the Deputy Attorney General's memorandum.

- Conference locations are to be selected based on business need and minimization of travel and other costs.
- Locations and accommodations should not be selected based on their lavish or resort qualities. Component Heads are required to submit written justification if the facility gives the appearance of being lavish or is a resort location. The Component Head approval cannot be re-delegated.
- Components must restrict the number of people traveling to conferences to the minimum necessary to accomplish the official purpose.
- Ensure the selected lodging location is within per diem rates.
- Meals should be provided on an infrequent basis and only as a working meal when necessary to accomplish the purpose of the event. Refreshments should be kept to an absolute minimum. Grant making organizations should instruct grant recipients that Department grant funding is not to be used for lavish food, refreshments, or entertainment purposes.
- Ensure that travelers are aware of their responsibility to reduce per diem when meals are provided at the conference.
- Ensure that reporting of costs for all non-Federal facility events and conferences are submitted by Component Heads no later than 45 days following the close of each fiscal quarter.

In addition, the Attorney General is required to submit a report of conferences held by the Department to the inspector general. The report is submitted on a quarterly basis. The Office of the Inspector General recently initiated an audit of the Department's fiscal year 2008 and 2009 Conference Reports.

Question. American families are tightening their belts in this tough economy. What are other ways that the Department of Justice can tighten its belt and clean up waste, fraud and abuse?

Answer. The Attorney General, in June 2009, issued a call for ideas to reduce Department costs and improve efficiency, and operations. Sixteen savings and efficiency initiatives were identified, 12 initiatives for immediate implementation and 4 initiatives that required additional review and are in the process of being phased in over time. The 16 initiatives address a range of efficiencies such as contract consolidation, leveraging purchasing power, reduction of travel, and centralizing IT functions. The identified initiatives resulted in saving \$4.7 million in fiscal year 2009. Through the third quarter of fiscal year 2010, 13 initiatives have been implemented and the Department recorded a savings of approximately \$20.5 million for a total to-date of \$25.2 million (for fiscal year 2009 and fiscal year 2010 combined), and we are on track to meet our fiscal year 2010 savings targets. Most importantly, these savings ideas have given us a basis for implementing a broader, more formal savings program across the Department.

In July 2010 the Attorney General's Advisory Council for Savings and Efficiencies (SAVE Council) was created. The SAVE Council will institutionalize the Department's early savings efforts and pave the way for the development of future on-going initiatives that will be incorporated into departmental budgets and strategic plans.

The SAVE Council will be responsible for developing and reviewing Department-wide savings and efficiency initiatives and monitoring component progress to ensure positive results for cost savings, cost avoidance and efficiencies. The goals of the SAVE Council are to achieve real and sustainable Justice-wide savings and efficiencies.

PRISONS—THOMSON PRISON FACILITY

Question. The President's fiscal year 2011 budget request for the Federal Prison System includes \$170 million for the BOP to acquire and renovate the Thomson Correctional Center in Illinois. An additional \$67 million is requested for activation costs to get the facility up and running. I have visited BOP facilities and I know firsthand the terrible crowding situation in U.S. prisons.

I appreciate and support our Federal investigators and prosecutors who are so very successful. However, the end result is that the U.S. Federal prison inmate population continues to grow exponentially. In fact, growth in that population has far outpaced growth in prison capacity and reached grave proportions.

What are your plans for the immediate future—to relieve dangerous overcrowding now—and in fiscal year 2011 and beyond?

Answer. The fiscal year 2010 appropriation provided funds for the BOP to begin activating two medium security institutions, Federal Correctional Institution (FCI) Mendota and FCI McDowell, which will expand rated capacity by 2,432 beds. The fiscal year 2011 President's budget requests new resources to acquire, renovate and begin activating the Thomson facility (1,600 high security cells) and begin activating FCI Berlin (1,280 beds).

I also convened a Sentencing and Corrections Working Group comprised of multiple bureaus and offices to identify alternatives to incarceration and reduce recidivism. The working group recommendations are being discussed within the Department. I look forward to sharing these ideas with Members of Congress and working together to reduce crowding over rated capacity in the Federal Prison System.

Question. How will purchasing the Thomson facility address BOP crowding?

Answer. The number of administrative maximum (ADX or "super max") beds available in the Federal prison system has not increased since ADX Florence was activated in 1994. Acquisition of the Thomson facility, which is significantly larger than ADX Florence, will expand BOP's capacity by up to 1,600 high security cells. The acquisition will allow BOP to confine ADX and Special Management Unit (SMU) inmates at a lower cost and within a shorter timeframe than building a new facility. High security facilities are currently 53 percent crowded over rated capacity. The Thomson facility is projected to reduce high security crowding to 46 percent over rated capacity. Without this acquisition, crowding in high security facilities is projected to rise to 57 percent.

Question. What role—if any—will the Defense Department and Guantanamo detainees have if the BOP acquires and activates this high security facility?

Answer. The fiscal year 2011 President's budget includes \$170 million for the BOP to acquire and modify the Thompson Correctional Center (Thomson, Illinois) for high security Federal prison use. The priority is to reduce crowding over rated capacity in BOP facilities by acquiring and renovating the Thomson facility, independent of the Defense Department's (DOD) interests or goals. Thomson expands BOP's capacity by 1,600 high security cells and would reduce crowding over rated capacity in high security facilities from 53 percent (as of August 12, 2010) to 46 percent. BOP will be responsible for all inmates designated to the Bureau.

Acquisition and activation of the Thomson facility will reduce the BOP's shortage of high security, maximum custody cell space. If it is determined that a portion of the facility is required for detainee management purposes, then the BOP would operate the Thomson facility as a high-security administrative maximum prison with Federal inmates and make a portion available to the Department of Defense (DOD) to house a limited number of detainees. DOD would also be solely responsible for the detainees housed in its separate portion of the facility and DOD would be responsible for any additional security upgrades to the institution that it deemed necessary. However, the facility would be owned by the BOP, and the Department would intend to pay the acquisition costs.

PRISONS—OVERCROWDING

Question. I understand that you would intend to house at Thomson general population high security inmates, some supermax inmates, and inmates designated for special management units. I am also concerned about the current crowding rate at high security institutions. By the end of 2011, it is expected there will be 228,000 inmates incarcerated in BOP institutions nationwide.

What is the current crowding rate in Federal prisons?

Answer. As of August, 12, 2010, system-wide crowding over rated capacity was 37 percent in facilities operated by BOP. By security level, BOP facilities are crowded over rated capacity by 53 percent at the high security level, 46 percent at the medium security level, and 37 percent at the low security level.

Question. What does it mean for staff and inmate safety?

Answer. As of August 12, 2010, crowding in BOP high security institutions was 53 percent over rated capacity. High security institutions confine the most violent offenders and crowded conditions increase safety and security risks for staff, inmates, and the community. If the BOP acquires the Thomson facility and begins the activation process during fiscal year 2011, the crowding rate for high security institutions is projected to decrease to 46 percent over rated capacity. Without Thomson or a facility of similar capacity, crowding in BOP high security institutions is projected to increase to 57 percent.

Question. Can you help the subcommittee to understand the impact that would be made on this problem by having the additional bed space at Thomson or elsewhere?

Answer. The number of administrative maximum (ADX or "super max") beds available in the Federal prison system has not increased since ADX Florence was activated in 1994. Acquisition of the Thomson facility, which is significantly larger than ADX Florence, will expand the BOP's capacity by up to 1,600 high security cells. The acquisition will allow BOP to confine ADX and Special Management Unit (SMU) inmates at a lower cost and within a shorter timeframe than building a new facility. High security facilities are currently 53 percent crowded over rated capacity. The Thomson facility is projected to reduce high security crowding to 46 percent over rated capacity. Without this acquisition, crowding in high security facilities is projected to rise to 57 percent.

PRISONS—UNDERSTAFFING

Question. The administration and the Department continued efforts to address the operating needs of the Federal prison system. The fiscal year 2011 President's budget's request resources for the Bureau of Prisons (BOP) to fill 1,200 vacant base positions, addressing BOP staffing needs. Increasing the number of staff in Federal prisons will improve the inmate to staff ratio, which will result in better supervision, safety, and programming of the inmates. Further, the fiscal year 2011 President's budget also requests an additional 1,316 new positions (including 652 correctional officers). For context, during fiscal year 2009, BOP achieved a net increase of 775 staff across the agency. The fiscal year 2010 operating plan will allow BOP to increase the total number of staff on-board this year by about 925, including staffing for new institutions.

The President's fiscal year 2011 request for BOP provides funding to hire an additional 1,200 correctional staff, including 652 correctional officers, in BOP facilities. Does this increase address the shortfall in staffing?

Answer. The President's budget request contains half year funding for an additional 1,200 correctional workers at existing institutions. Yes, these positions are meant to increase staffing in the BOP facilities.

Question. Understaffing of prisons has put prison guards and inmates at great risk and the Bureau of Prisons needs to hire additional prison guards. The number of Federal correctional officers who work in BOP prisons, however, is failing to keep pace with this tremendous growth in the prison inmate population.

The BOP system is currently staffed at an 86.6 percent level, as contrasted with the 95 percent staffing levels in the mid-1990s. BOP believes to be the minimum staffing level for maintaining safety and security should not be less than 90 percent. The current BOP inmate-to-staff ratio is 5 inmates to 1 staff member, versus the 1997 inmate-to-staff ratio of 3.6 to 1.

In the last year, there have been numerous assaults on prison guards, including an incident at a BOP facility when an inmate stabbed an officer 7 times. What steps are you taking to protect officers in BOP facilities?

Answer. BOP has taken a number of steps to improve security at BOP facilities, including: (1) increased staffing on evenings and weekends; (2) enhanced emergency response procedures and training of all staff to ensure more rapid responses to emergencies; (3) quicker access to less-lethal munitions; and (4) improved internal controls for inmate movement.

High security institutions were authorized two additional staff for evening watch and day watch shifts on weekends and Federal holidays at penitentiaries. The staff members assigned to these posts function as rovers and provide additional assist-

ance to housing unit staff. Therefore, two additional evening positions were incorporated into the roster as well as two positions on the weekends and holidays.

Question. The Department of Justice must award billions of dollars in State and local law enforcement grants each year. This year, we expect it to administer \$3.5 billion in grants alone. We must make sure the Office of Justice Programs, the COPS Office, and the Office on Violence Against Women have sufficient resources to get grants out the door and monitor how those funds are spent.

Given the dramatic increase in grant applications and funding available for State and local law enforcement activities in recent years, what steps has the Justice Department taken to improve accountability of taxpayer dollars when processing and awarding grants?

Answer. The Department is committed to improving the grant management process. Each of the Department's grant-making components began implementing the OIG's recommendations with their fiscal year 2009 and Recovery Act grants. As the inspector general noted in his November 13, 2009 report of the Department's Top Management and Performance Challenges, "[t]he Department has taken positive steps," and "is demonstrating a commitment to improving the grant management process."

Fairness, transparency, and accountability in the review, selection and administration of the OJP grant programs are among the Department's highest priorities. OJP is committed to ensuring that grant award decisions are transparent and that it is accountable for effective grant management.

Prior to making new grant awards, OJP considers whether grantees have appropriately managed past grant award funding. OJP's Office of Audit, Assessment, and Management (OAAM) administers a DOJ-wide high-risk grantee program, working collaboratively with OJP bureaus and program offices, the Office on Violence Against Women (OVW), and the Community Oriented Policing Services (COPS). Prior to making new grant awards to high-risk grantees, OJP determines whether additional special conditions and oversight may be needed based on the grantees' designated level of risk, including whether the grantee used the funds appropriately in the past.

OJP has taken several actions to establish uniform peer review policies and procedures, which apply across all OJP program offices and bureaus. In July 2008, OJP issued peer review policies providing for a sound and consistent methodology for scoring applications. OJP also created a common peer review form for all program offices. These policies were implemented to ensure that peer reviews are rigorous, cost-effective, and transparent across all OJP program offices and that funding decisions are clearly documented and justified. These policies also ensure that peer review panels include subject matter experts.

Also in 2008, OJP implemented a policy issued by the Associate Attorney General requiring DOJ grant-making components to maintain documentation to support all discretionary funding recommendations and decisions. On March 10, 2009, the OJP Assistant Attorney General issued a memorandum to all OJP bureaus and program offices, which continues the requirement that all discretionary grant recommendations must include clear explanations of the funding choices made, the reasons for the choices, and the policy considerations on which the decisions were based. The OJP bureaus and offices now maintain records detailing and supporting their grant recommendation decisions.

Beginning in fiscal year 2009, OJP award decisions are posted on the OJP Web site, including the type of award, the recipient, and the award amount.

For its fiscal year 2010 hiring program, the COPS Office conducted a thorough internal review process where applications are scored based on local economic indicators, crime rates and the applicant's local community policing plan—the same factors that were used for grading applications under the Recovery Act. In order to measure and compare the necessary factors, the COPS Office worked in consultation with experts in the fields of policing, criminology, and public finance to develop the appropriate questions. COPS asked applicants to submit information about:

- Reported crimes for the previous calendar year;
- Planned community policing activities;
- Changes in budgets for law enforcement agencies and local governments; and
- Poverty, unemployment and foreclosure rates.

In asking a variety of fiscal health questions, the COPS Office tried to get as complete a view as possible of the fiscal distress being experienced by applicants through objective and verifiable indicators that all agencies, from rural communities to large cities, could accurately report. The grant selection methodology, final rankings and applicant scores were all posted online, a process that the COPS Office will replicate for its future hiring programs.

The COPS Office has an external vetting process as well, including all United States Attorneys' Offices and the Justice Department's Civil Rights Division, Criminal Division, OJP's Office for Civil Rights, and Office of the Inspector General Investigations Division. These components are asked to identify any ongoing investigations or other matters that could make it inappropriate or inadvisable for the COPS Office to make a grant award to a particular agency.

The COPS Office also uses Sex Offender Registration and Notification Act (SORNA) expert peer reviewers to review the Project Narrative and Budget Narrative for its Child Sexual Predator Program. Each application was reviewed and scored three times by three separate peer reviewers. OVW is also committed to ensuring the fair and transparent awarding of grants. One critical component in the OVW grant-making year is the peer review process. Through this process, professionals with expertise in addressing violence against women participate in evaluating grant proposals. OVW conducts peer reviews in accordance with its Peer Review Guidelines. Applicants are scored based on criteria established in program solicitations. Peer review is well documented and ensures consistency and fairness in the process.

OVW's Technical Assistance Program provides OVW grantees and sub-grantees with the expertise and support they need to develop and implement successful State, local, tribal, U.S. territories and campus projects; increase victim safety; and bolster accountability. OVW supports education initiatives, conferences, peer-to-peer consultations, and targeted assistance for OVW grantees to learn from experts and one another about how to overcome obstacles and incorporate promising practices in their efforts to address violence against women. The primary purpose of the OVW Technical Assistance Program is to provide direct assistance to grantees and sub-grantees to enhance the success of local projects they are implementing with VAWA grant funds. OVW conducts on-site monitoring of grantees to ensure that the millions of dollars in OVW awards each year to States, tribes, units of local governments, and nonprofit organizations are being used in accordance with the intended purpose of OVW programs. On-site monitoring allows OVW program specialists to offer guidance regarding grant compliance, gather information on grantees implementing innovative best practices, support implementation of practices that enhance victim safety and promote offender accountability, and identify professionals who can serve as peer reviewers and expert consultants. Also, early on-site monitoring can prevent long-term challenges, including fraud, waste, and abuse.

In an effort to improve accountability and increase efficiency for its award making processes, the Justice Department's grant-making components created a streamlined approach for American Indian and Alaska Native tribal communities to apply for fiscal year 2010 funding opportunities. The Coordinated Tribal Assistance Solicitation (CTAS) will serve as a single solicitation for existing tribal government-specific grant programs administered by OVW, COPS, and OJP. This move comes after consultation with tribal leaders, including sessions at the Department's Tribal Nations Listening Session last year.

Question. Does the Department have the necessary resources, equipment and staff to process applications for programs funded in the fiscal year 2010 Omnibus?

Answer. While the fiscal year 2010 appropriations for OJP's Salaries and Expenses (S&E) account did not provide sufficient funds to support the programs funded in the fiscal year 2010 Omnibus, the Department of Justice subsequently submitted Congressional reprogramming notifications to the Subcommittees on Appropriations for Commerce, Justice, Science, and Related Agencies ("the subcommittees") to address DOJ grant components' critical fiscal year 2010 shortfalls. The Department appreciates the support received from the subcommittees for these reprogramming notifications.

The Omnibus Appropriations Act of 2009 (Public Law 111-8) established a new (S&E) account for OJP, OVW, and the COPS Office. Staff of the subcommittees advised OJP of their understanding that certain costs previously distributed to OJP programs (i.e., as programmatic costs) should now be considered S&E. Because these costs were previously distributed to programs, they were not taken into consideration when the fiscal year 2010 appropriation level for the S&E account was established. The Department submitted a reprogramming notification for \$8.5 million to the subcommittees to address these requirements, and the subcommittees responded on April 29 to the notification, without objection.

In addition, the Department submitted two reprogramming notifications to the subcommittees to address critical contractual services requirements. The subcommittees responded on July 29 to one notification totaling \$14.3 million, without objection. The subcommittees responded on September 21 to the second reprogramming notification totaling \$8.0 million, without objection.

Similarly, for OVW, since the change in methodology occurred after the President's budget had already been submitted, the peer review and previously distributed costs were not taken into consideration in the fiscal year 2010 budget request. Therefore, OVW submitted a \$7.6 million Congressional reprogramming notification to reclassify funds from OVW programs to S&E in order to cover costs that were previously distributed to programs, but that are now considered S&E. It should be noted that \$600,000 of these reprogrammed funds were for a one-time purpose to move OVW offices from its current location to Two Constitution Square. The subcommittees responded on March 3 to this notification, without objection.

In fiscal year 2011 OVW anticipates receiving an additional 40 positions and 25 full-time equivalents (FTE). Additionally, the President's fiscal year 2011 budget requests \$22.7 million for OVW's S&E account, which includes adjustments to base as well as a program increase. These FTEs and funds are critical to OVW's ability to carry out its grant-making function, accomplish administration and congressional priorities and mandates, and ensure sound stewardship of OVW's mandate to improve the Nation's response to domestic violence, sexual assault, dating violence, and stalking—largely through administration of the Violence Against Women Act's grant programs.

OVW and the Department, as a whole, are committed to ensuring the fair and transparent awarding of grants. One critical component in the OVW grant making year is the peer review process. Through this process, professionals with expertise in addressing violence against women participate in evaluating grant proposals. Applicants for OVW grant funds have confidence in the fairness of the selection process largely because of the OVW peer review. In fiscal year 2010 for the first time, however, OVW was not able to use grant program dollars to support peer review of our grant applications. Peer review expenses were moved to OVW's Management & Administration account without a commensurate increase in that account to adequately support peer review. The Office on Violence Against Women submitted a reprogramming of \$7.6 million to Congress on February 24, 2010 for costs which were previously distributed to programs, including peer review, that were not taken into consideration when the fiscal year 2010 appropriation level for the S&E account was established. The subcommittees responded on March 3 to the notification, without objection. Supporting peer review will continue to present a challenge in fiscal year 2011.

The Department's inspector general identified grant management as one of the Department's Top Ten Management Challenges. The inspector general noted the importance of making timely awards as well as the necessity of maintaining proper oversight over grantees to ensure funds are used as intended. The inspector general has stated that, while it is important to efficiently award the billions of dollars in grant funds appropriated by Congress annually, it is equally important to maintain proper oversight over the grantees' use of these funds to ensure accountability and to ensure that funds are effectively used as intended. In addition, although the inspector general noted that the Department is demonstrating a commitment to improving the grant management process, and there have been significant signs of improvement, "considerable work remains before grant management of the billions of dollars awarded annually in Department grants is no longer considered a top Department challenge." We take the inspector general's observation seriously and are working to meet this challenge. Doing so requires funding for additional personnel to carry out critical functions such as programmatic and financial monitoring and grantee outreach and training. This "post award" work is fundamental to preventing fraudulent, wasteful, or inappropriate use of the billions of taxpayers' dollars that the Department awards in grants each fiscal year.

Question. Do you anticipate needing additional resources for grants management and administration, either this year or next?

Answer. In the fiscal year 2011 President's budget request, OJP identified a total requirement of an additional 63 full-time equivalents (FTE) and \$56 million for the S&E account, which includes adjustments to base as well as a program increase. These funds are critical to OJP's ability to carry out its grant-making mission, accomplish administration and congressional priorities and mandates, and ensure sound stewardship of OJP's annual multi-billion grant programs and the \$2.765 billion appropriated pursuant to the Recovery Act.

Similarly, the fiscal year 2011 budget request for the COPS Office includes a total of \$40.3 million for management and administration expenses. The COPS request supports the administrative and oversight costs of the \$690 million in grant program funding requested in the budget, as well as for management and administration of programs appropriated in prior fiscal years, including the \$1 billion COPS Hiring Recovery Program (CHRP) funded by the Recovery Act in 2009. The fiscal year 2011 request is \$2.5 million above the current services level, and includes an

increase in COPS staffing levels of 22 positions and 11 FTEs. With enhanced grant funding, it is vital for COPS to have the staff and the systems in place to handle the thousands of new grant awards to be made as well as continue to efficiently monitor, maintain and close grants awarded in previous fiscal years. Additional resources and staff in fiscal year 2011 and fiscal year 2012 will further promote transparency and accountability for both the COPS Office and COPS grantees and will assist to ensure the worthwhile investment of taxpayer dollars.

In fiscal year 2011 OVW anticipates receiving an additional 40 positions and 25 full-time equivalents (FTE). Additionally, the President's fiscal year 2011 budget requests \$22.7 million for OVW's S&E account, which includes adjustments to base as well as a program increase. These FTEs and funds are critical to OVW's ability to carry out its grant-making function, accomplish administration and congressional priorities and mandates, and ensure sound stewardship of OVW's mandate to improve the Nation's response to domestic violence, sexual assault, dating violence, and stalking—largely through administration of the Violence Against Women Act's grant programs.

As noted above, both OVW and the Department as a whole are committed to ensuring the fair and transparent awarding of grants. One critical component in the OVW grant-making year is the peer review process. Through this process, professionals with expertise in addressing violence against women participate in evaluating grant proposals. Applicants for OVW grant funds have confidence in the fairness of the selection process largely because of the OVW peer review. In fiscal year 2010 for the first time, however, OVW was not able to use grant program dollars to support peer review of our grant applications. Peer review expenses were moved to OVW's Management & Administration account without a commensurate increase in that account to adequately support peer review. OVW did receive Congressional approval to reprogram fiscal year 2010 grant funds to OVW's Management & Administration account to support peer review. Supporting peer review will continue to present a challenge in fiscal year 2011.

The Department's inspector general identified grant management as one of the Department's Top Ten Management Challenges. The inspector general noted the importance of making timely awards as well as the necessity of maintaining proper oversight over grantees to ensure funds are used as intended. The inspector general has stated that, while it is important to efficiently award the billions of dollars in grant funds appropriated by Congress annually, it is equally important to maintain proper oversight over the grantees' use of these funds to ensure accountability and to ensure that funds are effectively used as intended. In addition, although the inspector general noted that the Department is demonstrating a commitment to improving the grant management process, and there have been significant signs of improvement, "considerable work remains before grant management of the billions of dollars awarded annually in Department grants is not longer considered a top Department challenge." We take the inspector general's observation seriously and are working to meet this challenge. Doing so requires funding for additional personnel to carry out critical functions such as programmatic and financial monitoring and grantee outreach and training. This "post award" work is fundamental to preventing fraudulent, wasteful, or inappropriate use of the billions of taxpayers' dollars that the Department awards in grants each fiscal year.

Question. What assurances do the American people have that DOJ is awarding grants without waste, fraud or abuse?

Answer. The Department is committed to performing quality and complete grant monitoring across OJP to detect and prevent waste, fraud, or abuse. OJP has established common procedures and guidance and provides training and effective tools to its grants managers to properly conduct and document desk reviews and on-site monitoring, formally communicate with grantees through the Grants Management System (GMS), and track the resolution of open issues.

OJP's Office of Audit, Assessment, and Management (OAAM) is dedicated to the oversight of OJP and COPS Office monitoring activities and the assessment of grant program performance. OAAM reviews the procedures and internal controls of OJP's grant management processes, provides recommendations for improvement, and monitors actions to ensure improvements are implemented. OAAM conducts program assessments of OJP and COPS Office grants and grant programs to measure performance against intended outcomes and assess compliance with applicable regulations and statutes. Assessment reports will include targeted recommendations for making program improvements and enhancing grant oversight practices, as well as program accomplishments and best practices.

OJP has embraced and implemented many of the recommendations from the Department's Office of the Inspector General's February 2009 report entitled "Improving the Grant Management Process." OJP has implemented the inspector general's

recommendations relating to grant program development and its grant application and award processes. OJP has an action plan in place to implement the OIG's recommendations relating to grant monitoring, program performance, and training to grantees and staff. At every possible opportunity, OJP is implementing OJP-wide corrective actions to respond to the inspector general's grant-related and program-specific audit recommendations.

In 2009, over 500 OJP staff attended OIG-led training on detecting and preventing fraud. OJP works with OIG staff to coordinate grant fraud training at OJP sponsored conferences and meetings. Additionally, a grant fraud component has been included in the Office of the Chief Financial Officers' Regional Financial Management training seminars.

Both OJP and COPS worked closely with the OIG throughout the Recovery Act grant pre-award phase and have taken proactive measures to reduce the risk of waste, fraud, and abuse as it relates specifically to Recovery Act funds. The COPS Office, working in conjunction with the OIG, has uploaded Post-Award Grant Record-Keeping Tips to ensure grantees are maintaining proper documentation for the CHRP grants and COPS intends to replicate this for its future grant-making processes.

In addition to audits by the Office of the Inspector General, COPS has a comprehensive grant monitoring process which provides serious consequences for misuse of grant funds. This is particularly important for Recovery Act funds. COPS barred 26 agencies across the country from receiving CHRP funding because of previous violations. Eighteen of these agencies were audited by the Office of Inspector General. Each agency went through an audit resolution process, all had various compliance violations, and most were found to owe money to the Government. When these agencies demonstrated that they could not pay back the funds, COPS and the OIG resolved these audits by barring these agencies from receiving future COPS funding for a set period of time based on the amount of funding owed or the type of violation. The typical bar period is a maximum of 3 years.

In addition to the sanctions imposed by OIG, agencies found to be in violation of the COPS retention requirement may be barred from receiving future grant awards. Those agencies that did not qualify for a retention exemption based on severe fiscal distress were barred for 3 years in accordance with the COPS retention policy. Eight of the agencies had violations that were identified after going through COPS comprehensive grant monitoring processes.

Grant monitoring and evaluation are also critical aspects of all COPS grant programs. The COPS Office has a progress reporting system that is being used to document grantees' use of funds. Recipients of CHRP grant awards are required to use grant funds for the specific hiring categories awarded and maintain documentation pertinent to the officers hired/rehired with CHRP grant funding.

The Recovery Act requires grantees to report their financial and programmatic progress within 10 days after the end of each calendar quarter. The COPS Office requests information from grantees consistent with section 1512 of the Recovery Act, including collecting information on the number of new jobs created and the number of jobs preserved using CHRP funding. The COPS Office is currently updating its grant monitoring strategy for CHRP, and is also working with the OJP's Office of Assessment, Audit, and Management to ensure implementation of a consistent grants monitoring approach across the Department.

In addition, the COPS Office will use the following measures to track the program's progress against achievement of Recovery Act and program-specific objectives. The COPS Director will be accountable for each of these measures.

—*Number of New Jobs Created (Number of Newly Hired Sworn Officer Positions).*—A newly hired sworn officer is an additional career law enforcement officer hired using Recovery Act funds. This officer is over and above the number of officer positions that a grantee would otherwise fund or redeploy in the absence of the CHRP grant award. This outcome will be measured quarterly.

—*Number of Jobs Preserved (Number of Rehired Sworn Officer Positions).*—A rehired sworn officer is either an already laid-off career law enforcement officer that is being rehired with Recovery Act funds or an officer that is scheduled to be laid off, but will not be, due to a CHRP grant award. This outcome will be measured quarterly.

—*Average Community Policing Capacity Implementation Rating (0 to 100) of CHRP Grantees.*—One of the key measures COPS Office management will use to evaluate the program is the average community policing capacity implementation rating of CHRP grantees. COPS management has asked an independent research firm to conduct a survey to determine how COPS grants have increased grantee agencies' capacity to implement community policing strategies. Each survey will produce a rating, which will be on a scale of 0 to 100 points,

with 100 being the most favorable rating. Grantees will be asked to answer questions related to how CHRP grants have increased their agency's capacity to implement community policing strategies with regard to the three primary elements of community policing: (1) developing community/law enforcement partnerships; (2) problem-solving; and (3) organizational change. This outcome will be measured on an annual basis.

OVW has identified detailed performance measures for each of its grant programs. These measures are included in OVW grant program solicitations and are collected through grantee progress reports. All OVW grant program solicitations include Government Performance and Results Act (GPRA) measures. Program solicitations also include a link for applicants to access samples of the progress report forms that grantees must complete during the life of the grant. These semi-annual progress reports (for OVW discretionary grantees) and annual progress reports (for OVW formula grantees and subgrantees) collect data regarding program measures for each of OVW grant programs. Although there are some similarities across progress report forms, OVW spends a significant amount of time developing these forms based on the goals and objectives of the individual grant programs.

The Department is committed to performing quality and complete grant monitoring across OVW to detect and prevent waste, fraud, or abuse. OVW has established common procedures and guidance and provides training and effective tools to its grants managers to properly conduct and document desk reviews and on-site monitoring, formally communicate with grantees through the Grants Management System (GMS), and track the resolution of open issues.

The objectives of OVW grant monitoring are to ensure that the grantee complies with the programmatic, administrative, and financial requirements of relevant statutes, regulations, policies, and guidelines and/or special conditions applied to a specific award; to verify that programs/projects initiated by grantees are carried out in a manner consistent with the grantee's approved project goals and objectives; to promote responsible stewardship of awarded funds by reporting fraud, waste, and abuse, as well as suspected violations, serious irregularities, and sensitive issues; and to provide guidance or technical assistance to grantees on OVW policies and procedures, grant program requirements, general Federal regulations, and basic programmatic, administrative, and financial reporting requirements.

OVW imposes a special condition on all awards requiring grantees to: ". . . promptly refer to the DOJ OIG any credible evidence that a principal, employee, agent, contractor, subgrantee, subcontractor, or other person has either (1) submitted a false claim for grant funds under the False Claims Act; or (2) committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving grant funds." This condition also applies to any subrecipients.

OIG staff makes presentations regarding fraud awareness, waste, and abuse at all of OVW's new grantee orientations, which are mandatory for new grantees to attend. OVW also has similar OIG presentations at its annual STOP Administrators meetings, which are attended by officials from the 56 States and territories that administer funding under the STOP Formula Program. OVW will include OIG presentations at all conferences directed at grantees and will require that current grantees attend OIG grantee orientations on an annual basis or when there is a key staff change on their grant. OVW is also currently drafting a Grant Program Development Manual to provide guidance to OVW staff on developing new grant programs. Several sections are in final draft, and we hope to have the entire manual completed in fiscal year 2011.

QUESTIONS SUBMITTED BY SENATOR PATRICK J. LEAHY

RISS PROGRAM FUNDING

Question. I believe that information sharing among law enforcement agencies plays a critical role in the fight against crime and terrorism. I have long supported the Regional Information Sharing System (RISS) program, which enhances the ability of local, State, Federal, and tribal criminal justice agencies to keep our communities safe by improving law enforcement technology and information sharing. The Department's fiscal year 2011 budget requests \$9 million for the RISS program, a reduction of \$36 million from last year's enacted level. I am concerned that this severe reduction could result in the dismantling of the RISS program and hamper our ability to share law enforcement information and technology across jurisdictions.

Information and intelligence sharing are critical to fighting increasingly expansive criminal networks, and RISS has proven to be successful in identifying and targeting criminal conspiracies and terrorist cells.

Do you agree that information sharing among law enforcement agencies is critical for the safety and security of our country?

Answer. Without question, the Department of Justice agrees that information sharing among Federal, State, local and tribal law enforcement is critical for national security and public safety. It is for this reason that the Department joined with more than 30 national organizations representing State, local, and tribal law enforcement; the Department of Homeland Security; and the FBI in signing the National Criminal Intelligence Sharing Plan (NCISP). The NCISP still serves as a blueprint document, along with the National Information Sharing Strategy issued by the White House, in protecting the safety and security of America.

The Department promotes greater sharing of national security and criminal justice information among Federal, State, and local law enforcement partners through a number of programs, including the FBI's Law Enforcement Online, which provides access to the National Data Exchange system. Additionally, the Department has demonstrated its support for information sharing by providing over \$335 million to the Regional Information Sharing System (RISS) Program since fiscal year 2000.

Question. Why did the Department of Justice request only \$9 million for the RISS program in fiscal year 2011?

Answer. RISS provides a very important resource for sharing law enforcement information through a secure network by Federal, State, local, and tribal law enforcement agencies, while maintaining local control over the data to be shared. Since 2000, the Department of Justice has provided more than \$335 million for the RISS Program, in addition to millions in discretionary funding through various competitive and non-competitive programs.

While the Department proposed a reduction to dedicated funding for the RISS program in the fiscal year 2011 budget, it remains committed to ensuring that the vital functions of law enforcement information-sharing continue without interruption. We will continue to work with our partners to maintain and expand current capabilities through discretionary funding requested in the fiscal year 2011 budget by considering options such as:

- Engaging RISS through the Byrne Justice Assistance Grants (JAG) Program or Byrne Competitive Program to provide competitive grant-funded training and technical assistance to law enforcement around the United States.
- Seeking support for State-maintained RISS Centers through the Byrne JAG Program.
- Re-evaluating user fees charged to member agencies to determine if such fees, with moderate increases or restructuring, can better support RISS.

POST CONVICTION DNA TESTING

Question. One of the key programs created in the Innocence Protection Act was the Kirk Bloodsworth Post Conviction DNA Testing Grant Program. Kirk Bloodsworth was a young man just out of the Marines when he was arrested, convicted, and sentenced to death for a heinous crime that he did not commit. He was the first person in the United States to be exonerated from a death row crime through the use of DNA evidence.

This program provides grants to States for testing in cases like Kirk's where someone has been convicted, but where significant DNA evidence was not tested. The last administration resisted implementing the program for several years, but we worked hard to see the program put into place. This year however the Department's budget did not include a request for the Kirk Bloodsworth grant program. Can you explain why the Department did not specifically request any funds for post conviction DNA testing?

Answer. In fiscal year 2008, the Office of Justice Programs (OJP) awarded \$7.8 million under the Post-Conviction DNA Testing Assistance program, and in fiscal year 2009, awarded an additional \$9.8 million.

The program has been very successful and based on initial reports from the fiscal year 2009 grantees, significant progress has been made. However, in response to the fiscal year 2010 solicitation, the Department's National Institute of Justice (NIJ) received only four applications requesting a total of \$1.6 million. Of these four applications, only one was a new applicant. The remainder was current grantees requesting continuation funds. Given this demand history in fiscal year 2010, the Department did not request funding for this initiative in fiscal year 2011. However, funds within the fiscal year 2011 request for the DNA Initiative, which includes "\$150 million for DNA-related and forensic programs and activities (including related research

and development, training and education, and technical assistance),” can be made available to meet the needs in this area.

MENTALLY ILL OFFENDERS

Question. The Mentally Ill Offender Treatment and Crime Reduction Act (MIOTCRA) was signed into law in 2004 and authorizes a \$50 million grant program to be administered by the Department of Justice. The bill received unanimous, bipartisan support in both chambers of Congress and is supported by a broad spectrum of leaders representing the diverse fields of law enforcement, corrections, the courts and mental health. The Mentally Ill Offender program provides assistance to States and communities to mount new programs or expand existing programs that can both reduce costs and help these offenders return to productive lives.

The MIOTCRA program received \$12 million in fiscal year 2010 and is in high demand. Of the 250 grant applications submitted in 2006, only 11 percent were funded, awarding only 28 jurisdictions in 19 States with additional resources to design and implement or improve upon their mental health programs. Despite this need, the Department’s fiscal year 2011 budget request did not include funds for the MIOTCRA program.

I appreciate the Department’s request for increased funding of Drug, Mental Health and Problem-Solving Courts, but unfortunately that funding would not encompass many of the key elements of the Justice and Mental Health Collaboration Program, which was established by MIOTCRA. Court-based grantees constitute only 40 percent of the current MIOTCRA grantees, and MIOTCRA program dollars also go toward many other types of initiatives, including mental health and substance abuse treatment for incarcerated mentally ill offenders, community reentry services, and cross-training of criminal justice, law enforcement and mental health personnel. How does the Department plan to address this gap in services?

Answer. The Department agrees that the Mentally Ill Offender Treatment Crime Reduction Act (MIOTCRA) Program has produced very promising results and is committed to furthering these efforts to promote the use of evidence-based and innovative strategies to address mental health issues. It is important to note, however, that the proposed Problem-Solving Courts Program funding, while required to be awarded to a court or court agency initially, could be sub-awarded to other types of agencies in the community to address mental health needs in order to form a more effective response to mental health issues. Additionally, OJP has consistently made Byrne JAG funds and Byrne Competitive Program funds available for the MIOTCRA Program, in addition to new resources recently made available to address mental health issues within the justice system, such as Second Chance Act funding.

INTELLECTUAL PROPERTY ENFORCEMENT

Question. Intellectual property is critical to our Nation’s economy. It is the engine that drives our contemporary economy and will fuel our future. Industries that rely on intellectual property protection accounted for roughly one-half of all U.S. exports and represented an estimated 40 percent of U.S. economic growth in 2006, the last year in which our economy grew in all four quarters.

I authored the Prioritizing Resources and Organization for Intellectual Property Act of 2008 (PRO-IP Act) (Public Law 110-403), which authorized programs to strengthen the protection of our intellectual property. I am pleased that the Department’s fiscal year 2011 budget request includes funds for economic, high technology and Internet crime prevention grants, including grants authorized by the PRO-IP Act. I believe there is a critical need for the Federal Government to take a leading role in protecting intellectual property rights in order to prevent billions of dollars in losses due to piracy and mitigate health and safety risks from trade in counterfeit goods. Will you work with Congress to ensure that a significant portion of funds provided for economic, high technology and Internet crime prevention are devoted to intellectual property enforcement?

Answer. Yes, the Department of Justice and the Department of Homeland Security will work with Congress to ensure that an appropriate level of funds is devoted to intellectual property enforcement.

NEW BLACK PANTHER PARTY VOTER INTIMIDATION INVESTIGATION

Question. Some constituents have expressed a continuing interest in the Justice Department’s decisions with regard to its resolution last year of a civil suit against members of the New Black Panther Party for voter intimidation. I know that you have explained the basis of these decisions in the past, but in order to ensure clarity on the subject, please set out why the Department decided to resolve the New Black Panther Party case in the way that it did, how the decision was made, what steps

were taken if any to ensure that the decision was made on the merits and not based on political motivations, and what the results were in the case.

Answer. Please see the Department's response to this question set forth in its letter to Senator Leahy of August 10, 2010. See Attachment 1.

U.S. DEPARTMENT OF JUSTICE,
OFFICE OF LEGISLATIVE AFFAIRS,
Washington, DC 20530, August 10, 2010.

The Honorable PATRICK J. LEAHY,
United States Senate,
Washington, DC 20510.

DEAR MR. CHAIRMAN: This responds to your letter, dated August 2, 2010, regarding *United States v. New Black Panther Party for Self-Defense*, a case arising out of events in Philadelphia, Pennsylvania in 2008, and filed under section 11(b) of the Voting Rights Act, 42 U.S.C. § 1973i(b).

On January 7, 2009, the Department filed a complaint seeking injunctive and declaratory relief under section 11(b) of the Voting Rights Act against four defendants: two individuals who appeared at the Philadelphia polling place on November 4, 2008, Minister King Samir Shabazz and Jerry Jackson; the New Black Panther Party for Self-Defense; and its leader, Malik Zulu Shabazz, who is not alleged to have been present at the Philadelphia polling place. The complaint alleged that the defendants violated section 11(b) because they attempted to engage in, and engaged in, both voter intimidation and intimidation of individuals aiding voters.

None of the defendants responded to the complaint in the case. That did not, however, absolve the Department of its legal and ethical obligations to ensure that any relief sought was consistent with the law and supported by the evidence. The entry of a default judgment is not automatic, and the Pennsylvania Bar Rules impart a clear duty of candor and honesty in any legal proceeding; those duties are heightened in the type of ex parte hearing that occurred in this matter. See Pa. RPC 3.3(d). At the remedial stage, as with the liability stage, the Department remains obliged to ensure that the request for relief is supported by the evidence and the law. In discharging its obligations in that regard, the Department considered not only the allegations in the complaint, but also the evidence collected by the Department both before and after the filing of the complaint.

For the reasons explained below, based on that review, the Department sought and obtained an injunction against defendant Minister King Samir Shabazz, the only individual known to the Department to have brought a nightstick to a Philadelphia polling place in November 2008. Following its review, the Department concluded, however, that the evidence did not warrant seeking an injunction against the other defendants named in the complaint, and dismissed the claims against those defendants.

LEGAL ANALYSIS RELEVANT TO LIABILITY UNDER SECTION 11(B) OF THE VOTING RIGHTS ACT

Section 11(b) of the Voting Rights Act prohibits anyone, whether or not acting under color of law, from intimidating, threatening, or coercing, or attempting to intimidate, threaten, or coerce, any person for voting or attempting to vote or for aiding any person to vote or attempt to vote or for exercising any powers or duties under certain sections of the Voting Rights Act. Section 12(d) of the Voting Rights Act, 42 U.S.C. § 1973j(d), provides for the filing of a civil action by the Attorney General to secure preventive relief for a violation of such statute. In 1968, Congress repealed the criminal penalties for violations of section 11(b) that were part of the original 1965 Voting Rights Act. Public Law 90-284, § 103, 82 Stat. 73, 75 (1968).

There have been very few cases brought under section 11(b). Possible explanations include the limited remedies available under section 11(b) of the Voting Rights Act and the challenging legal standard of proof. As a result, the Department can find records of only three civil actions filed under this provision since its enactment in 1965, prior to the case of *United States v. New Black Panther Party for Self-Defense*. One of these cases settled before trial, and in both of the others, the court ruled that the Department had failed to establish a section 11(b) claim. Those cases are: (1) *United States v. Harvey*, 250 F. Supp. 219 (E.D. La. 1966) (Threats of eviction and other economic penalties against black sharecroppers who had recently registered to vote found not to be form of intimidation, threat or coercion prohibited by section 11(b)); (2) *United States v. North Carolina Republican Party*, Civil Action No. 91-161-CIV-5-F (E.D.N.C.) (section 11(b) claim regarding pre-election mailing resolved by consent decree dated Feb. 27, 1992); and (3) *United States v. Brown*, 494 F. Supp. 2d 440, 477 n. 56 (S.D. Miss. 2007) (Publication by county political

party chairman of list of voters to be challenged if they attempted to vote in party primary election found not to be form of intimidation, threat or coercion prohibited by section 11(b)). Indeed, as demonstrated in the *Brown* case, section 11(b) cases can be extremely difficult to prove. In that case, the most recent Federal district court to reject a section 11(b) claim noted that the United States had “found no case in which plaintiffs have prevailed under this section.” *Id.*

The events that led to the Philadelphia section 11(b) case referenced in your letter occurred at a predominantly African American polling place, on the day of the most recent Federal general election, November 4, 2008. The Department concluded that the evidence collected established that Minister King Samir Shabazz violated section 11(b) by his conduct at the polling place on that election day. This evidence included his display of a nightstick at the polling place during voting hours, an act which supported the allegation of voter intimidation. The Department therefore decided to seek an injunction against defendant Minister King Samir Shabazz. In approving the injunction, the district court found that the United States had alleged that Minister King Samir Shabazz “stood in front of the polling location at 1221 Fairmont Street in Philadelphia, wearing a military style uniform, wielding a nightstick, and making intimidating statements and gestures to various individuals, all in violation of 42 U.S.C. § 1973i(b).” (Order of May 18, 2009, at 1). The court entered judgment “in favor of the United States of America and against Minister King Samir Shabazz, enjoining Minister King Samir Shabazz from displaying a weapon within 100 feet of any open polling location in the city of Philadelphia, or from otherwise violating 42 U.S.C. § 1973i(b).” Judgment (May 18, 2009). The Federal court retains jurisdiction over enforcement of the injunction until 2012.

After reviewing the evidence, the Department concluded that there was insufficient evidence to establish that the New Black Panther Party or Malik Zulu Shabazz, who was not at the polling place when the relevant events occurred, violated section 11(b). Prior to the election, the New Black Panther Party for Self-Defense made statements and posted notice that over 300 members of the New Black Panther Party for Self-Defense would be deployed at polling locations during voting on November 4, 2008, throughout the United States. To the Department’s knowledge, the single polling place in Philadelphia is the only location where an incident occurred. This apparent fact is inconsistent with the notion that the Party or Malik Zulu Shabazz directed a campaign of intimidation. The Department also considered the statement posted by the Party on its Web site regarding the incident. The statement posted on the Party Web site provided: “Specifically, in the case of Philadelphia, the New Black Panther Party wishes to express that the actions of people purported to be members do not represent the official views of the New Black Panther Party and are not connected nor in keeping with our official position as a party. The publicly expressed sentiments and actions of purported members do not speak for either the party’s leadership or its membership.” As of May 2009, the Department had information indicating that this statement was posted prior to the filing of the civil action. A separate statement posted on the Party Web site, dated January 7, 2009 (the same date that the complaint in this case was filed), reported the suspension of the Philadelphia chapter because of these activities.

Absent sufficient proof that the New Black Panther Party or Malik Zulu Shabazz directed or controlled unlawful activities at the polls, or made speeches directed to immediately inciting or producing lawless action on election day, claims against those parties based merely upon their alleged “approval” or “endorsement” of Minister King Samir Shabazz’s activities were, in our view, insufficient to establish legal liability. See *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886, 927 (1982). The Department therefore decided, based on its review of applicable legal precedent and the totality of the evidence, to dismiss the claims against the New Black Panther Party and Malik Zulu Shabazz.

Finally, the Department also concluded that the allegations in the complaint against Jerry Jackson, the unarmed defendant present at the Philadelphia polling place, did not have sufficient evidentiary support. The Department’s determination was based on the totality of the evidence. In reaching this conclusion, the Department placed significant weight on the response of the law enforcement first responder to the Philadelphia polling place on election day. A report of interview of the local police officer who responded to the scene, which is included in the Department’s extensive production to the U.S. Commission on Civil Rights indicates that the officer interviewed Mr. Jackson, confirmed that he in fact was a certified poll watcher, and permitted Jackson to remain at the polling place.

LEGAL ANALYSIS APPLICABLE TO THE SCOPE OF THE INJUNCTION UNDER SECTION 11(B)

After the clerk of court filed an administrative entry of default against defendant Minister King Samir Shabazz, the Department was required to file a motion with the court, setting forth its view of the legally appropriate scope of injunctive relief. Based on the facts in the case and the relevant legal precedent, the Department concluded that a nationwide injunction was not legally supportable in the case against Minister King Samir Shabazz. The Supreme Court has emphasized that an injunction must be “no broader than necessary to achieve its desired goals.” *Madsen v. Women’s Health Ctr.*, 512 U.S. 753, 765 (1994). To that end, a reviewing court must pay “close attention to the fit between the objectives of an injunction and the restrictions it imposes on speech” in keeping with the “general rule . . . that injunctive relief should be no more burdensome to the defendant than necessary to provide complete relief to the plaintiffs.” See *ibid.* (citation omitted).

Because injunctive relief is tailored to its objectives, a focus upon the facts alleged by the Department was critical to determining the scope of the injunction that could have been obtained. The Department alleged that Minister King Samir Shabazz is a resident of Philadelphia and is the leader of the Philadelphia chapter of the NBPP. Complaint ¶5. The complaint alleged that on November 4, 2008, Minister King Samir Shabazz brandished a weapon and made racially threatening and insulting remarks while standing in front of the entrance of a polling place in Philadelphia. Complaint ¶¶8–10. The complaint further alleged that on this specific occasion Minister King Samir Shabazz pointed the weapon at individuals, tapped it in his hand and elsewhere, and made menacing and intimidating gestures, statements and movements toward individuals who were present to aid voters. Complaint ¶¶9–10.

The evidence was insufficient to show that Minister King Samir Shabazz had engaged or planned to engage in a nationwide pattern of the kind of conduct he exhibited at the polling place in Philadelphia, or that he was inclined to disregard the injunction. Cf. *United States v. Dinwiddie*, 76 F.3d 913, 929 (8th Cir. 1996) (finding the scope of a nationwide injunction in a Freedom of Access to Clinic Entrance Act (FACE) case appropriate because of a protestor’s “consistent, repetitious, and flagrant unwillingness or inability to comply” with the proscriptions of the law, his “serious intent to do bodily harm to the providers and recipients of reproductive health services,” and the possibility, if the injunction were geographically limited, that he “could easily frustrate the purpose and spirit of the permanent injunction simply by stepping over State lines and engaging in similar activity at another reproductive health facility” (quotation and citation omitted)). Absent such facts, in other FACE cases, the geographic scope of injunctions the Department has obtained has been quite narrow, generally limited to a certain number of feet from a given clinic, see *United States v. Scott*, No. 3:95cv1216, 1998 U.S. Dist. LEXIS 10420 (D. Conn. June 25, 1998), or simply preventing protestors from impeding ingress and egress to a particular clinic. See *United States v. Burke*, 15 F. Supp. 2d 1090 (D. Kan. 1998); *United States v. Brock*, 2 F. Supp. 2d 1172 (E.D. Wis. 1998).

Given the facts presented, the injunction sought by the Department prohibited Minister King Samir Shabazz from displaying a weapon within 100 feet of any open polling location on any election day in the city of Philadelphia, or from otherwise violating 42 U.S.C. 1973i(b), (see Order of May 18, 2009, at 4). The Department considers this injunction tailored appropriately to the scope of the violation and the requirements of the First Amendment, and will fully enforce the injunction’s terms. Section 11(b) does not authorize criminal penalties, monetary damages, or other kinds of relief.

In sum, we believe that the decision of the then Acting Assistant Attorney General for Civil Rights to proceed with the claims against Minister King Samir Shabazz and to dismiss the claims against the three other defendants was based on the merits and reflects the kind of good faith, case-based assessment of the strengths and weaknesses of claims that the Department makes every day.

We hope this information is helpful. Please do not hesitate to contact this office if we may provide additional assistance regarding this, or any other matter.

Sincerely,

RONALD WEICH,
Assistant Attorney General.

QUESTIONS SUBMITTED BY SENATOR DIANNE FEINSTEIN

MAY 2010 TIMES SQUARE PLOT

Question. I believe the HIG should be used where we can obtain the most valuable intelligence possible, but I also understand that the HIG cannot be everywhere and that intelligence officials from CIA and other agencies make up the Joint Terrorism Task Force (JTTF) in each field office.

Was the HIG deployed in this case? If not, what does the HIG have that the Joint Terrorism Task Force personnel could not provide as far as expertise for interrogations?

Answer. The High-Value Detainee Interrogation Group (HIG) deployed in the Shahzad case to assist the New York Joint Terrorism Task Force (JTTF) with interrogators, subject matter experts, and reports officers. During the deployment, the HIG brought counterterrorism subject matter experts from FBI, the Central Intelligence Agency, the National Geospatial-Intelligence Agency, the Department of Defense, the National Counterterrorism Center, and others to observe the interrogation, and to provide advice, counsel, and intelligence requirements to the interrogators. In addition, HIG reports officers ensured that the results of the interrogation were disseminated to the Intelligence Community (IC) within hours after each session. This detailed level of expertise in areas as diverse as geospatial mapping, behavioral analysis, and foreign terrorist network associations does not typically reside in the JTTF. The interagency composition of the HIG, and its full-time focus on coordinating interrogation resources across the IC, enables the HIG to rapidly identify and deploy the right resources and IC counterterrorism assets to augment a JTTF as needed.

Question. Does the New York JTTF have the lead for this case? Please describe what kind of experience the New York JTTF has interrogating terrorist suspects.

Answer. Yes, the New York JTTF has the lead for this case. Currently, the New York JTTF has more than 400 personnel from 50 different law enforcement, public safety, intelligence, military, and critical infrastructure agencies. The New York JTTF has handled some of the most high-profile, high-threat terrorism investigations, including the first bombing of the World Trade Center in 1993, the bombing of the USS *Cole* in 2000, the second attack on the World Trade Center in 2001, and the most recent attempted bombing in New York's Times Square.

SHAHZAD ARREST ALTERNATIVES

Question. It is my understanding that Mr. Shahzad is cooperating and has waived his Miranda warnings as well as his right to be presented before a magistrate judge.

Please tell us what other options the FBI had other than arresting Shahzad and reading him his rights. As an American citizen could he be detained without formal charges against him? For how long?

Answer. Regardless of nationality, any person arrested in the United States is entitled to certain Constitutional rights. There are a number of laws and rules that govern what must occur when a suspect is arrested. First and foremost, the U.S. Supreme Court has held that the Fourth Amendment requires that the facts justifying the arrest be presented to a court "promptly." Moreover, Rule 5 of the Federal Rules of Criminal Procedure requires that the defendant be taken before a judicial officer "without unnecessary delay," at which time the court will advise the defendant of his rights. With the exception of questions designed to ensure the immediate public safety and the safety of the arresting officers (the so-called *Quarles* exception), Miranda warnings are generally required in order for responses to questions posed while the defendant is in custody to be admissible in court against the defendant.

The FBI has no legal authority to proceed against a terrorism suspect who is arrested within the United States in any venue other than an Article III court. There have been only two instances since 2001 in which civilians arrested within the United States were placed in military custody for some period of time. In both instances, the individuals were initially taken into custody and detained by Federal law enforcement officials. The transfers from law enforcement to military custody occurred by order of the President, and the civilians were later returned to Article III courts for disposition of their cases.

Question. Please explain how reading someone their Miranda rights can facilitate their cooperation in a criminal case. Is reading a suspect their rights sometimes part of a plan to get them to waive their rights to allow more intelligence gathering than not reading someone their Miranda rights would produce?

Answer. Many criminal defendants, including those arrested for crimes related to terrorism, waive their Miranda rights and talk voluntarily to investigators. In many

other cases, defendants decide to cooperate after consulting with counsel. Indeed, where defense attorneys conclude that the Government has strong evidence to support a conviction and lengthy sentence, they often encourage their clients to cooperate. Miranda warnings are far less determinative of the prospects for obtaining long-term cooperation in the criminal justice system than other factors, such as the strength of the Government's case against a defendant, the skill and expertise of the interrogator, and the interrogator's background knowledge about the target and the subject matter.

FBI SURVEILLANCE RESOURCES

Question. Chairwoman Mikulski and I are very intent on getting the FBI the surveillance resources it needs. I believe we could use more FBI teams—especially in our major cities.

Is it true that the FBI surveillance team lost Shahzad?

Answer. In May 2010, Faisal Shahzad attempted to detonate a car bomb in Times Square. Attempts by the FBI New Haven Division's armed Mobile Surveillance Team to keep him under surveillance failed when he slipped away and eluded surveillance until his capture aboard a commercial flight preparing to depart the country. Bad weather precluded the use of aviation to track Shahzad. Had a surveillance aircraft been available, it is likely that Shahzad would not have been able to break contact with the squad covering him.

Question. I think we should spend more money to give the FBI the resources it needs, so how much more money can you spend in fiscal year 2011 to hire and train more FBI surveillance teams?

Answer. The FBI's fiscal year 2011 Request to Congress includes an additional 30 Mobile Surveillance Team—Armed (MST-A), positions (18 agents) and \$6,100,000.¹ The fiscal year 2011 cost per new Mobile Surveillance Team (MST)² position is \$174,000; the cost per new MST-A position is \$217,000.

The MST-A program does not directly hire new agents; MST-A Agents work FBI investigative cases for 11 years, on average, prior to their assignment to a MST-A squad. Upon assignment to a MST-A squad, the MST-A program provides surveillance training, photography training, and Tactical Emergency Vehicle Operations Course (TEVOC) training, which totals 3 weeks. The MST-A program can train 63 agents per year, which equates to 7 MST-A teams.

Question. How long will it take to get more teams hired and trained to deploy?

Answer. The FBI has a large applicant pool for the MST positions, which traditionally can be hired and trained within the fiscal year. The MST-A positions, which are filled by experienced FBI Agents, are also traditionally filled and trained within the fiscal year.

DEPARTMENT OF JUSTICE FUNDING

Border Law Enforcement Grants

Question. Through the American Recovery and Reinvestment Act in 2009, the Chula Vista Police Department, on behalf of the local HIDTA, the California Border Alliance Group, was awarded \$2.86 million from the Justice Department's Bureau of Justice Assistance to support existing HIDTA-supported task forces with local representation from five agencies along the southern border.

With only 6 months into the grant project, the task force thwarted seven kidnappings and two murders in the United States and prevented two murders in Mexico.

As the United States continues to combat narcotics trafficking and related violence, this grant permitted more local participation in Federal task forces ultimately allowing for better intelligence gathering.

This grant model has proven successful in San Diego. Have other grant recipients experienced similar success? If so, do you plan to ask for a continuation of this grant opportunity in the fiscal year 2012 budget?

Answer. The progress you have described in Chula Vista is impressive. While other grantees have reported strong progress in creating and retaining jobs as well as in enhanced criminal enforcement, they are early in the process of implementation and progress will continue to be monitored.

Regarding future budget requests, the President has included in the fiscal year 2011 budget request a program called Smart Policing, which allows local law enforcement agencies such as Chula Vista to apply for funding to implement evidence-based and innovative enforcement efforts, which could include involvement in task

¹ MST-A was formerly known as the Special Operations Group (SOG).

² MST was formerly known as the Special Surveillance Group (SSG).

forces. In addition, the Byrne Justice Assistance Grants (JAG) Program was proposed at \$519 million, and the Byrne Competitive Program was proposed at \$30 million. Each of these programs could fund initiatives such as that implemented in Chula Vista. In addition, we are working closely with the Office of National Drug Control Policy (ONDCP) to coordinate our funding efforts with those under the High Intensity Drug Trafficking Area (HIDTA) Program.

Question. Would it be worthwhile to extend these grants for longer terms to allow better planning and sustainability by law enforcement?

Answer. The Department's Bureau of Justice Assistance (BJA), which administers the Chula Vista grant, takes a proactive stance on this issue. Typically, grantees that submit a 12-month budget are given as much as 18 months to plan and implement the project. Additionally, BJA is flexible with grant extensions, allowing local agencies to expend funding for additional time, when needed and when the law permits, to accommodate planning and sustainability concerns.

EL PASO INTELLIGENCE CENTER (EPIC)

Question. As Chair of the Senate Caucus on International Narcotics Control, I hosted a hearing entitled "Drug Trafficking Violence in Mexico: Implications for the United States". Several witnesses discussed the importance of intelligence sharing and the great benefit that the El Paso Intelligence Center (EPIC) is to the administration's National Southwest Border Counternarcotics Strategy, which was released in June 2009. DEA has requested funding for an expansion and renovation project to enlarge the existing EPIC facility since 22 of the agencies participating at EPIC, 8 are planning to add personnel in the next year.

Is this expansion at EPIC critical for the intelligence sharing process?

Answer. In order to facilitate information sharing with the various El Paso Intelligence Center (EPIC) partners, a DOJ-DHS Leadership Meeting was held at EPIC on June 8, 2010. Attending the meeting were Drug Enforcement Administration Administrator M. Leonhart; DEA Chief of Intelligence A. Placido; DHS Under Secretary C. Wagner; Customs and Border Protection (CBP) Commissioner A. Bersin; United States Border Patrol (USBP) Chief M. Fisher; U.S. Immigration and Customs Enforcement (ICE) Deputy Assistant Secretary Pena; FBI Deputy Assistant Director D. Cardona, USMS Assistant Director M. Earp; Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) Deputy Director K. Melson; and several other high-ranking officials. Various topics regarding the information sharing process were discussed and ultimately decided upon at this meeting. A few examples are detailed below:

- EPIC shall provide enhanced tactical cueing, analysis and analytic products designed to assist field investigators and interdictors perform their official duties.
- ATF will stand-up a joint interagency Firearms and Explosives Trafficking Unit. (Note: This unit became operational in July 2010 with 3 ATF staff.)
- The EPIC sharing model will be expanded to provide interdictors access to sensitive information via inclusion of CBP personnel in SOD and the OCDETF Fusion Center;
- DOJ/DEA would seek funds to develop a backup of the OCDETF Fusion Center's database at EPIC;
- EPIC will work with the Intelligence Community to acquire additional information to assist law enforcement operations;
- EPIC and its members will explore ways to expand technical collection along the entire length of the SWB;
- EPIC should expand training opportunities to State and local law enforcement officers which will forge/enhance the bond between interdictors at the border and the interior of the United States. Increasing the flow of information between these two groups will enhance the quality of intelligence and the efficiency of interdiction operations and criminal investigations; and
- Rather than creating another center, the focus should be on the formation of a new EPIC Section (Border Intelligence Fusion Section) to address border-centric intelligence needs. The number of personnel for this new EPIC Section has not yet been determined.

To allow space for the various agencies relocating to EPIC, expansion is necessary to provide for plans discussed/agreed upon at the IS Conference. In December 2008, the Army Corps of Engineers (ACE) conducted a study at EPIC regarding current space versus growth potential in the existing facility. At that time, the study showed that the facility consisted of a total of 324 available work spaces and that it housed 340 personnel from the various participating agencies. Since the ACE study, EPIC has grown to its current staffing level of 460. Conversion and reallocation of other-than-workspace areas has provided an additional 65 workstations for a total of 389

existing work spaces. The recently converted gym and mail room to office space has provided the facility an additional 17 work areas.

During fiscal year 2011, 8 agencies (listed below) plan to add a total of 47 positions to the current EPIC staff of 460 and during fiscal year 2012–2015, 7 agencies (listed below) plan to add an additional 83 positions.

Agency	Increase
Current EPIC Staff	460
Fiscal Year 2011:	
ATF	+ 6
FBI (Southwest Intel Group)	+ 1
USMS	+ 7
National Guard Bureau	+ 17
Texas Counterdrug	+ 3
JTF-North J-2	+ 9
USCG	+ 2
DEA	+ 2
Total Fiscal Year 2011	+ 47
New EPIC Section	(1)
Fiscal Year 2012–Fiscal Year 2015:	
ATF	+ 2
USMS	+ 4
National Guard Bureau	+ 47
JTF-North J-2	+ 14
CBP	+ 9
USCG	+ 3
DEA	+ 2
Total Fiscal Year 2012–Fiscal Year 2015	+ 83

¹ TBD.

The above increases would bring the EPIC staffing level to 590 by fiscal year 2014–2015.

NARCO-TERRORISM

Question. I believe that unless we address the drug problem in Afghanistan with the same level of resolve as the insurgency we will fail to stabilize the country. The Drug Caucus has found that the Taliban's terrorist operations are increasingly propelled by its huge narcotics profits, with as much as \$169 million coming from a single heroin trafficker in a 10-month period. At present, the DEA, which has units to address this type of narco-terrorism, does not have the manpower to devote to fulltime operations in Afghanistan, but has already been effective in combating major drug violators who are providing weapons to the Taliban. For a fraction of our national investment in Afghanistan, a DEA unit could be dedicated to removing narco-terrorists from the battlefield in direct support of the administration's top national security priorities.

I am asking for funding in the fiscal year 2010 supplemental or in fiscal year 2011 appropriations to stand up a new Terrorism Investigations Unit at DEA's Special Operations Division to focus on Afghanistan.

Have the existing Terrorism Investigations Unit been effective and do you agree that more resources are needed to address threat of narco-terrorism?

Answer. DEA has two enforcement groups within its Special Operations Divisions (SOD) with the mission of investigating high-level foreign-based drug traffickers and narco-terrorists organizations—the Bilateral Investigations Unit and the Terrorism Investigations Unit. Both units have been able to disrupt and dismantle some of the world's most dangerous drug trafficking organizations, as well as organizations that have supplied funding and arms to terrorists. The investigative success of these units has strengthened DEA's international partnerships and proven to be an invaluable prosecutorial tool for the U.S. Government.

The groups primarily conduct joint investigations with DEA Foreign Offices working toward U.S.-based prosecutions in coordination with SOD's Counter-Narcoterrorism Operations Center (CNTOC), DEA's central hub for addressing the increase in narco-terrorism related issues and investigations. The CNTOC's primary mission is to coordinate all DEA investigations and intelligence linked to counter-terrorism

and narco-terrorism; targeting, investigating, and extraditing individuals who are involved with drug proceeds that finance terror; and coordinating terrorism-related information with the FBI and other U.S. Government agencies.

The Bilateral Investigations Unit primarily pursues cases of drugs being exported to the United States under 21 U.S.C. § 959, and has actively investigated major Mexican and Colombian drug traffickers. Since its formation in 2002, the Bilateral Investigations Unit has realized numerous successes including the indictments of Ismael Zambada-Garcia and two key lieutenants; Ignacio Coronel Villarreal; and the late Arturo Beltran Leyva and Hector Beltran Leyva. Additionally, the Bilateral Investigations Unit indicted 17 Gulf Cartel members under Operation Dos Equis.

In 2007, the DEA established the Terrorism Investigations Unit, a second enforcement group that works within SOD. Under the authority of 21 U.S.C. § 960a, this Unit investigates international criminal organizations that use illicit drug proceeds to promote and finance foreign terrorist organizations and acts of terror. These DEA agents have also produced impressive case results such as the arrest of notorious arms trafficker Viktor Bout and his associate Andrei Smulian; the arrest of arms trafficker and terrorist Monzer Al Kassar; the capture of Haji Bashir Noorzai, reputedly Afghanistan's biggest drug kingpin with ties to the Taliban and Al Qaeda and the leader of one of the largest drug trafficking organizations in the Central Asia region; and the capture of Haji Baz Mohammad, an Afghan heroin kingpin who was the first defendant ever extradited to the United States from Afghanistan.

During December 2009, the investigative efforts of the Terrorism Investigations Unit resulted in Federal prosecutors charging three West Africans with plotting to transport tons of cocaine across Africa in concert with Al Qaeda, using 21 U.S.C. § 960a for the first time against that group. This investigation highlights the growing trend of ties between drug traffickers and Al Qaeda as the terrorist group seeks to finance its operations in Africa and elsewhere.

While the nexus between drugs and terrorism is not a new phenomenon, the speed of its growth in the recent past has been dramatic. Based on the overwhelming success of these two investigative units and the potential to further expand the Government's prosecutorial reach beyond our traditional borders, DEA believes that a third enforcement group would generate immediate results on a global scale; specifically in Afghanistan. Senate Report 111-229, that accompanies the Senate's fiscal year 2011 appropriations bill for Commerce, Justice, Science, and related agencies, directs DEA to use existing resources to create an additional Terrorism Investigations Unit.

GUN SHOWS

Question. This April marked the 11th anniversary of the Columbine High School massacre. All four of the guns used by the killers were purchased through private sellers at gun shows. No background checks were required for these sales due to a gap in Federal law known as the Gun Show Loophole. Moreover, according to ATF data, gun shows are a major source of firearms trafficked into Mexico by drug cartels. Mayors Against Illegal Guns—a bipartisan coalition of over 500 mayors from across the country—has written a memorandum to the administration, called the Blueprint for Federal Action on Illegal Guns, that lays out specific administrative reforms that the Justice Department and ATF could undertake to improve enforcement at gun shows.

What is the Justice Department's overall strategy to address illegal sales at gun shows?

Answer. In support of efforts to reduce violent crime and protect the public, ATF has a comprehensive strategy for addressing illegal firearms trafficking at gun shows. While gun shows and flea markets provide an outlet for firearms collectors, dealers and sportsmen to engage in the lawful commerce of firearms, they can also provide opportunities for prohibited persons, including violent offenders, to illegally obtain firearms. The unregulated sale of personal firearms at gun shows can increase the likelihood of criminal activity such as trafficking and straw purchases. Frequently at these events, criminals are able to obtain firearms with no background check and crime guns may be transferred with no records kept of the transactions.

ATF's National Firearms Trafficking Enforcement Strategy went into effect in June 2009, guided by a detailed implementation plan to identify, investigate, disrupt, and refer for prosecution illicit firearms traffickers, including proactive strategies to identify and target illegal firearms traffickers at gun shows and flea markets in their jurisdictions. There are two main elements to this strategy:

Element 1 (Pursue Investigations Where There is Reasonable Cause to Believe Violations Have Occurred).—ATF Special Agents conduct investigations when there is

reasonable cause to believe a violation of the Federal firearms laws has occurred. As with all investigations, ATF bases its decisions to conduct investigative operations at gun shows on significant law enforcement intelligence and information from sources that indicate illegal activity is occurring at a specific gun show. ATF often conducts these operations with the support of and in cooperation with State and local law enforcement agencies. These joint law enforcement efforts have proven to be successful in ensuring the lawfulness of firearms transactions at gun shows.

In addition to investigating Federal firearms licensees (FFL) believed to be violating Federal law, ATF also investigates private sellers who appear to be engaged in the business of dealing firearms without a license. Some individuals may do so without criminal intent and in ignorance of the law. Others engage in firearms trafficking purposefully. In both cases, through coordinated investigative and outreach efforts, ATF seeks to identify such persons, whether they operate out of gun shows or other venues, and deter this illegal activity.

Element 2 (Conduct Proactive Outreach Activities That Educate Gun Show Participants and Attendees).—ATF industry operations investigators (IOIs) provide outreach at gun shows by proactively educating attendees and preventing the illegal diversion of firearms. ATF IOIs have held pre-gun show seminars for sellers to educate them on Gun Control Act requirements and assist them in detecting and preventing straw sales. ATF IOIs have also staffed booths at numerous gun shows to provide information and assist with questions from sellers and purchasers. In addition, ATF IOIs have displayed posters and distributed flyers to gun show attendees on the “Don’t Lie for the Other Guy” program. These flyers explain the legal requirements applicable to gun show participants, which vary as among FFL from within the State where the gun show is held, FFLs from other States, and private individuals.

Question. Has the Justice Department and ATF implemented the mayors’ recommendation to enhance gun show enforcement? Does it have any plans to do so? *Answer.* ATF’s responses to the mayors’ recommendations are listed below:

—*Recommendation 10.*—When tracing guns, ATF National Tracing Center (NTC) personnel should be trained to routinely ask the FFL who sold the gun whether the recovered gun was purchased at a gun show and the location of that gun show, and then use the data to identify problematic gun shows. The NTC began requesting information regarding the location where the sale of a firearm took place (specifically whether the sale occurred at a gun show and if so, the location thereof) from FFLs in June 2008. Our ability to retrieve this information in an automated manner will be improved when ATF’s firearms systems are fully upgraded, a process which is estimated to be completed approximately 2 years from now.

—*Recommendation 11.*—ATF field agents should have the discretion to conduct criminal enforcement operations at gun shows when trace data, prosecutions, and witness statements suggest a particular show is a source of crime guns. ATF field divisions currently have the necessary latitude to conduct criminal enforcement investigations at gun shows given the set of facts outlined by the mayors.

—*Recommendation 12.*—ATF should increase enforcement activities to deter sales to prohibited purchasers by unlicensed gun sellers. ATF currently uses all available information and intelligence to target unlicensed sellers at gun shows who are engaging in illegal activities. ATF recognizes that gun shows are often used by illegal firearms sellers and buyers, and targets these illegal activities as an investigative priority. Through ATF’s coordinated investigative and outreach activity, ATF seeks to deter sales to prohibited persons by licensed and unlicensed sellers. ATF Industry Operations Investigators (IOIs) complement ATF’s criminal enforcement endeavors at gun shows by taking a proactive approach to educate attendees and prevent diversion of firearms. ATF IOIs have held pre-gun show seminars for sellers to educate them on Gun Control Act (GCA) requirements and assist them in detecting and preventing straw sales. ATF IOIs have also staffed booths at numerous gun shows to provide information and assist with questions from sellers and purchasers. In addition, ATF IOIs have displayed posters and distributed flyers to gun show attendees on the “Don’t Lie for the Other Guy” program. These flyers explain the legal requirements applicable to gun show participants, which vary as among FFLs from within the State where the gun show is held, FFLs from other States, and private individuals.

—*Recommendation 13.*—ATF should investigate private sellers at gun shows who appear to be engaged in the business without a license. ATF currently performs such investigations as part of its firearms trafficking strategy. ATF investigates private sellers who appear to be engaged in the business of dealing firearms

without a license. Some individuals may do so without criminal intent and in ignorance of the law. Others engage in firearms trafficking purposefully and with full knowledge of the law. In both cases, ATF seeks to identify such persons, whether they operate out of gun shows or other venues, and deter this activity.

—*Recommendation 14.*—At gun shows known for criminal activity, agents should have discretion to compare purchasers' addresses reported on Form 4473 to their State driving records. At gun shows, as with sales at other locations, FFLs are required to confirm a buyer's residence address by comparing the address documented by the purchaser on the ATF Form 4473 with the purchaser's identification document. The information provided by purchasers is particularly important because it is used to initiate the background check process required by the GCA. Confirmation of residence addresses through residence checks has proven to be an important tool to ensure the lawfulness of firearms transactions and to prevent straw purchases. However, Federal laws do not require firearm buyers to submit to any background checks from private non-licensed dealers.

ATF RESOURCES

Question. The stated goal of ATF is to inspect Federal licensed firearms dealers once every 3 years—an important practice for ensuring dealer compliance with Federal laws and regulations. Yet in 2007, ATF inspected only 9.3 percent of FFLs—an average rate of one inspection every 11 years.

Do you believe DOJ, and specifically ATF, currently receive adequate funding and resources to conduct firearms compliance inspections of dealers every 3 years?

Answer. ATF currently has approximately 640 industry operation investigators (IOIs) conducting firearms compliance inspections on a 6-year cycle. This amounts to 11,000 firearms compliance inspections conducted a year. The primary objectives of these inspections are to educate the industry concerning regulatory requirements, and to promote compliance and additional internal controls to prevent and detect diversion. Although ATF believes a 3-year inspection cycle would be optimal, its current "risk-based" approach directs existing resources to Federal firearms licensees (FFLs) with a history of noncompliance. Additionally, with the added resources provided in recent years to address firearms violence along the Southwest border ATF has increased the number of IOIs on-board and has been able to conduct 3-year inspection cycles in this high priority geographic area.

Question. In addition, when do you expect the President to announce a nominee for the Director of the ATF?

Answer. The administration recognizes the importance of the ATF Director position, and we expect that the President will announce a nominee for Director of ATF as soon as possible.

SOUTHWEST BORDER PROSECUTION INITIATIVE

Question. In April, I wrote a letter to the subcommittee with Senators Boxer, Cornyn, Hutchison, Bingaman and Udall asking that funding for Southwest Border Prosecution Initiative (SWBPI) be restored in fiscal year 2011. The SWBPI program reimburses State, county, parish, tribal, and municipal governments for costs associated with the prosecution and pre-trial detention of Federal-initiated criminal cases declined by local offices of the United States Attorneys. This important funding provides local law enforcement agencies with the means to prosecute drug trafficking and violent crime cases that have been initiated federally but referred to local jurisdictions along the southwest border.

If this funding is not restored, will U.S. Attorneys continue to refer cases to State and local jurisdictions for prosecution? If not, do the U.S. Attorneys in the Southwest border States have sufficient resources to deal with the increased caseload?

Answer. Local, State, and tribal prosecution offices are important partners with the five Southwest border Districts in prosecuting criminal offenses that originate along the border between the United States and Mexico. Without this partnership, thousands of criminal cases, namely narcotic offenses, would not be prosecuted.

Although the U.S. Attorney's Offices have been allocated additional Assistant U.S. Attorney (AUSA) positions to devote to the investigation and prosecution of Southwest border type offenses and criminal immigration offenses, they still require the assistance of the State, local and tribal prosecution offices to prosecute lower level drug trafficking crimes, simple possession drug offenses and certain juvenile offenses. Since 2008, the Department has allocated an additional 111 new AUSA positions to the 5 SWB Districts. Due to the additional attorney resources, each of the five SWB Districts saw a dramatic increase in its felony caseload from fiscal year 2007 to fiscal year 2009. Arizona increased its felony caseload by 1,153 cases; south-

ern California increased its felony caseload by 1,567 cases; New Mexico increased its felony caseload by 1,155 cases; southern Texas increased its felony caseload by 2,674 cases and western Texas increased its felony caseload by 2,118 cases. The additional resources that the State, local and tribal courts can employ to address and combat criminal offenses along the Southwest border increases the total number of criminal offenders that can be successfully prosecuted.

THOMSON FACILITY

Question. The fiscal year 2011 Bureau of Prisons (BOP) budget request for the Thomson prison is \$236.9 million, including funds to purchase (\$155 million), renovate (\$15 million), and staff (\$66.9 million) the facility. The prison will add 1,600 high security beds to the Federal system. Some have argued, I believe incorrectly, that moving these detainees creates a new terrorist target “in the heartland of America”.

Can you describe the modifications that will be made to the facility to ensure that it will be able to house high-risk Federal inmates and former Guantanamo detainees?

Answer. Additional modifications would be needed to meet BOP’s security standards to house high security inmates. Below is a list of the major modifications needed, together with examples of the necessary security enhancements: New stun-lethal fence and new razor ribbon to meet BOP guidelines; new fence alarm system; new rear gate and sallyport gates; construction of facilities building and storage area; and security upgrades, such as: Door locks, hardening of recreation cages behind units, adding security fencing within compound, installing additional cameras tied to the monitoring system, installing radio system base and portables, adding additional security lighting within compound, installing anti-crash bollards in front of institution and rear, and constructing holding cells in receiving and discharge area.

Acquisition and activation of the Thomson facility will reduce the BOP’s shortage of high security, maximum custody cell space. If it is determined that a portion of the facility is required for detainee management purposes, then the BOP would operate the Thomson facility as a high-security administrative maximum prison with Federal inmates and make a portion available to the Department of Defense (DOD) to house a limited number of detainees. DOD would also be solely responsible for the detainees housed in its separate portion of the facility and DOD would be responsible for any additional security upgrades to the institution that it deemed necessary. However, the facility would be owned by the BOP, and the Department would intend to pay the acquisition costs.

Question. How different will this facility be from the Supermax facility in Florence, Colorado?

Answer. The Thomson facility was built for the State of Illinois as a maximum security prison and was completed in 2001. It could be used fairly quickly after some modifications, which would reduce costs and save several years of construction time, as compared to constructing a new facility. Moreover the Thomson facility would enable the Bureau of Prisons (BOP) to move the most disruptive and violent inmates out of existing general population U.S. Penitentiaries (USPs) to a newer, more modern facility better suited to the controls required to manage the Special Management Unit (SMU) and Administrative Maximum (ADX) type population.

Once modified, Thomson would be similar to ADX Florence in security standards and daily operations. Acquiring Thomson would not replace ADX Florence, but rather help alleviate inmate crowding levels and provide safer conditions for staff and inmates. The number of supermax beds available in BOP facilities has not increased since ADX Florence was activated in 1994. ADX type and SMU inmates require specific higher security standards. Individual cells are required for ADX type inmates and, therefore, require more space to operate. The Thomson facility is not only larger than the ADX, but by acquiring Thomson, the BOP would gain a fairly new high security facility with ample bed space to house ADX type and SMU inmates, at a lower cost and within a shorter timeframe, than building a new facility from the ground up.

As it stands now, its size, age, and existing security features make it the best, and possibly, only, candidate to be retrofitted to meet Federal maximum security requirements.

VOCA FUNDING

Question. On June 24, 2009, Senator Leahy introduced the Crime Victims Fund Preservation Act of 2009, of which I am a cosponsor. The bill would establish minimum funding levels for the Crime Victims Fund for fiscal years 2010 through 2014.

The amount made available to the fund would be increased by 23 percent each year from \$705 million in fiscal year 2010 to \$1.6 billion in fiscal year 2014.

Does the Justice Department have a position on this bill and are the funding levels proposed in the bill sufficient?

Answer. The administration remains strongly committed to preserving the integrity of the Crime Victims Fund and to supporting all victims of crime. The Crime Victims Fund also provides support for programs targeting women who are victims of crime and provides resources for victim service providers. Like the Crime Victims Preservation Act, the fiscal year 2011 President's budget contemplates an increase in the cap for the Crime Victims Fund. For fiscal year 2011, the administration has proposed a \$95 million (13.5 percent) increase to the Crime Victims Fund cap for a total of \$800 million. Of the total amount requested, \$100 million is set-aside to support programs to combat violence against women. For a given year, the cap for the Crime Victims Fund is determined as part of the budget development process for that year. Therefore, at this time, the Department has no position on the appropriate level for the cap in future years.

CRIME VICTIMS CLINICS

Question. In 2004, Senator Kyl and I successfully enacted legislation, the Crime Victims' Rights Act, to provide the victims of violent crimes a set of procedural rights under Federal law, and to ensure that they have a standing to assert their rights before a court.

The act also authorized Federal funding for victims' clinics for pro bono legal counsel and support services. With the assistance provided through these clinics, victims understand their rights, learn how to actively engage in the case against their offender, and ensure that they are not treated by the justice system as only a "witness to" or "piece of evidence in" the case.

These clinics are essential to victims' understanding of their rights and their subsequent ability to request the enforcement of these rights at court. The Office for Victims of Crime has been helpful in providing startup funds for clinics in some States, but this funding is almost exhausted. In order to fully implement and validate the Crime Victims' Rights Act, we believe that the clinics require a constant stream of funding.

Will you work with us to locate a dedicated funding stream for these victim clinics?

Answer. OVC formally communicated to State Victims of Crime Act (VOCA) Victim Assistance Administrators in June 2010 that they were authorized to use formula VOCA funding to support legal clinics that offer legal services to crime victims. This clarification was a pivotal step in support for the legal clinics, as previously most States believed that the existing VOCA Guidelines prohibited them from supporting legal clinics with VOCA funding. To ensure continued progress, the Department's Office for Victims of Crime (OVC) supports the institutionalization and expansion of the crime victims' rights enforcement programs authorized for funding by subsections 103(A) and (b)(4) of the CVRA. OVC is in the process of revising existing guidelines for VOCA victim assistance funding and developing regulations that will further clarify and articulate the policy that it is appropriate and allowable to use this funding to support legal assistance to crime victims for issues related to their criminal victimization, including legal representation during criminal proceedings.

QUESTIONS SUBMITTED BY SENATOR FRANK R. LAUTENBERG

Question. My understanding is that a legally purchased firearm was recovered in the Times Square bombing suspect Faisal Shazad's car at JFK Airport. As you know, NICS background check records for firearm purchases are destroyed in 24 hours after a purchase is approved.

Do you think that destroying NICS background check records that were used in approving a gun purchase in just 24 hours is a good idea?

Answer. National Instant Criminal Background Check System (NICS) background check records for "proceeded" transactions (i.e., background checks that reveal no prohibiting information about the purchaser) are contained in the NICS Audit Log. Information in the NICS Audit Log concerning proceeded transactions is required by law to be destroyed within 24 hours. NICS has been complying with that requirement since July 21, 2004, without incident. Regardless of the length of retention, moreover, information in the NICS Audit Log concerning proceeded transactions may only be used for limited purposes, which do not include routine law enforcement functions. As a result, changing the retention period for NICS Audit Log infor-

mation would not necessarily make that information more available as an investigative tool.

Question. In the absence of the requirement to destroy the NICS background check record of Faisal Shahzad in 24 hours, do you believe that the FBI would have known right away by reviewing his background check record that the suspect had purchased a firearm and could be armed with it?

Answer. If Mr. Shahzad attempted to purchase a firearm from a Federal firearm licensee, a NICS background check record would have been created. Even assuming that this record was maintained in the NICS Audit Log beyond 24 hours, however, it would not reveal whether the firearm was actually transferred. Moreover, as noted above, the FBI's ability to use that record for law enforcement purposes is constrained by law.

QUESTIONS SUBMITTED BY SENATOR RICHARD C. SHELBY

NIST FORENSICS

Question. Attorney General Holder, The National Academy Forensics Study made 13 recommendations to shore up deficiencies identified by their investigation. The areas requiring attention are standards, practices, protocols, research, ethics, education, training, accreditation, certification, proficiency testing, report writing and testimony. Included in the recommendations is the creation of a national institute of forensic science.

What is your opinion on this report and its recommendations?

Answer. The Department welcomed the report of the National Research Council of the National Academies of Science (NAS) entitled, Strengthening Forensic Science in the United States: A Path Forward (the NAS report). The report is an important contribution to the public discourse on the state of the forensic science community, and it recommends many useful steps to strengthen the community and enable it to continue to support an effective criminal justice system. In fact, many of these steps are familiar to those in the forensic science community, including DOJ, and have been discussed among practitioners for some time.

Question. What is your Department doing to address these recommendations? Is there a timeline for action?

Answer. The Department of Justice is participating in the inter-agency Subcommittee on Forensic Science (SOFS) of the National Science and Technology Council, organized by the White House's Office of Science and Technology Policy. The SOFS is currently preparing recommendations for coordinated, comprehensive executive branch action to advance the goals of the NAS report.

Question. The report cites the need for increased scientific research in the forensic disciplines, how is the administration going to address this recommendation? Are you working with science agencies like NIST, NSF, and OSTP?

Answer. The Department of Justice is participating in the inter-agency Subcommittee on Forensic Science (SOFS) of the National Science and Technology Council, organized by the White House's Office of Science and Technology Policy. DOJ and NIST are the co-chairs of the SOFS, and NSF is an active participant. The SOFS is working on coordinated, comprehensive executive branch action to advance the goals of the NAS report, including increased scientific research. For example, on a recommendation from the SOFS, in September 2010 NSF sponsored a symposium on cognitive bias and forensic science. This recommendation from the SOFS responds directly to issues raised in chapter 4 of the NAS report.

In addition, the Department's National Institute of Justice (NIJ) has several projects in place that address the need for more funding of forensic science research:

- NIJ awarded \$7.9 million in fiscal year 2009 and \$7.2 million in fiscal year 2010 under a solicitation entitled, "Fundamental Research to Improve Understanding of the Accuracy, Reliability, and Measurement Validity of Forensic Science Disciplines."

- NIJ recently issued its first-ever grant solicitation focused on research and development for medicolegal death investigations and in June 2010, NIJ held its first symposium for medical examiners and coroners in an effort to identify their research needs.

- NIJ's Office on Investigative and Forensic Sciences recently initiated an NIJ-Forensic Sciences Foundation grant program which provides research grants to students in FEPAC accredited colleges and universities.

Question. In my opinion, the solution to the issues raised by the NAS is going to involve more than just the Department's assets. While I don't think the creation of a separate and independent National Institute of Forensic Science is realistic, I do

think that some type of partnership between Justice, NIST, and NSF will be required. Would you be supportive of this type of arrangement?

Answer. As noted above, the Department already works closely with NIST and NSF through the SOFS and supports continued close cooperation to jointly improve forensic science.

ADAM WALSH ACT RESOURCES

Question. There are an estimated 135,000 non-compliant sex offenders in the United States and the Marshals Service estimates they need a dedicated force of 500 deputies working on these cases to fully implement the Adam Walsh Act.

In March 2010, President Obama appeared on “America’s Most Wanted” with John Walsh and made a pledge to increase funding and personnel for enforcement of the Adam Walsh Act. The President highlighted that “it is very important for us to build up U.S. Marshals’ capacity. That is something we want to do in the Federal budget . . . my expectation is that we will get support, bipartisan support, from Congress on this issue because it is so important to every family across America.”

If fully funding the Adam Walsh Act is a priority for the President, why didn’t DOJ request additional resources for the Marshals Service in the fiscal year 2011 budget request?

Answer. The Adam Walsh Child Protection and Safety Act is a significant and landmark piece of legislation that considerably enhances the ability of the Department to respond to crimes against children and vulnerable adults and prevent sex offenders who have been released back into the community from victimizing other people. In fiscal year 2011, the administration is requesting \$336 million for Adam Walsh Act related activities, an increase of \$20 million (6.3 percent) to support implementation of the provisions of the Act.

Question. Can Congress expect to receive an amended fiscal year 2011 request adding resources for Adam Walsh Act enforcement?

Answer. The Department is not aware of any pending supplemental requests or budget amendments that would direct additional resources to the Department specifically to enforce the Adam Walsh Act. However, most of the activities authorized by the act are already performed as part of the Justice Department’s traditional mission. In most instances, for programs where the act authorized specific funding levels, the Department is spending at or above those levels.

DANGER PAY FOR USMS AND ATF PERSONNEL IN MEXICO

Question. While the DEA and FBI receive danger pay for their personnel in Mexico due to prior authorizations passed in 1990 and 2002, the Marshals Service and ATF do not have this same authorization language. USMS and ATF personnel face the same risks as their DEA and FBI counterparts in Mexico and should be equally compensated.

Due to recent killings of consulate workers in Juarez, the State Department added danger pay for all U.S. Government employees working in six Mexican cities (Juarez, Matamoros, Monterrey, Nogales, Nuevo Laredo, and Tijuana). State’s guidelines are limited to where personnel are “posted”; therefore, USMS and ATF personnel who are officially posted in Mexico City (not on State’s list of six Mexican cities) will not receive danger pay.

How is this administration working to rectify this danger pay disparity among DOJ law enforcement personnel working in Mexico?

Answer. This subject is complicated by the random nature of the violence that could put our employees in harm’s way, and the diversity of operational requirements between FBI, DEA, USMS, and ATF. We have made great strides in the last year to better understand this issue and other steps besides danger pay are promotions for those who serve in Mexico.

Within the last year, the Department of State has authorized danger pay for five cities in Mexico. In addition, during recent discussions with State, we have been made aware that a 5 percent Hardship Allowance based upon “danger” factors at a post has been authorized for four additional cities in Mexico, including Mexico City.

Currently Danger Pay is authorized for the following cities in Mexico: Ciudad Juarez at 15 percent; Matamoros at 15 percent; Monterrey at 15 percent; Nogales at 15 percent; and Tijuana at 15 percent.

Danger factors within the Hardship Differential provide 5 percent additional at the following posts: Guadalajara is at 5 percent but would be at zero otherwise; Hermosillo is at 15 percent but would be at 10 percent otherwise; Merida is at 15 percent but would be at 10 percent otherwise; and Mexico City is at 15 percent but would be at 10 percent otherwise.

The Department of State has assured us that they are regularly monitoring the situation in Mexico.

Question. Why was danger pay for USMS and ATF not included as a legislative need in the fiscal year 2011 budget request?

Answer. The administration is currently addressing this issue; therefore, a legislative proposal at this time would be premature.

Question. When can Congress expect to see a proposed legislative solution to this issue?

Answer. DOJ and the Department of State are working collaboratively on the issue of Danger Pay in Mexico and have made great strides within the last year, as noted in response to your previous question. We are actively engaged in discussions on a legislative package that would bring parity between our agencies, though the timing of such legislation has not been decided. We are committed to ensuring the safety of our employees stationed abroad and appreciate the level of interest and support you have provided us on this issue.

DHS-DOJ DISPARITY ALONG THE SOUTHWEST BORDER

Question. On April 19, Senators McCain and Kyl released a 10-point plan to increase Southwest border security. The plan proposes adding resources to DHS, particularly Border Patrol, but not for DOJ's components. Many Southwest border districts are already operating at capacity, particularly the Marshals Service and Office of Detention Trustee, in terms of space to hold detainees. Adding more resources without balancing the request to include DOJ agencies could lead Southwest border districts to the breaking point.

Does the administration believe there is parity between DHS and DOJ along the Southwest border?

Answer. The administration is working to facilitate parity between DHS and DOJ on the Southwest border. Any increase in Department of Homeland Security (DHS) enforcement activity has a "downstream" impact on workload and resource requirements that affect the rest of the criminal justice system, including both DOJ and the Judiciary. A principal area of concern along the Southwest border is the existing capacity of the prosecutorial, judicial, detention and incarceration components to respond to increased efforts by law enforcement. Currently, the annual number of apprehensions outpace prosecutorial capacity for criminal cases involving illegal immigration, drug trafficking, border violence and gangs; litigation and adjudication capacity for immigration cases moving through the Federal courts; detention capacity for the criminally accused as they move through the criminal justice system; and incarceration capacity for the criminally convicted after they are sentenced.

Additional funding directed at certain critical chokepoints could make matters worse if it is provided without considering the entire scope of Southwest border requirements. These chokepoints include: limits in human capital, training and facilities for new personnel (both operational and administrative); and infrastructure and other physical capital constraints along the Southwest border, particularly USMS cellblock/courthouse space, detention/incarceration beds, and tactical support resources. Outside of the DOJ, the limited number of courtrooms, judges, magistrates, and other members of the judiciary further restrict the Federal Government's ability to increase prosecutorial caseload and process larger numbers of offenders in the justice system.

Question. If the McCain-Kyl plan makes its way to legislation, what resources would DOJ agencies need to maintain parity with DHS?

Answer. Funding provided in the 2010 Emergency Border Security Supplemental Appropriations bill will allow the Department of Justice to expand our investigations and prosecutions. With the \$196 million provided, the Department will be able to surge Federal law enforcement officers to high crime areas in the Southwest border region by funding more than 400 new positions and temporarily deploying up to 220 personnel. Specifically, Justice funding would increase the presence of Federal law enforcement in the Southwest border districts by adding seven ATF Gun-runner Teams, five FBI Hybrid Task Forces, additional DEA agents and Deputy U.S. Marshals, equipment, operational support, and additional attorneys and immigration judges and to support additional detention and incarceration costs for criminal aliens in coordination with Department of Homeland Security enforcement activities. The supplemental would also provide funding to support Mexican law enforcement operations with ballistic analysis, DNA analysis, information sharing, technical capabilities, and technical assistance. However, some of these funds were required for Justice to prosecute the current level of Operation Streamline prosecutions. Any significant increase in resources of the Border Patrol will have a signifi-

cant downstream impact on the Department of Justice and the Administrative Office of the Courts.

Question. How would DOJ component agencies—the Marshals Service, Office of Detention Trustee, U.S. Attorneys Office—be affected if Operation Streamline is expanded to all districts along the Southwest border?

Answer. The capacity of the criminal justice system in the Southwest border region presents a very real impediment that needs to be addressed before Operation Streamline can be expanded beyond its present scope. These impediments include the physical constraints of courthouses along the border, including the number of defendants that can be housed and processed in a given day; the number of judges, magistrates, and other judicial personnel; and the number of detention beds where defendants can be housed in reasonable proximity to a given courthouse. Presently, courthouse structures in the region are inadequate to process large numbers of additional defendants. Moreover, the U.S. Marshals Service and U.S. Attorneys would have to modify or waive a number of their internal requirements in order to process an increase in defendants. Even increasing the daily shift of operations within the courthouses, particularly in Tucson, Arizona and San Diego, California, would be insufficient to process the increase in defendants likely to arise from expanding Operation Streamline.

Increased Department of Homeland Security (DHS) enforcement activity in the Southwest border region would have a “downstream impact” on workload and resource requirements—affecting the rest of the criminal justice system, including the Justice Department and the Administrative Office of the U.S. Courts (AOUSC). For example, felony drug arrests and subsequent additional investigations would likely increase, resulting in the need for additional Drug Enforcement Administration agents and support staff, and the need for additional attorney and intelligence analyst personnel deployed as part of the Organized Crime Drug Enforcement Task Forces Program. Further, additional Alcohol, Tobacco, Firearms and Explosives personnel would be needed to address gun trafficking arrests and investigations. In addition, Operation Streamline would increase the fugitive warrant workload, which in turn further impacts the USMS. The workload of other parts of the system, including the Executive Office for Immigration Review and the Civil Division’s Office of Immigration Litigation, would also increase. As stated previously, AOUSC would likely require additional courthouse space, judges, magistrates, and other judicial personnel to accommodate pressures resulting from the increased DOJ investigative and prosecutorial workload.

Question. Can DOJ provide this subcommittee with a detailed report about the resources needed if Operation Streamline was expanded to all Southwest border districts?

Answer. Operation Streamline has been viewed as a consequence-based prosecution initiative in which many U.S. Customs and Border Protection (CBP) apprehensions are criminally prosecuted. Operation Streamline is currently in place in some form in several sectors in the Southwest border region. However, even in those sectors where Operation Streamline is in place, many of the programs have a “daily cap” in terms of prosecutions based on resource limitations of Department components and Federal courts. For example, although CBP arrests several hundred individuals each day in the Tucson, Arizona Sector, only 70 cases per day are prosecuted under the auspices of Operation Streamline. This number is capped at 70 cases due to resource limitations of the U.S. Marshals Service cellblock and personnel, courtroom space, availability of court personnel, and detention bed space.

In order to implement Operation Streamline across the entire Southwest border region in a true zero-tolerance form, Department components and the Federal court system would need additional resources, such as:

- Additional personnel would be needed by the U.S. Marshals Service, the U.S. Attorneys Offices, and the courts.
- Additional resources for the Federal Prisoner Detention Fund would also be required.
- Additional construction funding would be needed to exponentially enlarge cellblock space in all Southwest border U.S. Courthouses.

At this time, the Department cannot provide a detailed report about the resources needed Government-wide if Operation Streamline was expanded to all Southwest border districts. Many of the Department cost inputs fluctuate. For example, detention costs are dependent on both detainee population levels and per diem jail rates. These levels and the average per diem jail rate would fluctuate as the immigration workload shifted to other border zones with less stringent immigration enforcement policies. Other factors impacting costs, also unknown, include time in detention (which is at the discretion of the courts; average sentence terms from Operation

Streamline cases have not been uniform across Operation Streamline locations) availability of bed space, as well as courthouse and cellblock space limitations.

Funding provided in the 2010 Emergency Border Security Supplemental Appropriations bill will allow us to expand our investigations and prosecutions. With the \$196 million provided, the Department will be able to increase the presence of Federal law enforcement in the Southwest border districts by adding seven ATF Gun-runner Teams, five FBI Hybrid Task Forces, additional DEA agents and Deputy U.S. Marshals, equipment, operational support, and additional attorneys and immigration judges and to support additional detention and incarceration costs for criminal aliens in coordination with DHS enforcement activities.

DEA-EPIC-ICE

Question. Mr. Attorney General, I understand that there is considerable confusion about providing support to the law enforcement community in the interdiction of bulk currency and that at least two centers—the El Paso Intelligence Center or EPIC and the Bulk Currency Smuggling Center operated by ICE—are competing with one another to provide similar services to law enforcement.

Are you aware of this and what can you tell us about plans to assure that tax dollars are not being wasted?

Answer. DEA and the Department of Justice are aware of the ICE Bulk Currency Smuggling Center (BCSC). The Department is aware that there may be duplication of effort and confusion over the bulk currency activities of the BCSC and DEA's El Paso Intelligence Center (EPIC). Several meetings between DEA—representing EPIC—and ICE—representing the BCSC—have recently been held to address this matter and to assure the effective and efficient expenditure of appropriated funds. There has been some progress in these discussions but the matter has not yet been conclusively resolved. Since 1974, EPIC has operated as an interagency intelligence center providing tactical support to law enforcement organizations dealing with illegal aliens, weapons, contraband drugs and, by extension, the currency that represents the proceeds of these illegal activities. As a multi-agency tactical intelligence center with representatives from 20 Federal agencies, including ICE, and liaisons assigned from Colombia and Mexico, EPIC has been responsible for tactical cueing and providing intelligence and de-confliction for law enforcement agencies from across the country for more than three decades.

BUREAU OF PRISONS/THOMPSON CORRECTIONAL CENTER

Question. The fiscal year 2011 budget requests a total of \$237 million—\$170 million for purchase and renovation and \$67 million for equipping and staffing—the Thompson Correctional Center. The Thompson Correctional Center is an Illinois State Prison that would be converted into a high security U.S. Penitentiary. It is also the site that the administration has identified for relocating terrorists who are currently housed at GITMO.

Mr. Attorney General, was the \$237 million for Thompson Correctional Center part of the Department of Justice fiscal year 2011 budget request to OMB? Or was this funding added to the Department's request by the administration?

Answer. Regarding budget deliberations, the nature and amounts of the President's decisions and the underlying materials are confidential. As described in the fiscal year 2011 Congressional Justification, the Thomson facility provides an opportunity to alleviate prison overcrowding in a cost effective manner. As of August 12, 2010, BOP institutions are crowded 37 percent over rated capacity, causing triple bunking in low and medium security institutions, and double bunking in high security institutions. Crowding is 53 percent over capacity in high security facilities. Capacity must be expanded to promote safe prison operations for both staff and inmates.

NATIONAL DRUG INTELLIGENCE CENTER

Question. The Department is requesting \$45 million for the National Drug Intelligence Center.

Mr. Attorney General, was the \$45 million for the National Drug Intelligence Center part of the Department of Justice fiscal year 2011 budget request to OMB? Or was this funding added to the Department's request by the administration?

Answer. The Department of Justice fully supports the \$45 million included in the fiscal year 2011 President's budget request for NDIC. The funding represents the ongoing cost to maintain NDIC operations and does not reflect an enhancement of NDIC's programs. Deliberations that led to the President's budget decisions are confidential to the executive branch, and congressional justification materials describe requests made in the fiscal year 2011 President's budget.

DRUG INTELLIGENCE CENTER

Question. The subcommittee understands that OMB suggested shutting down all but the Document and Media Exploitation activities of the National Drug Intelligence Center since OMB believed the drug analysis functions are duplicated in other Federal drug intelligence centers. OMB believed such an action would save \$22 million in fiscal year 2011—\$22 million that could be used for combating terrorism and other high priorities that I believe OMB has not funded at the appropriate levels.

Mr. Attorney General, do you believe there is merit to the OMB suggestion? Is the analytical function of the National Drug Intelligence Center duplicative of other centers?

Answer. The National Drug Intelligence Center (NDIC) provides beneficial intelligence products to the Department as well as other drug law enforcement stakeholders. Deliberations on the future of NDIC that led to the President's budget decisions are confidential to the executive branch, and congressional justification materials describe requests made in the fiscal year 2011 President's budget.

Question. Mr. Attorney General, you are requesting \$42 million to expand the DEA's El Paso Intelligence Center. Would it make sense to consolidate the drug analysis work at the National Drug Intelligence Center into DEA's El Paso Intelligence Center?

Answer. The funds being requested to expand EPIC are to accommodate an anticipated growth in the number of U.S. and international partners that are now collaborating to advance our interests in securing the SWB and confronting transnational criminal organizations.

Deliberations that led to the President's budget request are confidential to the executive branch, and congressional justification materials describe requests made in the fiscal year 2011 President's budget.

ADMINISTRATION "EARMARKS"

Question. Congress is often chastised by the administration for funding projects and programs—derisively called “earmarks”—that were not proposed in the President's budget. What the administration does not willingly identify are the “earmarks” that they add to an agency's budget for their initiatives. So, Madame Chairwoman, I'd like to bring some transparency to the process—just as we are required to declare and itemize our requests, so should the administration.

Mr. Attorney General, for the record, would you provide a list of the projects and programs and associated funding that was added to your fiscal year 2011 budget request by the administration and which were not included in your original budget request to the OMB.

Answer. Regarding budget deliberations, the nature and amounts of the President's decisions and the underlying materials are confidential. Information describing the President's request can be found in congressional justifications.

PEER REVIEW COSTS AT DOJ

Question. Previously at OJP, there had been questionable peer review problems, in particular at the National Institute of Justice, where peer reviewers were actually reviewing contracts that their lobbyist were competing for.

What is the average cost of reviewing an application within the Office of Justice Programs?

Answer. Office of Justice Programs (OJP) peer review cost averages, as well as a breakdown of the costs for each of the OJP bureaus and program offices from fiscal year 2006 through fiscal year 2009, are detailed on the attached spreadsheet. See Attachment 2.

SUMMARY OF OFFICE OF JUSTICE PROGRAMS PEER REVIEW COST DATA FISCAL YEAR 2006 TO FISCAL YEAR 2009

Program Office	Fiscal Year 2006 Total Peer Review Cost	Fiscal Year 2006 Total Number of Applications Peer Reviewed	Fiscal Year 2006 Average Peer Review Cost per Application	Fiscal Year 2007 Total Peer Review Cost	Fiscal Year 2007 Total Number of Applications Peer Reviewed	Fiscal Year 2007 Average Peer Review Cost per Application	Fiscal Year 2008 Total Peer Review Cost	Fiscal Year 2008 Total Number of Applications Peer Reviewed	Fiscal Year 2008 Average Peer Review Cost per Application ¹	Fiscal Year 2009 Total Peer Review Cost	Fiscal Year 2009 Total Number of Applications Peer Reviewed	Fiscal Year 2009 Average Peer Review Cost per Application
BIA	\$280,000	789	\$355	\$1,061,058	2,486	\$427	\$1,381,184	2,046	\$675	\$3,959,506	7,215	\$549
BIS ²	(³)	(³)	(³)	(³)	(³)	(³)	(³)	(³)	(³)	\$49,082	156	\$315
CCDO	\$22,050	63	\$350	\$20,950	55	\$381	\$23,891	56	\$427	\$53,222	91	\$585
NIJ ⁴	\$1,176,233	2,019	\$583	\$1,282,720	2,383	\$538	\$1,572,875	1,609	\$978	\$1,536,148	1,679	\$915
OJDIP	\$296,021	663	\$446	\$509,815	1,164	\$438	\$747,979	949	\$788	\$2,601,590	4,421	\$588
OVC	\$60,448	135	\$448	\$83,862	116	\$723	\$136,051	102	\$1,334	\$400,316	452	\$886
SMART ⁵	(³)	(³)	(³)	(³)	(³)	(³)	\$102,832	110	\$935	\$85,349	90	\$948
Total Amount⁶	\$1,834,752	3,669	\$436	\$2,958,405	6,204	\$501	\$3,964,812	4,872	\$856	\$8,685,213	14,104	\$684
Average Amount												

¹Fiscal year 2008 costs included the development and implementation of an OJP peer reviewer database that is used by all OJP bureaus and offices.
²BIS did not implement the OJP peer review process until fiscal year 2009; BIS conducted their peer review entirely in-house and did not use OJP's Grants Management System (GMS).
³N/A.
⁴Concept papers are included in NIJ's total number of applications, and did not have in-person peer review. The number of concept papers were fiscal year 2006: 967; fiscal year 2007: 1,159; fiscal year 2008: 636; fiscal year 2009: 180.
⁵SMART did not start administering and peer reviewing their own grants until fiscal year 2008.
⁶Fiscal year 2009 cost and application data includes American Reinvestment and Recovery Act of 2009 (ARRA) funding applications. The peer review contract cost in fiscal year 2009 decreased due to the volume of ARRA applications, many of which were reviewed internally.

Question. What has OJP done to ensure this hasn't happened again?

Answer. Within 48 hours of OJP assigning applications to a peer reviewer, the peer reviewer is required to disclose any conflict of interest on the OJP Disclosure of Conflict of Interest form. This form is retained in OJP's Grants Management System (GMS). If a peer reviewer discloses a conflict of interest with any applicant, OJP's Bureau or Program Office, in consultation with the Office of the General Counsel (OGC), will review the Disclosure of Conflict of Interest form and determine if the peer reviewer needs to be removed from the peer review of the application(s). If the peer reviewer is removed from the peer review process, the reviewer's access to the application(s) is eliminated.

To prevent conflicts of interest during the application review process, NIJ issued, in June 2010, internal guidance entitled National Institute of Justice Guidelines on the Administration and Management of NIJ Grant Programs (the "Guidelines"), for the administration and management of all NIJ grant programs to ensure that key aspects of the pre-award and award process for grants and cooperative agreements are documented. Beginning with fiscal year 2010 awards, all NIJ staff involved in the pre-award evaluation process are required to complete a Disclosure of Conflict of Interest form, which is reviewed by the immediate supervisor, certifying that they have reviewed the OJP OGC Guidance on Conflicts of Interest and indicate if they perceive that they have a conflict with any of the applications they have been assigned to review. If the memorandum cites a possible conflict, the supervisor will review the signed memorandum, consider the conflict, review the subject employee's Confidential Financial Disclosure Report, and make a determination about whether or not a conflict exists. The supervisor may work with NIJ's Office of Operations staff to consult with OGC when input is deemed necessary. If the supervisor determines a conflict exists, he or she must recuse the staff member from dealing with a specific grant application or from an entire solicitation. Similar procedures to avoid conflicts of interest exist throughout OJP.

Additionally, NIJ staff attended mandatory ethics training in November 2009 conducted by OJP's OGC.

Question. There will be differences in costs between bureaus in OJP. Why is there such a difference?

Answer. OJP bureaus and program offices conduct one or more of the following three types of peer review: standard review, internal review, and in-person review. The type of peer review determines, in large part, the cost.

A standard peer review process includes, but is not limited to: creating standard forms for solicitations; three peer reviewers reviewing approximately 15 applications each; a \$125 per application stipend for each peer reviewer; technical assistance for the peer review process and OJP's Grants Management System (GMS); a conference call or a webinar with the peer reviewers to discuss the initial peer review scores within a defined variance; and post review activities such as developing the funding tables and drafting the non-funded letters. External reviewers are used in this process, but are not brought to a central location for discussion and consensus review.

An internal review process includes the same activities as the standard review process, but DOJ employees are used as reviewers. Unlike outside reviewers, Federal employees do not receive a stipend for reviewing applications. Finally, an in-person review also includes costs such as travel, hotel, and per diem, for bringing the reviewers to a central location.

The following chart details estimated fiscal year 2010 costs based on the type of peer review process utilized by the respective bureau or program office.

Bureau or Program Office	Estimated Fiscal Year 2010 Cost Per Application	Elected Processes
Bureau of Justice Assistance (BJA)	\$800	Standard Peer Review Process.
Bureau of Justice Statistics (BJS)	\$500	Internal and External Reviewers.
Community Capacity Development Office (CCDO).	CCDO cancelled competitive solicitations in fiscal year 2010.
National Institute of Justice (NIJ)	\$925 or	Standard Process with 4 (versus 3) reviewers. The additional peer reviewer increases the cost by \$125 per application.
Office of Juvenile Justice and Delinquency Prevention (OJJDP).	\$1,250 \$800	In-Person Meeting. Standard Peer Review Process.
Office for Victims of Crime (OVC)	\$860	Standard Peer Review Process.

Bureau or Program Office	Estimated Fiscal Year 2010 Cost Per Application	Elected Processes
Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking Office (SMART)	\$860	Standard Peer Review Process.

—BJS costs are lower because BJS conducts mostly internal (DOJ employee) peer reviews. An internal peer review process eliminates the \$125 stipend that is paid to non-Federal employee peer reviewers. Also, the contractor does not need to provide technical assistance on how to use OJP's Grants Management System.

—NIJ, as an independent scientific research agency, has higher costs because of the complexity of its research methodological issues, and its need to conduct both standard and in-person peer reviews. In-person peer reviews allow for the effective exchange of scientific information and provide a forum for peer reviewers to discuss and debate various approaches to conducting criminological experiments. The in-person costs are higher because they include travel costs (airfare, hotel, meals and expenses) for the peer reviewer. Also, NIJ costs are higher for standard peer reviews because NIJ often uses four or more peer reviewers instead of three peer reviewers. An additional peer reviewer increases the cost of a standard peer review by \$125 per application. For both standard and in-person peer reviews, additional activity is undertaken to develop the NIJ specific funding tables (in lieu of the more standardized scoring/tier reports prepared for other agencies/offices, and to identify each application's principal investigator for inclusion in the funding table and application summary).

—OVC and SMART generally conduct standard peer reviews, but the costs are slightly higher because a reduced number of applications are assigned per panel, thereby increasing the number of reviewers and panels. In addition, all or most applications are discussed during consensus reviews, which increase the duration of the reviews.

Question. Please list the costs from fiscal year 2006 to fiscal year 2009 and explain if there is a significant difference in costs.

Answer. Please see the attached chart that lists, for each year from fiscal year 2006 to fiscal year 2009, the total peer review cost, the number of applications peer reviewed, and the cost per application for each fiscal year for each OJP bureau and program office.

The current OJP peer review contract supported the fiscal year 2008 and fiscal year 2009 peer review process. The overall cost of peer review increased from approximately \$4 million in fiscal year 2008 to \$8.7 million in fiscal year 2009 because the number of applications peer reviewed increased from 4,872 to 14,104. The increase in the number of applications OJP received and peer reviewed in fiscal year 2009 was largely due to funding appropriated pursuant to the American Reinvestment and Recovery Act (Recovery Act) of 2009. It is important to note that per application peer review costs were less in 2009 than in 2008 due to the fact that program offices had to assume many of the peer review tasks themselves in order to handle the unanticipated volume of Recovery Act applications.

In fiscal years 2006 and 2007, the peer review services for each of the OJP bureau and program offices were covered under individual contracts in each of the program offices. In fiscal year 2007, OJP awarded a new consolidated peer review contract. The consolidated peer review contract did not start providing peer review support for the OJP bureaus and program offices until fiscal year 2008. The consolidated peer review contract supported a standard peer review process across OJP. This included additional tasks and a standard fee of \$125 per application for the peer reviewers. It also included the development and maintenance of an OJP Peer Review Database. Development of the database was a necessary, but added peer review cost. The OJP Peer Review Database currently has over 4,000 peer reviewers registered. The OJP bureaus and program offices must select peer reviewers from the Peer Review Database.

Comparing application costs across fiscal years is difficult for two primary reasons: (1) Different contractors were used in 2006 and 2007 than in 2008 and 2009, and (2) the number and complexity of the tasks were different in each of the fiscal years. Comparing different tasks between fiscal years and among program offices is made more difficult by several variables that determine the per application costs. Among those variables that account for varying costs are:

- The number of tasks conducted by the contractor (Program offices request different levels of support, so costs are not standard across program offices in OJP.)
- The number of peer reviewers on each panel (Some program offices require four peer reviewers instead of the standard three reviewers per panel.)
- Whether reviews are conducted onsite or via telephone (The costs of transporting peer reviewers in to a central location is exponentially more expensive, but is often necessary.)
- The specialization and qualifications of the peer reviewers (Program offices, such as the National Institute of Justice, require professionals with specific qualifications, such as doctoral degrees, or professional expertise in an unusual subject.)
- Whether the contract costs include mailing non-funding letters with edited panel comments (Some program offices prepare and mail their own non-funding letters.)
- The manner in which consensus is reached (in person vs. via telephone) and whether or not consensus is required (Again, this relates to the transportation costs for bringing together panel members for a consensus review. Larger awards may require onsite consensus review.)

Accordingly, it is difficult to make an absolute comparison among fiscal years because contractors, tasks, practices, and scenarios differed during this time span. While many efficiencies have been introduced over the past 3 years, OJP also has placed new and additional requirements on the contractor in order to ensure that there is transparency in the award process and that fair and open competition can be properly documented.

See Attachment 2.

Question. If the application costs increased under the current contract for peer review services over the last 3–4 years, what is this attributable to?

Answer. The current OJP peer review contract supported the fiscal year 2008 and fiscal year 2009 peer review process. The overall cost of peer review increased from approximately \$4 million in fiscal year 2008 to \$8.7 million in fiscal year 2009 because the number of applications peer reviewed increased from 4,872 to 14,104. The increase in the number of applications OJP received and peer reviewed in fiscal year 2009 was largely due to funding appropriated pursuant to the American Reinvestment and Recovery Act of 2009.

Question. Finally, what cost containment strategies are contemplated?

Answer. In an effort to streamline the process and reduce costs, OJP released a Request For Quotation (RFQ) in July 2010 for peer review activities in fiscal year 2011–fiscal year 2015. In addition, the OJP bureau and program offices perform continuous reviews to reduce costs and, whenever appropriate, choose to complete peer review tasks in-house and/or conduct a standard peer review instead of a higher-cost in-person peer review.

Question. Please have OJP's OCFO task OAAM (Office of Audit Assessment and Management) to prepare these cost work ups, and the bureaus and program offices confirm the figures for accuracy before submitted.

Answer. See attached chart, also provided in response to Senator Shelby's Questions 20 and 23. See Attachment 2.

FORENSICS COST ANALYSIS

Question. As you know I am opposed to NIJ's efforts of bailing out their friends with taxpayer dollars to cheapen the quality of evidence by outsourcing DNA work to private contractors, as I believe we need to build our crime labs up and increase their capacity so that they can respond to the ongoing increase of cases that come that way. I find it unfortunate that many politicians have put unrealistic mandates on the crime labs yet they have not provided them the tools to meet those mandates and as a result they are forced to outsource. I am very concerned with your agencies clear leaning toward private contractors on this matter, particularly NIJ. Your office continues to put together panels with handpicked agencies so that you can present outcomes that support your position.

Please provide me a clear cost analysis of doing business with a private lab and include in that the cost to work the case from reception; including detection of stains on all items, identification of those stains, isolating and examining portions of those stains, and testifying in court.

Answer. NIJ provides Forensic DNA Backlog Reduction grants directly to State and local government laboratories for the purpose of reducing their backlogs. Backlog reduction activities may include the provision of overtime to DNA analysts, the purchase of supplies required for the DNA analysis of samples, and/or the outsourc-

ing of samples to accredited fee-for-service laboratories for DNA analysis. NIJ also provides funding to State and local government laboratories to purchase equipment and hire/train DNA analysts so they can build their capacity to the point where they will not have to rely on assistance from private labs.

NIJ's primary backlog reduction program, the Forensic DNA Backlog Reduction Program, provides funding to States and units of local government through grants. Recipients of these grants may choose to send casework evidence samples to accredited fee-for-service laboratories for DNA analysis if they do not have the capacity to conduct the analysis themselves. Because NIJ does not establish or manage casework contracts with private laboratories, it is difficult to assess the total cost of doing business with the private laboratories. Some private laboratories post their fee schedules publicly (e.g. <http://www.bodetech.com/solutions/dna-identification-services/forensic-casework-price-list>), and based on the examination of selected budgets submitted with requests for funding in fiscal year 2009, the estimated cost of outsourcing casework can range from \$200 to \$2,500 per case, with an approximate average of \$994 per case; however, this is not a full analysis of all costs involved and may be influenced by other variables such as the number of samples tested per case, the extent of forensic testing (i.e., identification of stains or screening for biological fluids), differing types of DNA analysis methods (e.g., STR, Y-STR, mtDNA), or variations in the number of samples requested per month. Additionally, NIJ does not allow Forensic DNA Backlog Reduction Program grant funds to be used for expert witness testimony, and as such, does not collect information regarding the costs associated with court testimony.

NIJ's other Forensic DNA backlog reduction program, the Convicted Offender and/or Arrestee DNA Backlog Reduction Program, provides funding through grants to State laboratories that perform forensic DNA analysis for upload to the Offender Index of the Combined DNA Index System (CODIS). Through the grant program, a State may request up to \$35 per sample to perform DNA analysis in its own CODIS laboratory, or it may contract up to \$35 per sample to a qualifying private fee-for-service laboratory to perform the DNA analysis. Qualifying laboratories are those that are accredited, have obtained a National Environment Policy Act Finding of No Significant Impact from OJP, receive mandatory annual DNA audits, and as such, are on the list of approved vendors. The current list of qualifying laboratories consists of five private laboratories; however, any accredited laboratory can become a qualifying laboratory by contacting NIJ and meeting and completing all requirements.

If a State has samples that were collected from convicted offenders and/or arrestees and are pending DNA analysis for upload to CODIS, and the State does not wish to establish or manage a contract with a private laboratory, that State can request that NIJ contract directly with the private laboratory for the DNA analysis of the backlogged convicted offender and/or arrestee samples. Because NIJ allows States that receive grants from the Convicted Offender and/or Arrestee DNA Backlog Reduction program to use granted funds to send backlogged samples to private laboratories, contracts between OJP and private laboratories are established only at a State's request. These contracts are established and managed by OJP's Acquisitions Management Division. In fiscal year 2009, the contracted cost per sample ranged from \$22.90 to \$32.00. Similar costs are anticipated for fiscal year 2010.

NATIONAL ACADEMY OF SCIENCE STUDY

Question. Does the Department of Justice have or is it developing a position on any of the issues of forensic reform as noted in the National Academy of Science report? Please include accreditation of laboratories and other forensic service providers, certification of those individuals who provide testimony in court regarding their findings, initiating research to determine what has yet to be done to improve the various examinations conducted, what support can be given to help laboratories to develop the capacity to handle casework received in an acceptable timeframe, and what support can be given to encourage students to pursue careers in forensic science and forensic pathology?

Answer. The Department of Justice has not itself taken a position on the specific recommendations of the NAS report, but rather has participated in the inter-agency Subcommittee on Forensic Science (SOFS) of the National Science and Technology Council, organized by the White House's Office of Science and Technology Policy. The SOFS is currently preparing recommendations for coordinated, comprehensive executive branch action to advance the goals of the NAS report.

Question. In an effort to fully understand this change in FBI Laboratory policy and what prompted this sudden policy change, I'm submitting the same questions I mailed to Director Mueller in a letter, to the Department of Justice so we can have these answers on record. I request that you provide the answers to the following questions and produce all documents and information requested for the record.

The FBI laboratory is one of the few executive board members of American Society of Crime Lab Directors (ASCLD), who issued the aforementioned position statement in support of the status quo and restricting access to NDIS to public labs. Explain why the FBI Laboratory, who has representation on this body's executive board, contradicts the position so soon after ASCLD's release of its position statement. Did undue pressure change the FBI position?

Answer. The FBI Laboratory's position regarding private laboratory access to the National DNA Index System (NDIS) does not contradict that of the American Society of Crime Lab Directors (ASCLD). The FBI's March 23, 2010 press release clearly states, "The administration and operation of the National DNA database is an inherently governmental function that supports criminal investigations conducted by our Federal, State, local, and tribal law enforcement partners. Therefore, the FBI's assessment does not include re-evaluating access to NDIS." Both the ASCLD position statement and the FBI's press release reaffirm support for the status quo that private laboratories should not have access to the NDIS. Both statements also support looking for ways to enhance the NDIS process so that DNA profiles can optimally assist in fighting crime.

Several members of the forensic community, including ASCLD, have been interested in improving the process of analyzing, reviewing, and entering DNA profiles into NDIS. The President of ASCLD requested the FBI's ex-officio (non-voting) member of the Board of Directors to communicate with the ASCLD Advocacy Committee. The extent of those communications was to understand the problems perceived by State and local crime laboratory directors and to advise of potential efforts the FBI Laboratory may consider to help all NDIS laboratories. However, there was no pressure whatsoever put upon the FBI's ex-officio member for the FBI to change its policy on private laboratory access to NDIS or other related policies that would benefit private DNA laboratories.

Question. The FBI's Scientific Working Group on DNA Analysis Methods (SWGDM), CODIS State Administrators, and ASCLD have all issued positions strongly supporting the status quo and restricting access to NDIS. With these and other subject matter experts supporting the current FBI procedures and national standards, who specifically at the FBI decided to move toward loosening these standards and made the decision to change this policy?

Answer. As previously noted, the FBI's March 23, 2010 press release clearly states, "The administration and operation of the National DNA database is an inherently governmental function that supports criminal investigations conducted by our Federal, State, local, and tribal law enforcement partners. Therefore, the FBI's assessment does not include re-evaluating access to NDIS." The scope of the current review is limited to a re-evaluation of NDIS procedures to determine whether time/backlog efficiency improvements would be possible, with no diminution in the current level of NDIS integrity. Again, the FBI Laboratory is not considering any changes to NDIS access, which is currently limited to Federal, State and local criminal justice agencies.

Question. Provide the names, dates, and attendees of any meetings held between the FBI Laboratory Director or his representative, and representatives of vendor DNA laboratories prior to this press release.

Answer. The FBI Laboratory Director has had the following relative interactions with vendor laboratory representatives prior to the release of the March 23, 2010, press release:

- Brief courtesy discussions with vendor participants at professional meetings, such as the International Association of Chiefs of Police (IACP), American Academy of Forensic Sciences, ASCLD, CODIS Conference, etc. At no time at any of these events did he discuss FBI Laboratory requirements or vendor capabilities.
- On October 23, 2009, at the request of the IACP, the FBI Laboratory Director and the Executive Assistant Director of the FBI's Science and Technology Branch, Louis Grever, met with IACP deputy executive director Jim McMahon and IACP member Howard Safir (former NYPD Police Commissioner, IACP president, and current CEO of Bode Technology). Mr. McMahon's and Mr. Safir's stated purpose was to represent the opinions of senior law enforcement officials regarding the value of DNA and the need for faster turnaround times.

All present were cognizant of Mr. Safir's current position with Bode Technology, and the conversation was never allowed to stray into discussion of Bode's capabilities or FBI requirements relative to contracted DNA analysis. It is noted that Bode Technology is currently under contract to the FBI for providing DNA support to Metropolitan Police Department (MPD) casework and laboratory workspace for MPD laboratory staff.

—On November 2, 2009 Jeff Boschwitz of Orchid Cellmark approached the FBI Laboratory Director on the exhibitor floor of the CODIS Conference and requested a meeting to discuss various issues of interest to Orchid Cellmark. The FBI Laboratory Director expressed that this meeting would be inappropriate per the Federal Acquisition Rules and FBI Ethics procedures. Subsequent e-mail attempts by Mr. Boschwitz to engage the Laboratory Director were unanswered. The FBI Laboratory Director has had no other communications of any kind with Mr. Boschwitz or Orchid Cellmark.

Prior to issuing the press release, representatives of the FBI Laboratory engaged in conversations with the ASCLD, SWGDAM, CODIS State Administrators, the Police Executive Research Forum (PERF), the IACP, and other Federal, State, local, and tribal agencies, including the Los Angeles Police Department (LAPD), to determine if a re-evaluation was necessary. The FBI did not engage with lobbyists or industry representatives on this issue.

Question. Did the FBI issue this press release because of pressure from Congress, lobbyists, or industry representatives?

Answer. No, the FBI did not issue the March 23, 2010 press release because of pressure from Congress, lobbyists, or industry representatives. Rather, the decision by the FBI to re-evaluate current policies, standards, and protocols was informed and influenced by inquiries to the FBI Laboratory by members in the law enforcement and forensic community.

The issue of DNA backlogs and the technical review process has drawn significant attention from Congress, and the FBI has been contacted by Members of Congress and/or their staffs by letter and phone. FBI representatives have had meetings and conversations with Members of Congress and/or their staff regarding the DNA backlog, technical review, and other related issues. For example, representatives of the FBI Laboratory met with staff from the Senate Judiciary Committee on March 2, 2010 to discuss potential efficiencies that could be gained by this re-evaluation of policies, standards, and protocols. Members of Congress and/or their staffs have expressed their interest in legislating on the issue of DNA backlogs. While the FBI is aware that Congress has the authority to legislate this issue, the FBI is more concerned with the accuracy, the backlogs, and the long turnaround times for casework, which decreases the utility of NDIS to solve crime.

Prior to the press release, the FBI Laboratory engaged in conversations with the LAPD, ASCLD, SWGDAM, CODIS State Administrators, PERF, the IACP, and other Federal, State, local, and tribal agencies to determine if a re-evaluation was necessary.

The FBI Laboratory is aware of activity by lobbyists and industry representatives who seek either private laboratory access to CODIS and/or a repeal of the 100 percent technical review requirement. The FBI has not interacted with individuals representing either of these groups.

Question. Was the FBI told by Congress, lobbyists, or industry representatives that if the FBI does not move in this direction, changes will be legislated? If so, who?

Answer. While Members of Congress and/or their staffs have expressed interest in legislating these issues, the FBI was not expressly told by Congress, lobbyists, or industry representatives that changes would be legislated in the absence of action by the FBI. While the FBI is aware that Congress has the authority to legislate this issue, the FBI is more concerned with the accuracy, the backlogs and the long turnaround times for casework, which decreases the utility of NDIS to solve crimes. The FBI Laboratory is obligated to ensure the quality and integrity of the data in NDIS, as well as ensure operational efficiency. The re-evaluation described in the March 23, 2010 press release is a responsible measure to fulfill these obligations.

Question. Has the FBI attended any meetings with the National Institute of Justice (NIJ) and discussed vendor laboratories? If so, please provide details and all documentation of the items discussed.

Answer. The FBI has not attended any meetings with the National Institute of Justice (NIJ) to discuss vendor laboratories since 2006.

Question. Provide specific details of the FBI's past experience with vendor DNA laboratories, to include the name of the vendor laboratory and the results of any lab errors that were detected by the FBI after the vendor review was conducted.

Answer. Since 2003, the FBI Laboratory has participated in four outsourcing contracts. These contracts are as follows:

- Outsourcing to Orchid Cellmark of nuclear DNA casework for serology and Short Tandem Repeat (STR) analysis. Contract amount was \$1,100,000. Period of performance was from September 2003 through July 2007.
- Outsourcing to Orchid Cellmark of nuclear DNA casework for retesting purposes. Contract amount was \$113,000. Period of performance was from September 2003 through September 2005.
- Outsourcing to The Bode Technology Group of Federal Convicted Offender database samples for STR analysis. Contract amount was \$1,000,000. Period of performance was from February 2004 through December 2006.
- Outsourcing to The Bode Technology Group of Metropolitan Police Department (MPD) backlog cases for serology and STR analysis, as well as space for the operation of the MPD DNA Laboratory, has totaled \$2,100,000 to date. The period of performance has spanned September 2008 to present.

During the FBI's technical review of the outsourced Federal Convicted Offender data, several errors were identified with the vendor (The Bode Technology Group) laboratory data. These errors can be classified into the following categories: administrative, clerical, quality, and incorrect profiles. Administrative and clerical errors included items such as missing or incomplete paperwork and typographical errors. Quality issues occurred when the vendor laboratory reported data that did not meet the FBI's interpretation guidelines. These samples had to be reanalyzed by the vendor laboratory. Finally, there were instances in which the reported profile was determined to be incorrect during the FBI technical review of the data. In these instances, the samples had to be reanalyzed by the vendor laboratory. Any errors that were identified during the FBI's technical review of data submitted by the vendor laboratory were subsequently corrected and ultimately accepted by the FBI.

Administrative, clerical, and quality issues were also observed with the outsourced serology and STR analyses conducted by the vendor laboratory (Orchid Cellmark) on both contracts initiated in September 2003. Most significantly, the vendor laboratory notified the FBI Laboratory of the improper testing and reporting of laboratory results by an Orchid Cellmark examiner on submitted FBI Laboratory casework. In these instances the samples were reanalyzed by the vendor laboratory, and further reviewed by the FBI Laboratory, prior to ultimate acceptance.

Question. Provide specific details on the architecture and scope of what the FBI plans to do after this press release. What will the process entail? How long will this evaluation last?

Answer. The FBI's "Initiative to Enhance NDIS Efficiency" began with a kick-off meeting on April 26, 2010 during which the objectives of this re-evaluation were established. The participants invited to this meeting included representatives from the IACP, SWGDAM, the Police Executive Research Forum, ASCLD, the American Society of Crime Laboratory Directors/Laboratory Accreditation Board (ASCLD/LAB), Forensic Quality Services-International, the National Institute of Standards and Technology (NIST), the National Institute of Justice (NIJ), and the New Scotland Yard Metropolitan Police Service (United Kingdom). Representatives from these agencies attended the meeting, with the exception of the IACP and the New Scotland Yard Metropolitan Police Service.

At this meeting, the FBI presented a strawman proposal for the re-evaluation of NDIS policies, standards, and procedures and began discussions with these groups on the process under which the NDIS re-evaluation is to be conducted. The FBI Laboratory has reached out to additional stakeholder groups most likely to be affected by any change in NDIS processes and practices for their comments. The FBI then presented this strawman proposal to additional stakeholders, such as the NDIS Board, CODIS State Administrators, SWGDAM Executive Board, and ASCLD Board. The groups were requested to provide feedback and suggestions. The FBI is looking at all proffered proposals and comments to determine the best course of action.

The FBI expects to maintain communication with these various groups as their comments and information is gathered. The FBI will continue to seek their input on the acceptability and feasibility of any proposed changes to the operation of the National DNA Index. Additionally, the FBI hopes to collect data and suggestions from jurisdictions that have been successful in reducing their DNA backlogs. Once the FBI has all the relevant information, it will evaluate the data and determine a timeline, as well as if a pilot project is needed. Based on the stakeholder input, the changes will be discussed with SWGDAM, who, if necessary and in agreement, will recommend changes to the Quality Assurance Standards to the FBI Director.

Question. Once the evaluation is completed, who at the FBI will decide whether any procedures should be changed?

Answer. Once the FBI's re-evaluation of all NDIS policies, standards, and procedures is complete, FBI Laboratory management will propose recommended changes (if any) to the FBI Director. When the FBI Director approves changes to the Quality Assurance Standards, the NDIS Procedures Board will make changes to the operational procedures of NDIS. The NDIS Procedures Board is composed of 12 individuals representing the FBI, SWGDAM, CODIS State Administrators, and State and local labs providing the highest volume of criminal and offender casework to NDIS. The NDIS Procedures Board approves changes to NDIS Procedures based upon a majority vote for which a quorum of members is present. Any proposed changes will be compliant with current legislation governing the operation of CODIS.

Question. If any changes are recommended, will the FBI require the CODIS State Administrators to unanimously endorse the proposed changes as it is the individual States who are affected most by a reduction in the review of vendor DNA data? If not, why is the FBI ignoring the opinions and concerns of these experts?

Answer. The FBI recognizes that the States, and the DNA records that they contribute, are responsible for the success of the NDIS. The FBI's practice has always been to seek out the views and opinions of the CODIS State Administrators, the NDIS Procedures Board, and the SWGDAM, with respect to any fundamental changes in the operation of NDIS. This is generally done at either the semi-annual CODIS State Administrators meetings or at NDIS Procedures Board and SWGDAM meetings. For situations requiring a more immediate response, the FBI solicits comments or input via e-mail requests. The FBI encourages CODIS State Administrators to make their views known during such meetings or through written communications. All of their views/comments are reviewed and carefully considered by the FBI before any new procedure or change is implemented. In those instances in which a substantial change to existing procedures is contemplated, the FBI often institutes such a change on a pilot basis to further evaluate the need for the change and the impact, if any, on the CODIS community. The FBI understands the importance of the CODIS community in the continued success of the CODIS and NDIS Programs.

With regard to this particular re-evaluation of NDIS policies, standards, and procedures, the FBI conducted an initial meeting with the CODIS State Administrators May 11-12, 2010, and plans to meet with them again in November 2010 to discuss potential revisions to NDIS procedures. FBI will solicit the opinions of these individuals at every step in the re-evaluation process. The FBI has also established an e-mail address for distribution of regular updates on the NDIS procedural re-evaluation, as well as for ease of solicitation of feedback from all interested in the re-evaluation process.

Question. Federal law directs SWGDAM to oversee changes to the FBI's quality assurance standards. Newly revised standards were just completed last year. At that time, did the Office of General Counsel of the FBI review the new standards and indicate that the FBI should loosen the standard of review for vendor labs? Will the FBI require a unanimous endorsement from SWGDAM on any proposed changes? If not, why not?

Answer. The DNA Identification Act of 1994 specifies that the FBI Director's Quality Assurance Standards shall be developed, and if appropriate, revised by the DNA Advisory Board (DAB), an entity established by the act and tasked with these responsibilities. The act also defined the Board's tenure to not exceed 5 years. The first meeting of the DAB occurred in May 1995 and the last in December 2000. The DNA Advisory Board recognized the Quality Assurance Standards would require direction and management beyond their 5 year tenure, and identified TWGDAM (Technical Working Group for DNA Analysis Methods), later re-named SWGDAM (Scientific Working Group for DNA Analysis Methods) as an appropriate body to provide such support. When the DNA Advisory Board was dissolved in December 2000, it was their recommendation that future revisions to the Quality Assurance Standards be performed by SWGDAM.

As an advisory authority, and not derived from a statutory role, the FBI's SWGDAM accepted the DNA Advisory Board's recommendation for maintaining and providing recommendations to the FBI Director for the Quality Assurance Standards. SWGDAM revised the Quality Assurance Standards in 2007 and 2008. These revisions were vetted not only by accrediting agencies, specifically the American Society of Crime Laboratory Directors/Laboratory Accreditation Board (ASCLD/LAB) and Forensic Quality Services (FQS), but also by the governmental laboratories and the public. All comments received by the deadline were considered by SWGDAM. After the public review, the proposed revisions were forwarded to the FBI's Office of General Counsel (OGC) for review. The FBI's OGC requested minor revisions to language in the standards, but did not presume to offer counsel on any technical issues, including the technical review requirement. The recommended revisions to

the Quality Assurance Standards were approved by the FBI Director and went into effect July 1, 2009.

The FBI is fully engaging SWGDAM on any proposed changes regarding the NDIS enhancement proposals, especially with regard to the FBI Director's Quality Assurance Standards. The SWGDAM by-laws specify that the affirmative vote of the majority of a quorum of SWGDAM members shall be an act of SWGDAM. Therefore, a unanimous endorsement by SWGDAM of any proposed changes to the Quality Assurance Standards is not required under SWGDAM's current by-laws.

Question. The FBI's CODIS Unit reports that the current framework has aided approximately 100,000 investigations and to date, has never incorrectly identified an offender to law enforcement. The FBI is now implementing the new Federal law where a DNA sample will be collected from Federal arrestees. By the FBI's own estimate, it will receive more than a million additional DNA samples a year. Provide the justification on why the FBI is considering loosening the quality standards when the number of samples the FBI will be putting into the database is going to increase dramatically.

Answer. The FBI continues to endorse the highest quality standards possible for DNA analyses as an active member of many groups which espouse quality in forensic science, to include SWGDAM, ASCLD, and ASCLD/LAB. Having managed NDIS for 12 years, the FBI has a thorough understanding of the effect of data quality on the ability of the National DNA Database to aid investigations and solve crimes. The re-evaluation of policies, standards, and procedures being performed must ensure that quality and integrity of data are priorities, and under no circumstances will the FBI make changes to procedures that will endanger the effective operation of NDIS. The FBI has no intention of lessening quality standards, but rather has the goal of making the operation of NDIS more efficient for all who use information derived from this system.

Question. Do you plan to outsource any of the testing related to the increase in Federal DNA collections, and if so, why?

Answer. The FBI does not currently plan to outsource any of its Federal DNA Database Program testing. The FBI does use the services of contractor staff working within the FBI Laboratory to process DNA samples submitted under the Federal Convicted Offenders Program (FCOP). The FBI continues to build its capacity to be able to analyze 90,000 samples per month and is on track to eliminate its offender backlog later this year. When the backlog is eliminated, the FBI Laboratory envisions achieving a 30-day turnaround on samples submitted under current legislation.

Question. The FBI is proposing that they perform site visits and audits to screen private labs to participate as an "AOL" associated outsourcing laboratory. Do they know how many private labs they will accommodate? Will they use existing resources to do this or ask for more money or positions to handle this workload?

Answer. The FBI Laboratory offered a "strawman" proposal to its stakeholders to stimulate discussions on if, and how, the operation of the National DNA Index System could be enhanced to better serve the law enforcement and CODIS communities. Input and comments from its stakeholders revealed that the "strawman" proposal was not a direction that a majority of its CODIS community was comfortable in pursuing at this time. As a result, the initial proposal is no longer under consideration. Instead, the FBI is reviewing proposals that would necessitate minor changes to the FBI Director's Quality Assurance Standards (QAS) for Forensic DNA and DNA Databasing Laboratories to provide States with additional flexibility in data review and their database and searching operations.

While the associated outsourcing laboratory proposal is no longer under consideration, it has been suggested that the FBI's performance of site visits, if acceptable under the QAS, would provide some additional flexibility to the States for accepting ownership of outsourced DNA records. The FBI will be reviewing this proposal with all of its stakeholders to determine if additional personnel or resources would be necessary to perform on-site visits of private laboratories.

Question. Does the FBI plan to propose this process for offender samples and move the process to ease work samples after a pilot project?

Answer. At this time, only minor changes to Quality Assurance Standards for both Forensic DNA and DNA Databasing Labs are being considered. These changes will give the States options for performing the 100 percent technical review, to include the use of contractors or assistance from other NDIS-participating laboratories. At this time, there are no immediate plans to conduct a pilot project.

Question. The FBI apparently supports dropping the quality assurance practice of public labs technically reviewing data produced by private labs prior to upload to CODIS. The American Society of Crime Lab Directors (ASCLD) and CODIS technical administrators cite a number of concerns with quality of data from private labs

that raise the concern. If public labs must own the data after it is tested by the outsourced private lab, why does the FBI feel that a review of that data is no longer warranted as an important quality assurance measure? (Note: ASCLD is concerned about taking ownership of data that has not been reviewed by public labs only prior to upload. Developing a profile and acquiring a hit in the database only generates an investigative lead in many cases. Additional work and court testimony often has to be performed as follow up.)

Answer. The “strawman” proposal offered to the law enforcement community included the concept of transferring the responsibility of data quality to the private laboratory. The feedback provided by ASCLD and the CODIS State Administrators indicated that this was not a favorable option and strongly opposed the removal of the 100 percent technical review requirement. Alternative suggestions, which will give States additional flexibility on review of outsourced data, are being considered.

Question. Does the FBI plan to make a path for private labs to eventually have the capability to upload samples to NDIS to some extent? ASCLD opposes any access by private entities, approved by the FBI or otherwise, to have access to confidential public information. Why does the FBI appear to lean toward developing data to support some level of access by private labs to NDIS?

Answer. As mentioned in our March 2010 press release announcing the review of the National DNA Index System, the FBI believes that participation in NDIS is an inherently governmental function that is properly limited to criminal justice agencies for law enforcement identification purposes. The FBI does not support permitting private organizations or entities direct access to NDIS, and the FBI has no plans to collect data to support any efforts for private entities to obtain access to NDIS.

Question. The FBI stated that private labs have assisted with testing one-half of the current offender profiles that public labs have uploaded to the database (not casework samples). They appear to cite this statistic as some sort of justification or entitlement for working with private labs. What is their view on the importance of citing the number of cases that public labs have been forced to outsource due to a lack of capacity in their own labs?

Answer. In describing the success of the National DNA Index System in generating investigative leads for criminal investigations, the FBI acknowledges the contributions of Federal, State, local and private laboratories that have generated the DNA records contained in NDIS. The number of investigations aided by NDIS is attributable to the number of DNA records stored at the national level. Through the NDIS review process, the FBI is working together with our stakeholders to provide the flexibility to the States to operate their DNA databases in the most efficient manner appropriate to their individual needs, whether the data is generated in-house or outsourced.

Question. The FBI recently surveyed all NDIS labs in an effort to assess the current DNA backlog. The majority of the DNA review problems for offenders and cases is limited to only a few labs, and including the FBI as one of the worst. The FBI is not in favor of making the raw survey results public and are proposing an elaborate plan before even looking at the data to even see what the problem is.

Answer. No response required.

BOP

Question. OMB’s Capital Programming Guide (OMB Circular No. A–11, Part 7) provides very specific direction regarding the analysis required to justify capital investments. Please describe the step-by-step process the Bureau of Prisons and the Department undertook to justify the purchase of the Thomson Correctional Center (TCC). In particular, please share with us the results of your cost-benefit and risk analyses? What viable alternatives were examined and what were the decisive factors that favored Thomson?

Answer. BOP Capacity Planning Committee has explored various possibilities to increase higher security bed space. In considering the Thomson Correctional Center, BOP’s capacity planning and analysis followed the guidance set forth by OMB Circular A–11, Part 7. Continuing increases in the Federal inmate population pose a substantial and ongoing challenge for BOP—particularly at the medium and high security levels. BOP must increase its capacity, and can do so by acquiring and renovating existing structures, expanding existing facilities (where infrastructure permits), and constructing new prisons. The fiscal year 2011 activation of the Thomson facility would reduce the crowding rate in BOP high security institutions from 53 percent to 46 percent over rated capacity. Without this acquisition, crowding in BOP high security institutions is expected to reach 57 percent over rated capacity.

BOP representatives visited the Thomson facility in 2009 and 2010 and determined that the institution was suitable, with modifications, to meet BOP's specific needs for special administrative high security bed space. After the State of Illinois indicated its interest in a sale, BOP researched the State's construction costs, met and spoke with facilities staff at Thomson, and developed preliminary estimates for maintenance and retrofit requirements. As part of the President's budget request, the OMB Exhibit 300s are posted on the Department's Web site and is available at: <http://www.justice.gov/jmd/2011justification/exhibit300/>.

The Thomson facility is uniquely different than other properties the BOP has considered. The Thomson facility is modern, was never fully utilized, and was built specifically to house maximum security inmates. Based on other ongoing construction projects, BOP estimates that it would cost between \$200 million and \$300 million to construct an equivalent high security facility in the current market, and it would take approximately 3 to 4 years to complete the Environmental Assessment process, proceed through the procurement process, and complete construction. The costs and time to activate the Thomson facility are expected to be significantly less; given security criteria for Administrative Maximum (ADX) and Special Management Unit (SMU) inmates, BOP determined the Thomson acquisition would be the best value.

Question. Because of the proximity of the TCC to the Mississippi River, environmental concerns were raised about the prison that faded when the decision was made not to open the prison. What were those concerns? Have you conducted an Environmental Assessment/Environmental Impact Statement to support purchase of the TCC? If not, how did you by-pass National Environmental Policy Act requirements?

Answer. The Bureau of Prisons (BOP) has not received information regarding specific environmental concerns leading to the decision by the State of Illinois to construct the Thomson facility. However, BOP intends to conduct an Environmental Assessment pursuant to the National Environmental Policy Act; it is anticipated that the environmental impacts to the Mississippi River will become part of the overall analysis. As with any Environmental Assessment, if significant environmental impacts would result from the acquisition and activation of the Thomson facility that cannot appropriately be mitigated, BOP would conduct an Environmental Impact Statement.

Question. The TCC was completed in 2001 and has remained empty, save a 200-bed minimum security unit, since then. The facility appears to fit the classic definition of a "white elephant." What happened in Illinois that led them to abandon the prison the minute it was completed a decade ago? What, specifically, has the State of Illinois done and spent to prevent the empty facility from deteriorating over the last decade? Have Federal engineers inspected the TCC and reported on its material condition? If so, what were the results of their inspection? If not, when will such an inspection be conducted?

Answer. According to the State of Illinois, although the high security portion of the Thomson facility was never fully operational, the State has been operating a 200-bed minimum security camp adjacent to the secure facility. According to State officials, the high security portion of the facility was never opened because of state-wide fiscal concerns. In terms of upkeep, BOP officials have visited the facility on multiple occasions and inspected the institution thoroughly. The institution has been well-maintained and is suitable, with modification, to meet the needs of the Federal Prison System.

Question. BOP is on record, repeatedly so, opposing the purchase of low- or medium-security privately-funded and built prisons, because of inherent design flaws that were operationally unacceptable and too expensive to fix. How does the TCC compare to BOP design and construction standards for the "Supermax" or other ultra-secure Federal facilities? Presuming much of this was done prior to making Thomson known and in anticipation of using it as a replacement for Guantanamo Bay's Detention Facility, have military officers responsible for the detention of terrorists at Guantánamo Bay inspected the TCC and provided an analysis of the security and safety of the facility? If not, will such an inspection be conducted?

Answer. Throughout BOP's history, the agency has acquired former military installations, college campuses, and a seminary to convert them for Federal prison use. Several of these locations included existing buildings that required renovations and security enhancements to provide suitable housing for low and minimum security inmates. BOP also acquired the U.S. Disciplinary Barracks in Lumpoc, California in 1959, which was modified and converted into U.S. Penitentiary Lumpoc, now a medium security institution.

BOP's interest in acquiring Thomson is consistent with its earlier position. In contrast to earlier acquisitions, the Thomson facility has already been built to modern, high security correctional facility specifications rather than having to be converted

to prison use. In earlier years, most prisons offered to BOP for purchase were old, obsolete facilities that were no longer desired by States moving to newly constructed, modern prisons.

Question. The “Presidential Memorandum—Closure of Detention Facilities at the Guantánamo Bay Naval Base,” issued December 15, 2009 must have reflected the summation of considerable analysis by the Departments of Defense and Justice regarding the incarceration of terrorists on U.S. soil. What bodies were convened to conduct this analysis, who was involved, and where are the results of their labors?

Answer. The Justice, Homeland Security, and Defense Departments collaborated to assess potential U.S. facilities for the Guantánamo Bay detainees, including several interagency meetings and site visits to the facility in Thomson. This work was part of a broader effort by the Detention Policy Task Force, created pursuant to Executive order 13493, to evaluate options for the apprehension, detention, trial, transfer, release, or other lawful disposition of individuals captured or apprehended in connection with armed conflicts or counterterrorism operations. The preliminary evaluation process also included discussions with Illinois stakeholders once the administration identified the Thomson facility as a likely candidate, such as: the Director of the Illinois State Police, the Director of the Illinois Department of Corrections, the Director of the Illinois Emergency Management Agency, and multiple regional, county, and local law enforcement officials.

THOMSON PRISON

Question. How did BOP determine that Thomson met the ADX/high bed space need?

Answer. BOP staff made multiple site visits to tour the Thomson facility and compare its security features with BOP administrative maximum, special management and general population high security bedspace. BOP staff determined that the institution was suitable to meet BOP’s special administrative high security bedspace needs and could become fully operational fairly quickly after acquisition, modification and hiring and training staff.

Question. What were the construction costs to the State of Illinois?

Answer. BOP’s understanding is that the cost to the State of Illinois has been reported at \$140 million.

Question. What were estimates for maintenance and retrofit requirements?

Answer. As requested in the fiscal year 2011 President’s budget, the BOP estimates \$15 million is required for security and infrastructure upgrades.

Question. Why don’t we offer a fire sale price, and no more, for this white elephant to ensure costs to acquire, retrofit, and activate the facility are “significantly less” than new construction?

Answer. Federal law requires the amount paid for the negotiated purchase of real property to be just compensation which is not less than the fair market value determined by an appraisal completed in accord with 42 U.S.C. § 4651, 49 CFR part 24, and the Uniform Appraisal Standards for Federal Land Acquisitions. Further, the Department of Justice believes the costs and benefits of acquiring (within 1 year) and modifying a never opened, solidly built, 1,600-cell, high security facility in Thomson, Illinois, for approximately \$170 million outweighs the cost (up to \$300 million in the current market) and time for constructing (approximately 3 to 4 years) a new high security facility.

Question. When is the formal appraisal going to be completed?

Answer. The formal appraisal is expected to be completed in Fall 2010.

Question. What are all of the applicable rules and regulations for purchasing Thomson that BOP must fully comply with?

Answer. BOP must comply with the following Federal rules and regulations:

- The National Environmental Policy Act of 1969 and its implementing regulations;
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and its implementing regulations;
- A Procedural Guide for the Acquisition of Real Property by Governmental Agencies Title Standards 2001;
- 18 U.S.C. Chapters 301 and 303; and
- Any other relevant authorization and/or appropriations laws.

In addition, Illinois State rules and regulations may impact the BOP and are unknown at this time.

Question. Please break down the OMB Circular No. A–11, part 7 into its individual steps and provide the documentation required by the circular where appropriate.

Answer. As part of the President's budget request, and in accordance with guidelines set forth by OMB Circular A-11, part 7, the OMB Exhibit 300s are posted each year at the following Web site: <http://www.justice.gov/jmd/2011justification/exhibit300/>.

Question. When does BOP intend to conduct an Environmental Assessment pursuant to the National Environmental Policy Act?

Answer. The Environmental Assessment began in June 2010. BOP anticipates the Environmental Assessment will be completed in Fall 2010.

Question. Provide an engineer's report on material condition and needed modifications.

Answer. BOP does not produce an "engineer's report"; however, the Bureau's assessment, according to Correctional Programs and Facilities experts, concluded that additional modifications would be needed to meet BOP's security standards to house high security inmates. The following lists the major modifications needed and provides examples of the necessary security enhancements: New stun lethal fence and new razor ribbon to meet BOP guidelines; new fence alarm system; new rear gate and sallyport gates; construct facilities building and storage area; and security upgrades, such as door locks, hardened recreation cages behind units, addition of security fencing within compound, installation of additional cameras and tie to monitoring system, installation of radio system base and portables, additional security lighting within compound, installation of anti-crash bollards in front of institution and rear, and construction of holding cells in receiving and discharge area.

The number of administrative maximum (ADX or "super max") beds available in the Federal prison system has not increased since ADX Florence was activated in 1994. Acquisition of the Thomson facility, which is significantly larger than ADX Florence, will expand BOP's capacity to confine ADX and Special Management Unit (SMU) inmates at a lower cost and within a shorter timeframe than building a new facility.

The Thomson facility is unique in that it is modern, was never fully utilized, and was built specifically to house maximum security inmates. Completed in 2001, the Thomson facility could be used fairly quickly after some modifications were completed. It could be acquired and readied for use, at today's lower costs, more rapidly than constructing a new facility, saving several years. The Thomson facility would enable BOP to move the most disruptive and violent inmates out of existing general populations U.S. Penitentiaries to a newer, more modern facility better suited to the controls required to manage the ADX- and SMU-type populations. Some features of the Thomson facility that compare extremely well with other administrative high units are: The amount of bedspace available (1,600 cells); flat land geography that allows unobstructed line of sight; good infrastructure with plenty of sewer and water capacity; and a central layout for program space, hospital, food service, education.

Question. Provide information on CCA medium-security facilities previously negotiated or discussed.

Answer. BOP currently contracts to house low security criminal aliens, BOP is not aware of any Corrections Corporation of America facilities offered for sale to BOP.

Question. Please provide the Defense Department inspection findings.

Answer. The Department of Justice does not have a copy of the Defense Department's inspection findings.

Question. Please provide the December 15 letter from Secretary Gates and AG Holder detailing some of the security enhancements envisioned for the Thomson facility.

Answer. Attached is the requested letter to Governor Quinn of Illinois, which was signed by Attorney General Holder (Justice), Secretary Clinton (State), Secretary Gates (Defense), Secretary Napolitano (Homeland Security) and then Director Blair (National Intelligence). See Attachment 3.

DECEMBER 15, 2009.

The Honorable PAT QUINN,
Governor of Illinois,
Chicago, Illinois 60601.

DEAR GOVERNOR QUINN: On January 22, 2009, President Obama issued Executive order 13492, directing the closure of the detention center at Guantanamo. A key purpose of this Order was to protect our national security and help our troops by removing a deadly recruiting tool from the hands of al-Qa'ida. This should not be a political or partisan issue. This action is by the Nation's highest military and civilian leaders who prosecuted the war against al-Qa'ida under the previous' and continue to do so today. It is also supported by five previous Secretaries of State who in both Democratic and Republican administrations, including those of Presidents Nixon, Ford, George H.W. Bush, Clinton, and George W. Bush.

On November 12, 2009, you wrote to Defense Secretary Robert Gates and Attorney General Eric Holder proposing that the Federal Government work with the State of Illinois to acquire the Thomson Correctional Center to house Federal inmates and a limited number of detainees from Guantanamo Bay, Cuba. We appreciate the leadership and assistance you and Senator Dick Durbin have provided during our evaluation of this proposal. We also would like to thank Thomson Village President Jerry "Duke" Hebler and the people of Thomson and the surrounding region for their support and hospitality.

We write to inform you that the President has directed, with our unanimous support, that the Federal Government proceed with the acquisition of the facility in Thomson. Not only will this help address the urgent overcrowding problem at our Nation's Federal prisons, but it will also help achieve our goal of closing the detention center at Guantanamo in a timely, secure, and lawful manner.

Executive order 13492 directed us to close the detention facility at Bay and to conduct a review of the most secure and efficient way to adjudicate each of the Guantanamo detainee cases. This is part of the President's aggressive posture in the fight against al-Qa'ida that uses all instruments of our national power, including: keeping the pressure on al-Qa'ida and its leadership globally; strengthening homeland security and increasing cooperation and intelligence sharing among Federal agencies and between the Federal Government and State and local authorities; recognizing our values as a critical piece of our battle against our enemies; prosecuting detainees in Federal courts, which have safely and securely prosecuted terrorists for many years; trying detainees for violations of the law of war in military commissions, which were reformed by bipartisan legislation signed by the President in October; and transferring detainees to their home countries or third countries that agree to accept them, when consistent with our national security interests and humane treatment policies.

As the President has made clear, we will need to continue to detain some individuals currently held at the Guantanamo Bay detention facility. To securely house these detainees, Federal agencies plan to work with you and other State officials to acquire the nearly vacant maximum security facility in Thomson, Illinois. This facility will serve dual purposes. First, the Department of Justice will acquire this facility primarily to house Federal inmates. The Bureau of Prisons has a pressing need for more bed space in light of current crowded conditions. Second, the Defense Department will operate part of the facility to house a limited number of detainees from Guantanamo. The two parts of the facility will be managed separately, and Federal inmates will have no opportunity to interact with Guantanamo detainees.

The security of the facility and the surrounding region is our paramount concern. The facility was built in 2001 to maximum security specifications, and after acquisition it will be enhanced to exceed perimeter security standards at the Nation's only "supermax" prison in Florence, Colorado, where there has never been an escape or external attack. Federal departments and agencies, including the Departments of Homeland Security, Justice, and Defense, will work closely with State and local law enforcement authorities to identify and mitigate any risks, including sharing information through the State's "fusion center" and working with the Federal Joint Terrorism Task Force.

The President has no intention of releasing any detainees in the United States. Current law effectively bars the release of the Guantanamo detainees on U.S. soil, and the Federal Government has broad authority under current law to detain individuals during removal proceedings and pending the execution of final removal orders.

Federal officials also have consulted with local, county, and State law enforcement authorities to begin the process of identifying additional resources they may require to handle the increased population of Federal inmates and detainees. We are pleased that Illinois law enforcement authorities endorsed this plan in a letter to the Secretary of Defense and the Attorney General dated December 2, 2009. We also note that more than 30 villages, towns, cities, counties, chambers of commerce, and other community and business organizations have sent letters, approved resolutions, or otherwise expressed their support for this plan. We are greatly encouraged by this support, and we commit to working with local authorities closely as this process moves forward.

There are many steps still to be taken and many requirements still to be met, but we look forward to working with you to complete the Federal acquisition of the facility in Thomson.

Sincerely,

HILLARY CLINTON,
Secretary of State.
ROBERT M. GATES,
Secretary of Defense.
ERIC H HOLDER, JR.,
Attorney General.
JANET NAPOLITANO,
Secretary of Homeland Security.
DENNIS C. BLAIR,
Director of National Intelligence.

Question. Provide more details and work products in response to the original question: What bodies were convened to conduct this analysis resulting in the December 15 letter referenced above, who was involved, and where are the results of their labors? Any other pertinent info you can offer would be appreciated as well.

Answer. Department of Justice officials have participated in a number of inter-agency meetings, work activities, and site visits of the Thomson facility. Visits and discussions have served as opportunities to engage local community members and law enforcement representatives; inform congressional, Office of Management and Budget, Department of Defense staff, and Illinois State legislators; assess compatibility with the operational and security needs of the Federal prison system; and educate surrounding communities of employment opportunities.

In addition, the Director of BOP has testified at hearings before the Illinois State Legislative Commission on Government Forecasting and Accountability and congressional appropriations committees on plans to purchase Thomson. The Department has also participated in a several congressional briefings with the Senate and House appropriations committee staff regarding the acquisition, renovation, and activation of the Thomson facility.

QUESTIONS SUBMITTED BY SENATOR MITCH MCCONNELL

Question. Currently, Federal correctional officers from Bureau of Prisons facilities in Kentucky, USP McCreary and FCI Manchester, have advised that they are not authorized to carry Oleoresin Capsicum (OC) spray as a means of defense from personal attacks from inmates who are often armed with improvised weapons. In light of the fact that the safety device is standard-issue in State prisons and local detention facilities across the United States, is the Bureau of Prisons considering the use of OC spray as standard-issued equipment to aid in increasing officer safety while on duty?

Answer. The Bureau of Prisons' (BOP) inmate management philosophy focuses on constructive and frequent interaction and communication between staff and inmates. In accordance with this approach, BOP does not issue less lethal devices to staff for everyday interaction with inmates and everyday performance of their duties and responsibilities. Implementing this policy promotes a less confrontational environment between staff and inmates. Further, it does so without providing the temptation or opportunity for inmates to obtain such devices through aggressive behavior. In all secure institutions (low, medium, and high-security), staff are authorized to use an array of less lethal munitions and devices (e.g., chemical agents and pepper ball launchers, etc.), but only during emergency situations. To further enhance safety and security, certain less lethal munitions have been placed in strategic areas for prompt access. Securely storing devices inside the institution with clearly established management controls, rather than in the outside armory only, ensures easier access and quicker response times to emergency situations.

BOP's inmate management philosophy, with its focus on the utilization of confrontation avoidance techniques, has worked well for the vast majority of inmates. BOP continues to review other aspects of institution operations and BOP policies and procedures to determine what else might be done to enhance safety and security and address staff concerns, consistent with the mission of the agency.

Question. In 2008, Bureau of Prisons Director Harley Lappin enacted a policy change to provide correctional officers with stab-resistant vests. The policy made the decision to wear a stab-resistant vest voluntary for each individual officer. However, the policy also dictates that if an officer chooses to wear a vest, he or she must do

so at all times regardless of an officer's posting, duties, or proximity to inmates, thus creating a deterrent to officers opting to wear vests. Has the BOP considered whether such a restrictive policy discourages officers from wearing these protective vests and has it conducted any research to determine the impact of its policy to date?

Answer. BOP reached an agreement with the Union regarding the vest implementation plan. All staff members who request a stab resistant vest are required to wear the vest while on duty except (1) during Annual Training, (2) when assigned to phone monitoring outside the secure confines of the facility, and (3) when assigned to the control center. Under the vest Implementation plan, each staff member who receives a fitted stab resistant vest is given a 6 month phase-in period. At any time during that initial 6 month period, the staff member may turn in the vest if he/she no longer desires one.

Question. In 2004, Congress passed the Law Enforcement Officers' Safety Act. This law allows law enforcement officers, including Bureau of Prisons correctional officers, to carry firearms when off-duty to defend themselves and their families. However, BOP has never reached an agreement allowing for storage of officers' personal weapons at BOP facilities. Has BOP considered providing storage for staff's personal weapons, or in the alternative, allowing staff to equip their vehicles with in-car gun safes?

Answer. The storage of personally owned firearms at Federal correctional and detention facilities would reduce the safety and security of the environment for staff, inmates, and the community. For instance, the storage of personal firearms on BOP property would provide opportunities for inadvertent mishaps regarding lost, stolen, or misplaced weapons and/or ammunition. In addition, the accidental discharge or misplacement of a personal weapon or ammunition could pose a significant threat to staff, inmates, and the general public.

QUESTIONS SUBMITTED BY SENATOR GEORGE V. VOINOVICH

OPERATION STREAMLINE

Question. Operation Streamline is a program where illegal immigrants are prosecuted and face jail time for crossing the border. This program has contributed to a 49.5 percent reduction in apprehensions by the Border Patrol along the Southwest border. It has also demonstrated the great cooperation between the U.S. Department of Homeland Security, the Department of Justice, and the Judiciary. Unfortunately, Operation Streamline, as successful as it is, is not fully utilized in all areas of the Southwest border. In the Tucson Sector, there is an artificial cap of 70 prosecutions per day in the face of hundreds of daily apprehensions. Does the Department of Justice support maximizing the use of Operation Streamline in all sectors along the Southwest border?

Answer. Border security and immigration policy continue to be a priority for the Department of Justice (the Department or DOJ). With regard to the Southwest border, the Department's efforts are focused on combating large and sophisticated criminal organizations, and the Department has devoted unprecedented resources to that effort. The Department generally supports consequence-based enforcement programs such as Operation Streamline as one of various tools that assist law enforcement in controlling illegal immigration and related violence. Operation Streamline programs are in place in four of the five Southwest border districts. It is, however, implemented differently in each of the districts, as a result of varying local conditions.

Operation Streamline has an enormous impact on the Department, as would any fast track immigration enforcement initiative. For example, capacity and infrastructure constraints (e.g. courthouse, cell block space, and ventilation systems) restrict the number of detainees or cases that can be processed by the Federal courts.

Funding provided in the 2010 Emergency Border Security Supplemental Appropriations bill will allow the Department to expand investigation and prosecution efforts along the Southwest border. With the \$196 million provided, the Department will be able to surge Federal law enforcement officers to high crime areas in the Southwest border region by funding more than 400 new positions and temporarily deploying up to 220 personnel. Justice funding will also increase the amount of equipment, operational support, and attorneys and immigration judges in order to support additional detention and incarceration costs for criminal aliens in coordination with Department of Homeland Security (DHS) enforcement activities.

Question. In fiscal year 2009, there were 39,183 apprehensions accepted for prosecution under Operation Streamline across the entire Southwest border. Of those

15,550 were in one sector Tucson. But, these 15,550 prosecutions represent only a fraction of the 241,673 apprehensions made in the Tucson Sector in fiscal year 2009. It would appear that much more can be done.

Please identify what additional resources are in the fiscal year 2011 President's request to expand Operation Streamline.

Answer. As stated previously, the Department of Justice is a committed partner in the Operation Streamline initiative. While the fiscal year 2011 President's budget does not break out separately all funds related only to Operation Streamline, in total, the fiscal year 2011 budget requests \$3.49 billion for the Department of Justice's Immigration and Southwest border related activities. This represents an increase of \$228 million (7 percent) from the fiscal year 2010 enacted level. Additionally, funding provided in the 2010 Emergency Border Security Supplemental Appropriations bill will allow the Department to expand investigation and prosecution efforts along the Southwest border into fiscal year 2011. With the \$196 million provided, the Department will be able to surge Federal law enforcement officers to high crime areas in the Southwest border region by funding more than 400 new positions and temporarily deploying up to 220 personnel. Justice funding will also increase the amount of equipment, operational support, and attorneys and immigration judges in order to support additional detention and incarceration costs for criminal aliens in coordination with DHS enforcement activities.

Question. What funding and additional personnel would be required for the Department of Justice to support doubling the number of Operation Streamline prosecutions in the Tucson Sector in fiscal year 2011? Please provide a table that displays costs and personnel for each component within the Department of Justice and the recurring costs for fiscal years 2012 through 2016 needed to do this.

Answer. Many of the Department's cost inputs along the Southwest border are unpredictable. For example, detention costs are dependent on both detainee population levels and per diem jail rates. These levels and the average per diem jail rate fluctuate depending on a number of factors, including sector in which the program operates. In fiscal year 2009, the highest per diem rate paid was in the San Diego border sector. The detention costs range from as little as \$41 to as high as \$111.45 per detainee per day. Other factors impacting costs include time in detention and availability of bed space, as well as courthouse and cellblock space limitations. Length of sentence is one variable that is at the discretion of the courts and sentence terms from Operation Streamline cases.

The differences in how each border sector operates Operation Streamline and unpredictable cost inputs make accurately estimating the full cost of implementation (however that is defined) difficult. To address these complexities, the National Academy of Sciences is currently studying the downstream effects of DHS immigration-related programs on the Department of Justice. Specifically, the purpose of the study is to develop, test, and select a budget model that accurately captures fiscal linkages between the two Departments and leverage the linkages into an estimate of the Department's immigration-related costs. Congress mandated the study in the Commerce, Justice, Science and Related Agencies Appropriations Act for 2009. The study started in January 2010 and is expected to be completed and provided to Congress in June 2011.

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Question. Are there any factors that would prohibit the expansion of Operation Streamline in the Tucson Sector?

Answer. In total, the fiscal year 2011 budget requests \$3.49 billion for the Department of Justice's Immigration and Southwest border related activities. This represents an increase of \$228 million (7 percent) from the fiscal year 2010 enacted level. A significant expansion of Operation Streamline would require additional appropriate enforcement and detention capacity, which could require a redirection of resources from other priority mission areas.

There are a number of factors that would inhibit the expansion of Operation Streamline. Capacity and infrastructure constraints (e.g., courthouse, cell block space, and ventilation systems) restrict the number of detainees or cases that can be processed.

Question. The Department of Homeland Security Appropriations Act, 2010, requires the Department of Homeland Security, in consultation with the Department of Justice and the Administrative Office of the United States Courts, to submit a report to the Committees on Appropriations and the Committees on the Judiciary on resources needed by the Department of Homeland Security, the Department of Justice, and The Judiciary to increase the effectiveness of Operation Streamline programs and the resources needed to utilize this program in additional sectors. This report was due in December 2009 and is now several months overdue. Has the Department of Justice completed its portion of the report and submitted that information to the Department of Homeland Security and the Office of Management and Budget? If not, when will it do so?

Answer. The Department provided its information to the Department of Homeland Security (DHS). DHS has reported that the Operation Streamline report was sent to the Hill on August 16, 2010.

CONCLUSION OF HEARINGS

Senator MIKULSKI. So the subcommittee will stand in recess, subject to the call of the Chair in cooperation with the ranking member.

We are in recess.

[Whereupon, at 11:52 a.m., Thursday, May 6, the hearings were concluded, and the subcommittee was recessed, to reconvene subject to the call of the Chair.]