

COMMERCE, JUSTICE, SCIENCE, AND RELATED  
AGENCIES APPROPRIATIONS FOR 2011

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HEARINGS  
BEFORE A  
SUBCOMMITTEE OF THE  
COMMITTEE ON APPROPRIATIONS  
HOUSE OF REPRESENTATIVES  
ONE HUNDRED ELEVENTH CONGRESS  
SECOND SESSION

SUBCOMMITTEE ON COMMERCE, JUSTICE, SCIENCE, AND RELATED  
AGENCIES

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NOTE: Under Committee Rules, Mr. Obey, as Chairman of the Full Committee, and Mr. Lewis, as Ranking  
Minority Member of the Full Committee, are authorized to sit as Members of all Subcommittees.

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**PART 6—COMMERCE, JUSTICE, SCIENCE, AND RELATED AGENCIES APPROPRIATIONS FOR 2011**

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

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TUESDAY, MARCH 16, 2010.

**DEPARTMENT OF JUSTICE FY2011 BUDGET OVERVIEW**

**WITNESS**

**HON. ERIC H. HOLDER, JR., ATTORNEY GENERAL OF THE UNITED  
STATES**

OPENING STATEMENT OF CHAIRMAN MOLLOHAN

Mr. MOLLOHAN. Mr. Attorney General, welcome to the hearing this afternoon, and welcome to everyone to this afternoon's hearing on the Department of Justice and its fiscal year 2011 budget request. Our witness this afternoon is the Honorable Eric Holder, Attorney General. Thank you for appearing today, Mr. Attorney General. We appreciate it.

I would like to start off by recognizing just a few of the numerous positive developments we have seen at the Department of Justice over the last year. Under your leadership, the Department has shown a renewed commitment to its criminal enforcement missions, including international organized crime, drug trafficking, and civil rights.

You have placed a new emphasis on funding effective state and local grant programs, including the COPS hiring program, which saved or created nearly 5,000 jobs through the stimulus provided by this Committee last year.

We have also seen a new and fairly comprehensive commitment by the Department of Justice to begin addressing the truly deplorable law enforcement situation in Indian Country. This commitment is reflected in your budget request, which has Indian Country increases almost across the board, and we certainly welcome that, as we initiated such investments in this very Committee last year.

Finally, I have been pleased to see that violent crime rates have continued to decrease over the past two years despite significant economic distress that seemed likely to produce the opposite result. To the extent that the Department of Justice is a national law enforcement leader, you share in that success along with your state and local partners.

While we enjoy and appreciate the successes, Mr. Attorney General, the Department also has its share of challenges. One of the most visible of these challenges is the enormous and growing workload of white-collar crime cases. Your current load of mortgage, se-

curities, and government fraud cases covers billions and billions of dollars of realized losses, and you have only just started to scratch the surface.

Another looming issue is the burgeoning federal inmate population, which is increasingly outstripping the capacity of our prison system.

Perhaps you have had no greater challenge since arriving at the Department of Justice than working to fulfill the President's commitment to close the detention facilities at Guantanamo Bay. The process of closing Guantanamo actually began under President Bush. He worked to reduce the detainee population by more than 500 detainees, all without involvement by the Congress, and without any publicly discernible process for choosing whom to release and under what terms.

This Administration replaced that ad hoc system with a formalized, consistent process for reviewing each detainee and determining the safest, most appropriate disposition for him.

Your system ensures that the Government's military, intelligence, law enforcement, homeland security, and diplomatic communities have reviewed each case and come to agreement on each outcome.

I think having such a system that we can sit here and discuss today, in a way that we never could have under an ad hoc process, is an achievement in its own right. While reasonable people might disagree about some of the specific outcomes your system produced, I don't think anyone should dispute that the system itself was well reasoned and had integrity.

Your process ultimately produced recommendations to bring a small number of Guantanamo detainees here to the U.S. for prosecution. Those recommendations have generated an enormous amount of debate and engendered an entrenched opposition that would like to limit detainee prosecutions exclusively to the military commission system.

I support the reformed military commission process and believe that there are times when a commission may be the only appropriate forum based on considerations like admissibility of evidence or the need to protect intelligence sources and methods. But there are equally valid reasons why an Article III or civilian court may be just as necessary and just as appropriate. Article III trials can be significantly shorter, given their broader authority to accept guilty pleas. Some of our allies will not cooperate with our prosecution efforts outside of the civilian system. Some cases present legal or operational issues that require the accumulated legal precedents and rules of courtroom procedure that have developed over hundreds of years in the Article III courts.

These are things that the relatively new military commission system, no matter how valuable, simply cannot provide right now.

For these reasons, I think it would be a mistake to categorically deny you access to the civilian system, especially in light of its established track record of success in terrorism prosecutions.

Let us not forget that the Article III system has safely and effectively tried and convicted hundreds of terrorists. Today there are more than 300 international or domestic terrorists incarcerated in civilian prison facilities.

The military commission system, by way of comparison, has produced three prosecutions, two of which came from guilty pleas.

I think the results speak for themselves. Officials from the former administration also support the civilian trial option and believe that precluding civilian trials out of hand is a dangerous proposal. The decision about whether to try a case in a civilian court is best left to the Department of Justice to determine, void of politics, just as was done in the previous administration.

I am sure that we will be discussing these issues in detail throughout the afternoon. There is also a lot of interest on all sides about the final venue determination for the 9/11 trials, which I understand is still under consideration. We really can't discuss the merits of the venue until it has been determined, but I would like to give you an opportunity to explain to us the underlying criteria that are being used to make forum and venue determinations for the Article III and military courts so that we can understand the considerations and constraints that are involved in that process.

In a moment we will have you provide an oral summary of your testimony, Mr. Attorney General. Your written statement, of course, will be made a part of the record.

But before we do that, however, I would like to turn to the Subcommittee's Ranking Member, Mr. Wolf, for any opening remarks that he would like to make.

#### OPENING STATEMENT OF MR. WOLF

Mr. WOLF. Thank you, Mr. Chairman. Mr. Attorney General, we welcome you to Committee, we look forward to your testimony. Thank you.

Mr. MOLLOHAN. Mr. Attorney General.

#### TESTIMONY OF ATTORNEY GENERAL HOLDER

Mr. HOLDER. Good afternoon, Chairman Mollohan, Ranking Member Wolf, and distinguished members of the Subcommittee.

Today it is my privilege to discuss the President's Department of Justice budget for fiscal year 2011, and to provide an update on the Justice Department's progress, top priorities, and future plans.

But first let me thank you for your ongoing support of the Department's work and your recognition of its essential role in protecting our Nation's people, as well as our highest principles.

When I met with this Subcommittee last April, I pledged that under my leadership the Justice Department would vigorously pursue a specific and critical set of objectives—combating terrorism, fighting crime, and enforcing our laws in a neutral and in a non-partisan way—and reinvigorate the Department's commitment to integrity, transparency, and results.

I believe we are on the right path to achieving these goals. Although unprecedented challenges and new demands have emerged, our key priorities remain clear, and ensuring the safety of the American people continues to be our paramount responsibility.

Over the last year, we have enhanced our national security programs and capabilities. We have also strengthened efforts to protect our environment, as well as our most vulnerable communities. We have reinvigorated our mission to safeguard civil rights in our

workplaces, our housing markets, our voting booths, as well as our border areas. And 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.

The President's budget request of \$29 billion demonstrates a strong commitment to the Justice Department's key priorities. Now 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 as well as transparency.

As you have seen, the President's budget requests \$300 million in program increases 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 in identifying and averting plots against the Nation, some known to the public, many not, including one of the most serious threats since September the 11th of 2001. A few weeks ago Najibullah Zazi, the mastermind behind a plot to bomb New York City's subway system, pleaded guilty to three criminal charges. Four others have also been charged as a result of our investigation. This attempted attack on our homeland, on our most populated city, was real, it was in motion, and it would have been deadly. But because of careful analysis by our intelligence agents and prompt actions by law enforcement, we were able to thwart a potential disaster as we have repeatedly done over the last year.

Just last month, again in New York City, Aafia Siddiqui, a United States trained Pakistani physicist, was convicted of attempted murder and armed assault. She had shown a clear intent to kill Americans, and at the time of her arrest possessed documents that referred to a "mass casualty attack" and listed specific locations, including the Empire State Building, the Statue of Liberty, and the Brooklyn Bridge.

And last week in Philadelphia, an American citizen was charged with conspiring to provide material support to terrorists and to commit murder overseas.

Now these recent cases remind us that terrorists' methods are evolving, as are the types of individuals involved in terrorist activities. We face a serious, capable, and determined enemy in the war that we are fighting. This underscores why the Justice Department must have the capacity to respond effectively and to respond quickly, and our actions over the past year, I believe, provide evidence that we are making significant advancements in combating these threats.

Now despite this recent progress, however, we cannot become complacent, and we must not, and we will not, lose focus in our efforts to bring terrorists to justice.

Now, I realize that there are different views on how best to approach this work. This is a very legitimate and robust conversation that we should have about it, but we cannot allow the politics of fear to drive us apart. Facts, facts, not fear, must be the basis of all our discussions. Now, more than ever, the American people deserve this.



Again, we are at war and we must use every instrument in our power, including the full scope of our military, law enforcement, intelligence, and diplomatic capabilities to win this war, but in the pursuit of victory we must not turn our backs on what has made our Nation an example to all the world.

Today our challenge is not only to remain safe, but also to be true to our heritage, true to our principles, and true to our best selves. This is the Justice Department's most urgent and most essential work.

Once again, I thank you again for supporting us. I look forward to continue to work with this Subcommittee and also with Congress, and I would be glad to answer any questions that you might have.

[The information follows:]

STATEMENT OF ERIC H. HOLDER JR.  
ATTORNEY GENERAL OF THE UNITED STATES  
BEFORE THE UNITED STATES HOUSE OF REPRESENTATIVES

COMMITTEE ON APPROPRIATIONS  
SUBCOMMITTEE ON COMMERCE, JUSTICE, SCIENCE, AND RELATED  
AGENCIES

MARCH 16, 2010

Good afternoon Chairman Mollohan, Ranking Member Wolf, and Members of the Subcommittee. Thank you for the opportunity to meet with you today to discuss the President's Fiscal Year (FY) 2011 Budget for the U.S. Department of Justice (Department) and the Department's key priorities. I look forward to your continued support and appreciate your recognition of the Department's mission and the important work that we do.

When I appeared before this subcommittee in April of 2009, 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 one year later, we are a Department that is absorbed in the challenges that face us, committed to the promises that I made to this Committee and the President's commitment to the American people.

The President's FY 2011 Budget request for the Department of Justice is \$29.2 billion. The Budget addresses key priorities ranging from national security and crime-fighting programs in the Federal Bureau of Investigation (FBI) and other DOJ components, to programs that address public safety needs in Indian Country and programs that combat financial fraud. The Budget also puts more police officers on the beat by funding the Community Oriented Policing Services (COPS) hiring program and provides vital support for innovative state and local law enforcement efforts. The President's Budget request demonstrates a strong commitment to protecting America and ensuring the safety, security, and rights of its citizens. The Budget provides the Department with the means necessary to protect our national security, bolster our traditional law enforcement missions, and prevent and reduce crime in tandem with our state, local, tribal and community partners. We have an obligation to protect our country in smart, reliable ways at the Federal, state, local and tribal levels. We will be aggressive in our fight against global terrorism while maintaining our collective responsibilities in fighting crime and enforcing civil rights and the rule of law.

### **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 our 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, just last week, in 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 the Manhattan subway lines in September 2009. In addition to Zazi, four others have been charged in connection with this plot. Were it not for the combined efforts of the law enforcement and intelligence communities, it could have been devastating. This attempted attack on our homeland was real, it was in motion, and it would have been deadly. We were able to thwart this plot because of careful analysis by our intelligence agents and prompt actions by law enforcement.

### **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 waging an aggressive effort against financial fraud and market manipulation. The President's FY 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. The Department's efforts to aggressively pursue traditional law enforcement and litigation activities ranging from mortgage fraud, corporate fraud and other economic crimes, to other mission-critical activities that support the overall functioning and efficiency of the Department will continue.

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 health care fraud cases. This increase will further the efforts of the Health Care Fraud Prevention and Enforcement Action Team (HEAT) initiative.

The Department's improved ability to collect debts, enforce tax laws and prosecute fraud will likely maximize the benefits of the Federal Government's investment of resources through the American Recovery and Reinvestment Act of 2009. The 2011 request will 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. Whereas, violent crime has not increased in recent years, helping to ensure that regional street gangs do not evolve into or increase their involvement with national and international gangs and drug trafficking organizations is an increasing cause for concern. The Department requires resources to meet unique challenges through its prosecutor-led, intelligence-driven strategy to address the interrelated 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 FY 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 achieve our mutual goal.

In addition, this Budget supports several programs that are 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 the 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 forensic support for FBI activities in Indian Country. 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 FY 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 to assist children exposed to violence; and, 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 FY 2011, we will build on the progress made in FY 2010 to restore the Department's unparalleled role in protecting civil and constitutional rights.

The FY 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 IOC (*International Organized Crime*) 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 OCDEF Fusion Center to accommodate the International Organized Crime Intelligence and Operations Center (IOC-2).

### **Maintain Prisons, Detention, Parole and Judicial & 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.

The BOP operates 115 federal prisons and contracts for low security prison beds to confine more than 215,000 inmates in FY 2010; BOP projects that the federal prison population will increase by approximately 7,000 inmates in FY 2011. Therefore, program enhancements included in the FY 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 FY 2011.

Finally, resources are requested to enhance the law enforcement efforts of the USMS, primarily their 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 FY 2009 (201 positions) and FY 2010 (700 positions) to support immigration enforcement, particularly along the Southwest Border.

#### **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 FY 2004 and FY 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 are 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 become more aggressive with the implementation of the Secure Communities Initiative, OIL can expect many more aliens to petition their removal decisions in circuit courts. The FY 2011 Budget maintains the current staffing levels for OIL.

#### **Ensure Public Safety in Indian Country**

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

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 Indian Country. It includes funds (provided by the Department of the Interior) for 45 new FBI agents to support law enforcement efforts in Indian Country and maintains the increased number of Assistant U.S. Attorneys in Indian Country that the Department will add in 2010 as a result of the support of members of this Committee. The President's FY 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 Indian Country.

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**

Chairman Mollohan, Ranking Member Wolf, 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 FY 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.



## DISPOSITION OF GUANTANAMO DETAINEES

Mr. MOLLOHAN. Thank you, Mr. Attorney General.

I would like to inform the Subcommittee that Mr. Wolf and I will take 20 minutes at the beginning of our questioning, and the rest of the Subcommittee on first round will have 10 minutes. That should get us into a second round, and we will see what kind of time we have after that. I think that gives each myself and Mr. Wolf an opportunity to explore questions, and then for the Subcommittee likewise to have plenty of time to explore follow-up questions.

So Mr. Attorney General, thank you for your statement.

The President's executive order on the closure of the detention facilities at Guantanamo Bay required a review of the status of each detainee in order to determine whether that detainee should be transferred, prosecuted, or placed in continuing detention. DOJ was tasked with coordinating that review. Mr. Attorney General, which other agencies were involved in making the recommendations and decisions about which suspects to transfer, which to prosecute, and which to detain?

Mr. HOLDER. Well, in addition to the Department of Justice, the Department of Defense, the Department of State, the Department of Homeland Security, the Office of the Director of National Intelligence, as well as the Joint Chiefs of Staff were involved.

Mr. MOLLOHAN. When those agencies actually sat down to make decisions, after the process that they went through to arrive at those decisions, were those votes unanimous?

Mr. HOLDER. When the principals of those agencies met to make final determinations with regard to the disposition of the 240 detainees, all of the decisions were unanimous.

Mr. MOLLOHAN. What were the criteria the task force members used to inform their recommendations?

Mr. HOLDER. Well, first and foremost, we focused on national security in deciding if a person could be released and where that person might be transferred. National security was always our primary concern. We looked at a person's history, the person's possibility for future violence, and also had to take into consideration trying to repatriate certain people, whether or not they could be transferred to their home countries out of concern that if they went there they might be abused. So it was a mix of those factors that led to the decisions that we made.

Mr. MOLLOHAN. Mr. Attorney General, do the detainees have access to habeas corpus?

Mr. HOLDER. Yes, they do.

Mr. MOLLOHAN. All of them?

Mr. HOLDER. I don't think all have filed habeas petitions at this point, but they certainly have that right.

Mr. MOLLOHAN. Have some detainees actually filed habeas corpus petitions?

Mr. HOLDER. Some have, and some, as a result of their habeas petitions, have been released.

Mr. MOLLOHAN. In the last administration, this administration, or both?

Mr. HOLDER. I believe that is true with regard to the last administration as well. I don't have specific figures, but the habeas process has been going on for some time.

Mr. MOLLOHAN. How are you handling those cases?

Mr. HOLDER. We have a dedicated crew of lawyers headed by the head of our civil division, Tony West. They have tried about 50 habeas cases. We have people coming from around the country, in addition to Washington, D.C.—Justice Department lawyers and lawyers from other organizations—to help put these cases together and then to try them before judges here in the District of Columbia.

#### DECIDING ON A FORUM FOR PROSECUTIONS

Mr. MOLLOHAN. Mr. Attorney General, deciding between the military and civilian forums for trial has caused a lot of consternation in the political community. I know that we have a history with regard to that through several administrations. Once the task force that you have just described decided which individuals would be referred for prosecution, there was a subsequent process set up to make the charging decisions for each detainee. This process has been the source of some of the most vigorous Guantanamo-related debate. There are a significant number of individuals who are opposed to even the consideration of holding detainee trials in Article III courts. These individuals advocate for holding any of these trials in a military commission.

We have held a number of terrorist trials in Article III courts, have we not? Through various administrations, Democratic and Republican?

Mr. HOLDER. Well, that is true. I mean, your opening remarks were accurate. There are approximately 300 people or so who are in our Federal prison system now as a result of their movement through the Article III system. I believe in the last administration there were about 150–160 trials or so in the Article III courts.

Mr. MOLLOHAN. It appears that the Administration may be openly considering the possibility of moving the 9/11 trials into a military setting. Is that an indication of a change in the Administration's overall policy?

Mr. HOLDER. No, I wouldn't say so. We remain committed to using all of the tools that we have in trying to win this war, and that means trying people in Article III courts, and trying people in military commissions. When I announced my decision to try Khalid Sheikh Mohammed in an Article III court, on the same day, and actually during the same announcement, I indicated that five or six detainees were going to be tried in military commissions. And so certain cases are more appropriate in Article III courts, and certain ones in military commissions, and one of the things that this Administration wants to retain is the ability to use our discretion to try these detainees in the appropriate forums.

Mr. MOLLOHAN. Well why should we keep open the option of civilian Article III prosecution for these terrorist suspects?

Mr. HOLDER. Well, I think one can look at the history of what we have had in Article III courts. They are tested. We have tried a number of these cases in Article III courts; they are secure. We have tried these cases in a safe manner. We have the ability to get our secret information through the Classified Information Protec-

tion Act (CIPA). Our allies around the world support us in bringing these cases in Article III courts. We have the ability to disrupt and to detain people through the long sentences that we get out of Article III courts.

We also have, and I think very significantly, have the opportunity through the Article III court system to get cooperation from people who are charged there and who do not want to face either long sentences or the prospect of serving significant amounts of time in our super max facilities. We saw from Zazi, from Headley, from Abdulmutallab, people who cut deals so that they would have an ability to share information, intelligence that we wanted so that they could receive some favorable treatment.

And then I think lastly one of the things that you can clearly do in an Article III court that you cannot so clearly do in a military commission is accept a guilty plea in a capital case.

Mr. MOLLOHAN. It seems to me, looking at it as a lawyer, that there are a lot of tools in a civilian court that the court has to manage not only the process of the trial, but also the decorum of the defendant. That seems to be a real concern, that defendants in these courts will take the opportunity to propagandize.

Mr. HOLDER. That is actually a very good point, Mr. Chairman, and one I think there is a misperception that somehow or another if we have a trial in an Article III court this will become a forum for these defendants to spout their hateful language, their propaganda. And if one compares the way in which these defendants are treated in military commissions as opposed to Article III courts, that is anything but the truth.

In the case that I mentioned before involving Siddiqui, she was in an Article III court in New York City and she was in her trial for one day. The judge determined that she was a disruptive influence, that she was trying to disrupt the proceedings, and she was removed from that courtroom and watched her own trial from outside the courtroom.

I think what we have seen, in military commissions certainly with regard to Khalid Sheikh Mohammed, long speeches about a whole variety of nonsensical things, but the judges there I think don't feel as comfortable in removing or clamping down on a defendant who is trying to do that.

Mr. MOLLOHAN. Who is involved, Mr. Attorney General, in the process of deciding which detainees will be tried in a civilian court and which might be tried in a military commission?

Mr. HOLDER. It is ultimately my decision in consultation with the Secretary of Defense. We have a protocol that we have put together and that we use because these are national security determinations. The President is consulted as well. But there is, as I said, a protocol that has been worked on and that the Secretary of Defense and I apply in making determinations. The decision is ultimately mine, but as I said, it also involves consultation with the President.

Mr. MOLLOHAN. You may have already touched on this, but I would like for you to elaborate because I think it is important for the Committee and it is important for the overall debate. There must be circumstances where the criteria you use suggests a military commission would be the best forum. Could you elaborate on

that a little bit? What is going through your mind? What are the criteria being used as these decisions are being made, ultimately by you?

Mr. HOLDER. Well on the same day that I announced the decision to try Khalid Sheikh Mohammed in an Article III court in New York, I made the determination that a man named Nashiri would be tried in a military commission. He is one of the people responsible for the bombing of the USS Cole. A military target was involved, the casualties were brave sailors, military men, and that is one of the distinctions that we made.

There are rules of evidence that exist in the military commissions that are more favorable towards the acceptance of hearsay evidence. You have to look at these cases individually, and on a case-by-case determination, make the decision as to where the case can be best tried. And it doesn't mean that you are being unfair, I think, to the defendant, you are simply looking at the forum that really best suits the particular facts of each case. And military commissions certainly play a role with the modifications, the amendments, that were done to the military commissions a couple of years ago. I think those are fine places in which these cases can actually be tried.

Mr. MOLLOHAN. What about the question of national security concerns? Does that enter into these decisions?

Mr. HOLDER. Yes although I think not to the degree that some of the critics of my earlier decision have indicated. Concerns about the leaking of information, the protection of national security secret sources and methods can be equally accomplished in Article III courts as they can in military commissions. In fact, the system that is in place in the military commissions to protect secrets is actually based on CIPA, the Act Classified Information Protection, which has been in effect for an extended period of time in the Article III system.

Mr. MOLLOHAN. How do you respond to the argument that holding trials in a civilian court will give detainees that public forum? You really have already spoken to that, but do you have anything else to add on that? That has been a really major criticism. Not only protecting against an outburst, but also the security aspects of trying in an Article III court.

Mr. HOLDER. Well I mean, as I said, there are Article III judges who are familiar with disruptive defendants, not only in a terrorism context, but in other cases as well. Article III judges are used to dealing with people like this and know how to deal with them. And as I said, I look back to that very recent case that concluded two or three weeks ago in New York. The defendant there was appropriately treated given the way in which she conducted herself during her trial.

Mr. MOLLOHAN. What about the concerns of Members of Congress about disruption to their communities, and even the safety of the courts holding such trials in local communities? Can you speak to that?

Mr. HOLDER. Well, I can understand how people would ask those questions, and I think my answer to that would be to look at history and look at the way in which these cases have been conducted safely, without incident to neighborhoods and communities that

surround the courthouses where these cases have been held. We tried Mr. Moussaoui in the eastern district of Virginia just across the river—I think in Mr. Moran’s district or close to Mr. Wolf’s district. We have tried cases of this nature in all parts of our country, always without incident because of the experience that we have, the training that our Marshals Service goes through—the work that they do with their state and local partners to prepare for these trials. It sometimes involves the closing of streets and sometimes causes disruptions, but at the end of the day, these cases have always been held in a safe manner.

Mr. MOLLOHAN. Finally, Attorney General Holder, there is the concern or the argument made that holding trials in civilian courts somehow affords detainees too many rights. As a lawyer, I have always wondered about those arguments, but I would like very much to hear you speak to that concern.

Mr. HOLDER. Well, I am really glad you asked me that question, because that is one that tends to get my blood boiling. The notion that a defendant in an Article III court is somehow being treated in an inappropriate, special way, that he is being coddled is anything but the truth. A person charged with murder, many of these defendants are, these defendants charged with murder are treated just like any other murder defendant would be. The comparison that they are getting more rights than the average American citizen is not an apt one. The question is, are they being treated as murderers would be treated? And the answer to that question is yes. They have the same rights that a Charles Manson would have, or any other kind of mass murderer. Those are the comparisons that people should be making when trying to make the determination about how terrorists are being treated and not compare them to average citizens who create no harm, and who have committed no crimes.

Mr. MOLLOHAN. Is it true, and I have heard this argument in counter to that concern, that defendants in military tribunals, many of whom are our service personnel, that the rights are skewed in favor of the defendants in a military commission environment? Is that correct or incorrect?

Mr. HOLDER. I am not sure I would say that they are skewed toward the defendant. I think that one of the things you do find, though, is that because of the lack of familiarity with these kinds of cases, there is a greater comfort in the Article III setting to be more, I don’t know if aggressive is the right word, but to be more strict in interacting with defendants than you perhaps see in the military commission setting. Which, again, is not to say that you cannot try successfully and appropriately these matters in military commissions.

#### BUDGET REQUEST FOR HOLDING CIVILIAN TERRORIST TRIALS

Mr. MOLLOHAN. Mr. Attorney General, with regard to choosing a specific venue for a civilian trial, your budget request includes \$73 million for the first year costs of holding the 9/11 perpetrators trial in federal court in the Southern District of New York. Since the time the budget was finalized you have announced that the final choice of forum is still under consideration and could theoretically change. If we accept recent news reports at face value, and

you have spoken to this, in fact, it appears possible that the 9/11 trials will ultimately be held in a military setting.

When a final determination has been made on a forum for these trials, will you submit a budget amendment to reflect any new cost estimates?

Mr. HOLDER. Yes, we would. The money that we have sought for the potential trials I think would probably be appropriate almost regardless of where the trial would be held. If, however, we end up in a venue where the costs are substantially less than what is included in our budget, we would come back to this Committee and seek to amend.

Mr. MOLLOHAN. Another budget we are concerned about is with regard to prison requirements. Would any such budget amendment affect your request, which I believe is for \$107 million, to acquire and renovate the prison at Thomson, Illinois? Is your budget request for the Thomson acquisition and renovation at all contingent or dependent upon the ultimate disposition of these terrorist trials and the location of the suspects?

Mr. HOLDER. No, not at all. Our budget requests money to acquire two facilities, one in Berlin, New Hampshire, and one in Thomson, Illinois. The Bureau of Prisons and the Justice Department have a great interest in acquiring these new facilities at a cost substantially smaller than we would incur if we built these new facilities, and our interest in Thomson exists irrespective of whether or not any detainees from Guantanamo ever set foot there. That is a place that can be used as a, I believe, maximum security facility, and one that the Bureau of Prisons and the Justice Department would like to acquire regardless of what happens with regard to the detainees at Guantanamo.

Mr. MOLLOHAN. Finally, Mr. Attorney General, is the Administration committed to paying for costs that might be imposed on local communities in any given venue?

Mr. HOLDER. Yes. I think what I said on the day of the announcement is that the trials of these matters are not local trials. On September 11th, though the buildings fell in New York, although the Pentagon was hit, and although there was a crash in Pennsylvania, all of this country was impacted, all of this country was affected, and these are truly national trials. As a result, it seems to me that there should be a national responsibility in paying the bills that these trials would generate. It is unfair that the local communities wherever these cases might be tried should bear a disproportionate share for what in essence, as I said, are national crimes.

Mr. MOLLOHAN. Okay, thank you. Mr. Wolf.

#### TRIALS OF THE 9/11 PERPETRATORS

Mr. WOLF. Thank you, Mr. Chairman. Simon and Garfunkel had this song, the Boxer, and it says man hears what he wants to hear and disregards the rest, and to a large degree I think there is a little bit of that taking place here. Without debating all of these issues I would like to put in the record a number of articles and position papers by Andy McCarthy and a group of other lawyers that really go to the heart of a lot of the answers that you have actually provided.

The difference of the Khalid Sheikh Mohammed, beheaded Daniel Pearl, mastermind for the 9/11 3,000 people, Moussaoui was in Alexandria for four years and there was not the patent and Trademark office, there was not the hotel, and so the circumstances are different.

Secondly, the cost for Khalid Sheikh Mohammed in New York, if he were there for three years, the figures that we have gotten from New York City and also the briefing, reimbursement of \$206 million a year for the City of New York Police Department. We have also gotten the briefing in the Marshals Service for the airplane they were going to buy and the cars rounding out to about a billion dollars to try him there. So a little bit of a different kind of thoughts.

The second thing is there are major differences, and the Administration and my good friend the Chairman talk about the process. To release six people back to Yemen when you are mortaring Yemen at that very moment, to Al-Qaeda in the Arabian Peninsula was really a bad idea. We are getting reports that one of them may have gone back.

Also the Administration released two Somaliland, and I have been to Somalia, there is no government there, and so to put two people back into Somalia and back into Al-Qaeda in the Arabian Peninsula, the government of Yemen controls basically the capital of Yemen and not much outside.

So we spoke to the White House, without mentioning names, one day they say we are pushing ahead, and days later when this thing blew up they said we are going to stop it.

But there were some problems, and I had a problem, and I don't want to take too much time of it, but you were going to release several Guantanamo Bay people, the Uighurs into our congressional area, whether it be in my district or adjoining, and your people came up to my office at this time last year, asked me at a hearing, please don't ask the Attorney General Holder that question, and out of respect, because I thought there could be some consultation that you were going to—I didn't ask the question, because I don't think it is appropriate for members to do a "got you" type thing. We never asked that and then we got calls from several people in the Administration at the low level saying they are coming to northern Virginia here and who is coming.

So there has been a pretty strong difference on a lot of these issues, and so I will just put a number of things in the record without us debating it.

But I do want the record to show in 1942 in the midst of World War II German saboteurs arrested in New York and Florida were arrested by the FBI, but transferred to the military custody for trial. Franklin Roosevelt rightly treated these agents as war criminals and not common civilian criminals.

And we are at war, you said that earlier. And I think if you talk to most of the family members, not every family member, but if you talk to most of them and you look to a lot of people they believe that this trial ought to be in a military court.

Now when will you be making a decision on the Khalid Sheikh Mohammed issue wherever you are going to make the decision, when do you expect that to come out?

Mr. HOLDER. I think that we are weeks away from making that determination. I don't think we are talking about months. I think we are probably weeks away.

Mr. WOLF. Okay. On the difference between civilian and military, the Pentagon as you know very well is a military—it is the center, the heart beat of the military system in the United States, and there were military people killed, so you could have used the same argument with regard to Khalid Sheikh Mohammed to be tried in a military court as you did in the other one because there were people wearing the American uniform and it was the Pentagon where most of our military generals are.

The other thing is, I sent a letter, and we just have a hard time getting answers from the Administration. There are going to be difference of opinions, and I think respectful if you ask me—if you call me I will try to get you anything I can. You ask me a question and if I don't have it I am going to get you the answer, and if I can't tell you I am going to give you a date when I tell you. And I say publicly, call me and I will try to cooperate in every way possible. But we can never get any kind of cooperation. From the Uighur issue we were not able to get any cooperation.

We got a letter from your department at 11 o'clock last night. There was nobody in my office at 11 o'clock last night. That is sort of a got you way to sort of clean the decks before you come up here, and it is not a very good way.

#### REINSTITUTING THE 9/11 COMMISSION

I sent a letter back in January asking the Administration to bring back the 9/11 Commission. Lee Hamilton had expressed support, I was the author of the Iraq study group, we asked Secretary Baker and Congressmen Hamilton, they did a great job. I can't get an answer. Will the Administration bring back the 9/11 Commission to take a look at where we are today, what recommendations were adopted, what ones were not adopted, and what ones were not adopted by the Congress that should have been adopted and then go away after six months? But I have had the request in since January 12th and I just can't get any response. Do you have any thought? Will the Administration bring back the 9/11 Commission per my request? And I think Lee Hamilton wants that to happen too.

Mr. HOLDER. Well, I am not familiar with what the decision might be by the President, but I think one of the things that strikes me is that the 9/11 Commission did a great job. It exhausted hearings with a specific set of recommendations. I think that almost any objective observer can look at that report, compare those recommendations to where the past Administration was, where this Administration is, and make a determination.

Mr. WOLF. Correctly though, but they have the expertise, and I called Congressman Hamilton and he thought it would be a good idea to come back to six months. Not the whole 9/11 Commission, but he and the governor of New Jersey to come back and look and see—because they have the history of what they said and what was adopted and had whatnot. I think that would make the country safer. I think it would be a good thing.



So I guess the answer is you are not sure if they are going to bring it back.

Mr. HOLDER. Yeah, again, I am not sure from my own perspective.

Mr. WOLF. Okay. I was just trying to get an answer. If I can't get an answer.

Secondly we asked that they put together a "Team B" made up of Bruce Hoffman and a group of outstanding people, bipartisan, outside of government to sort of look at the same circumstances to sort of see where we are, that what we are doing today to fight terrorism is everything that we should be doing. The request was bring in Bruce Hoffman to head up team B. I can't get an answer. Do you know what? Is there anything interest in the Administration in responding to bringing back a team B approach?

Mr. HOLDER. I have to tell you that again, we have good people, experienced people who have dedicated their lives to doing the very things that they are doing in very high-responsibility positions in the National Security Council in our Armed Forces, and I have great faith in the decisions that they make. And I am not sure that outsiders are necessarily needed.

Mr. WOLF. Well a lot of people think it would be a pretty good idea.

Thirdly, I asked that the Administration have the TSA administrator be a set term similar to the director of the FBI, between five administrators in six years. Any thought about them doing anything with regard to that?

Mr. HOLDER. Well one thing I would certainly call on is for the Senate to confirm a TSA administrator before we start talking about limiting the terms.

Mr. WOLF. Well you can certainly confirm this gentleman for the set term. But we have had five in the last six years, and to bring a continuity I think director Mueller has done a pretty good job, and that it is been a pretty good system. And so any thought of doing that?

Mr. HOLDER. Again, that is not something about which I have had any conversations with people in the Administration.

#### THE HIGH VALUE DETAINEE INTERROGATION GROUP

Mr. WOLF. Okay. Lastly, I have asked that the HIG, the high value interrogation team, be located not where they have gone which put them away from the National Counter Terrorism Center, but they be located at the National Counter Terrorism Center. And I know that comes under you to a certain degree. What is the thought of the recommendation of made for that? The letter has been two and a half months there asking that HIG be co-located at the Counter Terrorism Center so you have the breaking down of the stove pipes there, they are all together. What about that?

Mr. HOLDER. Well, I mean, the HIG is to be housed at the FBI, and—

Mr. WOLF. No, the HIG is not at the FBI. The HIG is out in Virginia. They have signed the lease at a building not near the FBI. I know where the building is. I have asked that the co-location of the HIG be with the Counter Terrorism Center directly there with the Counter Terrorism Center so that there is the exchange of in-

formation. That is the whole purpose of the center, to break down the barriers so FBI and CIA are talking to one another.

Since this is your responsibility, what about the recommendation has been made as you co-locate the HIG at the Counter Terrorism Center?

Mr. HOLDER. Well, I think the question is not necessarily physical proximity as much as it is having communication between the HIG and the variety of governmental entities that it needs to be in touch with.

Mr. WOLF. Okay. But it is physical proximity, that is the whole purpose of the Counter Terrorism Center. That is why the walls were broken down and they put everybody together. That was the whole purpose of it.

Mr. HOLDER. Right.

Mr. WOLF. Any way. Okay.

Mr. HOLDER. But the HIG, by its nature, draws together people from other agencies, co-locates them, gets them ready to go out there.

Mr. WOLF. And that is what the Counter Terrorism Center does, and that is why they are there. Any way the answer to that is probably not?

Mr. HOLDER. I think we have co-location. That is what I am trying to say.

Mr. WOLF. No, they are not. They signed a lease in a building, which I can tell you about, not near there. And I am asking that they be located there. You have the DNI there, you have Leiter there, you have the whole team there, that is where it makes sense. And everyone that I have talked to off the record thinks it should be there, and I have made the request that it be there, and I am just try to go get an answer. Since it comes under you will you co-locate it and put it there?

Mr. HOLDER. Well, I will certainly take that recommendation into consideration. But as I said, the fact is that the HIG is a multi-agency entity, and the fact of its existence means that there is co-location, wherever the larger entity is actually placed.

Mr. WOLF. Okay. That is probably a maybe, I don't know.

#### JOHN ADAMS PROJECT

John Adams project. Over the weekend, the New York Times reported that Department of Justice officials refuse to share CIA concerns in a briefing for the President with regard to the consequences of the ACLU's John Adams Project which hired photographers to track down CIA officers, and many who probably live in my district, and share their photos and personal information with alleged terrorists at Guantanamo. Is this report accurate? Were the CIA concerns included in their briefing to the president? And if not, why?

Mr. HOLDER. If you are talking about the Washington Times report—

Mr. WOLF. Well, I am talking about the John Adams Project. Yes, I am talking about that, but the information whereby that was not put in there as they requested the CIA.

Mr. HOLDER. Right. Well the Times article is riddled with inaccuracies. There is only so much I can say about that because there

is an ongoing investigation into the core of what was at that Times article.

Mr. WOLF. Okay. I haven't found much of what you have said today really in response to the legitimate questions that we are trying to answer. You know in 1998 I came back from Algeria where 175,000 people were killed, and the bombing took place in Nairobi and Tanzania, and people from my district died.

I put in the bill to set up the National Commission on Terrorism, the Bremmer Commission, and the Bush Administration ignored it and so did the Clinton Administration. We are just trying to legitimately ask some questions. With everyone I have asked, there is not a "yes" or a "no" or "I will do this or we will report to you." We just can't seem—from the Uighurs straight onto the Yemen straight onto the Somaliland, we just can't seem to find out any answers.

And with all due respect, Mr. Attorney General, I don't think you are served that well when whether it be Republican or Democrat asking an honest, legitimate, honest, ethical, moral question not trying to—and I respect you. I am not trying to create a problem, I am just trying to get to the answer.

You know, 30 people from my district died in the attack on the Pentagon. Michael Spawn, a CIA employee who was killed, the first person killed, I went to his funeral out at Arlington Cemetery. He was from my district. I am just trying to find out. The pilot of the airplane that went into the Pentagon was from my district. We are trying to get to work in a bipartisan way to really do what is best for the country and not in a "got you" way, but to make a difference to make the country safe. But I haven't had any answers, and I can't get an answer out of your department.

The letter you sent up the other day you said references this letter, this letter, this letter, this letter, this is the answer and there is no answer. Let me move on.

Mr. HOLDER. Well with all due respect, with regard to the responses that we have sent up there, there are more letters that you have sent to us, there are fewer responses that we have sent back, but I think the responses that we have sent back do, in fact, answer all of the things that are contained in the letters that you have sent to me.

Mr. WOLF. Well, with respect, I don't think that is accurate. What I will do is I will put my letters in the record at this point and your two letters in the record and the history can make a judge as to whether that is accurate.

[Clerks note.—Letters can be found following QFR responses.]

#### DELAYS IN THE IMPLEMENTATION OF THE PRISON RAPE ELIMINATION ACT

Congress unanimously passed, it was my bill, with former Senator Kennedy, the Prison Rape Elimination Act of 2003 in recognition of the urgent need to address the crisis of sexual abuse in U.S. correction facilities.

The National Prison Rape Elimination Commission spent more than five years holding public hearings and drafting recommended national standards. The law requires that you issue a final rule

making binding standards by June 23rd of 2010, one year after the Commission issued its recommendations.

You are not going to make that, and prison rape is a serious problem, particularly with regard to young people, but anyone, and I can't understand why you would have not followed through. We had the commission, we had the recommendation, we had everything set up. And now what is the status? Will there be a final ruling or what is the status of that?

And lastly the question that troubles me, the budget request for fiscal year 2011 includes a \$10 million reduction in prison rape elimination related funding leaving just 5 million for efforts to address sexual violence in detention. And I think to have a rape of a person who goes to prison is unacceptable, and Senator Kennedy had that in, and Bobby Scott and I did, and we expect this to be implemented now to protect people that are in prison.

Mr. HOLDER. Well, I mean, I share your concerns about the sexual mistreatment of people who go to prison. I was a judge, I sent people to prison, and I would never want to think that anybody I sent to prison to serve time would have to deal with the things that that Commission uncovered.

One of the things that I would note is that the Commission was given two years in order to make its findings; we were given one year in which to then implement them. We are doing the best that we can. I have met with the Commission on, I think, three occasions at this point, I have met with the chairman of that Commission, Judge Walton. We want to make sure that we get this right and also follow the dictates of the statute, which says change this situation, make sure that you eliminate, to the extent that you can, sexual predator activity in prisons, but not increase the amount of money that any local jurisdiction has to spend in order do that.

It is not an easy task, and we will not make that one year deadline, but we will do this as quickly as we can. And the fact that we will not make that deadline is not in any way an indication this is not a problem that we take seriously.

I have experience with this in a way that, you know, others do not. I have, as I said, sent people to jail, and I know what happens in our prisons. I know the people who I sent to Lorton before that facility was closed and what they had to deal with there, and it weighed on my conscience as a judge, it weighs on my conscience as Attorney General, and I am determined to try to do this, but to do it in the right way.

Mr. WOLF. Well, I helped close down Lorton because of that very, very reason. But you are reducing your budget for fiscal year 2011 includes a 10 million reduction in the funding for the program, leaving just 5 million.

So you can say you were a judge and you are interested, but the reduction sends the wrong message. I mean, you are known by your budget in essence, and that is sort of the landmark.

Any way, move. Every time, every delay—and if you have been reading the series of articles that have gone on, prison rape is a serious problem, and another long delay will mean more people will face this in prison. And I am disappointed in the fact that you have reduced the funding for something that you say you are interested in.

Well the last question.

Mr. HOLDER. But we have to deal with a deadline that with all due respect, that I think was artificially short given the fact that you gave two years to the Commission to do its work and only one year to the Department to effectuate the findings of that Commission.

Mr. WOLF. Because the Department drug its heels on this issue and didn't want to deal with this issue, so we brought some of the best minds in to look at this to give them adequate time.

Right now the Department should have enough information to move ahead. People are being raped in prison every day, every day. Today by the end of the day someone will be—that will happen to them, and so to push this off for another year is unacceptable, and to reduce your funding at the same time.

The last question.

Mr. HOLDER. I will do what the statute says that we have to do, we will do it right, but let me just say one thing. The degree to which we measure seriousness, if you want to say it is about money, I have to wonder, what was it that drove this body to say you have the responsibility to make these changes, to make sure these changes occur, and yet it cannot have a cost impact.

When I speak to wardens, when I speak to people who run local jails, when I speak to people who run state facilities, they look at me and they say, "Eric, how are we supposed to do this if we are going to segregate people, build new facilities, and do training, how are we supposed to do this?" And that is what we are trying to work out—ways in which we can follow the dictates of the statute and do something that is going to be meaningful, not something that is going to simply be, you know, a show thing, something that is going to have a measurable impact.

Mr. WOLF. I know, you know, but we put the legislation in because we talked to people that it happened to, and it is not a show thing, it is a real thing, it is a reality thing. And Senator Kennedy felt strongly about it, Bobby Scott felt strongly about it, and I feel strongly about it.

Mr. HOLDER. As do I.

Mr. WOLF. You came up to me last year, you came up and you said we are working on this and we are going to deal with this. Another whole year has gone by.

Any way, I have no more question with regard to that issue. I yield back.

Mr. HOLDER. Let me just on the record say that I feel as serious about it as you do, and my comment was only directed at the fact that you are taking note of a fact that we have reduced our funding here for that, and I was saying, you know, Congress in saying that this is something they were serious about, also said you can't spend money in order to deal with the problem. That is what the law says.

Mr. MOLLOHAN. Mr. Schiff.

Mr. SCHIFF. Thank you, Mr. Chairman, and thank you for being here, Mr. Attorney General.

At the outset I want to tell you how much I appreciate the job you are doing. I can't imagine a more difficult time to be Attorney General.

Mr. HOLDER. Good timing on my part.

Mr. SCHIFF. Yes. Well having spent six years in the Department, with the U.S. Attorney's Office in L.A., I have always had a great appreciation for the hard work being done in the Department, and I know it has been a rough decade for the Department, and I think in addition to all the challenges as a policy matter that you face, you also have the challenge of turning around morale in a department that had, I think, suffered during the last administration, and been overly politicized during the last administration.

I think your immediate predecessor did a good job in trying to turn that around, and you are doing a great job in continuing the rebuilding of the Department, and I appreciate that.

#### CIVILIAN TERRORISM TRIALS

The issue of how to deal with the detainees, I know, is one of the most difficult and vexing, and I appreciate the seriousness and thoughtfulness you have brought to this task. I think in reviewing case by case, every detainee that is exactly what we should want to view, and that is exactly what you have been doing. If there were easy answers to these questions they would have been decided a long time ago, but these are issues of first impression legally and things that we haven't been challenged with really or faced in this context ever.

You can say there have been prior cases like the prosecution of Nazi saboteurs during World War II, but comparing World War II to the kind of amorphous, countryless, stateless terrorism that we face now is I think really such a different environment. We are really comparing apples to oranges. And I appreciate your effort to tone down the volume, to take the politics out of it.

I despair frankly when I see the Justice Department attacked for the same thing the last administration did in terms of repatriating detainees when there were no attacks on the last administration for doing that or attacks on your department for arresting a suspect or Mirandizing a suspect like the Christmas day bomber when the shoe bomber was given exactly the same treatment.

That smacks to me of not a policy-driven search for what is the best approach, but rather a political process, but you have, I think, done a great job in staying focused on your mission.

I don't really understand, I think, some of the hyperbole that has surrounded the detainee issue in the sense that people are arguing that we should never try another terrorism case in the federal courts. The Oklahoma City bombers who blew up a federal building were tried in a civilian court. The people in the Justice Department then, as the people in the Justice Department now, work night and day and weekend and all of the above trying to bring these people to justice and put them away or seek the death penalty. That is what they should be doing, that is what they are doing. They are not out there to coddle criminals. And I don't think we can adopt a blanket policy of never trying a terrorist in a civilian court. That would say that all terrorism cases are the same, and of course they are not.

So I think what we need to do is really what the Department is doing, and that is looking at each case and asking what is the nature of this case, who is the defendant, where do they come from,

what was the goal of the attack, where did the evidence derive from, what is the public purpose to be served by trying it in a public civilian forum, a criminal court's forum, or a military forum? And those are tough decisions to make, but they can't be made in a vacuum, they can't be made, frankly, by the Congress trying to decide without the benefit of knowing where the evidence was derived or many other factors about the case.

I mean, I think you have two paradigms. You have the troop who is arrested in the field, on the field of battle, and the paradigm there is they get tried in a military forum, if they get tried at all. They may just get detained as an unlawful belligerent for the duration of this conflict.

The other paradigm is when you arrest an American citizen on American soil, and I think that those are sort of the polar opposites, and even those cases these may not be uniform treatment. You may decide to try someone arrested on the battlefield in a courtroom, and you may decide to try an American in a military setting, but I don't think one size fits all now, I don't think it ever will. And so I appreciate the thoughtfulness you are bringing to that challenge.

One thing I think we have to recognize is that there is no free lunch in leaving GITMO the way it is or trying people in military commissions. As our military leaders have pointed out, GITMO has been a terrific recruiting tool for Al-Qaeda, and so balanced against the criticisms that have been raised about incarcerating some of the GITMO detainees in the United States we have to ask what is the cost of recruiting another 100 or another 1000 people to Al-Qaeda because we still have a GITMO that is the subject of recruiting on Al-Qaeda web sites?

So there is no free lunch. These are all going to be hard decisions, and I appreciate what you are doing.

I am going to raise with you for the moment an important, but more mundane by comparison, topic and that is DNA.

#### DNA ANALYSIS BACKLOG

When we last had a chance to talk during your testimony your goal was to eliminate the backlog by this summer, and I would be interested to know how that is coming, whether we are still on track. You were bringing on new technologies to try to collect and upload into CODIS these samples and do it much quicker. So I want to ask you where we were on that? I think last year 38 of the 39 positions were filled, and I would be interested to know if those are filled and whether further staff increases are necessary to get to that goal of a zero backlog.

The other related question I wanted to ask is about the technical review of DNA evidence. There are hundreds of jurisdictions obviously around the country dealing with backlogs of DNA profiles. In Los Angeles, LAPD and the sheriff's department have backlogs of over 7,000 sexual assault kits. Both county and city have outsourced those kits to private labs that have the staff and equipment to handle that huge number in that amount of time. This has been partly successful in reducing or eliminating some of these backlogs, but there is a substantial question about whether there is a lot of waste in the effort.

And by that I mean last year I got half a million in funding with the help of the Chairman so that we could work on the LAPD backlog. They used it to hire people to do overtime, lab technicians to do technical review. Now these forensic scientists weren't testing the evidence themselves, what they were doing was simply checking the work of other highly-trained scientists at the private labs, a step that FBI requires before these samples can be uploaded into CODIS. So you have the samples that may be cleaned up in the backlog, but before they can be uploaded into CODIS, if the sample is tested by a private lab, it has to be retested in a government lab. According to the director there though, there wasn't a single error found in a technical review that would have resulted in any correct data going into CODIS.

So the question that we have been looking into is, is this requirement of 100 percent review really desirable? Because it is responsible for a big chunk of delay and a big expense, and if it is not going to improve the quality, of what goes into CODIS, then you have got to ask why are we doing it? And even if there was a problem and a sample got incorrectly loaded into CODIS, you can have a requirement that before, let us say, there is a match made, before that is used in any way, if the sample is done by a private lab then there has to be the technical review.

So if you could address those two subjects, where we are in the backlog and whether you are amenable to removing that requirement, of technical review, that would be great.

Mr. HOLDER. Yeah, I think first with regard to the second thing that you raised, that we do need to find ways in which we can make this process as efficient as we can without giving up what the real value of the tool is, and that is the near scientific certainty of it. I think your suggestion is actually an interesting one about the possibility of dealing with those samples that come from private labs on which we get a hit and then retesting perhaps only those. That I think is an interesting idea that ought to be considered.

Just kind of looking at the statistical information here, between 2004 and 2009 the Department has provided to the states and units of local government about \$300 million to perform DNA analysis requested for about 135,000 backlog forensic cases and to build DNA laboratory capacity, \$53.8 million to eliminate existing backlog of DNA database samples, although 1.6 million DNA database samples have been analyzed, resulting in more than 15,000 CODIS hits. We have for fiscal year 2011 a \$150 million DNA initiative to try to deal with the backlog and also deal with ways in which we can wring out from these very, very promising technology efficiencies.

I think people often times think of DNA as only the thing that springs people who were unjustly accused of a crime, and it certainly has had that impact, but it is also a very, very important law enforcement tool that convicts people who have committed very, very serious crimes, and so it is something that I think has to be at the center of what I have come to call an evidence-based approach to criminal justice, and we have to do it in the right way, in an efficient way, but this is a good place for us to spend our money.



Mr. SCHIFF. Do you know, Mr. Attorney General, if you don't I would love it if you could follow up though, are you on track to eliminate the backlog by the summer of this year? That was the goal last year. How is that coming, and if we are not on track what do we need to do to get on track?

Mr. HOLDER. Okay. I do not know if we will have the backlog eliminated by this summer, but what I will do is get back to you at the conclusion of the hearing and give you a sense of where we stand if not by the end of this summer, a sense of when it is we think we will have that backlog eliminated.

[The information follows:]

STATUS OF ELIMINATING THE BACKLOG OF DNA DATABASE

The FBI is on track to eliminate the DNA backlog associated with Federal Convicted Offender Program by September 2010.

Mr. SCHIFF. Thank you. And I also want to express our gratitude in California and the other border states for the SCAAP funding in the budget. It has been zeroed out by the last administration, you put in in excess of 300 million into the program, we of course would like and will push for more, but we are glad to see that program reappear in the Administration's budget.

Thank you, Mr. Chairman, I yield back.

Mr. MOLLOHAN. Mr. Culberson.

RIGHTS AFFORDED TO DEFENDANTS IN CIVILIAN TRIALS

Mr. CULBERSON. Thank you, Mr. Chairman, and thank you, Mr. Attorney General, for appearing before us.

In response a moment ago to a question from the Chairman you said that terrorists have the same rights as Charles Manson, correct?

Mr. HOLDER. I said that murderers have the same rights as Charles Manson, and if these people are charged with murder, in essence, those are the kinds of rights that they would get.

Mr. CULBERSON. And terrorists who have murdered U.S. citizens and the approach of your Department of Justice is they have the same rights as Charles Manson.

Mr. HOLDER. In a sense that a murderer has the right to go before a jury, get the acts that he is charged with proven beyond a reasonable doubt, yes.

Mr. CULBERSON. So therefore Osama Bin Laden in your opinion has the same rights as Charles Manson?

Mr. HOLDER. In some ways, I think they are comparable people.

Mr. CULBERSON. That is incredible. This is where the disconnect between this Administration and your mind set is so completely opposite that of where the vast majority of the American people are, where my constituents and I just have deep seeded a profound philosophical difference with the Obama Administration, the Department of Justice, the leadership of this Congress.

This is war. In a time of war we as a Nation have never given constitutional rights to foreign national, enemy soldiers certainly captures overseas.

And Senator Lindsey Graham asked you this question, and I know you have had time to think about it, at the time he asked the question you couldn't provide him with an example. Could you

provide us with an example of when in time of war the United States has ever granted a foreign national captured on a foreign battlefield U.S. constitutional rights? Has that ever happened?

Mr. HOLDER. You are dealing with a situation that is different from anything that we have ever before. Different from anything that we have ever before. We try to analogize this to wars where there were people in uniform, where you had signing ceremonies that ended declarations on battleships in Tokyo Harbor. This is not the kind of war that we are facing. And though we tried to analogize the tools and analogize the rules, they don't necessarily apply the same way.

Mr. CULBERSON. Uh-huh.

Mr. HOLDER. What Osama Bin Laden is responsible for are both, as I said, and I have consistently said, both acts of war and also criminal acts. And when I was referring to the Charles Manson analogy, that was just to talk about the rights that he had within a courtroom.

Mr. CULBERSON. Uh-huh.

Mr. HOLDER. I understand that we are at war with Al-Qaeda, and that is why we have 30,000 additional troops in Afghanistan.

Mr. CULBERSON. Right.

Mr. HOLDER. And why we have taken all kinds of other measures, some of which I can't talk about, in Pakistan. We are not fighting this from a law enforcement preventative mode, we are using law enforcement as one of the tools, but we are also using military means to defeat this enemy.

Mr. CULBERSON. Which is why you support the Second Circuit Court's decision in Padilla that the President lacks the authority to detain a U.S. citizen as an enemy combatant on U.S. soil.

Mr. HOLDER. That is not clear at this point that the United States has the ability to, as the President tried to do in that case, hold incommunicado and without a lawyer an American citizen on American soil. What that brief said was that there are other tools that the Executive Branch has, and that it should make use of, in order to effectuate the neutralization and the incapacitation of that person as opposed to simply locking them away and not giving them a lawyer.

Mr. CULBERSON. Right.

Mr. HOLDER. Again, we are talking about American citizens on American soil.

Mr. CULBERSON. Right. But the key is you said the President has other tools. The President is the Commander in Chief, and this is where the profound disconnect comes between where America is and where you are in this Administration and where this leadership of the Congress is.

Mr. HOLDER. I would disagree with the characterization that there is a split between America and the leadership of this Administration.

Mr. CULBERSON. There really is, because you saw it I think in the Massachusetts election, this was one of the key issues in the election of Scott Brown, is even the voters of Massachusetts, as liberal and different in their philosophical views as they are from my constituents in Texas, even the voters in Massachusetts under-

stand that Osama Bin Laden does not have the same rights as Charles Manson as you have just stated.

Mr. HOLDER. I said that they only have the same rights within a courtroom.

Mr. CULBERSON. Right. Well granting Osama Bin Laden the right to appear in a U.S. courtroom you are clothing Osama bin Laden with the protections of the U.S. Constitution. That is unavoidable, and something that you have skipped right past.

Mr. HOLDER. Let us deal with reality here.

Mr. CULBERSON. And it is giving constitutional rights to enemy soldiers that is the profound problem, sir.

Mr. HOLDER. We are talking about a hypothetical that will never occur. The reality is that we will be reading Miranda rights to the corpse of Osama Bin Laden. He will never appear in an American courtroom. That is a reality. That is a reality.

Mr. CULBERSON. But it is clearly your position and the position of this Administration that you believe on a case by case basis, and your tendency would be to grant constitutional rights to enemy soldiers captured on foreign battlefields. Has that ever been done before in U.S. history at a time of war?

Mr. HOLDER. Well, I assume that you are a supporter of military commissions, is that correct?

Mr. CULBERSON. Absolutely. In a time of war, yes, sir, I support what the U.S. Supreme Court affirmed when those German terrorists were captured, as Mr. Wolf said, on U.S. soil, they were lead off on the beaches of Florida and Long Island—

Mr. HOLDER. And yet even in those military commissions those people are given constitutional rights, are they not?

Mr. CULBERSON. Well they are in a military commission not clothed with all of the protections of the U.S. Constitution, they are treated by the military as enemy combatants captured at time of war. And the question is—

Mr. HOLDER. But they are not put up against a wall and shot. They have the ability to confront those who accuse them. They have the right to lawyers. They have many of the same constitutional rights.

Mr. CULBERSON. Severely restricted rights, and the military tribunal is the problem. We are at war, and you don't seem to recognize that we are at war just as though we were at war with the Germans in World War II, but the people who we're fighting are such cowards they clothed themselves as women and hide behind children and hide in mosques as they did in the Gaza Strip, as they do in attacking us, and it is the President's responsibility as Commander-in-Chief to protect the country, and the President has granted great discretion by the U.S. Supreme Court and as Commander-in-Chief deciding when and where to try these people.

It was President Roosevelt's decision that the German terrorists be tried in a military tribunal and not given the full protection of the Constitution. It was President Bush's decision that foreign nationals captured in foreign battlefields not be tried in civilian court and given the full protection of the Constitution, because we are at war. And time lost in interrogating these people means lives lost. And it is one of the principal reasons actually when you looked at why Scott Brown won his race it is not only because the people of

Massachusetts opposed the President's healthcare plan, but because this Administration consistently, and here once again today we now learn that you think Osama Bin Laden should be given the same rights as Charles Manson in a court of law, and that is just not acceptable to the people that I represent, to the people of America, and it represents a just profoundly different approach that has never been done before in the history of the country.

Mr. HOLDER. What we have said and what I have said is that on a case by case basis you make the determination of where you can bring the strongest case. Where will I have the greatest chance of success? There are things that you can do in Article III courts that you cannot do in military commissions. You cannot have, for instance, cooperation agreements. That does not exist in a military commission. We have the ability to incarcerate people for extended periods of time.

Mr. CULBERSON. Right.

Mr. HOLDER. And one only has to look at what has happened through the use of the Article III courts over the course of the past year to see the plots that we have broken up and the intelligence that we have gathered, which has allowed our military to be more effective in the field.

Mr. CULBERSON. Yes, sir.

Mr. HOLDER. And that cannot be denied. That cannot be denied. It is where facts run into everything that you are saying. Facts.

Mr. CULBERSON. Well forgive me, my time is limited and your perspective—I respect your opinion, but it is one that I profoundly disagree with, and my constituents and the Nation I think overwhelming would disagree with you that enemy soldiers captured in time of war, particularly on foreign battlefields are not going to be—should not be given the protection of the U.S. Constitution, that they should be tried as enemy soldiers in military tribunals. That has been the history in this country, and the goal is to protect the people of the United States. And you know, your focus has been on when and where and what rights they should be given.

If I could, I know my time is—

Mr. HOLDER. No, my focus is on how they are incapacitated, how they are disrupted, how they are punished, how they are held accountable. That is my focus. How do we bring these people to justice. Do I use Article III courts or do I use a military commission? I have used both in determinations that I have made. We are not afraid to use military commissions.

PROTECTION OF NATIONAL SECURITY INFORMATION IN CIVILIAN  
TRIALS

Mr. CULBERSON. If I could, because my time is limited, forgive me for interrupting, but a specific example, the Ahmed Ghailani case, he is being tried in New York. The Obama administration made the decision to try him as a foreign national in Pakistan, for the 1998 east Africa bombings. You made the decision to try him in civilian court. The first thing he did was file a motion to dismiss on the grounds that he was denied a speedy trial. And on February 24th the District Court ordered the Department to turn over all documents relating to his detention at Guantanamo that would

allow the defense to determine whether his detention or his delay in going to trial was actually based on national security grounds.

And Mr. Chairman, the worry is that of course this information the Department turns over to him, any of that information they give to this guy's lawyer is going to be scanned and broadcast on the Internet in a nanosecond. Of course it is. It is going to be broadcast in a nanosecond to our enemies overseas. So you have handed our enemies at time of war a powerful tool, very powerful information to use against our men and women in uniform, and that is one of the main concerns.

Mr. HOLDER. All right. Now let us have a couple of facts here. There is a statute, the CIPA statute, that would prevent the dissemination of the information that you are talking about.

Mr. CULBERSON. You can withhold things on national security grounds.

Mr. HOLDER. Lawyers have to be cleared, they have to have security clearances. There are all kinds of measures that are put in place.

With regard to Mr. Ghailani, he is the last of the people charged in that. The other people who were charged with that crime were charged by the Bush Administration, where? In civilian court.

Mr. CULBERSON. But in this case you made the decision to try them in civilian court, he is captured overseas, he is a foreign national, and the District Court has ordered you to turn over any documents that would allow the defense to determine whether he was denied a speedy trial based on national security grounds, and it is a fact those things can and will be scanned, and can and will be provided to our enemies overseas.

Mr. HOLDER. That is not a fact. That is speculation on your part that runs head-on into another bothersome thing called a statute, the CIPA statute, another fact.

Mr. CULBERSON. But it is the concern that we have.

Mr. MOLLOHAN. Mr. Culberson, you are going to have to—

Mr. CULBERSON. And I appreciate it.

Mr. MOLLOHAN. I don't want to cut you off because I don't want to sound like—

Mr. CULBERSON. I have gone long.

Mr. MOLLOHAN. Excuse me.

Mr. CULBERSON. Sorry.

Mr. MOLLOHAN. Thank you. It is one thing to interrupt the witness, and another thing to interrupt me. You will have another round.

Mr. CULBERSON. Thank you.

Mr. MOLLOHAN. But you have gone over your time. I don't want to appear like we are cutting this off.

Mr. CULBERSON. Thank you, sir.

Mr. MOLLOHAN. But you will have another round.

Mr. CULBERSON. Thank you.

Mr. MOLLOHAN. Mr. Fattah.

Mr. FATTAH. Thank you, Mr. Chairman.

#### USE OF THE CIVILIAN TRIAL SYSTEM TO REINFORCE THE RULE OF LAW

Mr. Attorney General, let me welcome you to the Committee, and rather than kind of go back over some of the territory that has al-

ready been over, let me just try to see if we can resurrect some of the context of all this.

Now President Reagan and President Bush, the first Bush, they criticized on behalf of our country China for instance for locking people up, not having trial, secret charges, secret evidence, they said that this was not appropriate in a civilized world. And Newt Gingrich was before the Congress and I asked him post 9/11, you know, what is the rule of law? You know, because you hear my colleagues, they are basically saying look, if you grab somebody, you kind of think they are a problem, put them in a place over in Guantanamo and that is it, let us throw the key away. And the question really becomes is how does our Nation, how should we behave in the context of trying to promote to the rest of the world the rule of law? Would it be impossible for a president of the United States, a Ronald Reagan, a George Bush, to criticize China in the same context today given the activities over the last eight years?

Mr. HOLDER. I wouldn't equate what the prior administration has done with—certainly what we know about what the Chinese have done, and yet I think back to my confirmation hearing and what Senator Graham said, and I think it is profound. He said that what we decide to do in dealing with these terrorists says more about us than it does about them. And we have a great tradition, and we have great systems that have been shown to work. People look at the United States and our legal system, and it is held out as the gold standard. I have great faith in the abilities of our judges, the people who serve as jurors, the people who are responsible for the protection of people who are involved in trials, to handle these matters in a way that we always have.

Mr. FATAH. Well, I do too, and I have said this before, you know, in terms of this manner of whether someone should have a trial in New York City who killed 3,000 people almost on 9/11. You know, if someone had killed so many Philadelphians we would want—we would expect that there would be an opportunity for justice to be done, and for the community there to be able to participate in a trial and for the families to be, you know, now so—

Mr. HOLDER. If I could just interrupt. There actually is a federal statute that says that the trial has to be held in the place where the murders occurred in a capital case.

Mr. FATAH. If he could live long enough to get to trial in Philadelphia we would expect for him to come to trial in Philadelphia.

So the idea that we can take 18, 19 year old kids, drop them on some mountain in Afghanistan in the middle of the dark, is that we are too cowardly to have a trial with all the protections that are afforded. You know, we have the military, we got the police. We can't put somebody on trial. I mean unless they are Superman or something.

I think it doesn't befit a great Nation to hesitate or equivocate on the question of, you know, following our own laws and the impulse to justice.

So in this selective amnesia of my colleagues, you know, we saw the past Attorney General of the Justice Department prosecute a CIA employee for harming a prisoner who was suspected of terrorism. There was no complaints, there was no suggestions that

this was hurting the morale of the CIA. You come along you say you want to review these cases. You haven't put anyone on trial, you haven't charged anyone at the CIA, except you have been attacked.

This Administration, as you point out, following the same—in the same case, trying the last perpetrator in a civilian court, they didn't criticize the others who have been tried in civilian court by the Bush Administration, so it is all politics, and it is such unfortunate that we have American citizens who have lost their lives, we have young men and women who are risking their lives, and that here in the Congress we can't rise above our own politics. It is unfortunate, and it is an unfortunate day, but we still have to persist.

And I think that I would just want to say to you as you go forward that this Committee, and I know that the Chairman, we want to be as helpful as we can in terms of making sure you have the resources. We had a young presidency, and in that young presidency of George Bush the second go around we had an attack. Thousands of Americans died. What the minority party did was we united with the majority and we worked together to protect the country.

Now we got a young presidency. We have a failed attack on Christmas day, and what does the minority party do? They attack the President and they attack this Administration. It is a reversal of responsibility, and I would just hope that my colleagues at some point would be able to put their petty politics aside and be able to work in the best interest of our country.

Thank you.

Mr. MOLLOHAN. Mr. Honda.

Mr. HONDA. Thank you, Mr. Chairman, and welcome.

Before I start I just want to thank you for your service to this country, and certainly as a third generation Japanese American who went through internment, and this country set aside our Constitution. I place my confidence in your ability to fulfill the laws of this country, and so for I am very appreciative for your service.

#### 2010 CENSUS

You know, the census is one of our most important civic responsibilities, it is under way now, and historically some population groups are more reluctant to respond because they are fearful that government agencies other than the U.S. Census Bureau will have access to their personal responses, and might use that information to take legal action against them.

Now the 2010 census is the first post September 11th enumeration. I, and several of my colleagues recently asked the Justice Department to analyze the strict census confidentiality provisions in light of the newer Patriot Act provisions, which allow the Federal Government to seek information and gather data about individuals suspected of terrorist activity, and we appreciate your recent response to our letter. Would you confirm my understanding of your analysis?

This is what I understand. It says no data sharing or data seeking provisions of the Patriot Act supercede provisions of the Census Act that prohibit the Census Bureau from sharing any personally

identifiable information with any other government agency or court of law. Is that a correct analysis and determination?

Mr. HOLDER. I was going to say yes, but I wanted to make sure, so I checked with all of my colleagues back here, and that in fact is correct, yes.

Mr. HONDA. I do that with my staff too, thank you.

Because I think that when we tell our communities, especially the recent arrivals and those who are citizens awaiting, those who are new citizens, we want them to feel confident that when the knock on the door is there and we do the outreach and spend all this money and effort to fulfill the constitutional mandate of counting everybody who is here, we want them to feel confident as I do that their information will be used only in the way to provide information so that we can come up with all kinds of programs that will benefit the people of this country, so I appreciate that input.

#### RESOURCES FOR INDIAN COUNTRY

The increased resources the Administration continued to request for Indian country law enforcement programs and initiatives through the Department of Justice in this 2011 budget request. The Administration has proposed a new bill language for 7 percent tribal set aside funding within state and local law enforcement assistance and other DOJ accounts. This 7 percent tribal set aside language would replace traditional language that has been carried out in recent years that specified particular funding amounts for the various Indian country law enforcement programs such as tribal courts, detention facilities, and Indian youth.

What assurances does the Subcommittee have that these key core component programs serving Indian country will continue to receive an adequate base level of funding in 2011?

Mr. HOLDER. Well, I think that one of the things we want to do is to work with the people in the tribal lands to make sure that the money is spent in appropriate ways. We will use our Inspector General, and the other mechanisms that we have, to ensure that money is being spent programmatically in the way intended by Congress and consistent with what the Administration's goals are.

I attended a listening conference in Minnesota, I guess late last year, to try to, as we were developing the budget, listen to the people who live on those lands. What are their needs? And I think we have tried to identify those needs in the budget, come up with a certain amount of flexibility, but also a certain amount of rigidity at the same time so that the needs that they identified, and we see, are met. And so I think that we have struck a right balance here.

Mr. HONDA. Has there been any discussion during that time or the perception that Indian country laws based upon culture and history traditions may be different if it were administered—well, are there any Indian country courts that are able to have the same kind of support from us and be able to administer the laws that they have traditionally on their own lands, and is there a difference in friction in that area, and is there any work being done to sort of address those differences?

Mr. HOLDER. Well, I think we are trying to be sensitive to the cultural differences that exist, while at the same time trying to, in terms of all the law enforcement instruments that we see there,



support them in such a way that they are effective by 21st Century standards. Again, being sensitive to those cultural differences, but ultimately just making them effective.

If one looks at the crime rates in Indian Country, if you see what a young girl born in Indian Country, who lives her life there, can expect in terms of sexual abuse and sexual violence, it is really breathtaking. What we have tried to do is come up with ways in which we are supportive of enforcement efforts, supportive of prevention efforts, while at the same time being sensitive to the cultural differences that I think you are right to point out.

Mr. HONDA. Given that distinction and that kind of case, in terms of the civil rights that we have and the kinds of access to health and things like that or education, would the reverse be applicable to Indian country? If there is a lack of that, and there is an expectation that somehow we are partners through this treaty that we have, and the context of their sovereignty? Do civil rights laws apply in that case in Indian country from the perspective of our own laws? I am not sure if that makes sense, but you know.

Mr. HOLDER. No, I think I understand what you are saying, and I would have to check on that and see exactly what the applicability is of our laws. I think they only reach so far. I think that the monies—but I would want to make sure that this is accurate—the monies that we give are to support the laws that they have and that they have to enforce. Not all of our laws, as I understand it, are necessarily applicable on tribal lands, but that is something I should check into and get back to you with a more definitive answer.

[The information follows:]

#### ARE CIVIL RIGHTS LAWS APPLICABLE ON TRIBAL LANDS

As the Supreme Court observed in *Nevada v. Hicks*, 533 U.S. 353, 383 (2001), “it has been understood for more than a century that the Bill of Rights and the Fourteenth Amendment do not of their own force apply to Indian tribes.” However, because of the unique status of tribes under federal laws, the actions of Indian tribal governments are limited by most of the provisions of the Bill of Rights through the Indian Civil Rights Act, 25 U.S.C. 1301–03.

Mr. HONDA. Okay, I appreciate that.

#### IMMIGRATION CASE REVIEWS

In the area of the Executive Office for Immigration Review in citing the complexities of immigration cases such as unmanageable dockets, unrealistic case completion deadlines. On average, immigration judges have probably less time than before to dispose of a case despite their merging in case laws. What steps have your office taken to ensure that judges and the Board of Immigration Appeals members can manage their case loads, and then reduce the heavy load on the circuit courts and ensure that immigration cases receive adequate attention in administrative courts? What concrete actions have been taken to ensure that immigration judges have the tools and resources to uniquely adjudicate these cases?

Mr. HOLDER. One of the things that we are doing is hiring more judges to have more people to hear these cases. We are looking at adding, using \$11 million that would include 125 positions and 31 attorneys, 21 immigration judge teams and 10 Board of Immigration Appeals attorneys. We want to have more people doing this

work, and at the same time, we want to increase the training that we give to these people.

I think we have made some substantial progress when it comes to what our immigration judges are doing. I had a meeting just yesterday, maybe the day before yesterday, with a group of Article III judges who review these cases. They said they thought over the last couple of years that they had seen a noticeable, positive change in the work product that is coming out of immigration judges, the trial judges.

Mr. HONDA. Okay. How much time do I have?

Mr. MOLLOHAN. Well you should ask. Go ahead and ask one more question.

Mr. HONDA. Let me pursue this.

Mr. MOLLOHAN. One more question, please.

#### FIREARMS TRAFFICKING AND RELATED VIOLENCE

Mr. HONDA. yeah, okay, thank you. Just recently, I read that there has been some pretty horrific and gruesome stories of assassinations or murders in, I believe it is in Juarez, committed by gunmen associated with drug cartels, and the murders were of our staffs from the American Consulate Office. I know that in past meetings, the ATF has reported that the U.S. is overwhelming is the source of guns used by these gun traffickers and their acts.

In the 2009 ARRA we allotted \$10 million in funding for the ATF Project Gun Runner. The initiative was designed to disrupt illegal gun trafficking operations through Mexico, especially along the southwest boarder.

Do you believe that this act, the Recovery Act funding, along with any other additional funds that the ATF is spending to confront this trafficking to Mexico, is sufficient to take on the problem of illegal gun trafficking?

And I guess just let me piggyback another question on top of that. The issue of gun shows, does that still continue to be the main source of arms that show up on the other side of the border?

Mr. HOLDER. Well, I think we have to use all the tools that we can to stop the flow of guns from the United States into Mexico. Gun Runner, I think, has been a successful program. We have tracing programs that we use with our Mexican counterparts in a very valiant effort to fight these cartels.

ATF has appropriately used projects to go to gun shows where guns are being sold improperly, and it has been effective in that regard as well.

The concern, though, is that we really have to understand that there is indeed a problem. If I speak to my Mexican counterparts, and if I look at the weapons that are seized down there, way too many of them come from the United States. If Mexico is ultimately to be successful in this war that they are fighting, that will benefit this Nation as well, I think that we have to do all that we can to increase our efforts to stop the flow of guns from the United States to Mexico.

There are things that we need to do in Mexico. I think we need to have more of our people there working with their Mexican counterparts, from ATF, DEA, and the DHS agencies as well. I think we also have to be honest with ourselves that we are allowing,

through straw purchases and other illegal things, the acquisition of guns that then ultimately go to Mexico.

Mr. HONDA. Should there have been intelligence regarding these want to be drug cartels who want to attain the leadership on the other side? Should there have been intelligence that should have been shared with our folks that their lives are in danger, or were in danger? And if the intelligence should have been there that wasn't passed on was it passed on, and is this the other area that we need to strengthen as to create a better intelligence process so that we can defend, or at least protect, our members of our organizations and our government on the other side?

Mr. HOLDER. Well we certainly have to make sure that we have a good information flow between the United States and Mexico, a good intelligence flow. One of the things that we have to assure ourselves though is that the people with whom we are sharing this information are appropriate to receive it, and that is why we have pushed Mexico to come up with what we call vetted units, people who we can trust and who we can share information with.

I will say this, you know, there is an investigation that is ongoing now by the FBI and by the DEA into the very tragic shootings that occurred over the last few days, and as a result of a variety of means that we have, we are developing a better understanding of exactly what happened there. And I would not place, at least at this point, I would not have any concern that information was not shared with us by our Mexican counterparts as being a cause of what happened there. As I said, the DEA and the FBI I think are doing a good job in the relatively short period of time they have had to investigate it. We are starting to get a picture of what happened.

Mr. HONDA. Thank you, Mr. Chairman.

#### BALANCING SECURITY AND JUSTICE IN TERRORISM TRIALS

Mr. MOLLOHAN. All right, Mr. Attorney General, there has been a discussion in some parts of the hearing which has raised questions about the balance between security and the guaranteeing of rights as meted out under the Constitution in various situations, including military courts and Article III courts.

I would simply note that if this is about rights it is also about responsibilities and both are constitutionally based. And to the extent that the authority that is vested with the power to implement policy in the country pursuant to constitutional principals is true to constitutional principals, then we are a better Nation. To the extent that we don't do or try to do that as well as we could or as we should, then we need to step back and regroup and address the shortcomings and then move forward.

I really commend the Administration for doing that, and doing it in a way that is very sensitive to the national security concerns that were obviously paramount in the last administration. I think that is to your credit.

I also think it is to your credit that in stepping back you have embraced process in order to assure our faithful fulfillment of our responsibilities and adherence to constitutional principals. I think you certainly have done that in the review of the detainees at Guantanamo. I think that is commendable. The defining distinction

between the way these detainees were initially handled and the way that this Administration has handled them has to do with process and bringing criteria to the table and really being sensitive to that. Frankly, that is a statement not to be insensitive to the national security concerns that the last administration was faced and preoccupied with. But it is to your credit that in pursuing those same national security goals, you backed up and did it with a greater sensitivity to those rights that are constitutionally based and which really define us as a Nation. Recognizing that you also have responsibilities and you are the power, you are exercising those responsibilities to achieve national security purposes and, at the same time, being sensitive to the principals that define us as a Nation.

There are a of issues that were raised, but I would like to quickly address two points that were principally raised by Mr. Culberson. With respect to the Ghailani case, can you elaborate on the statutory and other protections that will guide you with regard to what information and how much information is shared, and how that information will be safeguarded in the course of that proceeding?

Mr. HOLDER. If the prosecutors in that case make the determination, in consultation with the Intelligence Community, that information should not be shared, should not get out of the confines of the courtroom, there are mechanisms in place, principally the CIPA statute, that allow for that to occur. That is something that is fairly routine in terrorism cases where a motion is made. A judge looks at the motion, there are lawyers from the other side who have gone through the security clearance process, and the information is contained within the courtroom. We have judges, particularly in New York and other places where these cases have been tried, who are familiar with the very legitimate concerns that Mr. Culberson raised, but who handle those concerns, I think, in an appropriate way, using the tools that Congress has given them, chiefly the CIPA statute.

#### RIGHTS OF DETAINEES IN CIVILIAN TRIALS, CONTINUED

Mr. MOLLOHAN. There were some fairly complicated constitutional issues alluded to and questions asked that I think were inviting serious answers. The one issue that I would like to hear you speak to, with time to do it, is this comparison with Manson, who obviously was a murderer. I think it is important for you to characterize your point, rather than your point to be characterized, so I would like to give you an opportunity to characterize your opinion and to elaborate on the points you were making.

Mr. HOLDER. Yes, the point I was making was that I frequently hear the notion that these terrorists are getting rights that the average American would not get, and I think that runs head-on into the fact that, to the extent that we decide to bring terrorists charged with criminal acts into the criminal justice system, they are not treated as average Americans, they are treated as murderers. They are treated in the way that their crimes would have them be treated.

I used the Charles Manson example only because I was thinking of a mass murderer and thinking that, with regard to some of the people who might be brought into the Article III courts, they also

would be mass murderers, and so they would get, he used the word protections. I don't think that necessarily conveys what I am trying to say. They would be treated in the same way, which doesn't mean that they are going to be coddled and doesn't mean that they are going to get treated with kid gloves. They would be imprisoned before trial. They would be in holding cells that are, if you look at the detention facility in New York, extremely small. They are drafty. They are not pleasant. It is not, for these people who are brought into the Article III system and who are charged with these serious offenses, it is not at all a pleasant experience, and that is what I was trying to convey.

The comparison is not between the average American and these terrorists. The comparison is between those people who have committed the most heinous acts and who are charged in our Article III courts, that is the comparison that I think is more apt.

Again, what I have consistently said is that not everybody who we determine should be tried will be brought into Article III courts. Some will be tried in military commissions. I have already made that determination. The comparison I am making is only those of Article III courts, as opposed to other criminals brought in Article III courts.

Mr. MOLLOHAN. And I know that was extrapolated, if you will, to the mastermind of one of the most heinous crimes committed on the domestic shores of the country. I just felt it would be useful for you to note that that was not your comparison or your analogy and that the facts that would evolve there would be totally dependent on the circumstances. I know the law is very good about looking at the case, deciding things on a case by case basis, and understanding how constitutional principles are applied. Again, one measure of the country is the extent to which it honors those principles to which we affirm.

Mr. Wolf.

#### GUANTANAMO AS A RECRUITING TOOL

Mr. WOLF. Thank you, Mr. Chairman.

I want to just deal with a couple issues that came up from my colleagues on the other side. One to say that Guantanamo is a recruitment tool. It may be in the eyes of some people, and I think there are good people on both sides of the issue, but before that time there was the USS Cole before Guantanamo Bay, because of Guantanamo there is Khobar Towers, before that there was the embassy bombing in Tanzania, before there was the embassy bombing in Kenya where somebody from my congressional district died. There was the 1993 attack on the World Trade Center, and there was 9/11. And I think to say that it is a tremendous recruitment tool is almost like saying well if we just shut it down or Osama Bin Laden will say, you know, I really appreciate what they have done so we are going to kind of move off and get into another occupation. There are people who want to kill us and do things, so I think it may or may not be, and there are good people on both sides, but I don't think it is accurate to say that—I think it is overstated to say that it is the recruitment tool and we just shut it down.

Mr. HOLDER. Well, I wouldn't say it is the only recruitment tool, but I would certainly say that when you can have John McCain, President Bush—

Mr. WOLF. Sure, I don't differ. I am just saying, but there has been such an emphasis that it is a major, and I don't think it is. There are differences of a—

Mr. HOLDER. It is certainly a recruiting tool. I wouldn't say it is the major recruiting tool, but it is a tool that we can take out the hands of those who are trying to recruit people to fight us.

And as I said, you look at those people and you say, "let us close Guantanamo", Senator McCain, President Bush, Colin Powell all said Guantanamo should be closed.

Mr. WOLF. All good people too.

Mr. HOLDER. Yes.

#### INTERROGATION OF ABDULMUTALLAB

Mr. WOLF. Yeah. Secondly, to go to the other point. On the Christmas day bomber there were differences there though. I mean the gentleman was interviewed for 50 minutes. The DNI said at the hearing, and I watched the hearing, that he was never consulted. I assume it was your decision, I think was on the record that you make the decision. The DNI said he was not—

Mr. HOLDER. Well, I made the decision to do what?

Mr. WOLF. Excuse me. Then Leiter said he was not informed. Secretary Napolitano said she was not informed. So it isn't just—there were some interesting things here that people were concerned about, and I don't think you had the HIG team on board in Detroit at that time with regard to the interview, so that is the second thing I just wanted to clear.

Thirdly—

Mr. HOLDER. Well, with regard to that, the determination as to whether or not to Mirandize Abdulmutallab on the 25th, that was made by the people who were on the scene. I don't think it is fair to say this was not the first team. I mean the FBI agents who were there, one was an Iran Iraq expert, one was an explosives expert. Good people, trained. And I think that as we look at this whole question of how we codify this, how we arrange this, the one thing I think we should all try to agree on is that we don't handcuff the people who are trained at these kinds of things, these FBI agents, these DHS agents, and DEA agents, so that when they are there and trying to make these on the scene determinations, they don't have to worry about what is Washington going to think about my—

Mr. WOLF. Sure, no, I understand that, but that gets back to my original. The HIG team was not really involved. And secondly, by having the HIG team out there—

Mr. HOLDER. Oh, I am sorry, you are saying HIG team. I thought you said A team. I am sorry.

Mr. WOLF. No, the HIG team. Thirdly, it was Christmas day, and it is nothing wrong with people wanting to be off on Christmas day. If you looked at the interview on 60 Minutes the FBI agent Piro, his identification and understanding of the head of Saddam, he met with him, he understood, he understood culture. It probably would have been better to bring in your top person who understands Ni-

gerian culture, the top person who understands, and maybe they were out on vacation or with their family. That is not bad, I am not criticizing that, but that was my point is, it was Christmas day, a spur of the moment, and you do have some very good people in the Justice Department and very good people in the FBI who had been there and perhaps somebody from the FBI it could have been a little different, and that was the point I wanted to make.

Mr. HOLDER. I don't necessarily disagree with you. I think the operation on the 25th was done well. I think it was done even better post December 25th in the interaction that we had with Abdulmutllab, but I think there are things that we can learn from December the 25th, and we need to make sure that we do it better every time.

#### POTENTIAL TRIAL OF OSAMA BIN LADEN

Mr. WOLF. Sure. Thirdly, because I get to two last questions. On the Bin Laden question that my colleague asked, Mr. Culberson, you sort of dismissed it, you sort of brushed it aside, kind of a bump and run and move off. The reality is you may very well catch him and he very well may be alive and—

Mr. HOLDER. I don't expect that.

Mr. WOLF. Well, you know, we don't know. We don't know a lot of things. Sometimes we don't know what we don't know. But if you do catch him, and I think the concern is that you may very well be setting a precedent with Khalid Sheikh Mohammed case, beheading Daniel Pearl, killing 3,000 people, the precedent that you are setting there that if you should capture Osama Bin Laden alive, you may very well be setting a precedent.

So my question to you is, if you catch Osama Bin Laden will it go to an Article III court or will it go to a military court?

Mr. HOLDER. I am not trying to dodge this, but I just don't think that the possibility of catching him alive—

Mr. WOLF. Well but we can't—

Mr. HOLDER. It is infinitesimal. Either he will be killed by us or he will be killed by his own people so that he is not captured by us. We know that.

Mr. WOLF. But Attorney General, that was not a trick question. Sincerely, what if we do though catch him alive? That is the question.

Mr. HOLDER. And what I am saying is that—and maybe I was being a little flip with Mr. Culberson—you know, reading Miranda rights to his corpse, because I think that is what we are going to be dealing with. He is not going to be alive.

Mr. WOLF. Well but the question was what if he is alive? And I think the gentlemen raised a legitimate case. You know, from my perspective our government is setting a precedent with Khalid Sheikh Mohammed in a civilian court in New York City and I think that is the real danger.

#### PROSECUTIONS OF HUMAN RIGHTS VIOLATORS

Two other questions I wanted to ask you. The Intelligence Reform and Terrorist and Prevention Act of 2004 expanded to OSI jurisdictions beyond Nazi era cases. We had hearings when I was the chairman of this Committee. Since that change, how many human

rights violators have you successfully prosecuted or removed from the country?

I am continually seeing, I saw the fellow interviewed the other day from Somalia. We are finding all these bad people are showing up in the country, people who have been involved in a genocide in Rwanda where 600, 700,000 people who had been killed. We are finding, you know, Charles Taylor's son came in, Chuckie Taylor, fortunately the Administration did get him.

But can you tell us, and maybe this is not the place, can you commit that you are aggressively looking and how many have you prosecuted? But could you have somebody come by and give me the real information and an inventory of all these people who have been involved in genocide and crimes against humanity that are now living in the United States, you know where they are, that you are aggressively going after them to at least deport them?

Mr. HOLDER. Yes, I can arrange a briefing so that I can share with you what the exact numbers are, because I don't know them. But one of the things that we need is Congressional support for this, I believe.

Mr. WOLF. What support do you need?

Mr. HOLDER. To merge the Office of Special Investigations with its counterpart that is responsible for the prosecutions of people like Chuckie Taylor. Because we think that if we put those two groups together in our Criminal Division that we can be more effective at getting at the very people that you are——

Mr. WOLF. I will offer that as a motion at the mark up and just tell the gentleman from West Virginia, I will offer that as a motion, if your people can come up and give me the language, then I will see if I can get that passed, and I will also introduce a bill that in case the Judiciary Committee doesn't, I can look for another vehicle too, because I think we have an obligation to those people who have been persecuted, who have gone through this, to have these people that they then see living in the United States to be prosecuted and deported.

Mr. HOLDER. And I agree with you, Mr. Wolf. And to the extent that we can work together on that, I would appreciate it.

Mr. WOLF. That would be good. A good thing to work together on that would be good.

DELAYS IN IMPLEMENTATION OF THE PRISON RAPE ELIMINATION ACT,  
CONTINUED

The last thing is I want to go back to the prison rape. This is an issue I care deeply about. My office talked to somebody who was involved in a prison rape and connected to the Justice Department. When Senator Kennedy and Bobby Scott and I put this in we wanted this thing passed. I can send you and I will send you, and I would ask you on the record if you will promise you are going to read them.

Mr. HOLDER. Okay.

Mr. WOLF. Some of the cases of some of these people that have been raped. Some are very young too. And we sent a letter back in July of this year. Senator Kennedy, Congressman Scott, and myself. What you are doing is duplicating everything the Commission has done. You are going out on the contract now to look at every-



thing. And just because some prison wardens don't like this, or the Bureau of Prisons may not like it, the longer you delay the more people are going to be raped, period. And now what you are telling us is that this will not be in place until 2011 and maybe 2012. That is unacceptable. And I don't know why you did it. I don't know the operation of the Department. This was looked at carefully, and I think to reduce the funding for it too sends me a message that the Justice Department, whoever is putting your budget together really doesn't care.

I want a commitment you are going to expedite this, move this thing through knowing that each and every day that you don't do it someone in some prison, maybe a state prison, maybe a jail, maybe a federal prison is going to be raped. And so what I want to do is we want to pass this thing, we want to move this thing, we want to get it out and get it up and running, and 2011, it will be year and a half to two years late.

So what can you tell me that you are going to kind of do away with this contracting thing out and do what the Commission says or do something to make this thing happen fast?

Mr. HOLDER. Well, in terms of just funding, and that is what I was looking at here, we have total funding of over \$16 million available to us in 2010, \$5 million in 2011, plus our current funds are really sufficient to finish the survey process and to provide implementation and help to our state and local partners. So we think that with the money that we have, we are capable of doing the job that you want done and a job that I want to have done. We don't want to do this in a slipshod way, we want to effect substantive real change so that the horrors that are too often visited upon people in our prisons are eliminated.

I look forward to working with you on that. I mean, we are on exactly the same page on that one. This is something that I think needs to be done not tomorrow, but yesterday. And to the extent that we are not being as efficient, not being as aggressive as we need to be, it is good for you to bring that to my attention.

But I can tell you, I am sincere in my desire to make sure that we get this done as quickly as we can. I think we have sufficient funds to do it. I think the process that we have laid out will make sure that the changes that we implement will be ones that will have a substantive impact. It will not simply be things that you see on paper but don't affect the lives of people in prisons. That is my goal.

Mr. WOLF. I think it is fair to say most members of the Commission don't agree with you, and I think you knew the chairman of the Commission, Reggie Walton.

So with that, Mr. Chairman, I yield back.

Mr. MOLLOHAN. Mr. Schiff.

Mr. SCHIFF. Thank you, Mr. Chairman.

#### GUANTANAMO AS A RECRUITMENT TOOL, CONTINUED

I just want to quickly address a couple of the comments that were made about Guantanamo. In addition to Colin Powell and President Bush advocating for the closure of Guantanamo, the assessment of military commanders within DoD is that closing Guantanamo is a national security imperative in the war against Al-

Qaeda. That is according to John Brennan, the Assistant to the President for Homeland Security and Counterterrorism. Secretary Gates, Admiral Mullen, and General Petraeus have all stated that closing Guantanamo will help our troops by eliminating a potent recruiting tool.

My colleague, I think, sets up a straw man argument that because many of us, including the Defense Secretary, believe that GITMO is a recruiting tool, that we are somehow arguing if you close Guantanamo it will end the war on terrorism. Of course no one has ever made that claim. But I have yet to hear the advocates of keeping Guantanamo open, acknowledge any merit to the propaganda tool it has served for Al-Qaeda and the downside of keeping that open.

#### PAST PROVISION OF MIRANDA WARNINGS TO TERRORIST SUSPECTS

I also, again in terms of the criticism regarding the arrest and Miranda advisement of Abdulmutallab, I think that argument would have a lot more policy weight and a lot less political overtone if these same folks who are attacking this Administration now, had leveled any criticism of Attorney General Ashcroft when the shoe bomber was arrested, which coincidentally was also a December almost Christmas day, I think December 21st, effort to blow up an aircraft, and he was advised of his Miranda rights within the first five minutes, and was advised a total of four times within 48 hours. And I don't remember hearing a peep of criticism of the Bush Justice Department at that time.

So again, you know, I think we ought to try to keep the politics out of this and not be selective in our criticism.

#### MEXICAN FIREARMS TRAFFICKING

Let me turn to another subject though, and that was one raised by my colleague, Mr. Honda, and that is the spiraling of violence in Mexico. I had a chance to sit down with your counterpart, the Mexican attorney general two months ago who talked about the mutually destructive trade between our countries with narcotics flowing north and weapons flowing south, and in particular just the prevalence of American weapons being imported into Mexico, sold through straw purchases or acquired at gun shows or through whatever mechanism.

And I wanted to ask you how we can do more to stem that flow of weapons into Mexico. You know, we were devastated to see the loss of our consulate official and his wife, in some horrific violence, and of course thousands of Mexican citizens are dying every year in what looks increasingly like Columbia used to look.

So I would be interested to know whether you think there are any legal changes that are necessary to crack down on this high volume of trafficking of weapons into Mexico. You know, one disparity, for example, is you are required to disclose I guess if someone buys five or more handguns a month, but if they come and they buy five or more assault weapons you are not required to disclose it, and so you don't have those law enforcement kind of leads. As we recall in the Excalibur case some of the efforts to crack down on even high volume sales to straw purchasers are problematic. And you know, one of the issues too may be do we have the re-

sources and the priority among the U.S. Attorney offices to go after even the straw purchasers in a way that will let us climb the chain much as sometimes you have to go after the drug runners to go after the cartel leaders.

So if you could share your thoughts on how we can contribute to the effort in Mexico by stopping the flow of weapons into Mexico.

Mr. HOLDER. Well, I think one of the things that we need to do is to make sure that we have an ability from our Mexican counterparts to look at really basic things, such as the serial numbers on guns that are found in Mexico, so that we can trace them and find where they are being sold. What our history tells us is that a relatively small number of gun stores supply a disproportionate number of guns that are used in violent crimes, both in the United States and certainly in Mexico. We focus our attention, using our ATF and state and local counterparts, on those places where there is evidence and a predicate to believe that they are engaged in the sale of weapons that end up in Mexico through straw purchases or illegal sales to people with felony records. We follow the evidence back to those places that are the sources of these guns. I think one of the ways in which we can do that is by having a good interaction with our Mexican counterparts and by looking at the weapons that are seized. We have warehouses of these things, and they need to be preserved at least long enough for American law enforcement to get there and to obtain serial numbers and then try to trace those serial numbers.

Mr. SCHIFF. Do we need to look at some of the sentencing provisions as well? I was informed at a meeting with some of your colleagues and ATF and was informed about a recent case where someone was convicted of gun running into Mexico, I think 1,000 weapons were involved, and the sentence was 30 some odd months. That seems like an awfully light sentence for someone that is illegally exporting into Mexico 1,000 weapons, you know, and we may see several killings as a result of those guns being illegally trafficked in the countries. Do we need to look at whether we have sufficient sentencing deterrents in place?

Mr. HOLDER. I am not familiar with that case, but I think that is a very legitimate question that we should ask and look not only at that case, but at a larger number of cases to see who is it that is getting convicted of gun running to Mexico and what kinds of sentences they are getting. If they seem to be low, is it because the penalties that we have in the statutes are too low or is there something else that is going on? I think that is a very legitimate inquiry that we should engage in. We have to have a deterrent effect. We can't make this something that people do with the thought that, if caught, they are not going to face a very substantial penalty given the impact that it has in Mexico. But not only in Mexico, the impact that it has in the United States. It makes the cartels stronger in Mexico and gives them a greater capacity to ship drugs to our country. As you know, the violence we see along our border is only fueled by these same weapons.

Mr. SCHIFF. Thank you, Mr. Chairman, and I yield back.

Mr. MOLLOHAN. Mr. Culberson.

Mr. CULBERSON. Thank you, Mr. Chairman.

## PROVISION OF MIRANDA RIGHTS TO TERROR SUSPECTS CONTINUED

Mr. Attorney General, the Miranda case of course is designed to preserve the admissibility of evidence in a court proceeding. Do you believe Miranda is essential in order to preserve the admissibility of evidence in criminal court proceedings against the—for example, these enemy combatants brought to trial in Article III courts?

Mr. HOLDER. Well, it depends on the situation. For instance, that initial interaction with Abdulmutallab, there was no need for Miranda warnings under the public safety exception to Miranda. There are a number of exceptions to the Miranda rule that I think are appropriate and that law enforcement can use in questioning, gaining intelligence—

Mr. CULBERSON. Excited utterance?

Mr. HOLDER. Excited utterance. There are a whole variety of things. The Supreme Court said, not too many years ago, that the Miranda warning regime was a constitutional dimension. It was a seven to two opinion, I think.

Mr. CULBERSON. You mentioned a moment ago, sir, that the people on the scene made the decision to provide Miranda warnings to the Christmas bomber. I just wanted to confirm that if I understood you correctly. Who did authorize the Miranda warnings to be given to the Christmas bomber?

Mr. HOLDER. That was done by people on the scene, but although I was not involved in that, I think that the decision was correct.

Mr. CULBERSON. And the purpose of the questioning. If the purpose of the questioning of an individual is to gather intelligence, are they entitled to Miranda warnings?

Mr. HOLDER. Well, again, it depends. A byproduct of the questioning that was done of Abdulmutallab, justifiably done under the public safety exception, was the acquisition of intelligence information. We were also trying to determine whether there were other people in other planes, other people in the same plane, that he was on.

I have heard a lot said about the fact that he was only questioned for 50 minutes. That is a fairly long period of time. It certainly is not as long as what has happened subsequent to that. If you look at the report of the interview that was gotten from him in that 50 minutes, or hour, there was a pretty substantial amount of information that was received from him that proved to be actionable, that proved to be timely, and that continues to be, at least in some ways, the basis for a lot of the cooperation that he has shared with us.

Mr. CULBERSON. Since you have made the decision to try KSM in a U.S. court, wouldn't all of incriminating statements be inadmissible because he was not advised of his—not given his Miranda warnings?

Mr. HOLDER. This is something I really can't get into too much. There are a variety of statements that are available for our use in that trial, some of which have no Miranda issues at all.

Mr. CULBERSON. So when he raises the objection in—as he will when he is brought before a federal judge—when his lawyers raise the objection that he was not given a Miranda warning, what will be the position of the Department of Justice?

Mr. HOLDER. In the Article III trial that we would present there would not be a basis for a Miranda challenge.

USE OF CIVILIAN TRIALS AS A TOOL IN THE WAR ON TERRORISM

Mr. CULBERSON. Mr. Chairman and Mr. Attorney General, this is why this is such a—I mean this is just one piece of why it really is a sincere concern to the people of Texas that I represent, to me, my colleagues, that the approach of the Department of Justice and the Obama Administration is that this is a law enforcement action that in this war on terror is in fundamentally a law enforcement action like the war on crime, and it is not. We are at war. And Texans understand when you are at war the goal is to hunt down your enemy and kill them or capture them.

And in particular in this case, this war requires that the President of the United States as Commander in Chief be given full discretion authority to use whatever tools are at his disposal as the Supreme Court has ruled repeatedly, and specifically referring to the Hamdi versus Rumsfeld case, the Supreme Court said that in reversing the Second Circuit Court's decision in Padilla that a citizen of the United States, according to the Supreme Court, no less than an alien can be quote "part of or supporting forces hostile to the United States or coalition partners and engaged in an armed conflict against the United States." And if U.S. citizen if released would pose a threat of returning to the battlefield as part of the ongoing conflict, then that U.S. citizen can be held in detention through the military tribunal system because we are at war. And that is my concern, and it is a very deep seeded and earnest profound disagreement with the approach of the Administration that this is not law enforcement, we are at war.

And as Mr. Wolf quite correctly said through the KSM case, set the precedent that when Osama Bin Laden is captured, and you didn't answer the question directly, but it is a very legitimate one, if Osama Bin Laden is alive, because his role is equivalent to that of KSM, would you try him in a civilian court?

Mr. HOLDER. As I said, I don't expect that Osama Bin Laden will face justice in a military commission or in an Article III court.

Mr. CULBERSON. Right, odds are. But if he is captured alive where will he be tried?

Mr. HOLDER. Again, I—

Mr. CULBERSON. If he is captured alive?

Mr. HOLDER. I think that is speculation. You are asking me about something that, on the basis of all the intelligence that I have had a chance to review, the possibility just simply does not exist.

Mr. CULBERSON. It is profoundly concerning to me, to the people of Texas, I know I saw it in the polls in the Massachusetts, that because of the precedent you are setting in the KSM trial, because of the precedent that you are setting in the Ghailani trial, because of the precedent you are setting in granting constitutional rights to enemy soldiers in time of war that your approach to the war on terror is as though it is a war on crime in fighting gangs or murderers and the cities of the United States, and it is not, we are at war, and it is completely different.

Mr. HOLDER. As I have said, I don't know how many times, is that I know we are at war. And let me make this clear, let me make this very, very, clear. If you were to take away from the Justice Department, from this Government, from this Administration and subsequent administrations, the ability to use Article III courts you would weaken our ability to successfully fight these wars. It is as simple as that.

This tool that we are talking about is only one tool that we have in our arsenal, and to take that tool away and to say these are people who can't be tried would weaken our ability to ultimately be successful.

Before you asked the question about examples of people caught on the battlefield and prosecuted in court.

Mr. CULBERSON. Foreign nationals.

Mr. HOLDER. Foreign nationals. This woman Siddiqui was caught in Afghanistan, shot at military soldiers there, indicted in New York by the Bush Administration. Wesam al-Delaema is an Iraqi born Dutch citizen who was tried in D.C. for planting roadside bombs targeting U.S. soldiers in Iraq.

Again, minor examples, perhaps you would say, but nevertheless examples of people who committed acts overseas and were tried here in American courts. But the thing that I want you to focus on in the Ghailani case is that it is consistent with what happened in the Bush Administration with the other people who were responsible for the embassy bombings. If you take away this Article III tool, and it is not the only thing that we use, if you take it away you are unnecessarily taking away an effective tool, and one only has to look at what has happened this year in terms of who we have incapacitated, who we have gotten viable intelligence from, who we will be sentencing for extended periods of time in the coming months.

Mr. CULBERSON. And I am not suggesting take it away, it is just that you turn to it too readily, and the approach of the Administration and the Department is that this is a war on crime, and it is really not, we are at war.

And the two cases you mention, I want to make sure, because this is the first time in public testimony you have ever identified. Tell me again the name of those cases, because I am unaware of any example in American history.

Mr. HOLDER. Just don't ask me to spell them.

Mr. CULBERSON. Okay.

Mr. HOLDER. Aafia Siddiqui, that is the woman who was just convicted in New York. She was caught in Afghanistan, shot at military soldiers, and tried in New York by the Bush Administration.

Mr. CULBERSON. And she is a foreign national?

Mr. HOLDER. A foreign national.

Mr. CULBERSON. Okay.

Mr. HOLDER. And Wesam al-Delaema.

Mr. CULBERSON. Okay.

Mr. HOLDER. Iraqi born Dutch citizen tried in D.C. for planting roadside bombs targeting U.S. soldiers in Iraq.

Mr. CULBERSON. Okay, and both of those were sent to civilian court by the Bush Administration?

Mr. HOLDER. Yes.

Mr. CULBERSON. Okay, I will run those down. Those are ones that none of us have ever been aware of before because in granting constitutional rights to these folks and giving them the opportunity to as in the Ghailani case, file a motion to be released or charges dismissed because the failure to provide a speedy trial, it gives an opportunity to our enemies not only to have these people released and freed, chain of evidence wasn't preserved, can't prove beyond a reasonable doubt, speedy trial, et cetera, that they would not have in military tribunal. That is a huge concern.

Mr. HOLDER. You raise good points there. Looking at an individual case that had those kinds of problems, if I were convinced that those problems existed and they could not be cured in an Article III court, I would have the option of trying that matter in the military commissions. There are a variety of factors that go into this, and that is why I say it is done on a case by case basis. What will be best for this case.

Mr. CULBERSON. Yes, sir. I am sure I am just about out of time. The Chairman is very gracious. May I ask one very short follow up?

Mr. MOLLOHAN. We will be back to you in another round.

Mr. CULBERSON. All right, sir, thank you.

Mr. MOLLOHAN. We will be back to you. Mr. Serrano has waited a long time. Mr. Serrano, we have had a number of rounds, so please feel free to ask your questions. We will give you plenty of time.

#### HOLDING 9/11 TRIALS IN NEW YORK CITY

Mr. SERRANO. Thank you so much, Mr. Chairman. I apologize for being late. I was interestingly enough at a hearing where we were discussing compensation for the victims of 9/11.

Mr. Attorney General, I am in a very, very unique or small minority. I am the only elected official in New York who still thinks it is fine to have those trials in New York. And I think it is important to know why I feel that way, but it is also important to know how it came to be what it is now.

When it was first floated or introduced as a thought that we could do this in New York, everyone I remember was in favor of it, and everyone said it was the right thing to do. And then something happened. And what had happened is not what people throughout the country think happened. It wasn't a community that spoke up, it wasn't elected officials, it was the business community that said they were concerned about traffic jams in lower Manhattan. Traffic jams in New York City—that is redundant. This should not be a shock to anybody. Ironically the people who lost so much business during the attacks and the aftermath of the attacks were now complaining about this congestion in downtown Manhattan. And little by little you began to see this turning around of elected officials, colleagues of mine, friends of mine, people I have served with for many years who were rah, rah, rah for having the trials in New York and then all of a sudden they are all against it.

Next thing you knew something which I still don't understand, but I respect, the families of victims turned against having the

trials in New York. Somehow this was an insult to their memory to do it in New York. I see the world differently. The best respect you can pay victims is to say that as a country they may have killed some of us, they have maimed many of us, but they have not defeated us as a country, and that we are not afraid to try people at the scene of the crime, and that we are not afraid to try them within our court system. That is the way I feel.

I was one of the few elected officials who was not in Washington that day. I was in New York City. My son, who is now a state senator, was running for the city council. Very few people wrote about the fact that elections were interrupted that day. Amongst all the things the terrorists accomplished, one was to disrupt an election, which stands at the center of our democracy. And I remember the pain that day and the aftermath of that pain and everything that we are still discussing today, and yet there is this feeling that somehow if we hold trials in a civilian court and if we do it in New York we are dishonoring these folks and we are opening ourselves to more terrorist attack.

Well if there are people who are upset at the fact that we are going to put people on trial, does it matter whether we put them on trial in New York, in Duluth, Minnesota, or Waukegan, Illinois? With all respect to Duluth and Waukegan. They are going to be angry regardless of what we do. And if we do it in a military court they will be angry, if we do it in a civilian court they will be angry. If they are going to be angry they are going to be angry. And if New York City is going to be under the possibility of an attack because of that I would submit to all of us that New York City lives with the understanding that it is still the main target for any terrorist group. It is the main target. It is the Big Apple that people love to hate, but it is a symbol of who we are as a country. Of the strength and the financial community.

And so I know when an issue has left me, and it is not one I want to devote a lot of time to in the next few months. That train may have left the station already. In fact I think it has, because every elected official now thinks this is the worst thing you could do. But at least know that there is one elected official in New York City who feels that there was nothing wrong with trying them there. On the contrary, I thought it was very dramatic to say we are not afraid of you, we will try you at the scene of the crime, we will try you in our courts, and we will show you that you can't defeat our judicial system, and you can't defeat us as a people. And I just wanted to make that statement to you, sir.

Mr. HOLDER. Thank you, sir. For those who don't know, I was born and raised in New York City. I was born in the Bronx, spent my first years in Manhattan, was raised largely in Queens, went to high school, college, and law school in Manhattan. I am a New Yorker. My brother lost many people. He is a retired Port Authority lieutenant, he lost colleagues, people who went to training school with him, that day.

The decision that I made, I thought, was the right one for that case. But there was, very frankly, an emotional component to that as well; what was I doing to my city? I think the decision that I made was good for the case and, ultimately, that is what I had to focus on. But I appreciate the observations that you have made.



I think that we should have great faith in the resilience of our systems, resilience of our people, and the toughness that has always separated Americans from other peoples in this world and what has made this country.

You might be right that the train has left the station, it is certainly a factor that we are working with as we try to determine where this should occur. But on a very personal level that was at least a part of my thinking.

Mr. SERRANO. Thank you. Mr. Chairman, do I have time to ask a question?

Mr. MOLLOHAN. You have all the time you want.

#### HATE CRIMES AGAINST IMMIGRANTS

Mr. SERRANO. Thank you. We discussed this in the past, it keeps growing as an issue, and that is hate crimes against immigrants. As we get closer to perhaps discussing immigration, as the economy continues to hurt, as we continue deportations and raids, I think it could only get worse before it gets better.

I know you have been strong on trying to do something about this whole issue, but I think we need to continue to call the attention of this Congress and the American people to the fact that there is another category of hate crimes, and that is people who are attacked because they are immigrants, because they look like immigrants, because somehow before they are attacked no one asks whether they are here illegally or not, whether that—doesn't make a difference, but it encompasses a lot of people.

And again, I want to be clear, what I was saying was not that because you are illegal you should be attacked, but it doesn't matter to people if you are an immigrant or you look like an immigrant they are going to attack, and it is something that we have to deal with. And I am wondering just what programs you are putting in place and new actions that the Justice Department will be looking at as we deal with this very serious issue.

Mr. HOLDER. Well, we certainly have a new tool, a very substantial new tool, the Matthew Shepard and James Byrd Act, that was finally passed. I testified on behalf of that statute when I was Deputy Attorney General about 10 or 11 years ago, it was finally passed in October of last year. That gives us tools that we didn't have before, and that is a tool that we will use to get at the kinds of victims that you have described.

We have in our budget for next year a \$1.4 million increase so that we can hire 14 attorneys in our Civil Rights Division. This is a priority for this division. Tom Perez is the Assistant Attorney General for the Civil Rights Division, he has energized that place. He has the division focusing on the things that it has traditionally been focused on. Hate crime prevention and hate crime prosecutions are one of the key things that I have asked Tom to focus on in the Civil Rights Division, and I am confident that, with these additional lawyers and with this additional statute, that we will be successful. That is a priority for us.

Mr. SERRANO. I thank you for that, and I just again reiterate the obvious, that the President has said publicly, and he certainly told Members of Congress that went to see him last Friday, that he wants to work on an immigration reform bill, and that is great

news, continues to be great news, but as you know, that will only inspire a few people in this country to commit even more hate crimes because somehow those people are going to be legalized and they have to be dealt with and be taught a lesson.

So I would hope that we stay very vigilant as this period takes place. Thank you.

Thank you, Mr. Chairman.

Mr. MOLLOHAN. Thank you, Mr. Serrano.

INTERROGATION OF ABDULMUTALLAB, CONTINUED

Mr. Attorney General, for those terrorist suspects that we are talking about trying in Article III courts, the premise or the concern around the Miranda rights are that we won't get good information from them. So just a little bit of questioning with regard to that.

First of all, with regard to Abdulmutallab, the Christmas bomber, a timeline. Correct me to the extent that I am in error here, but I would like to lead you through this just a little bit. He was taken into custody by security officials at the airport first, I believe, and then taken to the hospital. He was then interviewed by the FBI team, which as you described was a pretty sophisticated group of people.

Mr. HOLDER. Right. I am not sure, but I believe that is the correct timeline and the correct people who interacted with him along the way.

Mr. MOLLOHAN. So up to that point, Miranda rights are all preserved because that is obviously, I think, a public safety exemption to the necessity for issuing Miranda rights. When questioning somebody in the heat of an arrest, or in the aftermath of an event, because you do have public safety concerns you are more interested in that than you are in—

Mr. HOLDER. Yes. And I also think you can argue that it was not at least in those initial times, you could argue he was not in a custodial situation.

Mr. MOLLOHAN. Okay. So he was questioned for some period of time without Miranda rights, correct?

Mr. HOLDER. Correct.

Mr. MOLLOHAN. Then he was treated in the hospital, and, after he was released, he was Mirandized; is that correct?

Mr. HOLDER. He was. He was Mirandized by a different team, a clean team as we call it. I think it was interesting that their view was that he came out of that procedure a different person. That he was more, for lack of a better term, warrior like, and I am not sure, that is, I am not convinced, this is Eric Holder's personal opinion, I don't think it was the Miranda warnings that made him decide not to talk. I think it was something within him that took him back to where he was immediately before he ignited the bomb, he became that person again. That is why I think he answered a few questions in that second interaction, but not many, and then ultimately decided he did not want to continue the conversation.

I think we should never forget that in the days that followed that, actually in the weeks that followed, that he has been talking.

Mr. MOLLOHAN. You are getting my point, but you are getting ahead of my point. My first point is that he was interviewed by a

qualified team, and I don't know what justification there would be for undermining the qualifications of the team. These are professional people out in the field who are trained in this area.

Mr. HOLDER. The people did that first one hour, 50 minute, interview were good, trained FBI agents. One thing I should clear for the record, to the extent that I said that the determination was made only by them, with regard to the whole Miranda warnings question, that was not done only by them. It was also done in conjunction with people at FBI and Justice Department headquarters. I was not involved, but other people at higher levels within the Department made those decisions.

Mr. MOLLOHAN. Okay. So the suspect was interviewed prior to being Mirandized, was Mirandized, and was subsequently questioned after being Mirandized. He was difficult right after getting out of treatment, but subsequently I think your testimony has been a number of times that a lot of good information, or perfectly good information, was gotten after being Mirandized.

Mr. HOLDER. Right. What people should understand is that there are studies in those briefs that we have heard about, I don't have it in front of me, that substantial numbers of people will, even after they are Mirandized, continue to talk. Two, once they are provided with lawyers, the lawyers can make a more objective determination of the fix that their clients are in. The defense lawyers frequently become, not advocates for the Government, but advocates for their client, in the sense that they tell an Abdulmutallab, "Unless you want to spend the rest of your life in a super max facility, you better start sharing information with the Government."

I don't want to get into a specific case, but it frequently happens that the defense lawyer helping his client also helps the Government.

Mr. MOLLOHAN. I think that is the point I really wanted to get to. If the premise of those who argue that a person should be questioned without Miranda rights is that better information is received prior to, or by techniques which are employed without, Miranda rights, that is a premise they would have to prove. It is certainly contested in the public debate. That is a premise that has not been established or laid before.

So my point is that we should not presume that pre-Mirandized information, or never Mirandized information, is better information. It is simply, as I understand it, not an accepted premise among the profession. Your comment?

Mr. HOLDER. I think you raise a very good point. It is one that I would throw back at those who have criticized us for using the criminal justice system and the Miranda requirement. "Well, what is your proof that if he were whisked off to a military facility and questioned by military people, even without the presence of a lawyer, that information you would receive would have been more voluminous, would have been better?"

There are psychologists we have consulted who say that the presence of military people in uniform makes them perhaps maybe warrior like.

Again, I would try to look at the facts and the experiences that we have had, and the use of the criminal justice system to get information from Abdulmutallab, from Zazi, from Headley, and from

a whole variety of cases that we have had this year. I think it shows the efficacy of that system and the efficacy of that approach.

Mr. MOLLOHAN. Okay. Well my point is that the premise that I think is assumed in this line of questioning is that the information is better when the person is not Mirandized as opposed to when they are Mirandized. That is not proven and is contradicted in a whole lot of testimony, including yours here today.

We just had three bells. That means we have 15 minutes to vote, but it will probably last longer than that. We are going to divide up the remaining time between myself and the other members who were here roughly equally, so it will be kind of a rapid fire here, Mr. Attorney General. Then after that, we are going to adjourn the hearing.

#### PREVIOUS TERRORIST TRIALS IN CIVILIAN COURT

I want to get on the record clearly that there have been a significant number of terrorist cases tried in Article III courts during different administrations, both Republican and Democrat administrations. Is that correct, sir, and can you give us a little detail on that?

Mr. HOLDER. That is absolutely correct. There were terrorism cases that were tried in Article III courts in the Bush Administration. I don't have the exact number here, but I am pretty sure it is close to about 150 or so. Ramzi Yousef, the original World Trade Center bomber, was tried in Article III court. The blind sheik. There are a number of high profile terrorism cases that were tried successfully in Article III courts.

Mr. MOLLOHAN. They were tried in Article III courts during the Clinton Administration, the Bush Administration, and now in President Obama's Administration.

Mr. HOLDER. Right, that is correct.

Mr. MOLLOHAN. Terrorist suspects tried in Article III courts. Convicted?

Mr. HOLDER. Convicted, yes.

Mr. MOLLOHAN. And serving time in?

Mr. HOLDER. Federal prisons.

Mr. MOLLOHAN. Federal prisons in the United States. Thank you.

#### WHITE COLLAR CRIME

There is a lot of interest in the extent to which criminal fraudulent conduct may or may not have been involved in the financial crisis that the country has just experienced and is trying to fashion regulations to prevent. Can you speak to your department's efforts to address that question and the status of your investigations?

Mr. HOLDER. We have put together a financial fraud enforcement task force that marries a group of federal executive branch agencies with our state and local counterparts, chiefly attorneys general.

Mr. MOLLOHAN. The Financial Fraud Enforcement Task Force?

Mr. HOLDER. Exactly. With state attorneys general to look at a whole variety of financial fraud. Everything from mortgage fraud to securities fraud. A case brought just yesterday in the Southern District of New York involving a bank and one of the first TARP

criminal cases was brought by the financial fraud enforcement task force.

That is something that is very broad in scope to look at, the entirety of financial fraud activity that may have contributed to the economic downfall that we saw, but to the extent that these crimes exist, we are determined to find the people responsible and to hold them accountable.

Mr. MOLLOHAN. The task force includes the Treasury Department, HUD, SEC, and various inspector generals. It looks like a broad base. Does your budget request anticipate greater activity with regard to that task force going into 2011?

Mr. HOLDER. Yes. We have increases with regard to corporate fraud; DOJ opened an 11-percent increase and with regard to corporate, mortgage, and other financial fraud DOJ wanted an increase request of 23 percent.

#### ADAM WALSH ACT

Mr. MOLLOHAN. Mr. Attorney General, the Adam Walsh Act was passed in 2006, as you know, but we are still struggling to fully implement it due to a lack of funding. Has the Department quantified what it would cost you to fully fund and implement the Adam Walsh Act? If you have not, could you submit that for the record?

Mr. HOLDER. Sure. Let me submit something for the record, just so that I can be more precise in my answer.

[The information follows:]

#### FULL COST AND IMPLEMENTATION OF ADAM WALSH ACT

The Department of Justice (DOJ) does not have an estimate for the full implementation cost of the Adam Walsh Act (AWA). However, the Department is working with DOJ components to quantify the resource requirements associated with the full implementation of the Act. Once completed, the Department will share the cost projection with the Appropriations' Committees. The Department has already identified current resources appropriated for AWA enforcement. In FY 2008, the Department's resources for AWA enforcement, excluding grants, was \$116 million. The FY 2011 President's Budget requests more than \$165 million, excluding grants, for the Department to enforce the Act. The overall growth of the Department's resources for AWA enforcement, excluding grants, from FY 2008 enacted to the FY 2011 request is 42 percent.

Mr. MOLLOHAN. Just to get a little support on the record from the executive for Adam Walsh, I was heartened to hear that President Obama recently committed to John Walsh that he would get the Act fully funded. Although clearly the 2011 request doesn't do that. Do you have a strategic plan, or is one being developed, to ramp up the program over time?

Mr. HOLDER. Yes. We are determined to make real the Adam Walsh Act. As the President indicated, we are looking at about a 20 percent increase in funding for next year, and I think that over a year we will be looking at those kinds of increases even in spite of the economic downturn that we have to deal with and a deficit reduction that we have to engage in.

Mr. MOLLOHAN. And you are going to submit for the record—

Mr. HOLDER. Yes, I will.

Mr. MOLLOHAN [continuing]. What it would cost to fully implement that Act, and, if you would, your plan for ramping it up to full funding and how many years that would take.

Let me note quickly, certainly with approval, that I applaud your request with regard to the Indian nation's leadership council. I feel confident it will help the Department coordinate tribal leaders and be more responsive in their campaign.

I think we all understand the ambiguities and jurisdictional difficulties of law enforcement in Indian territory, and the terrible consequences that result. This Committee certainly is sensitive to that. Our bill last year reflected our interest in increasing resources for law enforcement in Indian territory, even given these jurisdictional challenges. I want to compliment you on your budget, because you have significantly increased funding for maybe one of the most unnoticed issues in the country with regard to law enforcement.

Mr. Wolf.

INTERROGATION OF ABDULMUTULLAB, CONTINUED

Mr. WOLF. Thank you, Mr. Chairman. I am going to submit a lot of questions for the record, but on the issue of timeliness and Miranda, the press announcement materials provided to the Congress last fall stated that the principal function of interrogations of high value detainees is quote "intelligence gathering rather than law enforcement." One.

Secondly, I have talked to a lot of people, some in your department who are experts, they said you missed it on the timeliness. Timeliness is very important.

To have shown him pictures of Guantanamo people that have been sent back, to show pictures to the Christmas day bomber could have said did you see this man, did you see this man, did you see this person? You didn't have enough time to do that.

Also what location were you in? Were you in this location, what building were you in, what address, who did you see, who were you with, who else was in the class?

I mean there were so many things that could have been missed. So I mean, there was an opportunity that was missed and we will never get it back again.

Mr. HOLDER. That is simply not true.

Mr. WOLF. It is true. It is true.

Mr. HOLDER. It is not true.

Mr. WOLF. We missed opportunities. Because once we missed them—

Mr. HOLDER. That is not true.

Mr. WOLF. Well it is true.

Mr. HOLDER. I know.

Mr. WOLF. Well, I say it is true, and you say it isn't true, but people that I have talked to said you missed an opportunity—

Mr. HOLDER. I have had access to the documents.

Mr. WOLF. You never had the pictures with you to show him in Detroit at that time.

Mr. HOLDER. It is not true.

Mr. WOLF. You never had the pictures to show.

Lastly on the prison rape thing.

Mr. HOLDER. That is not true. For the record, that is not true.

Mr. WOLF. Well, I believe it is based on the information that I have.

## HUMAN RIGHTS WATCH REPORT ON PRISON RAPE

On the prison rape thing I am going to end by reading this. This is from Human Rights Watch. *No escape: Male rape in U.S. prisons*. "Preface." "I have been sentenced for a DUI offense, my third one. When I first came to prison I had no idea what to expect. Certainly none of this. I am a tall male who unfortunately has a small amount of feminine characteristics and very shy. These characteristics have got me raped so many times I have no more feeling physically. I have been raped by up to seven men at one time. I have had knives at my head and throat. I fought and I have been beat so hard that I didn't even think I would see straight again. One time when I refused to enter a cell I was brutally attacked by staff and taken to segregation. Though I had only wanted to prevent the same or worse by not locking up with my cell mate. There is no supervision at the lock down. I was given a conduct report. I explained to the hearing officer what the issues were. He told me that off the record he suggested I find a man that I can willingly have sex with to prevent these things from happening. I requested protective custody only to be denied. It is not available here. He also said there was no where to run and it was best for me to accept things. I probably have AIDS now. I have had difficulty raising food to my mouth and from shaking after nightmares of thinking how this all is. I have laid down without physical fight to prevent so much damage and struggles that when fighting it has caused my heart and my spirit to be raped as well, something I don't know if I will ever forgive myself for. This has gone on and the longer you delay it the more this will happen."

I yield back the balance of my time.

Mr. HOLDER. Again for the record, I share, as I indicated before, the concern that you have expressed. That story is a horrible one, and we are committed to doing all that we can as quickly as we can to deal with those kinds of situation.

Mr. MOLLOHAN. Mr. Culberson.

## LEGAL TECHNICALITIES IN TERRORISM TRIALS

Mr. CULBERSON. Thank you, Mr. Chairman. Mr. Attorney General and Mr. Chairman it is my concern and I know the concern of my constituents and all my colleagues, it is not just the quality of the information that we would obtain with or without Miranda, it is our worry is that these people will be released on technicalities, that they will go free because they were given constitutional protections by this Administration that foreign nationals in time of war have not been given previously. I am still trying to run the two individuals you gave me. Mr. Chairman, I do know for a fact that Richard Reid was arrested at a time when there was no military commission, that is why he was sent to civilian court.

Your testimony, Mr. Attorney General, that Siddiqui and al-Delaema individuals were sent to civilian court at a time there were military commissions in existence?

Mr. HOLDER. I have to look at the dates. I believe that is correct.

Mr. CULBERSON. Okay. We are very, very short on time. Mr. Chairman, I wanted to also ask if I could the Attorney General if the charges against KSM are dismissed because of some legal argu-

ment that he raises under the Constitution or Supreme Court case law, his charges are dismissed by the federal court and he is ordered released, I think I heard you say that you are going to—the Administration will order that he continue to be held; is that correct?

Mr. HOLDER. Yes. First off, in terms of the premise, I don't think there is an instance of a terrorism case where somebody, a terrorist charged in an Article III court, got off on a so-called technicality. I don't know of one case.

Mr. CULBERSON. Excuse me, I am talking about KSM. You have ordered that he be sent to be tried in a civilian court.

Mr. HOLDER. Yes, that is fine.

Mr. CULBERSON. Regardless of where that takes place.

Mr. HOLDER. I can certainly deal with that question, but I am just dealing with what you said at first, and I don't want to let that go un rebutted.

Mr. CULBERSON. Oh, I am sorry if you misunderstood me.

Mr. HOLDER. Again, what I would said is let us look at the facts and let us look at history. There has never been, as far as I know, a terrorism trial that ended in a pretrial release of somebody on the basis of some technicality.

Mr. CULBERSON. In a military tribunal.

Mr. HOLDER. In an Article III court.

Mr. CULBERSON. Okay, but that is the danger we expose ourselves to and that is our concern, is that this hasn't been done before, other than those two cases you mentioned, which we are going to run down.

Mr. HOLDER. We have tried hundreds of cases in Article III courts where I am sure pretrial motions have been raised, none have resulted in the release of somebody on a technicality.

Mr. CULBERSON. Well in time of war is the concern.

But if I could very quickly, because we are running out of time. If the charges against KSM are ordered dismissed by the District Court I have heard you say publicly that the Administration would order that he continue to be held; is that correct?

Mr. HOLDER. I will answer that question, but first, on the basis of the way in which this case would be structured in an Article III court, the chances of his being released on a technicality are slim to non-existent. Having said that, you are correct. I have said that if Haley's Comet were to come flying through this hearing room today, and if something like that happened, it would not be the intention of this Administration to release him into the United States.

Mr. CULBERSON. Well so if you get a court order ordering that KSM be released and the charges dismissed you will release him overseas?

Mr. HOLDER. That is not what I have said, no.

Mr. CULBERSON. Well you said you wouldn't release him in the United States. Where would you release him?

Mr. HOLDER. Well there are a variety of things that can be done. Again, I think we are talking hypotheticals that we will never have to face.



Mr. CULBERSON. But we have to think about it. And if he is ordered released by the court where would you release him if not in the United States?

Mr. HOLDER. Under the system that we have in place there have been cases where we have made the determination, with regard to detainees, that certain of them can be transferred, certain of them can be tried and certain of them can be held on a long-term basis.

Mr. CULBERSON. Okay.

Mr. HOLDER. We have I think the facility under the AUMF, the Authorization of Use and Military Force, to detain somebody on a long-term basis. So if, and it is not going to happen.

Mr. CULBERSON. It is an if. You got a court order, charges are dismissed, he shall be released. Where would you release him?

Mr. HOLDER. It is an if, it is not going to happen. But if that were to be the case, he would not be released.

Mr. CULBERSON. You said he would not be released in the United States and he will not be released period.

Mr. HOLDER. I am not qualifying it. He would not be released.

Mr. CULBERSON. Well then if the nobility of American justice, the example we would set to the world so the terrorists would like us you just threw all that out the window.

Mr. HOLDER. No, I am not. I am dealing with a hypothetical.

Mr. CULBERSON. Mr. Chairman, am I missing something here? Mr. Wolf, Mr. Chairman.

Mr. MOLLOHAN. Yes.

Mr. CULBERSON. What am I missing, please. I will yield. I mean, I don't get it. Texans don't understand this. I mean if you are at war you hunt them down, you kill them. I don't know why are we giving this guy constitutional rights to make the terrorists like us or think that we are noble and you are going to hold him in jail anyway if he is ordered released.

Mr. HOLDER. But you are dealing—

Mr. CULBERSON. Mr. Chairman, I will yield. What am I missing?

Mr. HOLDER. What you are missing is that what I said is you are dealing with a hypothetical that is not going to happen. It is not going to happen.

Mr. CULBERSON. It is a distinct possibility it could happen, and you said you are not going to release him.

Mr. HOLDER. On the basis of what? Why would you say that?

Mr. CULBERSON. Well this is a public hearing, our enemies are listening, you have just said that you are going to hold this guy in jail if the court orders him released. And the purpose of the trial is to show the nobility of American justice and we treat everybody equally and the terrorists will like us, you know, kumbaya. Well if the court order is saying release and you are going to hold him in jail you just nullified all that, right?

Mr. HOLDER. See this is the danger—

Mr. CULBERSON. And I yield, Mr. Chairman. If I am missing something I am missing something. This just does not make any sense at all. This is war. You hunt them down you kill them or you hold them forever. This is not complicated to a Texan.

Mr. HOLDER. Okay, but this is my fault for having gone down the road of a hypothetical, and I should have simply said the hypothetical that you have posed is not a real one on the basis of our

experience and the facts that we have over the years in Republican and Democratic administrations.

Mr. CULBERSON. But I hope you can see my concern. You say that if Osama Bin Laden is captured he is entitled to the same, you know, he is going to be treated as a murderer like Charles Manson. We are going to try KSM—

Mr. HOLDER. That is not quite what I said.

Mr. CULBERSON. That is the gist of your testimony. Is that he is—

Mr. HOLDER. That is not what I said.

Mr. CULBERSON. As a murderer is treated as a murdered like Charles Manson. They are not even in the same category. And it is just a real concern, Mr. Chairman, and I think it exposes the immense danger of going down this path, Mr. Attorney General. We are at war, you cannot treat these people, this is not a war on crime, this is a war on terrorists, and you treat them like you would Nazis. If you captured a Nazi on the battlefield you should treat them no different than you would a terrorist captured on the battlefield. And that is the danger, you have opened up a can of worms and pandora's box. We need to stick with what works. We are at war. You hunt them down and you kill them or you capture them.

Mr. HOLDER. I think you are right, we do stick with what works and we look at history, we look at facts, we don't look at hyperbole, we don't look at campaign slogans, we don't use fear. And if that is the case there is no reason for us to have any concern or fear that our Article III courts, our military efforts, the use of military commissions, or our diplomatic efforts will not ultimately be successful in winning this war.

But as I said before, if you take from us, if you take from us—

Mr. CULBERSON. Not suggesting that.

Mr. HOLDER. That is in essence what you are trying to say.

Mr. MOLLOHAN. The gentleman's time has expired.

Mr. CULBERSON. Thank you, Mr. Chairman.

Mr. MOLLOHAN. I will give the witness a chance to finish his answering.

Mr. HOLDER. I was simply going to say if you take from us the ability that has been used by Republican and Democratic administrations and attorneys general to use the Article III courts in the successful way that we have you will weaken our effort in this war that we must win.

Mr. MOLLOHAN. Mr. Attorney General, I would only add to that other administrations have likewise not taken those tools out of their toolbox presumptively. The law works wonderfully when it works in the context of real cases, and chasing hypotheticals can be extremely difficult in the law. Tangibility is always helpful in answering these kinds of questions.

I thank the Attorney General for his service and for his testimony here today. I compliment the Administration on really ensuring that process is re-emphasized at the Department, and thank you very much for doing a very difficult job extremely well, both in regard to the conventional crime responsibilities and the effort of the Department to handle these very complicated, difficult terrorist situations with professionalism while keeping in mind all of

the responsibilities and rights that you must balance under the Constitution.

Thank you for your testimony here today, Mr. Attorney General.

Mr. HOLDER. Okay, thank you.

Mr. MOLLOHAN. Thank you.

**Chairman Alan Mollohan**  
Questions for the Record

1. **The JIST budget request includes \$6 million to upgrade the JABS system and modify it to match the anticipated rollout of the FBI's Next Generation Identification system. This would include modifying the JABS software to allow it to be compliant with new biometric data, including palm prints, iris scans and facial recognition-quality photographs. The most recent information available to the Committee indicates that the FBI has yet to finalize which biometric indicators will be collected and stored in NGI. Is that correct? If so, how have you developed a resource request to adapt JABS to biometric standards that have not yet been set?**

**Answer:** In coordination with its stakeholders, the FBI has identified key biometrics for evaluation. Planned increments for the Next Generation Identification (NGI) program include integration of the following biometric indicators: fingerprints; palm prints; face; iris; and scars, marks, and tattoos. The Integrated Automated Fingerprint Identification System (IAFIS) system currently accepts and stores photos and palm prints. There are over 1.1 million palm prints, 8.8 million photos, and 66 million criminal fingerprint sets presently stored within IAFIS. Palm prints will be searchable in NGI in 2012. Facial photo searches, and text-based searches of scars, marks, and tattoos, will be available in NGI in 2013.

The FBI has provided tremendous identification and investigative capabilities for its user community using fingerprints within the IAFIS for over a decade. And while NGI will provide vast improvements in the use of this biometric (i.e., fingerprint), the addition of palm prints and facial recognition capability through NGI will provide additional tools that have been stable, mainstream biometric indicators for some time.

Because the FBI's user community has collected fingerprints, palm prints, and photographs as part of the booking process for years, suitable standards have evolved for these biometric modalities. The more recent developments in the state of the art iris scanning technology and corresponding matching algorithms indicate iris may add a highly accurate and scalable biometric indicator to the FBI stakeholders. From a standards perspective, iris recognition is continuing to mature but rapidly closing in on the previously mentioned biometric match performance. As a result, iris recognition is projected for inclusion in NGI in the latter increments subsequent to a trade study where iris standards maturity will be comprehensively assessed.

The FBI's approach to testing and evaluating potential NGI biometric technologies is a systematic method of conducting trade studies, partnering with the National Institute of Standards and Technology, assessing reference implementations at the state, local, or federal level, as well as other proven

methods already employed for fingerprints. The process used in the NGI trade study evaluations insures that the technology selected for the NGI system will meet the system requirements for accuracy, scalability, and interoperability.

The FBI agrees that more modern technology will need to be deployed within the JABS system to match the anticipated rollout of new biometric capabilities provided by NGI. The FBI publishes the collection standards required for the NGI system and its predecessor the IAFIS within the Electronic Biometric Transmission Specification (EBTS). The FBI also maintains a certified list of approved products for meeting this specification. With the exception of iris, all of the collection standards for fingerprints; palm prints; and photographs are currently mature enough to support the NGI Program and available to the JABS Program Office to support their development efforts. Iris recognition is not anticipated to be implemented until 2015. The FBI will continue assessing iris maturity for the next few years and remain in close collaboration with the JABS Program Office on the required specifications to acquire iris images in the booking environment.

2. **The budget request includes no new funds for the development and deployment of the Integrated Wireless Network. How does this lack of new investment impact the deployment schedule for the Midwest/Mid-Atlantic region? How does it impact the overall IWN development and deployment schedule?**

**Answer:** The FY 2010 appropriation and the FY 2011 President's budget each include approximately \$100 million for the Integrated Wireless Network (IWN). The original IWN deployment strategy was based on \$1.2 billion over a 6-year funding schedule. The constrained budget environment will extend the IWN implementation schedule beyond the original 6-8 years. The program office is currently reexamining the implementation schedule timeline in order to revise the lifecycle assumptions in light of the fiscal environment. In this effort, the Department will also explore different implementation approaches that enable a more rapid deployment of land mobile radio capabilities to agent communities and areas with the greatest needs. The National Capital Region is on schedule for IWN initial operating capability by the end of 2010, and the Baltimore metropolitan area is scheduled next in 2011.

3. **Every year without IWN, the Department's legacy radio equipment becomes older and more obsolete, which will increase the amount of O&M money needed just to keep the old system running. Given the unavoidable increase in O&M needs and the essentially flat total LEWC request, will this budget actually result in a decrease in funds available for IWN development and deployment?**

**Answer:** As identified previously, the FY 2010 appropriation and the FY 2011 President's budget each include approximately \$100 million for IWN. The FY 2011 President's Budget will continue to support both the development and deployment of the program, as well as ongoing O&M requirements.

- 4. In the budget request, a new Immigration Judge Team for EOIR includes a 1:1 ratio of law clerks to immigration judges. What is the EOIR-wide average ratio of law clerks to immigration judges? If the EOIR-wide average is not 1:1, what are you doing to address the shortage of law clerk support for your judges?**

**Answer:** The position increase received for 2010 will bring the ratio to 1:3 (90 law clerks to 280 immigration judges). If approved, the 2011 appropriation will result in a ratio of 1:2.7 (111 law clerks to 301 judges). Prior to 2006, the ratio was approximately 1:5. EOIR is committed to continuing to move toward the 1:1 goal.

EOIR has developed and implemented several programs and tools to augment legal support for immigration judges. These include a summer law intern program and a robust, year-round volunteer legal internship program which typically includes over 60 legal interns supporting immigration judges.

In addition, several tools have been developed and distributed to immigration judges. To name but a few, these include: the Immigration Judge Benchbook, an on-line resource containing a variety of legal resources, links to subject matter experts, decision templates, etc; a monthly publication – the Immigration Law Advisor – which includes a synopsis of recent developments in immigration law, as well as legislative, regulatory and case law updates; and, a new monthly CD distributed to judges, which is derived from the Board of Immigration Appeals lecture series and includes information on a variety of topics related to immigration law.

- 5. For each of the past 5 years, please provide the following for EOIR IJ positions: total authorized positions; start of year on-board positions; number of positions lost due to attrition; number of enhancement hires; number of vacancy back-fill hires; and end of year on-board positions.**

**Answer:** The numbers of IJ's on-board, start of the Fiscal Year were as follows:

2005.....215  
 2006.....213  
 2007.....223  
 2008.....216  
 2009.....222

The numbers of IJ's on-board, end of the Fiscal Year were as follows:

2005.....213  
 2006.....223  
 2007.....216  
 2008.....222  
 2009.....232

The number of IJ hires and separations were as follows:

	<u>Hires</u>	<u>Separations</u>
2005	11	13
2006	19	9
2007	7	14
2008	16	10
2009	15	5

There are no authorized staffing levels for immigration judges provided in statute or in the budget. However, EOIR's current target ceiling is 280 immigration judges (including the 28 new positions received in 2010). In addition, 21 additional judges have been requested in the President's 2011 budget, which would bring the total to 301.

When vacancies occur, whether through attrition, enhancements or the identification of base level funding, decisions as to the placement of the positions are made on a case-by-case basis taking into account the locations with the

highest demonstrable need. As such, EOIR does not track “back-fills” vs. “enhancements.”

- 6. Please provide NSD’s projected FISA workload for FY 2011, as well as an update on the current (FY 2010) and projected (FY 2011) FISA backlog.**

**Answer:** NSD is preparing a classified response to this question and will contact Chairman Mollohan through the appropriate channels.

- 7. Why are some litigating divisions within GLA getting increases for e-Discovery while others are not? Are the needs different across divisions, or is there a multi-year rollout plan for e-Discovery capabilities?**

**Answer:** The Department is committed to upgrading its E-Discovery capacity across the board, and is engaging in a number of initiatives that will have Department-wide effects. It is convening a cross-component working group on E-Discovery, creating training programs available to all components, and ensuring that every litigating attorney has the basic knowledge necessary to confront the E-Discovery issues that arise routinely in his or her practice. Yet while there are opportunities to improve in every litigating component, the increases requested recognize that each litigating component faces unique challenges. Some components – such as the Civil Division, Environment and Natural Resources Division, and the United States Attorneys’ Offices – face significant discovery obligations in a large number of their cases. Others focus primarily on litigation in which the Government’s actions are not otherwise at issue. The increase is designed to target the Department’s limited resources for this initiative at the strategies where they will be most effective.

- 8. The Department’s FY 2010 spend plan notes that all funds for debtor audits by the US Trustees will be exhausted by the end of this fiscal year. The FY 2011 budget request does not appear to include any new funds to restart this activity. Is the Department intending to perform debtor audits in FY 2011? If so, how many and how will you pay for this activity?**

**Answer:** Funds have never been appropriated to support the United States Trustee Program’s requirement to contract for debtor audits. Since the implementation of the Bankruptcy Abuse Prevention and Consumer Protection Act (BAPCPA), the Program has used carryover balances to fund debtor audits. Based on current projections, there may not be sufficient carryover funding available in FY 2011 to cover debtor audits at the current rate. The Program is reviewing alternatives to reduce the cost of debtor audits without measurably impacting their effectiveness.



**9. What is the mission of the Attorney General's Sentencing and Corrections Working Group? What are the scope of changes to the Federal criminal justice system it is considering, and what is the timeline for any proposed legal or policy changes?**

**Answer:** The Attorney General created the Sentencing and Corrections Working Group last year to conduct a comprehensive review of federal sentencing and corrections policy. The mission of the Working Group has been to help develop sentencing and corrections systems that, in as effective and efficient manner as possible, promote public safety, provide just punishment to offenders, avoid unwarranted sentencing disparities, and reduce recidivism by breaking down barriers for ex-offenders to successfully rejoin society. The group has been examining, among other issues, (1) the disparity in federal crack and powder cocaine sentences; (2) prisoner reentry and other programs to reduce recidivism; (3) the Department's policies on charging and sentencing advocacy; (4) the federal sentencing guidelines; (5) mandatory minimum sentencing statutes; (6) the impact of current charging policies, sentencing practices, and resource issues on the Bureau of Prisons; (7) alternatives to incarceration; and (7) the Department's protocols for reviewing capital offenses for the possible application of the death penalty.

The Working Group has been completing aspects of its work on a rolling basis. We anticipate announcing some changes to Department policies in the near future.

**10. The Department's Adam Walsh Act funding crosscut shows a 15% increase for Adam Walsh Act programs between FY 2009 and FY 2011 (with an 18% increase when including related, non-Adam Walsh Act programs that are included on the crosscut table). How do you reconcile this funding crosscut with public statements about increasing Adam Walsh Act funding by more than 20%?**

**Answer:** The Department provided an updated Adam Walsh Act (AWA) crosscut on March 23, 2010 that shows a 19% increase between FY 2009 and FY 2011 for AWA supported and related grant programs, which is consistent with public statements that reference a 20% increase between FY 2009 and FY 2011. More importantly, the increase in law enforcement and prosecutorial programs, when excluding grants, is 42% between FY 2009 and FY 2011 in the most recent version.

**11. Please provide a cost estimate for the full implementation of the Adam Walsh Act.**

**Answer:** The Department of Justice (DOJ) does not have an estimate for the full implementation cost of the Adam Walsh Act (AWA). However, the Department is working with DOJ components to quantify the resource requirements associated with the full implementation of the Act. Once completed, the Department will share the cost projection with the Appropriations' Committees.

The Department has already identified current resources appropriated for AWA enforcement. In FY 2008, the Department's resources for AWA enforcement, excluding grants, was \$116 million. The FY 2011 President's Budget requests more than \$165 million, excluding grants, for the Department to enforce the Act. The overall growth of the Department's resources for AWA enforcement, excluding grants, from FY 2008 enacted to the FY 2011 request is 42 percent.

**12. Please provide a strategic plan showing how the Department intends to achieve full implementation of the Adam Walsh Act.**

**Answer:** The Department is currently assessing what fully implementing the Adam Walsh Act entails and how much it is projected to cost. The Department will forward this information to the Committee as soon as possible.

**13. Have you established the interagency and tribal working group referenced in the explanatory statements accompanying the FY 2010 CJS and Interior appropriations acts? If not, when will this take place?**

**Answer:** To ensure coordination between the Departments of Justice and the Interior on public safety in tribal communities, the Departments have established a Deputy-led working group. Inter-agency issue teams, which will report to this working group, are being created to address specific topics (for example, law enforcement training, crime-data collection, and violence against Native women). The Attorney General has also created a Tribal Nations Leadership Council to advise the Department on critical issues implicating Tribal Nations. The Tribal Nations Leadership Council will be made up of tribal leaders representing 12 tribal regions, and selected by the tribes of each region.

**14. How did the tribal listening sessions conducted by the Department and by the White House inform the mix of Indian Country program increases proposed in the FY 2011 budget?**

**Answer:** The listening sessions conducted by the Department and by the White House, in which representatives from key federal agencies met with tribal government officials to discuss public safety in Indian Country, were very helpful to inform the development of the DOJ FY 2011 budget request. During these sessions and during subsequent tribal consultation, we consistently heard a strong desire for more flexible grant programs to meet tribal communities' needs more effectively. In addition, we heard that the tribes need additional FBI agents and prosecutors to address the serious violent crime problems that plague Indian Country, as well as increased support from the FBI lab in processing evidence in tribal cases.

Since the listening sessions, we have responded immediately by streamlining our grant-making process in FY 2010. DOJ announced in early March that the FY 2010 Coordinated Tribal Assistance Solicitation (CTAS) is now available at [www.tribaljusticeandsafety.gov](http://www.tribaljusticeandsafety.gov). CTAS is coordinating over \$160 million in Tribal specific competitive grant programs (other than Office on Violence Against Women's Tribal Coalitions Grant Program) into a single solicitation. That means that a Tribe will only have to submit one application, which will cover all of these programs. The deadline for CTAS applications is May 13, 2010.

The FY 2011 President's Budget request continues this process improvement by proposing to replace many tribal criminal justice programs with set-asides in OJP, COPS, and OVW that could be used to support many different types of tribal criminal justice efforts. Additionally, tribes will still be eligible to apply for many existing DOJ grants programs. This improved flexibility will allow the Department to respond more quickly to the changing needs of Native American communities.

We are requesting \$19 million in reimbursable funding from the Department of the Interior for the FBI to support 81 positions (45 agents) investigating violent crimes in Indian Country. The FBI is also requesting \$328,000 and 2 positions in direct funding to provide forensic support for Indian Country investigations. Finally, the FY 2010 appropriations act provided funding for an additional 33 prosecutors for Indian Country, and the FY 2011 request fully annualizes these additional positions.

**15. When will the first Indian Country operating plans be submitted by your US Attorneys offices? Will these plans identify district-level resource gaps for purposes of future budget planning?**

**Answer:** All United States Attorneys Offices with federally recognized tribes in their district will be required to prepare and submit an operational plan to the Deputy Attorney General and EOUSA's Native American Issues Coordinator within eight months of a newly confirmed United States Attorney taking office. It is expected that the operational plans will be reviewed and, if necessary, updated annually. The Department recognizes that prosecutions alone are not the answer to crime in Indian Country. Rather, an effective solution also involves prevention, training, and other grassroots intervention efforts. Due to limited financial resources in Indian Country, task force models and federal grant funds should be explored whenever possible. Through these mechanisms, the federal government may be able to supplement tribal resources. When addressing outreach matters, each operational plan should address grants provided by the Department to federally recognized tribes in their district.

**16. The budget request proposes significant new funding for tribal policing (through both additional FBI agents and increased tribal hiring), but no new funds for Indian Country prosecutions. Are you concerned that a bottleneck will form at the prosecutorial level when all of these new officers and agents are in place?**

**Answer:** The FY 2010 Department of Justice appropriation provided additional resources for the United States Attorneys Offices for the prosecution of cases involving violent crime. It is anticipated that this funding will support 30 new Indian Country AUSA positions and a pilot project consisting of three Indian Country Community Prosecution Teams. While no additional AUSA positions are included in the FY 2011 budget, the positions provided in the FY 2010 appropriation will be annualized. This increase in staffing should allow the United States Attorneys Offices to handle the anticipated increase in cases submitted for prosecution.

Furthermore, there is a hiring pipeline delay so that once an agent is hired, trained, and actively doing investigations, the need for prosecutorial resources is at least 6 months behind. Additionally, investigations do not always lead or end up in prosecution; a deterrent effect on crime happens even when an investigation does not become a case; and it may take several agents or investigators to conduct the investigations while it may only take one attorney to prosecute the case.

With respect to officers funded under the COPS Program, one of the basic tenets of community policing is for these officers to work in collaboration with their communities to come up with long-term solutions to neighborhood problems, so

that does not necessarily translate into more arrests. In addition, community policing is generally a proactive approach to improving public safety (i.e., take action before a crime occurs) rather than a reactive approach (after a crime has occurred).

Finally, state, local, and Tribal governments are all eligible to use Byrne JAG or Competitive funding grants and Juvenile Accountability Block Grants to hire prosecutors if there is a backlog on prosecuting violent offenders. Similarly, the COPS Child Sexual Predator Program can also fund the hiring of prosecutors.

**17. The Department has said that it is attempting to honor tribal leaders' preference for more flexible grant programs. However, the COPS budget request takes funds out of the more flexible Tribal Resource Grant Program and puts them into the more narrowly focused tribal set-aside of the Universal Hiring Program. How do you reconcile this proposal with the stated desire to provide more grant flexibility to tribes?**

**Answer:** The COPS Office is aware of and sensitive to both the hiring and equipment needs of tribal law enforcement. COPS is requesting to address hiring needs with the \$42 million being set aside for tribal hiring in the FY 2011 COPS Hiring Program proposal. When combined with the \$25 million request in funding for the Tribal Resources Grant Program (TRGP), COPS' total dedicated funding in FY 2011 for tribal agencies is \$67 million, an increase of approximately 68% from FY 2010. With these combined resources dedicated to tribes, COPS expects to continue to meet the hiring and equipment needs of tribal law enforcement. COPS believes that this approach provides the most flexibility to tribes, as it sets aside a minimum amount of funding for hiring tribal law enforcement officers under the COPS Hiring Program. The \$25 million requested under TRGP would still maintain the flexibility to fund both hiring and equipment and technology, based on demand from the tribes. Although COPS believes that the demand for tribal hiring can be met with the \$42 million from the COPS Hiring Program, should the demand for hiring far outweigh the demand for equipment, TRGP funds could be used to supplement the COPS Hiring set-aside. In addition, on average, the costs associated with hiring grants is higher than the costs associated with TRGP equipment grants, thus it has been more advantageous to use limited TRGP resources towards awarding equipment and technology grants.

- 18. Please provide the Department's legal opinion on the authority of GAO to review DOJ's intelligence and national security programs pursuant to a request from Congress.**

**Answer:** It is the Intelligence Community's longstanding practice, informed by the Department of Justice's analysis of the relevant statutory provisions regarding GAO investigative authority and the Intelligence Oversight Act, to decline to participate in GAO inquiries that evaluate intelligence programs. Because of the sensitivities that can arise during oversight of intelligence programs, there has been a longstanding arrangement between the branches that it is most appropriate for oversight of these programs to be conducted by the Intelligence Committees. The longstanding practice regarding GAO inquiries concerns intelligence programs, not national security programs more generally.

- 19. Which programs, projects, or activities proposed in the budget are unauthorized? For each such unauthorized PPA, what was the last authorization (public law reference); the last fiscal year of authorization; and the authorized funding level in the last fiscal year of authorization? What was the amount of the appropriation provided for each such PPA for the last fiscal year in which it was authorized?**

**Answer:** [Please see the following for the authorized programs and projects in the Department of Justice:]

DEPARTMENT OF JUSTICE  
AUTHORIZATION OF APPROPRIATIONS  
(Dollars in Thousands)

Appropriated Program	Last Year of Express Authorization of Appropriation	Auth Level in Last Year of Express Authorization of Appropriation	Appropriation in Last Year of Express Authorization of Appropriation	FY 2009 Amount Appropriated or specified in report	FY 2010 Amount Appropriated or specified in report	FY 2011 Requested	Authorization of Appropriation Citation
General Administration - S&E	2009	161,561	126,905	105,805	118,488	223,336	Violence Against Women and Department of Justice Appropriations Authorization Act of 2005 ("2005 Reauthorization"), Public Law 109-162 101
Detention Trustee	2009	1,858,509	1,295,319	1,295,319	1,438,663	1,633,863	2005 Reauthorization (P.L. 109-162)
National Drug Intelligence Center	indef		N/A	44,000	44,000	44,580	Sec. 8056, P.L. 103-139
Justice Information Sharing Technology	2009	204,152	80,000	80,000	88,285	179,785	2005 Reauthorization (P.L. 109-162)
Health Care Fraud	indef	1/	1/	1/	1/	1/	42 USC 1395xk(3)(A)
Law Enforcement Wireless Communications	2009	144,771	185,000	185,000	206,143	207,727	2005 Reauthorization (P.L. 109-162)
Counterterrorism Fund	2003	35,000	0	0	0	0	21st Century Dept. of Justice Appropriations Authorization Act (P.L. 107-273)
Administrative Review & Appeals	2009	243,291	270,000	270,000	300,685	319,220	2005 Reauthorization (P.L. 109-162)
Office of the Inspector General	2009	81,922	75,681	75,681	84,368	88,792	2005 Reauthorization (P.L. 109-162)
U.S. Parole Commission	2009	12,711	12,570	12,570	12,859	13,682	2005 Reauthorization (P.L. 109-162)
National Security Division	3/	3/	N/A	83,789	87,938	99,537	3/
General Legal Activities							
Salaries & Expenses	2009	764,526	604,007	604,007	675,097	976,389	2005 Reauthorization (P.L. 109-162)
Vacation Injury Compensation	indef	14,059	N/A	17,833	17,833	17,833	20 USC 9610
Office of Special Counsel - Anti-discrimination	indef	6,928	N/A	0	0	0	5 USC 1304(c)
Independent Counsel	1999		0	500	500	500	P.L. 103-270, Independent Counsel Reauthorization Act of 1994 (New Investigations) On-going Investigations (P.L. 100-202, 101 Stat. 1329)
	indef	9,500	N/A	0	0	0	
September 11th Victim Compensation	indef	oblig level	N/A	0	0	0	Sec. 404(b), P.L. 107-42, Air Transportation Safety and System Stabilization Act, 2001
Antitrust Division - S&E	2009	162,488	157,788	157,788	183,170	187,029	2005 Reauthorization (P.L. 109-162)
Offsetting Fee Collection (est.)	indef		N/A	(157,788)	(102,000)	(110,000)	Fees Auth - Sec. 605, 1990 C.J.S.J. Appropriations Act (P.L. 101-162)
U.S. Attorneys - Salaries and Expenses	2009	1,829,194	1,836,336	1,836,336	1,934,003	2,041,269	2005 Reauthorization (P.L. 109-162)
U.S. Trustees - S&E	indef	such sums	N/A	217,418	219,250	236,435	28 USC 886(a) and 1930(a)
Offsetting Fee Receipt (est.)	indef		N/A	(185,000)	(215,000)	(281,829)	28 USC 598(b) and 1930(a)
Foreign Claims Settlement Commission	2009	1,429	1,823	1,823	2,117	2,159	2005 Reauthorization (P.L. 109-162)
U.S. Marshals Service	2009	900,178	954,000	954,000	1,152,388	1,207,169	2005 Reauthorization (P.L. 109-162)
U.S. Marshals Service - S&E			950,000	950,000	1,125,783	1,180,534	
USMS Construction			4,000	4,000	26,605	26,625	
Fees & Expenses of Witnesses	2009	203,756	168,300	168,300	168,300	270,000	2005 Reauthorization (P.L. 109-162)
Community Relations Service	2009	10,977	9,873	9,873	11,479	12,606	2005 Reauthorization (P.L. 109-162)
Assets Forfeiture Fund Current Budget Authority	2009	22,000	20,990	20,990	20,990	20,990	2005 Reauthorization (P.L. 109-162)
Assets Forfeiture Fund Permanent Oblig. Authority	indef	such sums	N/A	1,281,410	1,151,810	1,146,210	28 USC 524(c)
Radiation Exposure Compensation - Trust Fund, (Mand)	indef	indef	N/A	74,000	60,000	53,200	Department of Justice Appropriations Act, 2005 Sec. 122 (Title I, Div. B, P.L. 109-447)
Interagency Crime and Drug Enforcement	2009	744,593	515,000	515,000	528,569	570,319	2005 Reauthorization (P.L. 109-162)
Federal Bureau of Investigation 7/	2009	6,480,608	7,301,191	7,301,191	7,899,537	8,204,677	2005 Reauthorization (P.L. 109-162)
Federal Bureau of Investigation - S&E			7,147,760	7,147,760	7,858,622	8,063,475	
Construction			153,431	153,431	239,915	181,202	
Health Care Fraud	indef	indexed amt	N/A	indexed amt			42 USC 1395xk(3)(B)
Drug Enforcement Administration							
Drug Enforcement Administration - S&E	2009	1,930,462	1,939,084	1,939,084	2,019,682	2,088,176	2005 Reauthorization (P.L. 109-162)
Construction			0	0	0	41,844	
Diversion Control Fee (est.)	indef	0	N/A	244,450	251,730	251,832	Fees Auth - Sec. 111(b), C.J.S.J. Appropriations Act, 1993 (P.L. 102-395)
Bureau of Alcohol, Tobacco, Firearms & Explosives	2009	1,038,939	1,054,215	1,054,215	1,114,772	1,162,986	2005 Reauthorization (P.L. 109-162)
Construction			0	0	6,000	0	
Federal Prison System	2009	5,688,292	5,171,561	5,171,561	6,185,386	6,803,512	2005 Reauthorization (P.L. 109-162)
Bureau of Prisons - S&E			5,596,754	5,595,754	6,086,231	6,533,779	
Buildings & Facilities			575,807	575,807	89,155	269,733	
Federal Prison Industries (Administrative Limitation)	indef		N/A	2,326	2,700	2,700	
Office of Justice Programs							
Salaries & Expenses, including OAAAM				151,000	160,218	216,396	
Justice Assistance Programs							
Management & Administration	2009	132,226	0	N/A	N/A	N/A	P.L. 109-162
Natl. Institute of Justice	1995	33,000	58,879	48,000	48,000	70,800	42 USC 3783(a)(2)
Bureau of Justice Statistics	1995	33,000	32,335	45,000	60,000	62,000	42 USC 3783(a)(1)
National Crime Victimization Survey	N/A	N/A	N/A	26,000	41,000	41,000	Department of Justice Appropriations Act, 2010 (P.L. 111-117)
Missing Children	2004-2011-2013	not to exceed 60,000		70,000	70,000	60,000	42 USC 5790(f), 42 USC 17617(a), 42 USC 6777(g)
RISIS	2003	100,000	28,000	45,000	45,000	6,000	42 USC 3786(c)
Victim Notification System	2009	5,000	15,000	12,000	12,000	10,000	42 USC 10604(c)
Justice for All Act/DNA and Forensics (including NIST/OLSI)	2009	15,000	3,000	3,000	6,000	0	42 USC 14136(b)(c)

DEPARTMENT OF JUSTICE  
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 (Dollars in Thousands)

Appropriated Program	Last Year of Express Authorization of Appropriation	Auth Level in Last Year of Express Authorization of Appropriation	Appropriation in Last Year of Express Authorization of Appropriation	FY 2009 Amount Appropriated or specified in report	FY 2010 Amount Appropriated or specified in report	FY 2011 Requested	Authorization of Appropriation Citation
Hate Crimes						6,000	
State & Local Assistance Help Desk & Diagnostic Ctr						6,000	
Juvenile Justice Programs							
Title II JJDPA-Juv. Just & Delinq Prev							
Part A-MJA/Fad F/W	2007	indef	703	0	0	0	42 USC 5671(a)(1)
Part B-Formula Grants	2007	indef	79,674	75,000	75,000	72,000	(same as above)
Subtotal, Pts A B D (2004)			79,681	75,000	75,000	72,000	
Part E-Demonstrations	2007	indef	104,674	82,000	91,095	0	42 USC 5671(c)
Youth Mentoring	N/A, 2007	N/A, indef	80,000	80,000	100,000	45,000	Department of Justice Appropriations Act, 2010 (P.L. 111-117), 42 USC 5665
Title V JJDPA Incentive Grants for Local							
Delinquency Prevention	2008	indef	62,000	62,000	65,000	62,970	42 USC 5784
Enforcing Underage Drinking Laws (EUDL)	N/A, 2007	N/A, indef	[25,000]	[25,000]	[25,000]		FBI; Department of Justice Appropriations Act, 2010 (P.L. 111-117), 42 USC 5665
6/ Secure Cur. Schools	2009		30,000	116,000	116,000	114,500	42 USC 3797a
Juvenile Accountability Block Grants	2009		350,000	55,000	55,000	40,000	42 USC 3796a-10
Community-Based Violence Prevention Initiative	N/A	N/A	N/A	0	10,000	25,000	Department of Justice Appropriations Act, 2010 (P.L. 111-117)
Safe Start Program	2007	indef	9,888	0	5,000	0	42 U.S.C. 5665
Natl/Lux Delinq Court Improvement Program			0	0	0	13,000	
Disproportionate Minority Contact Eval & Pilot Prog			0	0	0	806	
Gang & Youth Violence Prev & Intervention Init			0	0	0	12,694	
Victims of Child Abuse Act	2005		8,481	11,000	20,000	22,600	42 USC 13004(a) and (b)
Sec. 215-Reg. Child Advocacy Ctr	2005		15,000	0	15,000	15,000	42 USC 13004(a)
Weed and Seed	2009	indef	25,000	25,000	20,000	0	42 USC 3712a
Community Policing	2009		1,047,119	550,500	550,500	791,608	690,000 42 USC 3793(a)(1)(A)
Adam Walsh/Child Sexual Predator Elimination	2009	indef	[18,000]	[18,000]	[24,000]	118,000	P.L. 108-248
Violence Against Women							
Law Enforcement and Prosecutor/ Grants to Combat Violence Against Women (SICOP)	2011		225,000	N/A	190,000	210,000	187,500 42 USC 3793(a)(18)
Encouraging Arrest Policies	2011		75,000	N/A	60,000	60,000	47,500 42 USC 3793(a)(19)
Rural Domestic Violence	2011		35,000	N/A	41,000	41,000	41,000 42 USC 13871(e)
8/ Stalking Databases	2011		3,000	N/A	3,000	3,000	42 USC 14032
Safe Havens	2011		20,000	N/A	14,000	14,000	42 USC 10420(e)
Educating & Training VAWA w/Disabilities	2011		10,000	N/A	6,750	6,750	42 USC 3795g-7(e)
Legal Assistance for Victims Program	2011		16,000	N/A	37,000	41,000	50,000 42 USC 3795a-5(b)(1)
Violence on College Campuses	2011		15,000	N/A	9,500	9,500	42 USC 14048(e)
Training Grants (Elder) Program	2011		10,000	N/A	4,250	4,250	4,250 42 USC 14047b
Transitional Housing	2011		40,000	N/A	119,000	119,000	25,000 42 USC 13975g(1)
Sexual Assault Victims Assistance	2011		50,000	N/A	12,000	15,000	30,000 42 USC 14033g(1)
Engaging Men and Youth in Prevention	2011		10,000	N/A	3,000	3,000	42 USC 14043a-4(b)
Services to Advocates and Respond to Youth	2011		15,000	N/A	3,500	3,500	42 USC 14043(f)
Grants to Assist Children and Youth Exposed to Violence	2011		20,000	N/A	3,000	3,000	42 USC 14043a-2(b)
Court Training Improvements Program	2011		5,000	N/A	3,000	3,000	4,000 42 USC 14043a-3(a)
Indian Country - Sexual Assault Clearinghouse	N/A	N/A	N/A	0	0	500	
Indian Country - Regional Summits	N/A	N/A	N/A	0	0	500	
National Resources Center on Workplace Responses	2011		1,000	N/A	1,000	1,000	42 USC 14043(e)
9/ Research on Violence Against Indian Women	2008		1,000	840	1,000	1,000	3,000 42 USC 3793a-10 (note)
National Tribal Sex Offender Registry/Tracking of Violence Against Indian Women	2011		1,000	N/A	1,000	1,000	1,000 28 USC 534 (note)
Research and Evaluation of Violence Against Women (NEV)	N/A	N/A	N/A	[1,860]	[3,000]	3,000	Department of Justice Appropriations Act, 2010 (P.L. 111-117)
Supporting Teens Through Education Program	N/A	N/A	N/A	0	2,500	0	Department of Justice Appropriations Act, 2010 (P.L. 111-117)
VAWA Tribal Government Grants Program						[38,400]	
VAWA Tribal Coalitions Grants						[4,520]	
Victims of Child Abuse							
8/ Court-Appr. Special Adv.	2011		12,000	N/A	15,000	10,000	42 USC 13074(a)
9/ Training for Judicial Personnel	2005		2,300	0	2,500	2,500	42 USC 13026(a)
8/ Grants for Televised Testimony	2005		1,000	0	1,000	1,000	42 USC 3793(a)(7)
State and Local Law Enforcement							
5/ 2nd Chance Act/Prisoner Reentry (Adult and Juvenile State and Local Reentry)	2010		55,000	100,000	25,000	100,000	42 USC 3797(w)(9)
State and Local Gun Violence Prosecution Assistance/Gun Violence Reduction	N/A	N/A	N/A	15,000	15,000	0	Department of Justice Appropriations Act, 2010 (P.L. 111-117)
Southwest Border Prosecutor Initiative	N/A	N/A	N/A	31,000	31,000	0	Department of Justice Appropriations Act, 2010 (P.L. 111-117)
4/ Bulletproof Vest Partnership	2012		50,000	N/A	23,500	30,000	42 USC 3793(a)(23)
5/ Criminal Records Upgrades (CRA)	2007		250,000	0	10,000	11,500	42 USC 14601(e)(1)-4250 mtl auth for FY07 (omit for several programs; see also line below (C7A))
5/ Paul Coverdell Grants	2009		20,000	25,000	25,000	30,000	42 USC 3793a(j)(24)
State Criminal Alien Assistance	2011		950,000	N/A	400,000	330,000	330,000 8 USC 1231(j)(5)
Prison Rape Prevention and Prosecution	2010		40,000	N/A	12,000	15,000	5,000 42 USC 1920a(h)(7)
Byrne Justice Assistance Grant Program (JAG)	2012		1,095,000	N/A	546,000	519,000	42 USC 3758
State and Local Antiterrorism Training (SLAT1)	N/A	N/A	N/A	[2,000]	[3,000]	[2,000]	Department of Justice Appropriations Act, 2010 (P.L. 111-117)
National Institute of Justice to assist units of local govt with law enforcement technology	N/A	N/A	N/A	[5,000]	[5,000]	[5,000]	Department of Justice Appropriations Act, 2010 (P.L. 111-117)
Byrne Discretionary Grants	N/A	N/A	N/A	178,500	185,288	0	Department of Justice Appropriations Act, 2010 (P.L. 111-117)
Prescription Drug Monitoring	N/A	N/A	N/A	7,000	7,000	0	Department of Justice Appropriations Act, 2010 (P.L. 111-117)



DEPARTMENT OF JUSTICE  
AUTHORIZATION OF APPROPRIATIONS  
(Dollars in Thousands)

Appropriated Program	Last Year of Express Authorization of Appropriation	Auth Level in Last Year of Express Authorization of Appropriation	Appropriation in Last Year of Express Authorization of Appropriation	FY 2009 Amount Appropriated or specified in report	FY 2010 Amount Appropriated or specified in report	FY 2011 Requested	Authorization of Appropriation Citation
Indian Programs							
Indian Courts	2004	indef	7,898	9,000	25,000	0	25 USC 3681(d)
Alcohol and Substance Abuse	N/A	N/A	N/A	6,000	12,000	0	Department of Justice Appropriations Act, 2010 (P.L. 111-117)
Indian Prison Grants	2000	2,753	5,000	10,000	10,000	0	42 USC 13706(a)
Training/TA Civil and Criminal Legal Assistance					3,000	0	Department of Justice Appropriations Act, 2010 (P.L. 111-117)
4/ DNA/Other Forensics	N/A	N/A	N/A	158,000	161,000	150,000	N/A
4/ For the purposes of the Kirk Bloodsworth post-conviction DNA testing	2009	5,000	(5,000)	(5,000)	(5,000)	180	42 USC 14136e(o)
Sexual Assault Forensic Exam Program					(5,000)	0	Department of Justice Appropriations Act, 2010 (P.L. 111-117)
4/ DNA Analysis and Capacity Enhancement/Other Forensics (including for the purposes of Debra Smith)	2014	151,000	N/A	(151,000)	(151,000)	180	42 USC 14135(j)
Criminal Justice Reform & Recidivism Efforts by the States					10,000	0	
John R. Justice Student Loan Repayment					10,000	0	
Missing Alzheimer's Patient Program	1999	900	898	2,000	2,000	0	42 USC 14181(d)(3)
Capital Litigation Improvement Grants (including Wrongful Conviction Review Program)	2009	75,000	5,500	5,500	5,500	5,500	42 USC 14163e
Drug Courts	2008	70,000	15,200	40,000	45,000	0	42 USC 3793(a)(25)
Residential Substance Abuse Treatment	2000	72,000	61,677	10,000	30,000	30,000	42 USC 3793(a)(17)(E)
Victims of Trafficking	2011	10,000, 1,000	N/A	10,000	12,500	10,000	22 USC 7130; 42 USC 14944(d)
4/ Sex Offender Management Assistance (SOMA)	2009	indef	5,000	5,000	11,000	5,000	42 USC 19626(d)
4/ National Sex Offender Public Website	N/A	N/A	N/A	1,000	1,000	1,000	Department of Justice Appropriations Act, 2010 (P.L. 111-117)
Mentality III Offender Act	2014	50,000	N/A	10,000	12,000	0	42 USC 3797a(a)
Northern Border Prosecutor Grants	N/A	N/A	N/A	3,000	3,000	0	Department of Justice Appropriations Act, 2010 (P.L. 111-117)
Byrne Competitive Grants	N/A	N/A	N/A	30,000	40,000	30,000	Department of Justice Appropriations Act, 2010 (P.L. 111-117)
Economic, HighTech, Cybercrime Prevention	N/A	N/A	N/A	18,000	20,000	0	Department of Justice Appropriations Act, 2010 (P.L. 111-117)
5/ National Instant Background Check System (NICS)	2013	125,000, 62,500	N/A	10,000	20,000	10,000	NICS Improvement Amendment Act of 2007 (P.L. 110-580 Secs. 103 and 301)
8/ Training - Probation & Parole Officers	2011	5,000	N/A	3,500	3,500	3,500	42 USC 1392f
Byrne Criminal Justice Innovation Program						40,000	
Smart Policing						10,000	
Ensuring Fairness & Justice in the Criminal Justice System						4,000	
Justice Information Sharing and Technology						15,000	
Smart Probation						10,000	
Adam Walsh Act						20,000	
Children Exposed to Violence Initiative						37,000	
Drug, Mental Health & Problem Solving Courts	2008, 2014	70,000, 50,000	N/A	0	0	57,000	42 USC 3793(a)(25), 42 USC 3797a(a)
Public Safety Officers' Benefits							
Death Benefits	indef	indef	N/A	110,000	81,000	61,000	42 USC 3793(a)(4)
Disability Benefits	indef	5,000	N/A	5,000	5,000	12,200	42 USC 3793(a)(4), 42 USC 3796(b)
Public Safety Officer Dependents Asst.	indef	indef	N/A	4,100	4,100	4,100	42 USC 3793(a)(4), 42 USC 3796a-7
Crime Victims Fund	indef	indef	705,000	635,000	705,000	800,000	42 USC 10601 et seq.

1/ The amount is subject to negotiation between the Attorney General and Secretary for Health and Human Services.  
 2/ Number includes total appropriation, including \$4 million transfer from DHS Immigration Examinations Fee  
 3/ The National Security Division was established by Section 506(b)(1), P.L. 109-177, and received appropriations in FY 2007 - 2010. However, there have not been any authorizations of appropriations for the National Security Division.  
 4/ In FY09 and FY10, Congress appropriated \$550,000,000 and \$791,608,000 respectively, under the heading "Community Oriented Policing Services." Funds under such heading were transferred under the requirements of the appropriations acts, to the Office of Justice Programs for the administration of these specific programs. An OJP component is the properly authorized administering agency of each of these programs, as referenced by this footnote. OJP administers each of these programs upon the authority granted to it by an underlying authorizing statute and/or delegation of the Attorney General. In FY 11 these program are requested directly under OJP.  
 5/ In FY09 and FY 10, Congress appropriated \$550,000,000 and \$791,608,000 respectively, under the heading "Community Oriented Policing Services." Funds under such heading were transferred under the requirements of the appropriations acts, to the Office of Justice Programs for the administration of these specific programs. An OJP component is the properly authorized administering agency of each of these programs, as referenced by this footnote. OJP administers each of these programs upon the authority granted to it by an underlying authorizing statute and/or delegation of the Attorney General. In FY 10 these program are appropriated directly to OJP and in FY 11 are requested under OJP.  
 6/ In FY09 and FY 10 legislation appropriates \$16M for this program to COPS and in FY 11 is requested by COPS.  
 7/ The FBI S&E for FY 2010 includes \$101,066,000 for Overseas Contingency Operations.  
 8/ In FY 09 these programs were appropriated to OVV, however, the programs were administered by OJP. In FY 10 and FY 11 these programs are appropriated to OJP.  
 9/ In FY 09 the program was appropriated to OVV, however, the program was administered by OJP. In FY 10 this program was appropriated to OJP and in FY 11 is requested under OVV.  
 10/ The GA account for FY 2011 includes \$7,610,000 for the International Organized Crime Intelligence and Operations Center (IOC-2).

NOTE: This chart generally references the authorization of appropriations, not the Acts authorizing operation of specific programs.

**20. Provide for each appropriation the actual obligation rates by quarter for each of the last three fiscal years. Provide planned obligation rates for fiscal years 2010 and 2011, also by quarter.**

**Answer:** [Please see the following for the actual obligation rates by quarter:]

**DEPARTMENT OF JUSTICE**  
**FY 2007 Through FY 2011 Quarterly Obligation Amounts**  
(Dollar in thousands)

APPROPRIATION	FY 2007 Total Obligations	FY 2008 Total Obligations	FY 2009 Total Obligations	FY 2010 Estimated Obligations <sup>(1)</sup>	FY 2011 President's Budget <sup>(2)</sup>
<b>GENERAL ADMINISTRATION</b>					
First Quarter Obligation Amounts	32,821	28,385	30,148	45,165	56,119
Second Quarter Obligation Amounts	41,012	48,657	53,162	40,216	75,245
Third Quarter Obligation Amounts	22,891	23,818	33,226	16,554	39,664
Fourth Quarter Obligation Amounts	39,006	32,881	38,807	18,553	52,308
Total Obligation Amount	\$ 135,730	\$ 133,741	\$ 155,343	\$ 118,488	\$ 223,336
<b>INDIC SALARIES &amp; EXPENSES</b>					
First Quarter Obligation Amounts	0	0	0	13,206	13,373
Second Quarter Obligation Amounts	0	0	0	11,153	11,294
Third Quarter Obligation Amounts	0	0	0	9,882	10,007
Fourth Quarter Obligation Amounts	0	0	0	9,782	9,906
Total Obligation Amount	\$ -	\$ -	\$ -	\$ 44,023	\$ 44,580
<b>JUSTICE INFORMATION SHARING TECHNOLOGY</b>					
First Quarter Obligation Amounts	34,673	16,644	11,521	30,974	39,807
Second Quarter Obligation Amounts	42,091	22,531	34,808	21,000	51,102
Third Quarter Obligation Amounts	13,783	10,921	15,191	18,900	24,948
Fourth Quarter Obligation Amounts	64,599	42,894	21,904	21,259	63,928
Total Obligation Amount	\$ 155,146	\$ 92,990	\$ 83,424	\$ 92,133	\$ 179,785
<b>DETENTION TRUSTEE</b>					
First Quarter Obligation Amounts	294,772	312,232	328,551	401,064	399,048
Second Quarter Obligation Amounts	313,605	314,055	347,224	342,637	387,418
Third Quarter Obligation Amounts	283,256	313,962	462,747	346,294	413,512
Fourth Quarter Obligation Amounts	288,657	296,079	220,014	351,128	339,887
Total Obligation Amount	\$ 1,180,290	\$ 1,236,328	\$ 1,358,536	\$ 1,441,123	\$ 1,533,863
<b>LAW ENFORCEMENT WIRELESS COMMUNICATIONS</b>					
First Quarter Obligation Amounts	2,270	23,382	23,529	44,000	31,966
Second Quarter Obligation Amounts	65,893	42,121	13,905	55,000	60,693
Third Quarter Obligation Amounts	15,184	11,580	37,526	55,000	40,923
Fourth Quarter Obligation Amounts	14,533	16,523	127,372	57,698	74,144
Total Obligation Amount	\$ 97,880	\$ 93,606	\$ 202,332	\$ 211,698	\$ 207,727
<b>ADMINISTRATIVE REVIEW &amp; APPEALS</b>					
First Quarter Obligation Amounts	52,372	56,145	57,283	66,676	70,595
Second Quarter Obligation Amounts	84,113	86,844	96,022	114,707	115,806
Third Quarter Obligation Amounts	55,326	53,057	53,808	59,553	67,278
Fourth Quarter Obligation Amounts	45,869	47,856	62,744	59,549	65,541
Total Obligation Amount	\$ 237,680	\$ 243,902	\$ 269,857	\$ 300,685	\$ 319,220
<b>OFFICE OF THE INSPECTOR GENERAL</b>					
First Quarter Obligation Amounts	15,722	17,287	0	37,890	20,928
Second Quarter Obligation Amounts	20,907	22,547	40,880	17,371	30,021
Third Quarter Obligation Amounts	16,056	15,793	16,418	14,588	18,553
Fourth Quarter Obligation Amounts	16,113	15,390	19,326	14,520	19,290
Total Obligation Amount	\$ 68,798	\$ 71,017	\$ 76,624	\$ 84,369	\$ 88,792
<b>U.S. PAROLE COMMISSION</b>					
First Quarter Obligation Amounts	2,572	2,754	2,431	3,858	3,306
Second Quarter Obligation Amounts	3,884	3,840	3,912	3,986	4,386
Third Quarter Obligation Amounts	2,184	2,132	2,238	2,572	2,595
Fourth Quarter Obligation Amounts	2,954	2,275	3,912	2,443	3,294
Total Obligation Amount	\$ 11,394	\$ 11,011	\$ 12,493	\$ 12,859	\$ 13,582
<b>NATIONAL SECURITY DIVISION</b>					
First Quarter Obligation Amounts	0	11,638	17,166	43,969	24,272
Second Quarter Obligation Amounts	29,638	18,603	23,561	14,656	28,803
Third Quarter Obligation Amounts	14,685	14,296	13,659	14,657	19,110
Fourth Quarter Obligation Amounts	18,878	18,441	29,736	14,655	27,253
Total Obligation Amount	\$ 63,201	\$ 63,178	\$ 84,122	\$ 87,938	\$ 99,537
<b>GENERAL LEGAL ACTIVITIES</b>					
First Quarter Obligation Amounts	147,566	164,025	182,026	323,281	256,250
Second Quarter Obligation Amounts	248,925	268,324	274,325	221,697	317,850
Third Quarter Obligation Amounts	124,808	135,821	167,012	174,609	189,918
Fourth Quarter Obligation Amounts	163,226	170,329	184,050	162,598	213,371
Total Obligation Amount	\$ 684,525	\$ 738,499	\$ 807,413	\$ 882,185	\$ 976,389

**DEPARTMENT OF JUSTICE**  
**FY 2007 Through FY 2011 Quarterly Obligation Amounts**  
(Dollar in thousands)

APPROPRIATION	FY 2007 Total Obligations	FY 2008 Total Obligations	FY 2009 Total Obligations	FY 2010 Estimated Obligations <sup>(1)</sup>	FY 2011 President's Budget <sup>(2)</sup>
<b>ANTITRUST</b>					
First Quarter Obligation Amounts	35,779	37,800	39,088	70,000	47,697
Second Quarter Obligation Amounts	57,493	63,695	61,396	35,000	56,512
Third Quarter Obligation Amounts	26,665	30,583	30,282	35,000	31,984
Fourth Quarter Obligation Amounts	34,810	24,529	27,313	30,148	30,524
Total Obligation Amount	\$ 154,747	\$ 156,707	\$ 158,069	\$ 170,148	\$ 167,028
<b>U.S. ATTORNEYS</b>					
First Quarter Obligation Amounts	382,453	412,393	436,849	613,540	524,371
Second Quarter Obligation Amounts	593,361	596,448	626,807	761,574	729,817
Third Quarter Obligation Amounts	311,777	368,510	422,781	275,445	392,876
Fourth Quarter Obligation Amounts	396,879	381,751	359,114	249,445	394,205
Total Obligation Amount	\$ 1,674,470	\$ 1,759,102	\$ 1,845,551	\$ 1,904,004	\$ 2,041,269
<b>U.S. TRUSTEES</b>					
First Quarter Obligation Amounts	47,620	48,674	51,855	95,868	46,551
Second Quarter Obligation Amounts	85,850	74,584	72,514	46,019	53,209
Third Quarter Obligation Amounts	39,239	44,732	42,803	44,912	32,764
Fourth Quarter Obligation Amounts	40,424	45,312	48,161	410,915	103,911
Total Obligation Amount	\$ 213,143	\$ 213,302	\$ 215,463	\$ 597,734	\$ 236,435
<b>FOREIGN CLAIMS SETTLEMENT COMM</b>					
First Quarter Obligation Amounts	287	323	327	420	436
Second Quarter Obligation Amounts	350	468	348	660	585
Third Quarter Obligation Amounts	392	386	513	602	604
Fourth Quarter Obligation Amounts	356	359	415	545	534
Total Obligation Amount	\$ 1,405	\$ 1,536	\$ 1,603	\$ 2,227	\$ 2,159
<b>U.S. MARSHALS SERVICE</b>					
First Quarter Obligation Amounts	195,955	194,643	242,263	302,400	289,296
Second Quarter Obligation Amounts	271,512	317,013	210,513	293,978	338,051
Third Quarter Obligation Amounts	211,887	187,221	283,796	287,709	305,338
Fourth Quarter Obligation Amounts	172,943	198,297	245,518	269,150	274,474
Total Obligation Amount	\$ 852,297	\$ 897,174	\$ 992,190	\$ 1,153,237	\$ 1,207,159
<b>USMS SALARIES &amp; EXPENSES</b>					
First Quarter Obligation Amounts	189,226	193,845	241,998	300,000	284,839
Second Quarter Obligation Amounts	274,188	316,288	209,846	281,441	333,087
Third Quarter Obligation Amounts	196,516	185,307	291,092	281,441	293,857
Fourth Quarter Obligation Amounts	172,169	195,558	242,212	262,882	268,751
Total Obligation Amount	\$ 832,099	\$ 890,998	\$ 985,148	\$ 1,125,764	\$ 1,180,534
<b>USMS CONSTRUCTION</b>					
First Quarter Obligation Amounts	6,729	798	265	2,400	4,457
Second Quarter Obligation Amounts	(2,619)	725	767	12,537	4,964
Third Quarter Obligation Amounts	15,371	1,914	2,704	6,268	11,481
Fourth Quarter Obligation Amounts	774	2,739	3,306	6,268	5,723
Total Obligation Amount	\$ 20,198	\$ 6,176	\$ 7,042	\$ 27,473	\$ 26,625
<b>COMMUNITY RELATIONS SERVICE</b>					
First Quarter Obligation Amounts	2,115	2,292	2,275	5,152	3,695
Second Quarter Obligation Amounts	3,528	3,917	3,964	3,967	4,788
Third Quarter Obligation Amounts	1,970	1,943	1,702	1,346	2,168
Fourth Quarter Obligation Amounts	1,952	1,526	1,821	1,014	1,966
Total Obligation Amount	\$ 9,565	\$ 9,678	\$ 9,762	\$ 11,479	\$ 12,606
<b>ASSETS FORFEITURE FUND CURRENT BUDGET AUTHORITY</b>					
First Quarter Obligation Amounts	3,795	3,988	4,931	5,289	4,552
Second Quarter Obligation Amounts	6,837	6,161	3,895	5,234	5,595
Third Quarter Obligation Amounts	5,218	4,738	6,182	5,234	5,404
Fourth Quarter Obligation Amounts	5,320	5,269	5,694	5,233	5,440
Total Obligation Amount	\$ 21,170	\$ 20,156	\$ 20,702	\$ 20,990	\$ 20,990
<b>INTERAGENCY CRIME &amp; DRUG ENFORCEMENT</b>					
First Quarter Obligation Amounts	121,789	112,412	123,496	150,499	141,835
Second Quarter Obligation Amounts	117,054	154,694	131,095	169,922	159,856
Third Quarter Obligation Amounts	167,689	135,826	140,745	122,033	158,050
Fourth Quarter Obligation Amounts	105,366	100,414	122,146	100,520	119,577
Total Obligation Amount	\$ 511,898	\$ 503,346	\$ 517,482	\$ 542,974	\$ 579,319

**DEPARTMENT OF JUSTICE**  
**FY 2007 Through FY 2011 Quarterly Obligation Amounts**  
(Dollar in thousands)

APPROPRIATION	FY 2007 Total Obligations	FY 2008 Total Obligations	FY 2009 Total Obligations	FY 2010 Estimated Obligations <sup>(1)</sup>	FY 2011 President's Budget <sup>(2)</sup>
<b>FEDERAL BUREAU OF INVESTIGATION</b>					
First Quarter Obligation Amounts	641,185	1,436,507	1,570,674	3,113,783	1,967,663
Second Quarter Obligation Amounts	1,977,737	2,072,937	1,934,169	2,357,344	2,426,004
Third Quarter Obligation Amounts	1,667,091	1,356,071	1,733,174	1,389,874	1,753,438
Fourth Quarter Obligation Amounts	1,596,739	1,936,607	2,214,351	1,248,309	2,018,686
Total Obligation Amount	\$ 5,882,752	\$ 6,812,122	\$ 7,452,368	\$ 8,107,310	\$ 8,165,791
<b>FBI SALARIES &amp; EXPENSES</b>					
First Quarter Obligation Amounts	640,989	1,436,379	1,568,504	3,063,449	1,960,049
Second Quarter Obligation Amounts	1,977,609	2,063,349	1,926,735	2,297,587	2,415,324
Third Quarter Obligation Amounts	1,650,889	1,352,462	1,706,967	1,148,793	1,712,181
Fourth Quarter Obligation Amounts	1,580,229	1,925,864	2,175,189	1,148,793	1,995,921
Total Obligation Amount	\$ 5,849,716	\$ 6,776,054	\$ 7,375,395	\$ 7,658,622	\$ 8,083,475
<b>FBI CONSTRUCTION</b>					
First Quarter Obligation Amounts	196	128	4,170	50,334	7,614
Second Quarter Obligation Amounts	128	9,588	7,434	59,757	10,680
Third Quarter Obligation Amounts	16,202	13,609	26,207	241,081	41,257
Fourth Quarter Obligation Amounts	16,510	10,743	39,162	97,516	22,765
Total Obligation Amount	\$ 33,036	\$ 34,068	\$ 76,973	\$ 448,688	\$ 82,316
<b>DRUG ENFORCEMENT ADMINISTRATION</b>					
First Quarter Obligation Amounts	356,126	394,295	415,669	483,091	416,603
Second Quarter Obligation Amounts	455,215	553,908	405,669	731,382	505,456
Third Quarter Obligation Amounts	501,362	551,966	584,833	482,463	585,258
Fourth Quarter Obligation Amounts	461,660	513,231	652,135	322,746	622,801
Total Obligation Amount	\$ 1,774,363	\$ 2,013,400	\$ 2,058,306	\$ 2,019,682	\$ 2,130,117
<b>DEA SALARIES &amp; EXPENSES</b>					
First Quarter Obligation Amounts	356,126	394,295	415,669	483,091	437,885
Second Quarter Obligation Amounts	455,215	553,908	405,669	731,382	569,845
Third Quarter Obligation Amounts	501,362	551,966	584,833	482,463	563,061
Fourth Quarter Obligation Amounts	460,723	512,993	652,135	322,746	517,385
Total Obligation Amount	\$ 1,773,426	\$ 2,013,162	\$ 2,058,306	\$ 2,019,682	\$ 2,088,176
<b>DEA CONSTRUCTION</b>					
First Quarter Obligation Amounts	0	0	0	0	0
Second Quarter Obligation Amounts	0	0	0	0	0
Third Quarter Obligation Amounts	0	0	0	0	0
Fourth Quarter Obligation Amounts	937	238	-	-	41,941
Total Obligation Amount	\$ 937	\$ 238	\$ -	\$ -	\$ 41,941
<b>BUREAU OF ALCOHOL, TOBACCO, FIREARMS &amp; EXPLOSIVES</b>					
First Quarter Obligation Amounts	215,922	218,627	259,516	277,290	267,975
Second Quarter Obligation Amounts	287,586	360,140	235,536	391,555	344,855
Third Quarter Obligation Amounts	248,421	290,044	342,035	276,277	319,717
Fourth Quarter Obligation Amounts	240,482	189,921	237,753	165,650	230,440
Total Obligation Amount	\$ 992,411	\$ 1,058,732	\$ 1,074,840	\$ 1,111,172	\$ 1,162,986
<b>ATF SALARIES &amp; EXPENSES</b>					
First Quarter Obligation Amounts	215,922	218,627	259,516	275,370	267,975
Second Quarter Obligation Amounts	287,586	336,640	235,536	387,795	344,855
Third Quarter Obligation Amounts	248,421	290,044	342,035	276,117	319,717
Fourth Quarter Obligation Amounts	240,482	189,921	237,753	165,490	230,440
Total Obligation Amount	\$ 992,411	\$ 1,035,232	\$ 1,074,840	\$ 1,104,772	\$ 1,162,986
<b>ATF CONSTRUCTION</b>					
First Quarter Obligation Amounts	0	0	0	1,920	0
Second Quarter Obligation Amounts	0	23,500	0	4,160	0
Third Quarter Obligation Amounts	0	0	0	160	0
Fourth Quarter Obligation Amounts	0	0	0	0	0
Total Obligation Amount	\$ -	\$ 23,500	\$ -	\$ 6,400	\$ -

**DEPARTMENT OF JUSTICE**  
**FY 2007 Through FY 2011 Quarterly Obligation Amounts**  
(Dollar in thousands)

APPROPRIATION	FY 2007 Total Obligations	FY 2008 Total Obligations	FY 2009 Total Obligations	FY 2010 Estimated Obligations <sup>(1)</sup>	FY 2011 President's Budget <sup>(2)</sup>
<b>FEDERAL PRISON SYSTEM</b>					
First Quarter Obligation Amounts	1,439,072	1,308,805	1,362,485	2,252,693	1,827,898
Second Quarter Obligation Amounts	1,439,071	1,556,499	1,594,324	1,434,383	1,767,259
Third Quarter Obligation Amounts	1,402,671	1,150,845	1,285,966	1,411,848	1,510,375
Fourth Quarter Obligation Amounts	1,393,175	1,547,415	1,835,107	1,359,000	1,698,012
Total Obligation Amount	\$ 5,673,989	\$ 5,563,654	\$ 6,077,882	\$ 6,457,924	\$ 6,803,512
<b>FPS SALARIES &amp; EXPENSES</b>					
First Quarter Obligation Amounts	1,325,734	1,292,672	1,345,609	1,950,000	1,752,258
Second Quarter Obligation Amounts	1,325,734	1,534,529	1,572,273	1,408,383	1,740,477
Third Quarter Obligation Amounts	1,139,293	1,123,882	1,246,080	1,383,848	1,458,047
Fourth Quarter Obligation Amounts	1,226,555	1,318,712	1,389,601	1,344,000	1,572,997
Total Obligation Amount	\$ 5,017,316	\$ 5,269,795	\$ 5,563,563	\$ 6,086,231	\$ 6,533,779
<b>FPS BUILDINGS &amp; FACILITIES</b>					
First Quarter Obligation Amounts	113,338	16,233	16,876	302,693	65,608
Second Quarter Obligation Amounts	113,337	21,960	22,051	26,000	25,782
Third Quarter Obligation Amounts	263,378	26,963	39,886	28,000	52,328
Fourth Quarter Obligation Amounts	166,620	228,703	445,506	15,000	125,015
Total Obligation Amount	\$ 656,673	\$ 293,859	\$ 524,319	\$ 371,693	\$ 269,733
<b>SUBTOTAL, DISCRETIONARY w/o State and Local</b>	<b>\$ 20,396,854</b>	<b>\$ 21,693,181</b>	<b>\$ 23,474,402</b>	<b>\$ 25,374,382</b>	<b>\$ 26,216,182</b>
<b>DISCRETIONARY GRANTS PROGRAMS</b>	<b>\$ 2,850,483</b>	<b>\$ 3,010,155</b>	<b>\$ 6,135,737</b>	<b>\$ 3,864,205</b>	<b>\$ 3,364,149</b>
<b>OFFICE OF JUSTICE PROGRAM</b>					
First Quarter Obligation Amounts	42,299	395,182	70,592	630,982	109,089
Second Quarter Obligation Amounts	75,416	125,794	64,168	791,130	66,796
Third Quarter Obligation Amounts	722,723	130,711	1,809,112	959,666	547,569
Fourth Quarter Obligation Amounts	1,064,315	1,543,325	3,110,151	173,169	1,243,452
Total Obligation Amount	\$ 1,904,753	\$ 2,295,012	\$ 5,054,023	\$ 2,554,947	\$ 1,966,906
<b>JUSTICE ASSISTANCE</b>					
First Quarter Obligation Amounts	24,911	29,273	39,414	36,230	26,080
Second Quarter Obligation Amounts	44,383	85,051	52,680	83,004	53,257
Third Quarter Obligation Amounts	128,511	32,803	3,762	95,004	52,245
Fourth Quarter Obligation Amounts	107,846	137,024	164,171	32,613	86,719
Total Obligation Amount	\$ 305,651	\$ 284,151	\$ 260,027	\$ 246,851	\$ 220,300
<b>JUVENILE JUSTICE PROGRAMS</b>					
First Quarter Obligation Amounts	4,633	5,121	502	173,186	32,964
Second Quarter Obligation Amounts	2,210	6,937	0	155,000	31,062
Third Quarter Obligation Amounts	34,192	9,220	4,723	85,000	25,194
Fourth Quarter Obligation Amounts	302,610	351,520	363,960	26,051	197,886
Total Obligation Amount	\$ 343,645	\$ 363,556	\$ 369,185	\$ 439,237	\$ 286,906
<b>STATE AND LOCAL LAW ENFORCEMENT ASSISTANCE</b>					
First Quarter Obligation Amounts	12,482	370,164	29,456	412,971	131,662
Second Quarter Obligation Amounts	28,489	32,764	9,833	545,000	98,311
Third Quarter Obligation Amounts	548,868	87,357	1,796,155	771,500	510,936
Fourth Quarter Obligation Amounts	617,913	1,121,835	2,554,397	108,782	702,991
Total Obligation Amount	\$ 1,205,762	\$ 1,612,120	\$ 4,389,841	\$ 1,838,253	\$ 1,443,500
<b>WEED AND SEED</b>					
First Quarter Obligation Amounts	0	2,099	273	7,467	0
Second Quarter Obligation Amounts	122	788	139	6,500	0
Third Quarter Obligation Amounts	12,995	1,152	1,260	5,250	0
Fourth Quarter Obligation Amounts	35,534	31,908	24,889	2,289	0
Total Obligation Amount	\$ 48,651	\$ 33,549	\$ 26,561	\$ 21,506	\$ 0
<b>PSOB</b>					
First Quarter Obligation Amounts	263	165	947	1,128	2,021
Second Quarter Obligation Amounts	212	254	1,516	1,628	2,913
Third Quarter Obligation Amounts	157	179	3,212	2,912	5,215
Fourth Quarter Obligation Amounts	412	1,038	2,734	2,434	6,150
Total Obligation Amount	\$ 1,044	\$ 1,636	\$ 8,406	\$ 9,100	\$ 16,300

**DEPARTMENT OF JUSTICE**  
**FY 2007 Through FY 2011 Quarterly Obligation Amounts**  
(Dollar in thousands)

APPROPRIATION	FY 2007 Total Obligations	FY 2008 Total Obligations	FY 2009 Total Obligations	FY 2010 Estimated Obligations <sup>(1)</sup>	FY 2011 President's Budget <sup>(2)</sup>
<b>OJP SALARIES AND EXPENSES</b>					
First Quarter Obligation Amounts	0	0	0	84,223	25,927
Second Quarter Obligation Amounts	0	0	0	55,148	167,871
Third Quarter Obligation Amounts	0	0	159,510	46,370	46,252
Fourth Quarter Obligation Amounts	0	0	51,783	40,597	19,394
Total Obligation Amount	\$ -	\$ -	\$ 211,293	\$ 226,338	\$ 279,443
<b>COMMUNITY POLICING</b>					
First Quarter Obligation Amounts	5,904	18,343	11,505	90,520	47,840
Second Quarter Obligation Amounts	11,610	12,315	7,753	179,130	179,958
Third Quarter Obligation Amounts	302,886	10,950	(18,257)	179,130	179,852
Fourth Quarter Obligation Amounts	250,102	302,281	250,992	179,131	372,240
Total Obligation Amount	\$ 670,502	\$ 343,889	\$ 251,993	\$ 627,911	\$ 679,800
<b>OFFICE ON VIOLENCE AGAINST WOMEN</b>					
First Quarter Obligation Amounts	2,757	6,734	5,247	150,997	39,669
Second Quarter Obligation Amounts	5,646	32,971	6,582	86,262	34,339
Third Quarter Obligation Amounts	43,009	2,245	128,852	207,750	91,399
Fourth Quarter Obligation Amounts	333,814	329,304	475,747	0	272,593
Total Obligation Amount	\$ 385,226	\$ 371,254	\$ 618,428	\$ 455,009	\$ 438,000
<b>SUBTOTAL, DISCRETIONARY w/o Offsets</b>	<b>\$ 23,287,337</b>	<b>\$ 24,703,336</b>	<b>\$ 29,610,138</b>	<b>\$ 29,238,807</b>	<b>\$ 29,580,331</b>

Negative obligation amounts for USMS, Juvenile Justice, Weed and Seed and COPS are errors in reporting that have been corrected in subsequent quarters.

(1) FY 2010 Estimated Obligation amounts are based on current approved SF 132 apportionment.

(2) FY 2011 quarterly estimates are based on average quarterly obligation amounts for FY 2007 to FY 2010.

**21. Provide end-of-year FTE data for each component for each of the last five fiscal years. For fiscal year 2010, provide the current on-board FTE level and end of year (EOY) planned levels. For fiscal year 2011, provide anticipated EOY proposed FTE levels.**

**Answer:** [Please see the following for the end-of-year FTE data by component.]



Department of Justice											
Full-Time Equivalent Report (FTE)											
	End of Fiscal Year FTE Data				Current FTE Level As of 3/13/10	End of Fiscal Year Planned FTE Level 2010	Anticipated End of Fiscal Year FTE Level 2011				
	2005	2006	2007	2008							
General Administration	668	661	553	564	576	605	778				
National Drug Intel Center	238	227	229	226	221	221	274				
Justice Information Sharing Technology	5	34	53	59	65	65	78				
Legal Activities Office Automation	1										
Integrated Automated Fingerprint Identification System	6										
Joint Automated Booking System	9										
IT Policy and Planning	1	3	4								
Office of Special Counsel	18	20	20	22	22	21	28				
Detention Trustee	12	14	14	16	16	17	35				
Law Enforcement Wireless Communications	1,121	1,152	1,214	1,271	1,301	1,308	1,659				
Executive Office for Immigration Review	13	12	12	10	12	11	15				
Pardon Attorney	425	411	414	423	432	445	510				
Office of The Inspector General	619	613	575	558	557	575	723				
Working Capital Fund	84	79	76	68	65	67	90				
U.S. Parole Commission											
National Security Division			213	232	266	285	355				
Solicitor General	43	46	44	46	46	48	49				
Tax Division	482	485	507	530	539	583	582				
Criminal Division	869	862	901	869	852	883	986				
Civil Division	1,071	1,006	1,064	1,196	1,348	1,436	1,510				
Environmental & Nat'l Resources Division	628	644	648	643	662	679	711				
Legal Counsel	30	27	29	31	25	28	37				
Civil Rights Division	704	670	669	672	682	698	866				
Interpol	53	55	53	57	57	59	88				
Office of Dispute Resolution	2	3	2	2	2	2	3				
Amitrust	792	763	767	790	762	795	851				
U.S. Attorneys	11,125	10,874	10,582	10,959	11,641	11,779	12,485				

Department of Justice											
Full-Time Equivalent Report (FTE)											
	End of Fiscal Year					Current FTE Level As of 3/13/10 2010	End of Fiscal Year Planned FTE Level 2010	Anticipated End of Fiscal Year FTE Level 2011			
	2005	2006	2007	2008	2009						
U.S. Trustees	1,137	1,173	1,264	1,281	1,239	583	1,262	1,341			
Foreign Claims Settlement Commission	6	6	7	8	7	4	9	11			
U.S. Marshals Service	4,485	4,506	4,565	4,674	4,853	2,310	5,006	6,019			
Community Relations Services	44	47	42	42	41	21	45	56			
Federal Bureau of Investigation	29,161	30,088	30,278	30,240	31,719	15,332	33,220	36,307			
Drug Enforcement Administration	8,567	8,723	8,516	8,232	8,343	3,968	8,597	9,627			
Diversion Control	739	807	808	867	885	445	965	1,282			
Bureau of Alcohol, Tobacco, Firearms & Explosives	4,752	4,883	4,799	4,869	5,006	2,340	5,069	5,175			
Federal Prison System	31,922	32,117	32,874	33,294	33,596	15,859	34,361	38,249			
Salaries & Expenses	232	213	196	173	153	76	165	268			
Building & Facilities	1,551	1,562	1,637	1,652	1,630	721	1,562	1,806			
Federal Prison Industries	586	611	626	628	648	301	653	723			
Commissary Fund	617	607	593	610	667	316	685	743			
Office of Justice Programs	151	137	117	109	107	55	119	175			
Community Policing	38	38	36	46	50	27	57	90			
Office on Violence Against Women											
<b>Total</b>	<b>103,006</b>	<b>104,207</b>	<b>105,001</b>	<b>105,969</b>	<b>109,093</b>	<b>51,870</b>	<b>112,385</b>	<b>124,585</b>			

**22. Provide similar FTE data as requested above for all political appointee positions.**

**Answer:** The following chart provides a list of onboard political appointees in the Department of Justice.

Date	# Presidential Appointees	# Presidential Appointees (w/ Senate Confirmation)	# Noncareer SES	# Schedule C	# Limited Term
3/30/2010	0	20	52	71	0
9/30/2009	9	95	48	67	0
9/30/2008	9	103	42	69	0
9/30/2007	9	103	52	76	0
9/30/2006	0	133	52	89	0
9/30/2005	0	141	49	372	0
<b>Total DOJ</b>	<b>27</b>	<b>595</b>	<b>295</b>	<b>744</b>	<b>0</b>

**23. What is the annual average cost of a fully-loaded FTE in fiscal years 2010 and 2011?**

**Answer:** The annual average onboard cost of a fully loaded FTE in FY 2010 for the Department of Justice is \$113,000. For FY 2011, the average is \$115,000.

**Representative Adam Schiff**  
**Questions for the Record**

**Intellectual Property Enforcement**

The FY09 CJS Appropriations bill provided an increase of over \$9,393,000 for not less than 26 additional FBI agents, dedicated solely to investigating criminal intellectual property rights (IPR) cases. They are to be placed in the same localities as the Computer Hacking and Intellectual Property (CHIP) units which the Attorney General has determined most merit assistance in IPR investigations. The funding level also provides for the creation of an additional operational unit at FBI Headquarters with at least 5 full-time, permanent agents dedicated to working solely on complex, multidistrict and international criminal IPR cases with the Department of Justice's Computer Crime and Intellectual Property Section.

The FY10 CJS Appropriations bill provided an additional increase of \$8,000,000 to the FBI for additional IP dedicated agents as well as \$2,000,000 for dedicated federal prosecutors. The report directed that an expenditure analysis be provided to the Appropriations Committee in mid-April to ensure that these agents are solely investigating and supporting the criminal prosecution of violations of those Federal intellectual property laws cited in the statement accompanying Public Law 111-8. The report is to provide an accounting of the agents placed in specific field offices with Computer Hacking and Intellectual Property units and the types of intellectual property investigations pursued by these agents.

1. **What is the status of appointing the 26 agents in the field and the 5 at headquarters to work exclusively on IPR cases from FY09?**

**Answer:** Through funding received in April 2009 from the Prioritizing Resources and Organization for Intellectual Property (PRO-IP) Act, the FBI designated 31 Special Agents to work IPR investigations (26 Field Office Special Agents and five FBI Headquarters (HQ) Special Agents). The 26 Field Office Special Agents were placed in 20 Field Offices with CHIPs units. The five FBIHQ Special Agents were assigned to the operational Intellectual Property Rights Unit (IPR Unit), embedded within the National Intellectual Property Rights Center (IPR Center). Three of the five FBIHQ Special Agents will conduct investigations and deconflict matters with partner agencies. The remaining two FBIHQ Special Agents were designated as Headquarters Program Managers to provide strategic guidance, develop intelligence, and oversee the field office IPR programs, agents and investigations.

**2. Where have the FBI agents deployed with FY09 funding been assigned?**

**Answer:** The 26 Field Office Special Agents were placed in 20 Field Offices with CHIPs units as follows: Atlanta, Baltimore, Boston, Chicago, Dallas, Detroit, Kansas City, Los Angeles, Memphis, Miami, New York, Newark, Philadelphia, Pittsburgh, Sacramento, San Antonio, San Diego, San Francisco, Seattle and Washington, D.C.

The five FBIHQ Special Agents were assigned to the National IPR Center in Crystal City, Virginia.

**3. What progress have you made on FY10 plans to deploy and assign additional agents and prosecutors?**

**Answer:** The FY 2010 Consolidated Appropriation Act provided funding for 20 additional Special Agents dedicated to the investigation of intellectual property crimes. The FBI has initiated hiring and has an established IPR training program to ensure these new investigators will have immediate impact upon the threats to IPR upon assignment. The addition of these 20 investigators has driven the FBI to conduct a strategic review to develop the most effective national program for management of these resources.

On April 26th, it was announced that the 20 new FBI Special Agents will be deployed to specifically augment four geographic areas with intellectual property squads, and increase investigative capacity in other locations around the country where IP crimes are of particular concern. The four squads will be located in New York, San Francisco, Los Angeles and the District of Columbia. The squads will allow for more focused efforts in particular hot spot areas and increased contact and coordination with our state and local law enforcement partners.

The FBI has been conducting extensive analysis of the current IPR caseload, and threat information from our partners in industry associations, international and domestic law enforcement, and the intelligence community. In addition, the FBI is reviewing and analyzing the current case portfolio to ensure we are addressing the most significant threats. The squads will facilitate the development of subject matter experts in priority IP areas, and allow for the surging of resources and greater use of complex investigative techniques in penetrating, disrupting, and dismantling criminal organizations that thrive on the counterfeiting of goods.

The development of the strategy and the hiring, training, and staffing of these 20 personnel will be completed before the end of this fiscal year.

**4. Have these assignments resulted in any additional IP investigations?**

**Answer:** From October 1, 2009 to March 2010, the FBI opened 59 new IPR investigations in the offices staffed with FY 2009 IPR-designated Special Agents.

**5. Can you provide us with information on the types of cases that have been pursued?**

**Answer:** From October 1, 2009 to January 31, 2010, the FBI had 528 pending IP investigations. The 20 offices with FY 2009 IPR-designated Special Agents accounted for 64 percent of the 528 pending cases as detailed below:

31	Computer Intrusions-IPR
54	Theft of trade secret
73	Copyright infringement (software)
90	Copyright infringement (other than software)
39	Trademark infringement
28	Copyright infringement (signal theft)
8	Counterfeit aircraft parts
6	Counterfeit electrical parts
2	Counterfeit automotive parts
6	Counterfeit (other)

**Representative C.A. "Dutch" Ruppberger**  
**Questions for the Record**

- 1. Attorney General Holder can you discuss the Department of Justice's role in the Comprehensive National Cybersecurity Initiative? (CNCI is the overall government plan to address cybersecurity)**

**Answer:** The Department works closely with partners throughout the government – including law enforcement agencies, the Intelligence Community, the Department of Homeland Security, and the Department of Defense – to support cybersecurity efforts and inform policy discussions as part of the Comprehensive National Cybersecurity Initiative (CNCI). Some of the Department's work involves legal guidance related to the unique challenges posed by threats in cyberspace, on topics ranging from the use of existing legal tools and authorities, the legality of cybersecurity programs like the EINSTEIN program, and the ways in which the Department can most vigorously protect privacy and civil liberties while still achieving the goal of securing the Nation's information infrastructure. The Department is also actively engaged in the operational work of a number of the specific initiatives of the CNCL. The declassified description of all of the CNCI initiatives can be found at <http://www.whitehouse.gov/cybersecurity/comprehensive-national-cybersecurity-initiative>

The FBI is particularly engaged in a number of CNCI initiatives. For example, the FBI is directly involved with Initiative #5 to connect the federal cyber operations centers, Initiative #6 to develop a government-wide counterintelligence plan, Initiative #7 to secure Government classified networks, and Initiative #12 to conduct private sector outreach. Additionally, the FBI's funding supports a CNCI "strategic enabler" designed to "Ensure Adequate Support to Neutralize, Mitigate, and Disrupt Domestic Illegal Computer Activity". The goal of this enabler is to increase the US Government's capacity to counter illegal cyber activities against domestic targets, whether the threats are from nation-state, terrorist, or criminal actors. The enabler accomplishes this by: 1) enhancing existing FBI capacity and investigative tools; 2) forging stronger partnerships and seamless coordination of cyber threat investigation activities among the law enforcement and intelligence communities; and 3) making law enforcement efforts more proactive and as a result more predictive in the preventative management of cyber threats. Key to this strategy is leveraging of the FBI-led National Cyber Investigative Joint Task Force (NCIJTF). The NCIJTF is an alliance of peer government organizations with complementary missions to protect national cyber interests. The NCIJTF identifies, mitigates, and neutralizes cyber threats by coordinating and integrating the counterintelligence, counterterrorism, intelligence, and law enforcement activities of member organizations. The NCIJTF enables unified, strategic actions to be taken across all partner agencies to reach desired outcomes.

**2. What is your view of the Comprehensive National Cybersecurity Initiative and are other agencies working well together to protect our national security from cyber attacks?**

**Answer:** One of the goals of the Comprehensive National Cybersecurity Initiative is to promote interagency information sharing and cooperation in the area of cybersecurity in order to strengthen key strategic foundational capabilities within the Government. Many of the current initiatives will enable the Federal Government to act in a more coordinated fashion, better share information about cyber threats, and provide the ability to detect and respond to cyber threats before harm is done, across federal networks. These efforts require significant interagency coordination and cooperation.

In addition to aspects of CNCI which focus on building stronger defenses or more resilient computer systems, the FBI is proactively pursuing threat actors and organizations seeking to carry out cyber intrusions and attacks. To date, the FBI has been successful in engaging key partner agencies via the NCIJTF. The full development of these relationships is an ongoing.

**3. What is DoJ doing to help state and local law enforcement address cybersecurity? The reason I ask is that a cyber attack looks for the most vulnerable points to break into more sensitive networks. So if local police are not protected they can be an entry point for terrorist or nation states that wish to do us harm.**

**Answer:** The Department engages in extensive capacity building through training programs that augment state and local law enforcement's ability to investigate and prosecute cyber incidents. Every year, DOJ trains hundreds of domestic law enforcement agents on the legal tools they can use in their enforcement efforts and supports the cybercrime efforts of the National Association of Attorneys Generals. Moreover, the Department dispenses legal support on a daily basis to state and local law enforcement agents seeking guidance on investigative issues that arise in their cybercrime investigations.

In addition, the FBI maintains an extensive portfolio of programs focused on engaging state, local, and tribal law enforcement on a variety of issues. The FBI provides access to sensitive systems such as Law Enforcement Online to other Federal, state, and local law enforcement users. The risks to these networks are managed by the FBI's Information Assurance program which consists of security controls and training programs designed to deal with the risks to individual systems. With respect to Cyber threats in general, the FBI supports Information Sharing Analysis Centers (ISACs), provides training on Cybercrime investigation and computer forensics, and conducts grassroots outreach through the Infragard and National Cyber Forensic and Training Alliance (NCFTA).



**4. Is Department of Justice reaching out to our international law enforcement partners to address cyber attacks?**

**Answer:** Yes, the Department engages extensively with its foreign law enforcement partners. This cooperation is critical to addressing Cyber attacks on U.S. entities that originate in foreign countries. Moreover, as a result of our assistance to foreign authorities, they often reciprocate by sharing evidence vital to DOJ investigations. For this reason, the FBI has engaged numerous international law enforcement partners on Cyber crime matters. These relationships have helped bring suspects to trial in other countries, and, in several cases, have led to suspects being extradited to the United States for prosecution. In addition, the FBI has detailed FBI Cyber Agents to national cyber units in Estonia, Romania, Ukraine, and the Netherlands, to target transnational cyber crime in Eastern Europe and to increase international cooperation in this area. The Computer Crime and Intellectual Property Section (CCIPS) in DOJ's Criminal Division serves as the United States Point of Contact in the G8 High-Tech Crime's 24/7 Network, which consists of 55 member countries and is designed to connect international law enforcement partners with each other at any time to facilitate investigative cooperation. It is also active in many multilateral groups to influence policymaking.

DOJ also trains foreign law enforcement agencies each year on electronic evidence collection and international cooperation, and provides extensive technical and drafting assistance for countries developing laws criminalizing malicious cyber activity. For six years, CCIPS has run a coordination group where U.S. federal agencies exclusively discuss and coordinate foreign cybertraining. To promote foreign legal development, DOJ believes that the United States should continue to press other nations to accede to the Convention on Cybercrime (2001). Broader membership in the Convention will improve cooperation between law enforcement agencies by creating consistent substantive laws, and by improving procedural laws across the globe. This will facilitate the United States' ability to quickly and easily obtain evidence in the possession of foreign countries that is essential to our investigations.

**Gangs****5. Gangs are still a huge threat to our country.**

**Over the summer in a speech you gave to the Conference on Gang Violence Prevention and Crime Control you mentioned the need for data driven, evidence based strategies. I know you have asked the Department of Justice attorneys about what strategies are really working and I was hoping that you could share with us any findings so far?**

**I want to make sure that we can get this information out to state and local law enforcement. I want to make sure we get this information out to our communities, our schools and to our parents.**

**Answer:** There is a stronger need for data driven, evidence-based strategies for programs that reduce gang membership and violence. Unlike the problems of juvenile delinquency and domestic violence, research on the factors that draw individuals to join and engage in gang activity has been severely underfunded. Additionally, much of the work on addressing gang problems has favored strategies of deterrence over intervention and prevention.

Research in this gang reduction area reveals that few programs that have been adequately evaluated and found to be successful. The National Institute of Justice (NIJ) has invested in research and evaluation in this area. One of NIJ's goal is to increase public knowledge of "what works" in reducing gang membership and violence. NIJ also continues to build knowledge of what factors attract individuals into the gang life.

Among the many projects in NIJ's gang portfolio include evaluations of the Gang Resistance Education and Training (GREAT) and Comprehensive Anti-Gang Initiative (CAGI) programs. The GREAT program is a school-based prevention program that teaches youth about the hazards of becoming involved in gangs. An improved GREAT program has been developed, implemented in the field, and is currently being evaluated.

CAGI is based on a combination of enforcement, prevention, and reentry strategies for reducing gang activity, and was implemented as a component of Project Safe Neighborhoods (PSN). The CAGI model is currently being evaluated and NIJ expects to release its findings later this year.

NIJ is collaborating with the Centers for Disease Control and Prevention (CDC) on a book, for practitioners that will provide a framework for practitioners in the field for constructing effective programs geared towards reducing gang membership. The book is being written by experts in the areas of criminology, sociology, psychology, psychiatry, and public health.

NIJ is also collaborating with the Executive Office for United States Attorneys (EOUSA) to improve data collection and performance and evaluation measures for several EOUSA initiatives. Through this collaboration, NIJ is participating on several task forces and bringing evidence based strategies to current initiatives and policies. A compilation of strategies and programs that have been proven to be effective can be accessed via the National Gang Center Strategic Planning Tool at <http://www.iir.com/nygc/tool/agematrix.cfm>.

**6. How many gang members are there in the United States?**

**Answer:** According to the National Gang Center (NGC), there were approximately 774,000 gang members and 27,900 gangs active in the United States in 2008. Gang activity remains a widespread problem across the United States. The NGC estimates that 32.4 percent of all cities, suburban areas, towns, and rural counties (more than 3,330 jurisdictions served by city and county law enforcement agencies) experienced gang problems in 2008.

**7. Which gangs are the biggest threat? Which ones have ties to drug trafficking and transnational organizations?**

**Answer:** The Department's National Gang Targeting, Enforcement and Coordination Center (GangTECC) works with its partner agencies – ATF, FBI, DEA, USMS, BOP, and DHS/ICE – to rank those individual gangs posing the greatest regional and national threats and then target them aggressively for law enforcement action. GangTECC does not publish its list outside of law enforcement circles to prevent a gang from engaging in violence in an effort to move higher on the list and enhance its violent reputation.

Intelligence indicates that several gangs have ties to drug trafficking organizations. Some ties appear to be stronger than others and relationships between U.S.-based gangs and drug trafficking organizations (DTOs) are not static. Intelligence shows some level of connection between traffickers and gangs such as The Mexican Mafia, Sureños, Nortenos, Barrio Azteca, Hermanos de Pistoleros Latinos, Mexikanemi, Nuestra Familia, and the Texas Syndicate. Overall, gangs are opportunistic and will forge relationships if they are beneficial to the organization. Therefore, while these gangs represent some of the groups that have known ties to DTOs, the list is not comprehensive, as it evolves and opportunities and needs arise.

It is also important to note that according to the 2009 National Gang Threat Assessment, neighborhood-based street gangs remain a significant threat to communities throughout the United States as they continue to account for the largest number of gang members nationwide. These neighborhood based groups may constitute between 70 and 80 percent of the nation's gang membership.

8. **Can you tell us what percentage of crime is conducted by gangs in our country? Do you have a breakdown of what criminal activity they are most engaged in, I assume drugs?**

**Answer:** Crime attributed to gang activity varies from jurisdiction to jurisdiction. However, according to the 2009 National Gang Threat Assessment, criminal gangs commit up to 80 percent of crimes in some communities. Due to varying definitions of gang activity, law enforcement may not know the extent or nature of the crime when it is initially reported and therefore may not attribute the incident to gang activity. In some instances, communities do not acknowledge the presence of gangs and consequently do not report crimes as being gang related. Therefore, it is difficult to accurately assess what percentage of crime is conducted by gangs in a particular community.

Approximately 70 percent of gang members arrested and convicted by FBI Violent Gang Safe Street Task Forces are charged with narcotics violations. However, gangs are opportunistic in their efforts to earn money from illicit activity.

While drug trafficking remains one of the primary sources of income, gangs engage in a variety of other illicit activities that include, but are not limited to, acts of violence such as armed assaults and drive-by shootings in order to protect their drug turf, armed robberies, home invasions, credit card fraud, identity theft, bank fraud, auto theft, prostitution, and alien smuggling. Because gangs are opportunistic, they engage in criminal activities when opportunities present themselves.

9. **How many U.S. based gangs are engaged in smuggling illegal aliens and drugs into our country?**

**Answer:** Although it is difficult to determine exactly how many gangs are engaged in alien and/or drug smuggling into the U.S., a significant number of U.S. based gangs work cooperatively with Mexican Drug Trafficking Organizations (DTOs) and Mexican criminal enterprises to smuggle and/or distribute illegal narcotics and/or aliens in the U.S. In addition to the gangs operating on the Southwest and Northern border, Mexican DTOs, and to a lesser extent Dominican, Jamaican and Colombian DTOs, have infiltrated nearly every major metropolitan area in the nation and serve as principal sources of supplies of narcotics to street gangs. As a result, gangs within the Northeast, Midwest, South and West have direct and consistent access to narcotics. Specifically within the Southwest Border community, law enforcement have identified members of MS-13, the Mexican Mafia, and Barrio Aztecas actively engaged and working in concert with Mexican DTOs in smuggling and trafficking drugs and/or illegal aliens across the Southwest Border.

**10. We all know about the drug violence in Mexico and along the southwest border. How many U.S. based gang are trafficking arms into Mexico?**

**Answer:** As noted previously, gangs are opportunistic in their efforts to earn money from illicit activity. The majority of weapons used by Mexican DTOs are acquired in the U.S., and Mexican DTOs utilize any available source, including U.S. based gangs, to acquire weapons and smuggle them into Mexico. Of the firearms recovered in Mexico and then traced, over 90 percent originate from sources in the U.S. In FY 2009, ATF seized over 2,500 firearms and 265,000 rounds of ammunition destined for the Southwest Border.

**11. How do gangs use the internet, social networking site to communicate and recruit? What can the DoJ do to stop this from happening?**

**Answer:** Street gangs and their members are using the Internet and social networking sites in a variety of ways. The simplest use is to develop a presence on the Internet to promote the gang and to disrespect rival gangs. Gang members post blogs and write rap songs to glorify crimes they have committed for the gang and to gain individual and group respect. Although there is a paucity of data to measure the success of gang recruitment through the Internet and social networking sites, street gangs can connect with individuals outside their normal sphere of influence through the use of these tools. This allows existing gangs to provide guidance and knowledge to individuals seeking to start or grow street gangs. Thirty-two states have passed laws prohibiting the recruitment of gang members. Little data exists to measure whether these laws are effective, or are even being used widely.

Street gangs have used venues such as YouTube.com to post videos of themselves, gang initiations, and other gang crimes. They utilize the blogging area to represent their gang and defend against posted threats. Over the past three years there have been multiple instances where street gangs posted videos threatening law enforcement, posing with firearms and body armor.

Street gangs are also working with organized prison gangs to promote their illegal business ventures both here and abroad. For example, in January 2010, a group calling itself ESR (Eastside Rivas from Riverside, CA) was involved in methamphetamine trafficking with the Mexican Mafia. ESR used MySpace.com to communicate about gang business and rap videos to promote itself.

The Bureau of Justice Assistance (BJA) provides training and technical assistance using subject matter experts to provide awareness, basic, and advanced training to law enforcement regarding the identification, infiltration, investigation, and prosecution of these individuals and groups. The Bureau of Justice Assistance gang training is conducted by the National Gang Center (NGC) and includes a module on Gangs and the Internet. This section of the

curriculum is always well received. Many agencies from the federal, state, local and tribal levels do not understand the degree to which the Internet is used by these groups and the ease with which law enforcement, with proper training, can investigate these crimes within their communities. State, local, and tribal practitioners need additional training in how to identify, investigate, and prosecute the use of the internet by gang members.

#### **Drug Court**

**I am concerned that the President's budget does not include funding for the Drug Court Discretionary Grant Program. As you know, this is a highly effective program at the local level and a highly effective federal program based the reports from the General Accountability Office (GAO).**

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**As a direct result the difficult economic times and the incredible cost of incarceration my home state needs Drug Courts. While I understand the intent of the Problem Solving Court Initiative, why are we moving our focus away from the main issue of substance abuse and mental health in our courts - these issues are plaguing our courts; moving focus away from programs that have been proven to work and save money? Why are we not expanding the Drug Court model when we have yet to finish the job by serving the 1.2 million substance abusing offenders identified by your Department in need of Drug Court?**

**Answer:** OJP has funded drug courts since 1995. Since the inception of the Drug Court Program Office, and later when these functions were transferred to BJA, a total of 2,583 drug court awards have been made to 1,787 different drug court programs. In the last two fiscal years, BJA has been able to fund over 50% of all eligible applicants, which represents a very high funding rate. Of the drug court programs funded under OJP, 95 percent are still operational today. In fiscal year 2010, BJA has placed a priority on building the capacity of existing drug courts to increase participation rates and plans to fund 81 of these drug courts. OJP also allows state and local jurisdictions to use JAG formula funding to support drug courts. In addition, some state legislatures are appropriating state dollars specifically for drug courts. For example, Alabama appropriated \$5.1 million and New Jersey appropriated \$31.4 million to support state drug courts. Within the 36 states with state drug court appropriations, local jurisdictions may want to seek other opportunities to implement problem solving initiatives. Close to 50% of jail and prison inmates are clinically addicted, thus emphasizing the need for the criminal justice system to implement problem solving techniques that will result in better treatment for these offenders. Many of today's court cases involve

individuals with medical, psychological, and social problems that can drive criminal behavior such as addictions, homelessness, or lack of access to mental health treatment. OJP's FY 2011 request for the Problem Solving Court program which supports Drug Court and Mentally Ill Offender Act programs is equal to the FY 2010 enacted funding levels for the Drug Court and Mentally Ill Offender Act programs, demonstrating DOJ's ongoing commitment to these proven strategies. The Problem Solving Court program will help state, tribal and local governments assess their offender populations, and develop evidence-based strategies that bring courts together with other criminal justice, social services, and public health agencies to develop system-wide responses to offenders affected by the problems discussed above. Drug courts are one effective part of this strategy, but not the only one. The Problem Solving Court program will allow state, local and tribal grantees increased flexibility to fund evidence-based strategies that address unique local needs and expand collaboration between drug courts, mental health, and substance abuse providers. Programs funded under the new Problem Solving Courts Initiative may serve as models to other courts nationwide.

**Ranking Member Frank R. Wolf**  
Questions for the Record

**Guantanamo**

1. **You are seeking \$237 million to acquire and begin the activation of the Thomson Correctional Facility in Illinois. While the Bureau of Prisons is in need of maximum security bedspace for its own population, this request is tied directly to a plan to bring some undisclosed number of Guantanamo detainees into the U.S. for continued detention in a portion of this facility controlled by the Department of Defense. What is the estimated cost to acquire the facility, and how much of that would be paid by the Department of Justice?**

**Answer:** The FY 2011 President's Budget includes \$170 million for the Bureau of Prisons (BOP) to acquire and modify the Thompson Correctional Center (Thomson, Illinois) for high security federal prison use. The Department of Justice (DOJ) determined that acquisition of the Thomson facility would reduce the BOP's shortage of high security space. Based on one proposal under consideration, DOJ would assist the Department of Defense (DOD) in utilizing a portion of the Thomson facility for detainee management purposes if a decision is made to transfer detainees from the Guantanamo Bay Naval Base. The BOP would operate the Thomson facility as a high-security prison with federal inmates and make a portion available to DOD to house a limited number of detainees. DOD would be solely responsible for the detainees housed in its separate portion of the facility. However, the facility would be owned by the BOP and the Department intends to pay the acquisition costs.

2. **What is the estimated cost to renovate the entire facility, and how much of that total is requested by DOJ and how much by DOD?**

**Answer:** The FY 2011 President's Budget includes \$170 million for the Bureau of Prisons (BOP) to acquire and modify the Thompson Correctional Center (Thomson, Illinois) for high security federal prison use. The Thomson Correctional Center is a relatively new facility in good condition, built to house high security inmates. Acquiring and converting this facility to meet federal prison standards will allow the BOP to quickly add high security capacity.

Based on one proposal under consideration, the BOP would operate the facility as a high-security prison with federal inmates and make a portion available to the Department of Defense (DOD) to house a limited number of detainees from Guantanamo. DOD would be solely responsible for the detainees housed in its separate portion of the facility and any additional modifications required by DOD.



3. **Would there also be additional costs to activate the prison that would begin in FY11 and extend into FY12? What is the total multi-year cost to activate both the DOJ and DOD sections of the prison? How much of that total is requested for FY11 and how much of that total is to be borne by DOJ and how much by DOD?**

**Answer:** \$67 million is included in the Department's FY 2011 request to activate the Thomson Correctional Center as a U.S. Penitentiary (USP). Activating a prison is a multi-year process that includes many steps from selecting a warden and executive staff, identifying and ordering equipment, meeting with the community, recruiting and training new staff, furnishing and equipping the new facilities, and eventually accepting inmates. USP Thomson will provide up to 1,600 high security cells when fully activated and operational.

The FY 2011 request funds first-year costs, including the one-time costs of equipping the facility, conducting background investigations for new employees and providing standard law enforcement training. One-time costs are non-recurring the following year in accordance with future needs. The Bureau of Prisons estimates that \$122 million is the full activation cost for USP Thomson.

4. **What is the grand total amount requested in FY11 (including amounts requested by both DOJ and by other Departments and agencies) to relocate the detainee population from Guantanamo to the United States?**

**Answer:** The FY 2011 President's Budget includes a planning estimate of \$72.8 million for the anticipated increases in security and prosecutorial costs associated with high security threat trials. The requested resources will finance a variety of functions, including transportation and prisoner production, prisoner housing, security, litigation, and other costs associated with high threat trials. The Department does not know what resources are requested in the FY 2011 President's Budget by other federal agencies to relocate the detainee population from the Guantanamo Bay Naval Base to the United States.

**Interrogation Policy**

5. One of the DOJ-led interagency task forces set up by executive order was on Interrogation Policy. This task force finished its work last year. Did that task force make recommendations to the President and did the President approve those recommendations?

**Answer:** The Special Task Force on Interrogation and Transfer Policies established by the President under Executive Order 13491 issued a report that made recommendations to the President on August 24, 2009. Task Force officials briefed various committees and many members of Congress about the contents of their report and recommendations to the President at the time it was issued. The President approved the Task Force recommendations.

6. Can you please provide for the record any written documentation that exists as to what specific recommendations were approved by the President and what our new national policy on interrogation is?

**Answer:** The President made clear in Executive Order 13491 and his May 2009 speech at the National Archives that non-law enforcement agencies, including the U.S. military, are to conduct interrogations consistent with the Army Field Manual, and that the FBI and other federal law enforcement officials may continue to use authorized, non-coercive techniques of interrogation that are designed to elicit voluntary statements and do not involve the use of force, threats, or promises. In his speech, the President emphasized that he had banned the use of "enhanced interrogation techniques," such as water boarding, stating that they undermine the rule of law and our counterterrorism efforts.

The interagency Special Task Force appointed by the President unanimously concluded that the Army Field Manual provides appropriate guidance on interrogation for military interrogators and that no additional or different guidance is necessary for other agencies. These conclusions rested on the Task Force's unanimous assessment that the practices and techniques identified by the Army Field Manual or those that are currently used by law enforcement provide adequate and effective means of conducting interrogations.

follows

A copy of the President's May 2009 speech is attached. We also will be happy to provide the Army Field Manual if it would be helpful to the Committee.

THE WHITE HOUSE  
Office of the Press Secretary

For Immediate Release May 21, 2009

REMARKS BY THE PRESIDENT  
ON NATIONAL SECURITYNational Archives  
Washington, D.C.

10:28 A.M. EDT

THE PRESIDENT: Good morning, everybody. Please be seated. Thank you all for being here. Let me just acknowledge the presence of some of my outstanding Cabinet members and advisors. We've got our Secretary of State, Hillary Clinton. We have our CIA Director Leon Panetta. We have our Secretary of Defense William Gates; Secretary Napolitano of Department of Homeland Security; Attorney General Eric Holder, my National Security Advisor Jim Jones. And I want to especially thank our Acting Archivist of the United States, Adrienne Thomas.

I also want to acknowledge several members of the House who have great interest in intelligence matters. I want to thank Congressman Reyes, Congressman Hoekstra, Congressman King, as well as Congressman Thompson, for being here today. Thank you so much.

These are extraordinary times for our country. We're confronting a historic economic crisis. We're fighting two wars. We face a range of challenges that will define the way that Americans will live in the 21st century. So there's no shortage of work to be done, or responsibilities to bear.

And we've begun to make progress. Just this week, we've taken steps to protect American consumers and homeowners, and to reform our system of government contracting so that we better protect our people while spending our money more wisely. (Applause.) The -- it's a good bill. (Laughter.) The engines of our economy are slowly beginning to turn, and we're working towards historic reform on health care and on energy. I want to say to the members of Congress, I welcome all the extraordinary work that has been done over these last four months on these and other issues.

In the midst of all these challenges, however, my single most important responsibility as President is to keep the American people safe. It's the first thing that I think about when I wake up in the morning. It's the last thing that I think about when I go to sleep at night.

And this responsibility is only magnified in an era when an extremist ideology threatens our people, and technology gives a handful of terrorists the potential to do us great harm. We are less than eight years removed from the deadliest attack on American soil in our history. We know that al Qaeda is actively planning to attack us again. We know that this threat will be with us for a long time, and that we must use all elements of our power to defeat it.

Already, we've taken several steps to achieve that goal. For the first time since 2002, we're providing the necessary resources and strategic direction to take the fight to the extremists who attacked us on 9/11 in Afghanistan and Pakistan. We're investing in the 21st century military and intelligence capabilities that will allow us to stay one step ahead of a nimble enemy. We have re-energized a global non-proliferation regime to deny the world's most dangerous people access to the world's deadliest weapons. And we've launched an effort to secure all loose nuclear materials within four years. We're better protecting our border, and increasing our preparedness for any future attack or natural disaster. We're building new partnerships around the world to disrupt, dismantle, and defeat al Qaeda and its affiliates. And we have renewed American diplomacy so that we once again have the strength and standing to truly lead the world.

These steps are all critical to keeping America secure. But I believe with every fiber of my being that in the long run we also cannot keep this country safe unless we enshrine the power of our most fundamental values. The documents that we hold in this very hall -- the Declaration of Independence, the Constitution, the Bill of Rights -- these are not simply words written into aging parchment. They are the foundation of liberty and justice in this country, and a light that shines for all who seek freedom, fairness, equality, and dignity around the world.

I stand here today as someone whose own life was made possible by these documents. My father came to these shores in search of the promise that they offered. My mother made me rise before dawn to learn their truths when I lived as a child in a foreign land. My own American journey was paved by generations of citizens who gave meaning to those simple words -- "to form a more perfect union." I've studied the Constitution as a student, I've taught it as a teacher, I've been bound by it as a lawyer and a legislator. I took an oath to preserve, protect, and defend the Constitution as Commander-in-Chief, and as a citizen, I know that we must never, ever, turn our back on its enduring principles for expedience sake.

I make this claim not simply as a matter of idealism. We uphold our most cherished values not only because doing so is right, but because it strengthens our country and it keeps us safe. Time and again, our values have been our best national security asset -- in war and peace, in times of ease and in eras of upheaval.

Fidelity to our values is the reason why the United States of America grew from a small string of colonies under the writ of an empire to the strongest nation in the world.

It's the reason why enemy soldiers have surrendered to us in battle, knowing they'd receive better treatment from America's Armed Forces than from their own government.

It's the reason why America has benefitted from strong alliances that amplified our power, and drawn a sharp, moral contrast with our adversaries.

It's the reason why we've been able to overpower the iron fist of fascism and outlast the iron curtain of communism, and enlist free nations and free peoples everywhere in the common cause and common effort of liberty.

From Europe to the Pacific, we've been the nation that has shut down torture chambers and replaced tyranny with the rule of law. That is who we are. And where terrorists offer only the injustice of disorder and destruction, America must demonstrate that our values and our institutions are more resilient than a hateful ideology.

After 9/11, we knew that we had entered a new era -- that enemies who did not abide by any law of war would present new challenges to our application of the law; that our government would need new tools to protect the American people, and that these tools would have to allow us to prevent attacks instead of simply prosecuting those who try to carry them out.

Unfortunately, faced with an uncertain threat, our government made a series of hasty decisions. I believe that many of these decisions were motivated by a sincere desire to protect the American people. But I also believe that all too often our government made decisions based on fear rather than foresight; that all too often our government trimmed facts and evidence to fit ideological predispositions. Instead of strategically applying our power and our principles, too often we set those principles aside as luxuries that we could no longer afford. And during this season of fear, too many of us -- Democrats and Republicans, politicians, journalists, and citizens -- fell silent.

In other words, we went off course. And this is not my assessment alone. It was an assessment that was shared by the American people who nominated candidates for President from both major parties who, despite our many differences, called for a new approach -- one that rejected torture and one that recognized the imperative of closing the prison at Guantanamo Bay.

Now let me be clear: We are indeed at war with al Qaeda and its affiliates. We do need to update our institutions to deal with this threat. But we must do so with an abiding confidence in the rule of law and due process, in checks and balances and accountability. For reasons that I will explain, the decisions that were made over the last eight years established an ad hoc legal approach for fighting terrorism that was neither effective nor sustainable -- a framework that failed to rely on our legal traditions and time-tested institutions, and that failed to use our values as a compass. And that's why I took several steps upon taking office to better protect the American people.

First, I banned the use of so-called enhanced interrogation techniques by the United States of America. (Applause.)

I know some have argued that brutal methods like waterboarding were necessary to keep us safe. I could not disagree more. As Commander-in-Chief, I see the intelligence. I bear the responsibility for keeping this country safe. And I categorically reject the assertion that these are the most effective means of interrogation. (Applause.) What's more, they undermine the rule of law. They alienate us in the world. They serve as a recruitment tool for terrorists, and increase the will of our enemies to fight us, while decreasing the will of others to work with America. They risk the lives of our troops by making it less likely that others will surrender to them in battle, and more likely that Americans will be mistreated if they are captured. In short, they did not advance our war and counterterrorism efforts -- they undermined them, and that is why I ended them once and for all. (Applause.)

Now, I should add, the arguments against these techniques did not originate from my administration. As Senator McCain once said, torture "serves as a great propaganda tool for those who recruit people to fight against us." And even under President Bush, there was recognition among members of his own administration -- including a Secretary of State, other senior officials, and many in the military and intelligence community -- that those who argued for these tactics were on the wrong side of the debate, and the wrong side of history. That's why we must leave these methods where they belong -- in the past. They are not who we are, and they are not America.

The second decision that I made was to order the closing of the prison camp at Guantanamo Bay. (Applause.)

For over seven years, we have detained hundreds of people at Guantanamo. During that time, the system of military commissions that were in place at Guantanamo succeeded in convicting a grand total of three suspected terrorists. Let me repeat that: three convictions in over seven years. Instead of bringing terrorists to justice, efforts at prosecution met setback after setback, cases lingered on, and in 2005 the Supreme Court invalidated the entire system. Meanwhile, over 525 detainees were released from Guantanamo under not my administration, under the previous administration. Let me repeat that: Two-thirds of the detainees were released before I took office and ordered the closure of Guantanamo.

There is also no question that Guantanamo set back the moral authority that is America's strongest currency in the world. Instead of building a durable framework for the struggle against al Qaeda that drew upon our deeply held values and traditions, our government was defending positions that undermined the rule of law. In fact, part of the rationale for establishing Guantanamo in the first place was the misplaced notion that a prison there would be beyond the law -- a proposition that the Supreme Court soundly rejected. Meanwhile, instead of serving as a tool to counter terrorism, Guantanamo became a symbol that helped al Qaeda recruit terrorists to its cause. Indeed, the existence of Guantanamo likely created more terrorists around the world than it ever detained.

So the record is clear: Rather than keeping us safer, the prison at Guantanamo has weakened American national security. It is a rallying cry for our enemies. It sets back the willingness of our allies to work with us in fighting an enemy that operates in scores of countries. By any measure, the costs of keeping it open far exceed the complications involved in closing it. That's why I argued that it should be closed throughout my campaign, and that is why I ordered it closed within one year.

The third decision that I made was to order a review of all pending cases at Guantanamo. I knew when I ordered Guantanamo closed that it would be difficult and complex. There are 240 people there who have now spent years in legal limbo. In dealing with this situation, we don't have the luxury of starting from scratch. We're cleaning up something that is, quite simply, a mess -- a misguided experiment that has left in its wake a flood of legal challenges that my administration is forced to deal with on a constant, almost daily basis, and it consumes the time of government officials whose time should be spent on better protecting our country.

Indeed, the legal challenges that have sparked so much debate in recent weeks here in Washington would be taking place whether or not I decided to close Guantanamo. For example, the court order to release 17 Uighurs -- 17 Uighur detainees took place last fall, when George Bush was President. The Supreme Court that invalidated the system of prosecution at Guantanamo in 2006 was overwhelmingly appointed by Republican Presidents -- not wild-eyed liberals. In other words, the problem of what to do with Guantanamo detainees was not caused by my decision to close the facility; the problem exists because of the decision to open Guantanamo in the first place. (Applause.)

Now let me be blunt. There are no neat or easy answers here. I wish there were. But I can tell you that the wrong answer is to pretend like this problem will go away if we maintain an unsustainable status quo. As President, I refuse to allow this problem to fester. I refuse to pass it on to somebody else. It is my responsibility to solve the problem. Our security interests will not permit us to delay. Our courts won't allow it. And neither should our conscience.

Now, over the last several weeks, we've seen a return of the politicization of these issues that have characterized the last several years. I'm an elected official; I understand these problems arouse passions and concerns. They should. We're confronting some of the most complicated questions that a democracy can face. But I have no interest in spending all of our time re-litigating the policies of the last eight years. I'll leave that to others. I want to solve these problems, and I want to solve them together as Americans.

And we will be ill-served by some of the fear-mongering that emerges whenever we discuss this issue. Listening to the recent debate, I've heard words that, frankly, are calculated to scare people rather than educate them, words that have more to do with politics than protecting our country. So I want to take this opportunity to lay out what we are doing, and how we intend to resolve these outstanding issues. I will explain how each action that we are taking will help build a framework that protects both the American people and the values that we hold most dear. And I'll focus on two broad areas. First, issues relating to Guantanamo and our detention policy, but, second, I also want to discuss issues relating to security and transparency.

Now, let me begin by disposing of one argument as plainly as I can: We are not going to release anyone if it would endanger our national security, nor will we release detainees within the United States who endanger the American people. Where demanded by justice and national security, we will seek to transfer some detainees to the same type of facilities in which we hold all manner of dangerous and violent criminals within our borders -- namely, highly secure prisons that ensure the public safety.

As we make these decisions, bear in mind the following fact: Nobody has ever escaped from one of our federal, supermax prisons, which hold hundreds of convicted terrorists. As Republican Lindsey Graham said, the idea that we cannot find a place to securely house 250-plus detainees within the United States is not rational.

We are currently in the process of reviewing each of the detainee cases at Guantanamo to determine the appropriate policy for dealing with them. And as we do so, we are acutely aware that under the last administration, detainees were released and, in some cases, returned to the battlefield. That's why we are doing away with the poorly planned, haphazard approach that let those detainees go in the past. Instead we are treating these cases with the care and attention that the law requires and that our security demands.

Now, going forward, these cases will fall into five distinct categories.

First, whenever feasible, we will try those who have violated American criminal laws in federal courts -- courts provided for by the United States Constitution. Some have derided our federal courts as incapable of handling the trials of terrorists. They are wrong. Our courts and our juries, our citizens, are tough enough to convict terrorists. The record makes that clear. Ramzi Yousef tried to blow up the World Trade Center. He was convicted in our courts and is serving a life sentence in U.S. prisons. Zacarias Moussaoui has been identified as the 20th 9/11 hijacker. He was convicted in our courts, and he too is serving a life sentence in prison. If we can try those terrorists in our courts and hold them in our prisons, then we can do the same with detainees from Guantanamo.

Recently, we prosecuted and received a guilty plea from a detainee, al-Marni, in federal court after years of legal confusion. We're preparing to transfer another detainee to the Southern District Court of New York, where he will face trial on charges related to the 1998 bombings of our embassies in Kenya and Tanzania -- bombings that killed over 200 people. Preventing this detainee from coming to our shores would prevent his trial and conviction. And after over a decade, it is time to finally see that justice is served, and that is what we intend to do. (Applause.)

The second category of cases involves detainees who violate the laws of war and are therefore best tried through military commissions. Military commissions have a history in the United States dating back to George Washington and the Revolutionary War. They are an appropriate venue for trying detainees for violations of the laws of war. They allow for the protection of sensitive sources and methods of intelligence-gathering; they allow for the safety and security of participants; and for the presentation of evidence gathered from the battlefield that cannot always be effectively presented in federal courts.

Now, some have suggested that this represents a reversal on my part. They should look at the record. In 2006, I did strongly oppose legislation proposed by the Bush administration and passed by the Congress because it failed to establish a legitimate legal framework, with the kind of meaningful due process rights for the accused that could stand up on appeal.

I said at that time, however, that I supported the use of military commissions to try detainees, provided there were several reforms, and in fact there were some bipartisan efforts to achieve those reforms. Those are the reforms that we are now making. Instead of using the flawed commissions of the last seven years, my administration is bringing our commissions in line with the rule of law. We will no longer permit the use of evidence -- as evidence statements that have been obtained using cruel, inhuman, or degrading interrogation methods. We will no longer place the burden to prove that hearsay is unreliable on the opponent of the hearsay. And we will give detainees greater latitude in selecting their own counsel, and more protections if they refuse to testify. These reforms, among others, will make our military commissions a more credible and effective means of administering justice, and I will work with Congress and members of both parties, as well as legal authorities across the political spectrum, on legislation to ensure that these commissions are fair, legitimate, and effective.

The third category of detainees includes those who have been ordered released by the courts. Now, let me repeat what I said earlier. This has nothing to do with my decision to close Guantanamo. It has to do with the rule of law. The courts have spoken. They have found that

there's no legitimate reason to hold 21 of the people currently held at Guantanamo. Nineteen of these findings took place before I was sworn into office. I cannot ignore these rulings because as President, I too am bound by the law. The United States is a nation of laws and so we must abide by these rulings.

The fourth category of cases involves detainees who we have determined can be transferred safely to another country. So far, our review team has approved 50 detainees for transfer. And my administration is in ongoing discussions with a number of other countries about the transfer of detainees to their soil for detention and rehabilitation.

Now, finally, there remains the question of detainees at Guantanamo who cannot be prosecuted yet who pose a clear danger to the American people. And I have to be honest here -- this is the toughest single issue that we will face. We're going to exhaust every avenue that we have to prosecute those at Guantanamo who pose a danger to our country. But even when this process is complete, there may be a number of people who cannot be prosecuted for past crimes, in some cases because evidence may be tainted, but who nonetheless pose a threat to the security of the United States. Examples of that threat include people who've received extensive explosives training at al Qaeda training camps, or commanded Taliban troops in battle, or expressed their allegiance to Osama bin Laden, or otherwise made it clear that they want to kill Americans. These are people who, in effect, remain at war with the United States.

Let me repeat: I am not going to release individuals who endanger the American people. Al Qaeda terrorists and their affiliates are at war with the United States, and those that we capture -- like other prisoners of war -- must be prevented from attacking us again. Having said that, we must recognize that these detention policies cannot be unbounded. They can't be based simply on what I or the executive branch decide alone. That's why my administration has begun to reshape the standards that apply to ensure that they are in line with the rule of law. We must have clear, defensible, and lawful standards for those who fall into this category. We must have fair procedures so that we don't make mistakes. We must have a thorough process of periodic review, so that any prolonged detention is carefully evaluated and justified.

I know that creating such a system poses unique challenges. And other countries have grappled with this question; now, so must we. But I want to be very clear that our goal is to construct a legitimate legal framework for the remaining Guantanamo detainees that cannot be transferred. Our goal is not to avoid a legitimate legal framework. In our constitutional system, prolonged detention should not be the decision of any one man. If and when we determine that the United States must hold individuals to keep them from carrying out an act of war, we will do so within a system that involves judicial and congressional oversight. And so, going forward, my administration will work with Congress to develop an appropriate legal regime so that our efforts are consistent with our values and our Constitution.

Now, as our efforts to close Guantanamo move forward, I know that the politics in Congress will be difficult. These are issues that are fodder for 30-second commercials. You can almost picture the direct mail pieces that emerge from any vote on this issue -- designed to frighten the population. I get it. But if we continue to make decisions within a climate of fear, we will make more mistakes. And if we refuse to deal with these issues today, then I guarantee you that they will be an albatross around our efforts to combat terrorism in the future.

I have confidence that the American people are more interested in doing what is right to protect this country than in political posturing. I am not the only person in this city who swore an oath to uphold the Constitution -- so did each and every member of Congress. And together we have a responsibility to enlist our values in the effort to secure our people, and to leave behind the legacy that makes it easier for future Presidents to keep this country safe.

Now, let me touch on a second set of issues that relate to security and transparency.

National security requires a delicate balance. One the one hand, our democracy depends on transparency. On the other hand, some information must be protected from public disclosure for the sake of our security -- for instance, the movement of our troops, our intelligence-gathering, or the information we have about a terrorist organization and its affiliates. In these and other cases, lives are at stake.

Now, several weeks ago, as part of an ongoing court case, I released memos issued by the previous administration's Office of Legal Counsel. I did not do this because I disagreed with the enhanced interrogation techniques that those memos authorized, and I didn't release the documents because I rejected their legal rationales -- although I do on both counts. I released the memos because the existence of that approach to interrogation was already widely known, the Bush administration had acknowledged its existence, and I had already banned those methods. The argument that somehow by releasing those memos we are providing terrorists with information about how they will be interrogated makes no sense. We will not be interrogating terrorists using that approach. That approach is now prohibited.

In short, I released these memos because there was no overriding reason to protect them. And the ensuing debate has helped the American people better understand how these interrogation methods came to be authorized and used.

On the other hand, I recently opposed the release of certain photographs that were taken of detainees by U.S. personnel between 2002 and 2004. Individuals who violated standards of behavior in these photos have been investigated and they have been held accountable. There was and is no debate as to whether what is reflected in those photos is wrong. Nothing has been concealed to absolve perpetrators of crimes. However, it was my judgment -- informed by my national security team -- that releasing these photos would inflame anti-American opinion and allow our enemies to paint U.S. troops with a broad, damning, and inaccurate brush, thereby endangering them in theaters of war.

In short, there is a clear and compelling reason to not release these particular photos. There are nearly 200,000 Americans who are serving in harm's way, and I have a solemn responsibility for their safety as Commander-in-Chief. Nothing would be gained by the release of these photos that matters more than the lives of our young men and women serving in harm's way.

Now, in the press's mind and in some of the public's mind, these two cases are contradictory. They are not to me. In each of these cases, I had to strike the right balance between transparency and national security. And this balance brings with it a precious responsibility. There's no doubt that the American people have seen this balance tested over the last several years. In the images from Abu Ghraib and the brutal interrogation techniques made public long before I was President, the American people learned of actions taken in their name that bear no resemblance to the ideals that generations of Americans have fought for. And whether it was the run-up to the Iraq war or the

revelation of secret programs, Americans often felt like part of the story had been unnecessarily withheld from them. And that caused suspicion to build up. And that leads to a thirst for accountability.

I understand that. I ran for President promising transparency, and I meant what I said. And that's why, whenever possible, my administration will make all information available to the American people so that they can make informed judgments and hold us accountable. But I have never argued -- and I never will -- that our most sensitive national security matters should simply be an open book. I will never abandon -- and will vigorously defend -- the necessity of classification to defend our troops at war, to protect sources and methods, and to safeguard confidential actions that keep the American people safe. Here's the difference though. Whenever we cannot release certain information to the public for valid national security reasons, I will insist that there is oversight of my actions -- by Congress or by the courts.

We're currently launching a review of current policies by all those agencies responsible for the classification of documents to determine where reforms are possible, and to assure that the other branches of government will be in a position to review executive branch decisions on these matters. Because in our system of checks and balances, someone must always watch over the watchers -- especially when it comes to sensitive administration -- information.

Now, along these same lines, my administration is also confronting challenges to what is known as the "state secrets" privilege. This is a doctrine that allows the government to challenge legal cases involving secret programs. It's been used by many past Presidents -- Republican and Democrat -- for many decades. And while this principle is absolutely necessary in some circumstances to protect national security, I am concerned that it has been over-used. It is also currently the subject of a wide range of lawsuits. So let me lay out some principles here. We must not protect information merely because it reveals the violation of a law or embarrassment to the government. And that's why my administration is nearing completion of a thorough review of this practice.

And we plan to embrace several principles for reform. We will apply a stricter legal test to material that can be protected under the state secrets privilege. We will not assert the privilege in court without first following our own formal process, including review by a Justice Department committee and the personal approval of the Attorney General. And each year we will voluntarily report to Congress when we have invoked the privilege and why because, as I said before, there must be proper oversight over our actions.

On all these matters related to the disclosure of sensitive information, I wish I could say that there was some simple formula out there to be had. There is not. These often involve tough calls, involve competing concerns, and they require a surgical approach. But the common thread that runs through all of my decisions is simple: We will safeguard what we must to protect the American people, but we will also ensure the accountability and oversight that is the hallmark of our constitutional system. I will never hide the truth because it's uncomfortable. I will deal with Congress and the courts as co-equal branches of government. I will tell the American people what I know and don't know, and when I release something publicly or keep something secret, I will tell you why. (Applause.)

Now, in all the areas that I've discussed today, the policies that I've proposed represent a new direction from the last eight years. To protect the American people and our values, we've banned enhanced interrogation techniques. We are closing the prison at Guantanamo. We are reforming military commissions, and we will pursue a new legal regime to detain terrorists. We are declassifying more information and embracing more oversight of our actions, and we're narrowing our use of the state secrets privilege. These are dramatic changes that will put our approach to national security on a surer, safer, and more sustainable footing. Their implementation will take time, but they will get done.

There's a core principle that we will apply to all of our actions. Even as we clean up the mess at Guantanamo, we will constantly reevaluate our approach, subject our decisions to review from other branches of government, as well as the public. We seek the strongest and most sustainable legal framework for addressing these issues in the long term -- not to serve immediate politics, but to do what's right over the long term. By doing that we can leave behind a legacy that outlasts my administration, my presidency, that endures for the next President and the President after that -- a legacy that protects the American people and enjoys a broad legitimacy at home and abroad.

Now, this is what I mean when I say that we need to focus on the future. I recognize that many still have a strong desire to focus on the past. When it comes to actions of the last eight years, passions are high. Some Americans are angry, others want to re-fight debates that have been settled, in some cases debates that they have lost. I know that these debates lead directly, in some cases, to a call for a fuller accounting, perhaps through an independent commission.

I've opposed the creation of such a commission because I believe that our existing democratic institutions are strong enough to deliver accountability. The Congress can review abuses of our values, and there are ongoing inquiries by the Congress into matters like enhanced interrogation techniques. The Department of Justice and our courts can work through and punish any violations of our laws or miscarriages of justice.

It's no secret there is a tendency in Washington to spend our time pointing fingers at one another. And it's no secret that our media culture feeds the impulse that lead to a good fight and good copy. But nothing will contribute more than that than an extended relitigation of the last eight years. Already, we've seen how that kind of effort only leads those in Washington to different sides to laying blame. It can distract us from focusing our time, our efforts, and our politics on the challenges of the future.

We see that, above all, in the recent debate -- how the recent debate has obscured the truth and sends people into opposite and absolutist ends. On the one side of the spectrum, there are those who make little allowance for the unique challenges posed by terrorism, and would almost never put national security over transparency. And on the other end of the spectrum, there are those who embrace a view that can be summarized in two words, "Anything goes." Their arguments suggest that the ends of fighting terrorism can be used to justify any means, and that the President should have blanket authority to do whatever he wants -- provided it is a President with whom they agree.

Both sides may be sincere in their views, but neither side is right. The American people are not absolutist, and they don't elect us to impose a rigid ideology on our problems. They know that we need not sacrifice our security for our values, nor sacrifice our values for our security, so long as we approach difficult questions with honesty and care and a dose of common sense. That, after all, is the unique genius of America. That's the challenge laid down by our Constitution. That has been the source of our strength through the ages. That's what makes the United States of America different as a nation.

I can stand here today, as President of the United States, and say without exception or equivocation that we do not torture, and that we will vigorously protect our people while forging a strong and durable framework that allows us to fight terrorism while abiding by the rule of law. Make no mistake: If we fail to turn the page on the approach that was taken over the past several years, then I will not be able to say that as President. And if we cannot stand for our core values, then we are not keeping faith with the documents that are enshrined in this hall. (Applause.)

The Framers who drafted the Constitution could not have foreseen the challenges that have unfolded over the last 222 years. But our Constitution has endured through secession and civil rights, through World War and Cold War, because it provides a foundation of principles that can be applied pragmatically; it provides a compass that can help us find our way. It hasn't always been easy. We are an imperfect people. Every now and then, there are those who think that America's safety and success requires us to walk away from the sacred principles enshrined in this building. And we hear such voices today. But over the long haul the American people have resisted that temptation. And though we've made our share of mistakes, required some course corrections, ultimately we have held fast to the principles that have been the source of our strength and a beacon to the world.

Now this generation faces a great test in the specter of terrorism. And unlike the Civil War or World War II, we can't count on a surrender ceremony to bring this journey to an end. Right now, in distant training camps and in crowded cities, there are people plotting to take American lives. That will be the case a year from now, five years from now, and -- in all probability -- 10 years from now. Neither I nor anyone can stand here today and say that there will not be another terrorist attack that takes American lives. But I can say with certainty that my administration -- along with our extraordinary troops and the patriotic men and women who defend our national security -- will do everything in our power to keep the American people safe. And I do know with certainty that we can defeat al Qaeda. Because the terrorists can only succeed if they swell their ranks and alienate America from our allies, and they will never be able to do that if we stay true to who we are, if we forge tough and durable approaches to fighting terrorism that are anchored in our timeless ideals. This must be our common purpose.

I ran for President because I believe that we cannot solve the challenges of our time unless we solve them together. We will not be safe if we see national security as a wedge that divides America -- it can and must be a cause that unites us as one people and as one nation. We've done so before in times that were more perilous than ours. We will do so once again.

Thank you, God bless you, and God bless the United States of America. (Applause.)

END  
11:17 A.M. EDT



7. **Can you give the Committee a description of what our new interrogation policy is, and how it is being and will be applied when opportunities arise for terrorism suspects to be interrogated both here in the U.S. and abroad?**

**Answer:** Please see #6 above.

8. **The press announcement materials provided to the Congress last fall stated that the “principal function” of interrogations of High Value Detainees is “intelligence gathering rather than law enforcement”. Can you define “high value detainee”, and explain how this policy applied or did not apply to the Abdulmutallab case, where it appears that the decisions taken on his interrogation were made by the Justice Department, and did not involve extensive interagency intelligence-gathering interrogation?**

**Answer:** The HIG selection criteria defining “high value detainee” are classified, but generally speaking, a high value detainee is someone who is assessed to have information with the greatest potential to prevent terrorist attacks against the United States and its allies. The primary responsibility of the HIG is to deploy expert Mobile Interrogation Teams, or “MITs,” to interrogate high value detainees previously identified as having such information. The MITs’ primary objective is the collection of intelligence to prevent terrorist attacks, but where possible and consistent with the HIG’s primary objective, MITs will collect intelligence in a manner that allows it to be used as evidence in a criminal prosecution and they will preserve evidence for use in a criminal prosecution. The MITs will bring together the most experienced interrogators, analysts, subject matter experts, and linguists from across the Intelligence Community, the Department of Defense and the Federal Bureau of Investigation.

As of Christmas Day last year, when Abdulmutallab was apprehended, the HIG and MITs were not yet operational. Even if they had been, given the urgency of the situation, it would not have been appropriate to delay the interrogation until a mobile interrogation team could be flown in. Indeed, the MITs are not intended to be “first responders.” The FBI had extremely capable people in place who questioned Abdulmutallab immediately, and Abdulmutallab provided intelligence to those interrogators. The FBI also has the ability to leverage expertise from across the government – intelligence, military, and law enforcement – to effectively question terrorism suspects, regardless of whose custody they are in. This interdisciplinary approach has been used very effectively in the Abdulmutallab case, drawing on the expertise of other parts of the Intelligence Community, to develop an effective interrogation strategy tailored to the particular circumstances at hand. That strategy has worked well in this case. We expect that the HIG’s Mobile Interrogation Teams will formalize and strengthen this interagency cooperation and expertise, as they deploy to support interrogations of terrorism suspects.

- 9. It has been said that there was not time to conduct such an interrogation. What was the imperative(s) that placed a limit on the amount of time that Abdulmutallab could continue to be interrogated?**

**Answer:** When Flight 253 landed in Detroit, the men and women of the FBI and the Department of Justice did precisely what they are trained to do, what their policies require them to do, and what this nation expects them to do. In the face of the emergency, they acted quickly and decisively to ensure the detention and incapacitation of a would-be bomber and to interrogate him to protect public safety. At that point, our primary focus was on immediately protecting the public and ensuring that the threat had been appropriately contained. In light of the immediate public safety concerns, FBI agents interviewed Abdulmutallab without providing *Miranda* warnings, as permitted under the "public safety" exception to the *Miranda* rule that has been recognized by the courts, and he provided intelligence. They did not terminate that interview because of any invocation of rights by Abdulmutallab.

Although Abdulmutallab later declined to cooperate, as the American people now know, the FBI did not halt its efforts to collect intelligence from Abdulmutallab after that first day. From the time of his arrest, there was a concerted, interagency effort that used all available resources, including those of other members of the Intelligence Community, to develop an interrogation approach that would work, and it has worked. As a result, Abdulmutallab provided additional intelligence to the FBI that is being used to help protect our country. There is no evidence that any other lawful approach would have been more successful or would have produced intelligence more quickly.

- 10. In the wake of the Christmas day incident, the President ordered an interagency review. Nothing provided to the Congress indicated that the interrogation was part of that review. Did the President's review of this matter include a review to determine whether we maximized the intelligence gained from Mr. Abdulmutallab by the choices and decisions made regarding his interrogation and charging? If so, what were the findings and recommendations for corrective action, and have those corrective actions been taken?**

**Answer:** The January 7, 2010 Summary of the White House Review of the December 25, 2009 attempted terrorist attack addressed a variety of issues leading up to the incident; it did not address the later ongoing interrogation of Abdulmutallab. The interrogation strategy for Abdulmutallab has worked and has produced intelligence that we are using to help protect the country.

- 11. One recommendation of the Interrogation Task Force last year was the creation of a High-Value Detainee Interrogation Group. Has this Group been formally established? Please provide for the record any Charter or MOU that describes the purpose and operations of this Group.**

**Answer:** The HIG Charter is still in the process of being finalized, though the basic concept for its operations was approved in January 2010.

#### Gangs

- 12. In FY10 report language the Committee asked you to ensure that DOJ entities reexamine and reach consensus on their roles and responsibilities in anti-gang efforts. This applies not only to the FBI, ATF and the Criminal Division, which received significant increases above the request for gang programs, but also to the interagency National Gang Intelligence Center and GangTECC. Has there been a reexamination of roles, and what changes, if any, are being made?**

**Answer:** Keeping our communities safe remains a core mission of the Justice Department at a time when far too many neighborhoods across this country are confronting the destructive effects of drugs and violence associated with gangs. The Department employs a crosscutting approach to its anti-gang efforts which requires regular coordination amongst components, offices, and agencies at both a programmatic and an operational level to ensure each one is clear on its discrete role and responsibilities in anti-gang efforts. During the last six months, the Department has taken the following steps to reexamine roles and responsibilities of DOJ entities in anti-gang efforts:

The Attorney General's Anti-Gang Coordination Committee (AGCC), which meets at least quarterly, is responsible for ensuring programmatic coordination amongst our components, offices, and agencies. At its meeting on November 16, 2009, the Chair of the AGCC asked each of the DOJ headquarters-level anti-gang coordinating entities to make a presentation to the group on its discrete role and responsibilities.

To ensure better coordination, the Federal Bureau of Investigation co-located its MS-13 National Gang Task Force with the National Gang Intelligence Center (NGIC) and GangTECC.

The managing components of NGIC and GangTECC agreed that establishing a partnership with the OCDETF Fusion Center and Special Operations Division could potentially alleviate many of the management challenges identified in a November 2009 Report of the Office of the Inspector General. In response, the Department initiated a process with the participating members of NGIC/GangTECC to solicit their input on whether such a partnership should go

forward, the terms of any partnership, and the development of an implementation plan for any resulting partnership.

To ensure better coordination, the Department initiated a process to actively consider merging the Gang Unit and GangTECC into a single Criminal Division Component.

**13. Are you seeking any increases in your FY11 request that are specifically targeted at anti-gang activities?**

**Answer:** The Department remains committed to combating violent gangs and is seeking increases that specifically target anti-gang activities. These requests support a range of anti-gang activities including enforcement, prosecution, and prevention initiatives.

The Federal Bureau of Investigation (FBI) is requesting funding for two positions to provide forensic support for violent crime and gang investigations in Indian Country. The FBI is also requesting reimbursable funding from the Department of Interior to support 81 additional positions, including 45 agents, to investigate violent crime and gangs in Indian Country. These additional resources will allow the Department to better combat gang activity in Indian Country.

Additionally, the Department is requesting \$12 million in grant funding to support state and local programs aimed at the prevention, intervention and suppression of gangs, as well as reentry in targeted communities. This initiative will enhance and support evidence-based multimodal direct service programs that target both youth at-risk of gang membership and youth already involved in gangs.

The Department also requests funding to support two additional litigators and one additional support staff for the Criminal Division's Gang Unit. These additional litigators will not only prosecute complex gang cases but also provide support to federal, state, and local law enforcement and prosecutors as they seek to combat gang activity.

Finally, \$11.8 million is also requested to fully fund the three Project Gunrunner teams that were stood up in the Southwest Border with one time funding provided by the American Recovery and Reinvestment Act (ARRA). ATF's Project Gunrunner combats firearms trafficking by investigating the sources of trafficked firearms, identified through trace related intelligence, and will likely lead to gang investigations and prosecutions.

- 14. The National Gang Threat Assessment found that gangs traffic illicit drugs at the regional and national levels and several are capable of competing with U.S.-based Mexican drug trafficking organizations. It also states that U.S.-based gang members illegally cross the border for the express purpose of smuggling drugs and illegal aliens. Finally, it states that U.S.-based gangs are intent on developing working relationships with foreign-based drug trafficking organizations to gain access to foreign sources of illicit drugs. The FBI's Deputy Assistant Director for criminal investigations was quoted as saying that about 20 gangs in the U.S. have direct links to the Mexican cartels. What is the Department doing to counter this trend that the Gang Assessment describes?**

**Answer:** The Department is aptly equipped to address violent crime issues that have a multijurisdictional dimension calling for a federal solution. The most significant national and international gangs fit this description. They operate across state and international borders and their conduct implicates serious domestic and security concerns. As a result, the Department has taken a leadership role in combating major national and international gangs. In particular, we have focused our efforts on: developing a national base for gang-related intelligence; coordinating multijurisdictional enforcement efforts; working to dismantle major national and international gangs; and building the capacity of foreign counterparts to combat major international gangs impacting the United States.

*Developing a National Intelligence Base and Coordinating Multijurisdictional Enforcement*

The National Gang Intelligence Center (NGIC) was created to facilitate and support intelligence driven gang investigations and prosecutions. It is a multi-agency effort that integrates the gang intelligence assets of federal, state, and local law enforcement entities to serve as a centralized intelligence resource for gang information and analytical support. The mission of the NGIC is to support law enforcement agencies through timely and accurate information sharing and analysis of federal, state, and local law enforcement intelligence. The NGIC concentrates on gangs operating on a regional and national level that demonstrate criminal connectivity.

The National Gang Targeting, Enforcement & Coordination Center (GangTECC) serves as a catalyst in the unified federal effort to disrupt and dismantle violent gangs. GangTECC develops an enhanced understanding of regional and national gang problems and proposes strategies to neutralize these threats. GangTECC enhances the effectiveness of existing gang initiatives, investigations and prosecutions through active coordination of law enforcement and prosecution efforts and assists in the initiation of new gang-related operations. It is a multi-agency center that uses the strength of each federal law enforcement

agency to achieve maximum impact against the most violent gangs operating at a regional or national level through effective coordination and de-confliction.

One of the significant benefits of establishing a partnership between NGIC/GangTECC and the OCDETF Fusion Center and Special Operations Division, mentioned above, would be a greater ability to identify and respond operationally to the interrelationships between Mexican drug trafficking organizations and gangs.

#### *Dismantling Major Regional, National and International Gangs*

To counter the interdependent relationship between Mexican drug trafficking organizations - and to a lesser extent Dominican, Colombian and Jamaican drug trafficking organizations - with U.S. street gangs, the FBI is actively utilizing its Safe Streets Task Forces to identify, target, disrupt and dismantle these criminal enterprises. Using proactive investigative techniques such as Title III wire interceptions and undercover operations, each Safe Streets Task Force attempts to disrupt and dismantle the most prolific and dangerous street gangs operating in their areas of responsibility.

In addition, the task forces seek to identify and disrupt the sources of supply of narcotics, which in most investigations have ties to a foreign-based drug trafficking organization. To assist in this effort, the Safe Streets Program works cooperatively with the resources and funding mechanisms established through the Organized Crime Drug Enforcement Task Force (OCDETF) partnership.

The Criminal Division's Gang Unit is a core team of experienced anti-gang prosecutors who serve as the prosecutorial arm of the Department's efforts to achieve maximum national impact against violent gangs. Its mission is to develop and implement layered prosecution strategies designed to dismantle the most significant regional, national and international gangs, including prosecuting select cases of national importance. The Unit works closely with anti-gang prosecutors in the United States Attorneys' Offices and with GangTECC to carry out this mission of targeting the nation's most violent gang threats.

#### *Building Capacity Abroad*

The Department is pursuing a comprehensive program designed to build the capacity of key foreign counterparts to combat international gangs that adversely impact violent crime in the United States. The program includes:

- Providing the technical assistance and manpower necessary for El Salvador to create a vetted anti-gang unit to work side-by-side with U.S. law enforcement;

- Providing equipment and training to help law enforcement agencies in Central American nations acquire digital fingerprints of violent gang members and other criminals who commit crimes under different identities in different countries;
- Providing eTrace equipment and training to help law enforcement agencies in Central American nations trace firearms recovered there;
- Delivering regional anti-gang training to police investigators and prosecutors at the International Law Enforcement Academy in San Salvador; and

Leading implementation of the law enforcement component of the Strategy to Combat the Threat of Criminal Gangs from Central America and Mexico, adopted by the U.S. Government in 2007. The Strategy is a key component of the overall Merida Initiative, a multi-year plan to provide equipment and training to governments in Mexico and Central America to support law enforcement operations.

#### **Proposed Human Rights and Special Prosecutions Section**

**15. In December of 2005, I chaired a Subcommittee hearing on the detection and investigation of human rights violators in the United States. The main witness was the head of DOJ's Office of Special Investigations. At that time the Committee heard estimates by outside groups that there were as many as 2500 to 3000 suspected human rights violators in the United States, many of whom have come to the United States in an effort to evade prosecution or punishment by their home countries. Last week you notified the Committee of your intent to create a new "Human Rights and Special Prosecutions Section" in the Criminal Division. How will this reorganization enable a more efficient and effective use of resources to find and remove, or prosecute, more human rights violators?**

**Answer:** The merger and associated changes will eliminate the duplication of effort that, despite close coordination between the two units, inevitably resulted from the previous division of responsibility within the Criminal Division for pursuing human rights violators in the United States. Previously, OSI was responsible for prosecuting human rights violators who had obtained naturalized U.S. citizenship; while DSS had authority to prosecute alien human rights violators as well as those whose offenses are subject to direct prosecution of the underlying human rights crimes in U.S. courts. As a result, both offices could have responsibility for pursuing participants in the same crime if the suspects included both citizens and non-citizens. In addition, since the nature of the potential charges and the status of the accused were not always known at the outset of investigations, it was not always clear which component should handle

a specific case. This arrangement sometimes produced confusion on the part of U.S. Attorneys Offices and our domestic and foreign law enforcement partners.

The merger will facilitate implementation of a comprehensive strategy for denying safe haven to human rights violators by creating a section that can make use of the full range of legal tools at the Department's disposal. The section will make use of available criminal and civil statutes, including MEJA and immigration laws, to prosecute offenders for the most serious readily provable offenses. It will be able to draw on the experience of DSS lawyers in criminal prosecutions under the torture, MEJA, visa fraud, and other statutes, on the expertise of OSI's attorneys in criminal and civil prosecutions to revoke citizenship and remove offenders, and on the subject matter and linguistic expertise of OSI's non-attorney professionals. It will also make possible centralized oversight and management of related cases throughout the country, and it will give the U.S. Attorneys Offices, ICE, the FBI, and other agencies a single address in the Criminal Division for coordination and advice in human rights violator cases.

**16. The Intelligence Reform and Terrorism Prevention Act of 2004 expanded the OSI jurisdiction beyond Nazi-era cases to include modern human rights violators. Since that change how many human rights violators have you successfully prosecuted or removed from the country?**

**Answer:** Since the enactment of the Intelligence Reform and Terrorism Prevention Act, the Criminal Division's former Office of Special Investigations (OSI) has successfully prosecuted 18 human rights violators and persons who served in units that committed such violations. As of April 9, 2010, six of these individuals have been removed.

**17. Are you seeking any funding increase for FY11 for this new Section? Since this reorganization proposal has come up after your budget submission, please provide for the record the FY11 resource requirements to ensure this Section will re-energize the human rights violator program and continue to ensure that the United States will not be a safe haven for human rights violators from around the world.**

**Answer:** The Department is not seeking any funding increase for FY 2011 for the Criminal Division's Human Rights and Special Prosecutions Section (HRSP). The FY 2011 resource requirement for HRSP, as included in base funding in the FY 2011 President's Budget, is \$13,881,000. The Division is currently assessing the programmatic needs for this Section.



**Adam Walsh Act**

**18. The Adam Walsh Act gives the Marshals Service the authority to treat as fugitives convicted sex offenders who fail to comply with a registration requirement and directs the Marshals Service to assist jurisdictions in locating and apprehending these individuals. I understand that there are estimated to be 135,000 non-compliant offenders in the US and that the Marshals Service estimates that they need 500 deputies working on these cases to fully implement the Adam Walsh Act. Can you tell the Committee how many deputy marshals are currently dedicated full time to this program?**

**Answer:** The Marshals Service currently has 56 operational personnel (Deputy U.S. Marshals and Senior Inspectors) dedicated full time to Adam Walsh Act (AWA) investigations. In addition, the Marshals Service has 16 operational support personnel dedicated full time to AWA investigations resulting in a total of 72 personnel dedicated full time to the AWA mission.

In FY 2010, the Marshals Service will increase operational and support personnel dedicated full time to AWA implementation. The allocation and hiring plan is still being finalized.

**19. Your request for the Marshals Service does not seek any additional resources for this work. Why is that?**

**Answer:** The Marshals Service supports the President's priorities and budget request for FY 2011 while recognizing that all missions may not be fully funded among the Administration's many priorities. The Marshals Service 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."

**20. Are US Attorneys aggressively pursuing these cases?**

**Answer:** Yes. The United States Attorneys are aggressively pursuing cases involving sex offenders who fail to comply with their sex registration requirements under the Adam Walsh Act of 2006. Since implementation of the Act and in particular Title I of the Act, we have seen a significant increase in the number of cases filed. During Fiscal Year 2007, the United States Attorneys filed 157 cases; meanwhile, in 2008 and 2009, the United States Attorneys filed 270 and 281 cases, respectively.

Title I of the Adam Walsh Act, the Sex Offender Registration and Notification Act (SORNA), expressly seeks to protect the public from sex offenders. With SORNA, Congress established a comprehensive set of minimum standards for sex offender registration and notification. Sex offenders must register, and keep the registration current, in each jurisdiction where the offender resides, where the offender is an employee, and where the offender is a student. The offender must also initially register in the jurisdiction in which convicted if such jurisdiction is different from the jurisdiction of residence. Each sex offender also has only three business days to register after each change of name, residence, or student status.

SORNA serves a number of important public safety purposes. But the most basic aspects are the registration aspects for the tracking of sex offenders following their release into the community. If a sexually violent crime occurs or a child is molested, information available to law enforcement through the SORNA program about sex offenders who may have been present in the area may help identify the perpetrator and solve the crime. If a particular released sex offender is implicated in such a crime, knowledge of the sex offender's location through the SORNA system may help law enforcement in making prompt apprehension.

**21. How closely and how successfully are you working with State and local officials to identify and apprehend sex offenders?**

**Answer:** The Marshals Service's full time field investigators in the Sex Offender Investigations Branch are supported by the 237 collateral duty Marshals Service investigators. All of these investigators are focused on the issue of locating, arresting, and prosecuting sex offenders who have not complied with registration requirements. Sex offender registration is a system designed to allow government authorities to track the residence and activities of ex-sex offenders, including those who have completed criminal sentences. The Sex Offender Investigations Coordinators (SOICs) working on these cases have two main responsibilities: investigate and prosecute crimes of non-compliance; and coordinate with federal, state and local partners. State and local partners include but are not limited to: law enforcement agencies, registry personnel, prosecutors, and other agencies that share a similar mission. These relationships are especially helpful in light of charging decisions prosecutors must make, since an offender may face violations of both federal and state law.

SOICs work with registry personnel to examine the specific offenders who are non-compliant on a daily basis. From this point SOICs then work with state and local law enforcement partners to target these offenders for arrest. From FY09 to March FY10, the Marshals Service has conducted 161 sex offender specific compliance and apprehension operations. In these operations the Marshals Service has partnered with 566 State and Local law enforcement agencies and worked with 2,619 officers from these agencies. These partnerships led to the arrest over 32,000 fugitive sex offenders, assistance in conducting 15,488

compliance checks, and investigations of over 4,700 cases of non-compliance. Marshals Service investigators have worked with federal, state, and local prosecutors to issue over 1,000 warrants of non-compliance resulting in the arrest of 800 of those offenders.

Additionally, Marshals Service investigators routinely travel to state and local jurisdictions to provide training on the role of the Marshals Service in the battle against non-compliance and to make the most of the limited resources allocated to state and local entities to carry out registry requirements and monitoring.

#### TARP and Stimulus Fraud

**22. Your budget correctly indicates that, with TARP and the Stimulus bill, we are currently in the midst of the largest expenditure of government funds over the shortest period of time in the Nation's history. Last year the Special Inspector General for the TARP stated in written testimony that the Federal Government was looking at the potential exposure of hundreds of billions of dollars in taxpayer money lost to fraud. What increases are you seeking for FY11 that will help the Department to investigate and prosecute financial fraud related to TARP and the Stimulus?**

**Answer:** In FY 2011, the United States Attorneys request a total increase of 109 positions (88 attorneys), 82 FTE, and \$17,224,000 to combat numerous White Collar Crimes, especially mortgage fraud, corporate and securities fraud, and financial fraud and public corruption related to the Troubled Asset Relief Program (TARP) and the American Recovery and Reinvestment Act (ARRA) spending. The United States Attorneys' FY 2011 request also annualizes \$10.6 million and 55 positions (45 attorneys) originally provided as one-time supplemental funds in FY 2009.

The requested positions will be used to support the activities of the President's Financial Fraud Enforcement Task Force, including the Task Force's Rescue (TARP) Fraud and Recovery Act Fraud Working Groups. United States Attorneys actively participate in these working groups, as well as regional working groups and task forces, which are coordinating the combined efforts of United States Attorneys, investigative, and regulatory agencies to prevent and punish misapplication of TARP and Recovery Act funds. The Task Force recently identified Financial Fraud Coordinators in every United States Attorney's Office to help coordinate Task Force activities and the anti-fraud effort.

The number and complexity of white collar crime cases for the United States Attorneys continues to grow, resulting from both increased FBI, HUD, IRS and Postal Inspection Service financial crime investigation efforts and the growing sophistication of white collar criminal activity. We believe that it is critical that our United States Attorneys' Offices build the capacity to handle the increased demand for financial fraud prosecutions relating to the financial crises (e.g., the

increased number of mortgage rescue scams and Ponzi-schemes) and government recovery efforts.

**Guantanamo Detainee Review Task Force**

- 23. I understand that the Guantanamo Detainee Review Task Force has now completed its review of each detainee case and recommended a course of action for each. I also understand that the Task Force has been disbanded. Please provide to the Committee any final report produced by the Task Force and a report describing the activities and findings of the Task Force. Please include in such report, the recommendations made and statistical summary information on the categories and subcategories of detainee case dispositions, i.e. how many detainees were cleared for transfer to other countries, how many were recommended for prosecution, and how many were recommended for further detention?**

**Answer:** The Task Force did prepare a final report summarizing its review, its findings, and its recommendations. Officials from the Department have already briefed several congressional committees on much of the information described in the report, and we would be happy to arrange similar briefings for this Committee and its staff. I cannot at this time, however, provide the Committee with a copy of the report. I appreciate the Committee's interest in the document. The document, however, reflects input from the different departments and agencies that served on the Task Force, and, any release of the report must be coordinated with our interagency partners.

- 24. Now that the Task Force is disbanded, how is administration handling ongoing decisions about the course to be taken for any particular detainee? For example, what would happen should new information become available about a particular detainee?**

**Answer:** The interagency review process established pursuant to Executive Order 13492 will continue through a working group led by the Departments of Defense and State. Drawing upon the work of the Task Force, this working group, which is comprised of representatives from the same entities identified in Executive Order 13492, will have primary responsibility for implementing disposition decisions and considering other issues related to the closure of Guantanamo. As part of this process, the Office of the Director of National Intelligence will, among other things, advise the working group of any new information concerning Guantanamo detainees.

**25. Your budget request for FY11 proposes the deletion of all the appropriations language which currently places limitations on transfers of Guantanamo Bay detainees, and requires advance notifications and related reports. This language passed on several FY10 bills, including the CJS bill. Why are you proposing that the Committee delete this language?**

**Answer:** The Department of Justice proposed to delete the language that currently places limitations on transfers of Guantanamo Bay detainees and requires advance notifications and related reports because it limits the President's discretion in this national security matter.

**26. For example, the language you are proposing to delete specifically prohibits the release of detainees into the United States, and prohibits the transfer of detainees to the United States for continued indefinite detention. Does the Administration plan to release detainees into the United States, or transfer detainees to the U.S. for indefinite detention in FY11?**

**Answer:** I am not aware of any plan by the Administration to release Guantanamo detainees into the United States. Likewise, I am not aware of any immediate plans to transfer detainees to the United States for indefinite detention, which, as you note, current law prohibits. The Administration previously indicated that it is exploring the possibility of acquiring a facility in the United States to house certain detainees once Guantanamo closes. The Administration is working closely with members of Congress on this initiative, and I expect that a final decision on this matter will depend on congressional input and changes to existing laws.

#### **Medical Marijuana**

**27. Is it a violation of federal criminal law to grow and traffic marijuana? If so, please cite any applicable statutory prohibition.**

**Answer:** Yes, it is a violation of federal law to manufacture, distribute, or dispense marijuana, a Schedule I controlled substance, for any purpose without a valid DEA registration. See 21 U.S.C. §841(a)(1). A Schedule I controlled substance is one which has a high potential for abuse, has no currently accepted medical use in treatment in the United States and has a lack of accepted safety for use of the drug. See 21 U.S.C. §§ 812(b)(1), 812(c), Schedule I(c)(10)

The authority of DEA to investigate those growing, selling and possessing marijuana irrespective of state law has been upheld by the Supreme Court. In *United States v. Oakland Cannabis Buyers' Cooperative*, the Supreme Court held that the CSA contains no exception permitting the distribution of marijuana on the basis of "medical necessity." (532 U.S. 483 (2001)).

Similarly, in *Gonzales v. Raich* (545 U.S. 1 (2005)), the Supreme Court stated that Congress's Commerce Clause authority includes the power to prohibit the intrastate and noncommercial manufacture and possession of marijuana for claimed medical purposes pursuant to state law. The Supreme Court stated that:

"Given the enforcement difficulties that attend distinguishing between marijuana cultivated locally and marijuana grown elsewhere, 21 U.S.C. §801(5), and concerns about diversion into illicit channels, we have no difficulty concluding that Congress had a rational basis for believing that failure to regulate the intrastate manufacture and possession of marijuana would leave a gaping hole in the CSA (545 U.S. at 22)."

**28. Which states permit dispensing marijuana for medical purposes, and of those, which states permit such dispensing for profit?**

**Answer:** As of February 2010, fourteen states have legalized the manufacture, distribution, and possession of marijuana for purported medical use. These states are: Alaska, California, Colorado, Hawaii, Maine, Michigan, Montana, Nevada, New Jersey (effective July 2010), New Mexico, Oregon, Rhode Island, Vermont, and Washington. Each state's statutory and regulatory schemes are significantly different regarding how marijuana will be supplied to users. The majority of states have not specified a method for supply or supplier compensation. DEA was able to identify only one state that explicitly permits the distribution of marijuana for profit.

The New Jersey Compassionate Use Medical Marijuana Act, which will become effective in July 2010, provides for the registration of "alternative treatment centers," which are described as entities that acquire, possess, cultivate, manufacture, deliver, transfer, transport, supply or dispense marijuana and related supplies and materials. Although the first two centers issued a permit to operate in the Northern, Central and Southern regions of New Jersey are required to be nonprofit entities, the Act provides that subsequent permits may be issued for either nonprofit or for-profit entities. This is a rapidly developing area of the law and many states have regulatory policies which are not yet codified.

**29. Has there been any change in the number of medical marijuana dispensaries in the states which allow them since the Oct. 19, 2009, Ogden Memorandum regarding "Investigations and Prosecutions in States Authorizing the Medical Use of Marijuana" was issued?**

**Answer:** DEA does not track the number of medical marijuana dispensaries in states that allow them to operate. DEA only tracks medical marijuana dispensaries that are under investigation by DEA for operating illegally outside of federal and state law.

**30. What or who is the source of the marijuana dispensed for medical purposes in the states that have legalized using marijuana for medical purposes?**

**Answer:** DEA does not track sources of supply for medical marijuana dispensaries or individuals in states where use is legal. DEA only tracks medical marijuana dispensary and case information for those under investigation by DEA for operating illegally outside of federal and state law.

In general, sources of supply vary by state, as each state establishes its own provisions for growing and dispensing medical marijuana. According to state medical marijuana laws, patients and their caregivers are currently allowed to cultivate in 13 of 14 states where medical marijuana is legal. Home cultivation is prohibited in New Jersey and a special license is required in New Mexico. In July, New Jersey will allow state approved grow facilities, having dispensaries located in various parts of the state for medical marijuana distribution.

**31. Do any criminal organizations, gangs or cartels supply, directly or indirectly, the marijuana used for medical purposes?**

**Answer:** DEA does not track sources of supply for medical marijuana dispensaries or individuals in states where use is legal. DEA only tracks medical marijuana dispensary and case information for those under investigation by DEA for operating illegally outside of federal and state law.

Although there is little data to confirm the assumption that criminal organizations, gangs, or cartels directly or indirectly supply marijuana used for medicinal purposes, it can be assumed that a certain amount of marijuana grown and harvested by illicit criminal organizations will find its way into the medical marijuana market. It is expected that some caregivers or patients may circumvent applicable state law by using alternate sources of supply. Examples of illicit marijuana use for medicinal purposes can be substantiated on a case-by-case basis.

For example, in the San Diego area, there are several medical marijuana dispensaries that typically sell the potent strains of cannabis cultivated in sophisticated grow houses. In September 2009, DEA assisted the San Diego Police Department and the San Diego Sheriff's Office in the investigation of ten medical marijuana dispensaries operating in San Diego County. These dispensaries were operating outside the bounds of both federal and state law. The investigation resulted in the execution of 23 search warrants, the arrest of 36 people, and included the seizure of 88 kilograms of marijuana, 3 kilograms of hashish, 1000 vials of hashish oil, 645 marijuana plants from 13 indoor grows, \$232,305 in US Currency, and other assets.

In Colorado, the law loosely stipulates that the dispensary control its own marijuana cultivation; however, many appear to contract the growing to third parties. Although there are many growers in Colorado, it seems unlikely that all of the supply comes from within the state. Certain dispensary websites and advertisements tout their marijuana as "Colorado Grown," implying that not all medical marijuana is sourced from within the state.

As a reflection of the problem, the Los Angeles Clearinghouse (LACLEAR) is currently creating a single intelligence system on medical marijuana dispensaries available to both federal and state investigators to assist in combating the illicit medical marijuana dispensaries in Los Angeles by helping to identify, investigate, and prosecute the dispensaries that do not follow state rules or are associated with other criminal enterprises.

As for the Mexican drug cartels, DAE does not believe that criminal drug organizations in Mexico are operating differently as the result of state medical marijuana legislation.

**32. Do criminal organizations, gangs or cartels receive, directly or indirectly, proceeds from the sale of medical marijuana?**

**Answer:** DEA does not track sources of supply for medical marijuana dispensaries, dispensary profits, or individuals in states where use is legal. DEA only tracks medical marijuana dispensary and case information for those under investigation by DEA for operating illegally outside of federal and state law.

Although there is little data to confirm the assumption that criminal organizations, gangs, and/or cartels receive proceeds, either directly or indirectly, from the sale of marijuana used for medicinal purposes, it can be assumed that there have been and will be instances where a certain amount of criminally sourced marijuana will find its way into the medical marijuana market. It is expected that some patients or caregivers may circumvent applicable state laws by using alternate sources of supply, resulting in profits for the illegal organization.

**33. Is there a connection between the growth in the number of Mexican operated or controlled plots in the National Forests and Parks and the growth in the medical marijuana industry?**

**Answer:** In recent years, the number of cannabis plants eradicated by agencies participating in the DEA's Domestic Cannabis Eradication and Suppression Program has increased dramatically. In 2009, the program documented the seizure of more than 10 million plants nationwide, representing a 49 percent increase over those reported in 2007. Seizures of cannabis plants from public lands accounts for a significant portion of plants eradicated each year. In 2009, 60 percent of all of seizures occurred on public lands. While there has been an increase in plant seizures from large-scale outdoor cannabis grows, especially in



the Western United States, a direct correlation to the increase in the medical marijuana industry has not been established.

DEA Domestic Divisions report that marijuana cultivation is clearly on the rise in states that have legalized the use of marijuana for medical purposes. For example, there appears to be an upsurge in the cultivation of both indoor and outdoor marijuana throughout Colorado. During the summer of 2009, several outdoor grow operations were discovered within designated National Forest areas in Colorado. These grows were operated by Mexican nationals and were capable of growing thousands of plants. Small marijuana cultivation operations ranging from a few dozen to a few hundred plants and typically grown in residential basements are increasingly encountered. Many of these growers claim to be growing medical marijuana but lack the documentation to support this claim.

In another example, much of the indoor marijuana trafficked in Montana is grown in western Montana under the guise of medical marijuana providers. Similarly, in the Riverside, California area, indoor marijuana grows in the Coachella Valley area has been connected to a medical marijuana facility.

**34. Please list the authorized suppliers of marijuana for state authorized medicinal purposes.**

**Answer:** With the exception of those persons who have been authorized to possess marijuana for federally approved research projects, no person or entity is an authorized under federal law to supply marijuana. DEA also does not maintain a list of suppliers that have been authorized by their respective state to supply marijuana for claimed medicinal purposes. DEA only tracks medical marijuana dispensary information from those under investigation by DEA for operating illegally outside of federal and state law. Most state statute and regulatory schemes do not address how marijuana will be supplied to authorized users in that state. Authorized medical marijuana suppliers vary by state, as each state establishes their own provisions for growing and dispensing medical marijuana. In general, patients or their caregivers serve as suppliers.

**Representative Jerry Lewis**  
**Questions for the Record**

**State Criminal Alien Assistance Program (SCAAP)**

- 1. The State Criminal Alien Assistance Program provides federal payments to states and localities to reimburse them for incarcerating undocumented criminal aliens. This year you are proposing that Congress prohibit states from requesting compensation for any cost greater than the *actual* cost for the detention of criminal aliens housed in State and local facilities. What effect would this new limitation have on reimbursements to the states, and why was it necessary to request this language?**

**Answer:** This change is being proposed to ensure that states and localities will not charge the Federal government more than their actual costs for Federal immigration and other detainees held in detention in state and local facilities for the Federal government. In other words, if states and localities are to receive SCAAP funding, we are asking them in turn to treat the Federal government fairly in charging actual costs as we contract with them for detention space.

This requirement would not change a state or local jurisdiction's eligibility for reimbursement; as long as they can demonstrate that an offender is an illegal alien and meet the program's other requirements, they can still claim reimbursement.

- 2. Civil immigration enforcement is a federal responsibility, yet the SCAAP program only reimburses a fraction of states' costs for the arrest and incarceration of criminal aliens. Do you have a recent estimate of the total cost to States and localities for the incarceration of criminal aliens?**

**Answer:** In FY 2009, Congress appropriated \$400 million for SCAAP; based on this funding level, OJP was able to reimburse each qualifying SCAAP jurisdiction for 35% of its eligible costs. The total eligible cost claimed by all qualifying SCAAP jurisdictions in FY 2009 was nearly \$1.121 billion. The eligible costs are based on the correction officer salary for each jurisdiction.

**Drug, Mental Health and Problem-Solving Courts**

- 3. With regard to your proposal for combining funding for drug courts and mental health courts, can you tell me the purpose of this request?**

**Answer:** Many of today's court cases involve individuals with medical, psychological, and social problems such as addiction and lack of access to mental health treatment, which drive criminal behavior. Many offenders participating in drug courts have co-occurring mental health disorders, and most offenders participating in mental health courts have co-occurring substance

abuse disorders. The new Problem Solving Courts Initiative will continue the effective approach of helping state, tribal and local governments assess their offender populations, and develop evidence-based strategies that bring courts together with other criminal justice, social services, and public health agencies and develop system-wide responses to offenders affected by the problems discussed above. This new funding stream will allow greater flexibility so state, local and tribal jurisdictions can develop strategies that best meet their needs, and provide comprehensive responses to the needs of offenders within their systems, with the goal of reducing substance use and recidivism and increasing social functioning.

- 4. Because drug courts help reduce recidivism and increase offenders' likelihood of successful rehabilitation, can you assure Congress that the proposal will not result in less support or funding for this important program?**

**Answer:** OJP's FY 2011 request for the Problem Solving Court program is equal to the FY 2010 enacted funding levels for the Drug Court and Mentally Ill Offender Act programs, demonstrating the ongoing commitment to these proven strategies. The Problem Solving Court program will help state, tribal and local governments build on the successes of the Drug Court program by assessing their offender populations and developing collaborative, evidence-based strategies that bring courts together with other criminal justice, social services, and public health agencies. This will allow for development of system-wide responses to offenders affected by medical, psychological, and social problems such as addiction and lack of access to mental health treatment, which drives criminal behavior. The Problem Solving Court program will allow state, local and tribal grantees increased flexibility to fund evidence-based strategies that address unique local needs and expand collaboration between drug courts, mental health, and substance abuse providers.

**Representative Robert B. Aderholt**  
**Questions for the Record**

Attorney General Holder, as you are aware, funding for the Terrorist Explosive Device Analytical Center (TEDAC) was originally requested by the FBI and your Department in the original Fiscal Year 2011 budget submission. But, in the pass-back to your Department from the Office of Management and Budget (OMB), not only was the funding request omitted, but political appointees with no counterterrorism or law enforcement experience have proposed to rescind \$98 million already appropriated for this facility. The President is proposing to cut the funding Congress has already provided to give the FBI the facilities it needs to deal with the threat of IEDs and the threat does not appear to be lessening – as we have recently seen in the attempted bombing of the Northwest flight on Christmas and the New York City plot. We've been told this facility would provide the FBI with needed laboratory space and specialized facilities that are not currently available.

1. **Are you concerned that the proposed cut would reduce the FBI's ability to deal with this threat and leave the FBI less prepared for future bombing incidents?**

**Answer:** Improvised explosive devices (IEDs) are considered weapons of strategic influence by the Department of Defense (DoD). Terrorists' use of IEDs is acknowledged by the Intelligence Community (IC) as an enduring global transnational threat. Recent attempted bombings in the United States clearly demonstrate the very real threat to our homeland security. DoD anticipates that the use of IEDs will result in asymmetric warfare or conflict in the future. It is vital to maintain the capability and capacity to understand, process, and exploit IEDs for military tactical and force protection, intelligence, law enforcement, and homeland security purposes. The Department is committed to doing that. This rescission does not reduce funding for the operations or continued analysis of explosives by TEDAC staff at the FBI laboratory, and therefore will not reduce the FBI's ability to deal with the threat of IEDs, or leave them less prepared for future bombing incidents.

2. **What have you and the Department done to support the FBI in restoring this funding?**

**Answer:** The Department does not support funding for construction of TEDAC.

The Joint Improvised Explosives Device Defeat Organization (JIEDDO) projects monthly submissions to TEDAC could reach as high as 1,500 to 2,500 boxes per month when the war-fighting season in Afghanistan resumes in the spring of 2010. The FBI receives approximately 800 boxes of recovered and seized IEDs and related forensic materials each month from Iraq, Afghanistan and other

areas of the world, however, the FBI can only process approximately 325 boxes per month – or 40 percent of the incoming work – 4,264 devices have been collected in the last six months alone. A backlog of more than 33,000 boxes of forensic materials has accumulated. A random sampling of backlog boxes determined that 86% of the items could yield forensic information (e.g., latent prints, DNA), if processed. All of this information could provide critical evidence necessary to hunt down terrorists.

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- 3. If the FBI says that there is evidence sitting idly in warehouses that could possibly help us identify and track down terrorists, how can this Administration justify cutting this funding?**

**Answer:** It is important that the backlog be addressed in a timely manner, and we are working to do so. The FBI, and its interagency partners comprising TEDAC, is using available resources to exploit IEDs and related evidence submitted by the DoD and other Intelligence Community partners. This is why the Joint Improvised Explosives Device Defeat Organization (JIEDDO) is increasing its support of TEDAC by providing \$68 million in funding in FY 2010, a 275% increase over FY 2009. The additional funding will allow TEDAC to process nearly four times more evidence per month than it is currently able to process. TEDAC will be able to eliminate the backlog with this additional processing capacity.

**The Drug Courts program in Alabama has been an asset to our judiciary system and we would certainly benefit from federal funding to expand Drug Court. As you know, the Drug Courts help more substance abusers who are caught up in the criminal justice system at a time when our state and local resources are very limited.**

- 4. Why are you proposing funding for a Problem Solving Courts Initiative that is not authorized and does not have demonstrated results like the Drug Court Grant program when we have yet to finish the job by serving the 1.2 million substance abusing offenders identified by your Department in need of Drug Court?**

**Answer:** Many of today's court cases involve individuals with medical, psychological, and social problems that can drive criminal behavior such as addictions, homelessness, or lack of access to mental health treatment. The new Problem Solving Courts Initiative will continue the effective approach of helping state, tribal and local governments assess their offender populations, and develop evidence-based strategies that bring courts together with other criminal justice, social services, and public health agencies and develop system-wide responses to offenders affected by the problems discussed above. While Drug Courts are an effective part of this strategy, they are not the only one. This new funding stream will allow greater flexibility enabling state, local and tribal jurisdictions to develop strategies that best meet their needs. Programs funded under the new Problem Solving Courts Initiative may serve as models to other courts nationwide.

- 5. Why are we not expanding the Drug Court Grant Program model?**

**Answer:** The success of drug courts has resulted in a new generation of problem-solving initiatives that are confronting emerging issues in communities across the country. More comprehensive supervision, longer stays, a better commitment to treatment, and increased accountability by offenders are all a direct result of this behavior shift that can be attributed to the success of drug courts. Drug courts are an effective part of the Problem Solving Courts Initiative, and it is OJP's intent to expand upon the lessons learned from drug courts through this new program. Many of today's court cases involve individuals with medical, psychological, and social problems that can drive criminal behavior such as addictions, homelessness, or lack of access to mental health treatment. The Problem Solving Courts Initiative will allow state, tribal and local governments to develop evidence-based, system-wide responses to the unique criminal justice issues presented by their offender populations. In some jurisdictions, offenders' problems go beyond substance abuse or mental health issues. Problem solving courts can address many different issues, including child welfare, domestic violence, truancy and issues specific to returning veterans. This new funding stream will allow jurisdictions to create programs that effectively address the needs of their offender populations, leading to increased program effectiveness and reduced recidivism. The goal of the Problem Solving Court Initiatives is to help state and local jurisdictions plan, implement, sustain, and evaluate problem-solving initiatives based on the most pressing needs in their communities. Taking into consideration problem solving principles, a jurisdiction can more effectively respond to the most pressing needs in its community which may include

implementing or expanding a drug or mental health court. The initiative will encourage communities to focus on increased training and information dissemination for staff; increased engagement with the community; increased collaboration not only within courts, but with other components of the criminal justice system; improved accountability for offenders; and effectively demonstrating outcomes for the problem-solving initiative.

OJP's FY 2011 request for the Problem Solving Courts Initiative is equal to the combined FY 2010 enacted funding levels for the Drug Court Discretionary Grant Program and Mentally Ill Offender Act programs, demonstrating OJP's ongoing commitment to these proven strategies.

**FRANK R. WOLF**  
10TH DISTRICT, VIRGINIA

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HUMAN RIGHTS COMMISSION



**Congress of the United States**  
**House of Representatives**

March 13, 2009

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The Honorable Eric H. Holder, Jr.  
Attorney General  
U.S. Department of Justice  
950 Pennsylvania Ave NW Rm 5111  
Washington DC 20530

Dear Attorney General Holder:

President Obama recently issued an executive order to close the detention facility at Naval Station Guantanamo Bay, Cuba, and decisions must now be made regarding how and where to house the 250 suspected terrorists and enemy combatants held there.

I was particularly concerned to read in the March 7 *Washington Post* that some of these detainees may be tried in and housed by the United States District Court for the Eastern District of Virginia (Eastern District of Virginia) or the United States District Court for the Southern District of New York. Their presence so close to large civilian population centers raises serious questions of security and logistics for any region forced to accept these detainees.

I do not -- and would not -- support the transfer of any prisoners presently being detained at Guantanamo Bay to any facilities in Virginia and have joined Virginia colleagues Reps. Randy Forbes and Eric Cantor in introducing legislation (H.R. 1186) to prohibit prisoners at the Guantanamo Bay detention facility from being transferred to federal prisons or military bases in Virginia.

I take seriously the responsibility of congressional oversight, especially in matters with national security implications. In 1998 I authored legislation that created the National Commission on Terrorism. Unfortunately, it took the horrific events of September 11, 2001, for the recommendations of the commission to be taken seriously. I have traveled to Sudan five times and seen evidence of the terrorist training camps used by Osama bin Laden in the 1990s.

The first bombing of the World Trade Center in 1993 was treated as a routine criminal case by the Clinton administration when there were clear indications from Sheik Omar Abdel-Rahman that terrorism was the intent of the bombing.



The Honorable Eric H. Holder, Jr.  
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Furthermore, the individuals currently at Guantanamo Bay are members of the same organization that bombed the U.S. embassies in Kenya and Tanzania as well as the USS Cole in Yemen.

The March 11 *Washington Post* detailed how a detainee recently released from Guantanamo Bay is now the operations commander of Taliban forces attacking U.S. and NATO forces in southern Afghanistan. There also have been news reports that 61 of the detainees that were processed and released from Guantanamo Bay were recaptured fighting American forces. If those individuals were deemed safe to release from custody yet returned to terrorist activities and killing Americans, what does that say about how dangerous the detainees still at Guantanamo Bay must be?

I was also troubled to read that five Guantanamo detainees described themselves as "terrorists to the bone," and stated in a court filing that they describe their role in the 9/11 attacks as "a badge of honor." These dangerous individuals simply cannot be transferred anywhere near large civilian populations.

As the ranking member on the House Appropriations Commerce-Justice-Science Subcommittee, I am particularly concerned about the complexities of bringing any of these enemy combatants to any installation, military or civilian, close to U.S. civilian populations. Regardless of where these detainees are confined, I would appreciate your detailed response to the following questions:

1. What steps has the Justice Department taken to assure the security of the surrounding population if such violent combatants are confined and tried in urban areas?
2. What precautions will be taken to ensure that the detainees do not escape?
3. Is the Obama administration concerned that the presence of these detainees will invite attacks from ideological followers in an attempt to set them free and, if so, what precautions are being taken to prevent this scenario?
4. How will the detainees be transported to the courthouses?
5. What type of security cordon will be in place if detainees are transported on local highways?
6. Has the Justice Department considered the traffic disruptions associated with road closures around federal courthouses and local jails during the trials of these individuals?
7. If the detainees are flown to any location, will they use military or commercial airports?

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8. If commercial airports are used, will terminals have to be evacuated to ensure security?
9. What will be the security perimeter around federal courthouses and will local residents and businesses be forced to move or close to ensure security? If so, for how long?
10. Will Metrorail stations in close proximity to the U.S. Courthouse in Alexandria be closed?
11. Will the Westin Hotel, approximately 200 feet from the courthouse, and the Patent and Trademark Office, approximately 250 feet from the courthouse be evacuated?
12. Has the Justice Department considered the impact such detainees will have on local prisons, such as the city jail in Alexandria, where federal defendants are often held during trial?
13. Will prisoners in local jails have to be moved to provide a secure location for housing these combatants, and, if so, who will bear the costs associated with their transfer?
14. Will there be an extensive list of rules and regulations given to local and state officials regarding the housing and trial of these suspects? If so, will a copy of the regulations be made available to state and local officials as well as members of Congress?
15. Will state and local law enforcement officers be required to assist federal officials and will the federal government compensate those agencies for the use of those officers' time?
16. What costs will be associated with the trial and what portion, if any, will be borne by state and local governments?
17. Has the Justice Department consulted with the Defense Department regarding its ability or willingness to house these detainees?
18. Do a set of protocols for transferring and housing these individuals exist, and, if so, will you make it available to members of Congress?
19. What discussions regarding these detainees, if any, have administration officials had with the commanders of the Naval Station Brig in Norfolk, Virginia; the Marine Corps Base at Quantico, Virginia, or any other military installation in the contiguous United States, Alaska or Hawaii?
20. Has the administration or the Department of Defense had any discussions with Naval commanders regarding the possibility of transferring detainees to U.S. Naval vessels either in U.S. territorial or international waters?
21. Has the administration had any discussions with the warden of the Administrative Maximum prison facility in Florence, Colorado, regarding the difficulties surrounding the housing of Zacharias Moussaoui and how other prisons might be affected by housing similar detainees?

The Honorable Eric H. Holder, Jr.  
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22. Has the administration had discussions with any of the detainees' country of origin regarding their willingness to accept custody?

While I understand that the Eastern District of Virginia and the Southern District of New York have successfully held the only trials to date of terror suspects, I remain extremely concerned that adequate thought has not been given to the extensive security, financial and logistical costs associated with the transfer of any of these individuals to civilian court districts. State and local officials, as well as the citizens of northern Virginia, will face many challenges and dangers with these combatants housed in the Eastern District of Virginia.

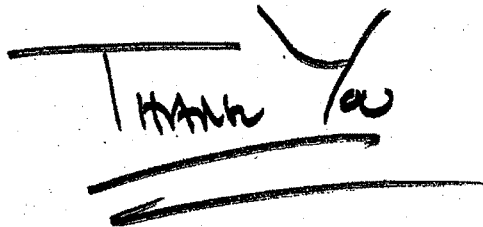
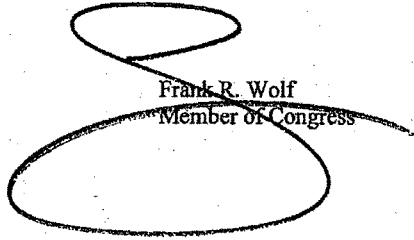
I look forward to receiving your responses to these concerns.

Best wishes.

Sincerely,

Frank R. Wolf  
Member of Congress

FRW:ccw  
Enclosure.



**FRANK R. WOLF**  
10TH DISTRICT, VIRGINIA  
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RANKING MEMBER—COMMERCE-JUSTICE-  
SCIENCE  
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**Congress of the United States**  
**House of Representatives**  
April 23, 2009

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The Honorable Eric H. Holder, Jr.  
Attorney General  
U.S. Department of Justice  
950 Pennsylvania Ave NW Rm 5111  
Washington DC 20530

Dear Attorney General Holder:

My letter of March 13 indicated my concerns about bringing enemy combatants from the detention facility at Naval Station Guantanamo Bay, Cuba, to the United States. I understand that the president has given you the task of determining the release, transfer or prosecution of these detainees. I noted your recent comments on how this is the most challenging aspect of your job as attorney general and I respect the difficulty of your position.

But as I have learned more about these detainees and received additional information from terrorism experts, I remain extremely concerned that transferring these combatants to locations near large civilian populations would place an overwhelming burden on the court system and endanger public safety.

The detainees currently held at Guantanamo Bay are some of the most dangerous individuals in the world who have openly dedicated their lives to killing Americans. Kahlid Sheik Mohammed was the architect of the 9/11 attacks and took pleasure in beheading *Wall Street Journal* reporter Daniel Pearl. Ramzi Binalshibh was identified as one of the planners of 9/11 and was supposed to be one of the hijackers until he was denied entry into the United States. Walid bin Attash is believed to be the mastermind behind the bombing of the U.S.S. Cole in Yemen in 2000. These individuals are responsible for planning the deaths of thousands of Americans.

Guantanamo Bay also houses combatants who were detained after actively trying to kill U.S. troops in Iraq and Afghanistan. From news reports I have read, it appears consideration is being given to allow these detainees rights that go beyond protections offered U.S. military personnel by the Uniform Code of Military Justice. Giving such rights to the men listed above greatly concerns me.

Earlier trials of terrorists in the U.S. demonstrated the necessity for extraordinary security resources that would be needed if some of those at Guantanamo are transferred here. *Newsday* and the *Buffalo News* reported that during the 1995 trial in New York of Omar Abdel Rahman, the mastermind of the 1993 World Trade Center bombing, terrorist confederates of El Sayyid Nosair,

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another World Trade Center bombing planner, were plotting to break him out of Attica State Prison in New York. In the same case, court tapes show that conspirators provided each other assurance that, in the event that some were captured, the others would work to free them. In addition, during the 2000 trial of Mahmud Salim, one of the terrorists accused of the 1998 bombing of the U.S. Embassy in Kenya, he stabbed New York prison guard Louis Pepe in the eye during an escape attempt. Al Qaeda saw the rights given to its members to meet with counsel as an opportunity to carry out a violent escape attempt. Mr. Salim was one of the original followers of Osama bin Laden and the highest ranking al Qaeda member held in the U.S. at the time.

In addition to trying to escape from prison, al Qaeda members have communicated with confederates while in prison. It is my understanding that El Sayyid Nosair was involved in plotting the 1993 World Trade Center bombing while in custody in Attica State Prison. In addition, Osama bin Laden has publicly credited Sheik Abdel Rahman with issuing the "fatwa" that approved the 9/11 attacks while he was in federal prison, despite the high security confinement conditions imposed on him. It also emerged later that, with the assistance of his lawyer, Rahman was continuing to send instructional messages to the Islamic Group, his Egyptian terrorist organization.

In 2004, *NBC News* reported that, despite their incarceration in maximum security conditions, convicted World Trade Center bombers were communicating by mail with terrorists in Madrid, Spain. There would certainly be strong reasons to believe that detainees currently held at Guantanamo Bay -- who are known to have rioted and grossly abused prison guards -- would use their access to counsel and investigators in order to convey messages to their allies.

It took federal prosecutors eight years in the 1990s to try 29 defendants charged with terrorism-related crimes as a result of attacks on U.S. property and interests abroad. The detention facility at Guantanamo Bay currently holds almost 10 times that number. If it took eight years to prosecute 29 individuals, how long will it take to transfer and prosecute over 200?

How is the Justice Department responding to the fact that prosecutors, judges, and juries in recent terrorism trials, and their families, have required government protection measures, sometimes for many years, at great cost in manpower and to our security budget? Has the Justice Department estimated the cost of providing enhanced personal security for trials yet to come?

I am also concerned about the extra costs that will be incurred in preparing prisons and courthouses for possible trials. I understand that the courthouses in which prior terrorism cases were litigated and the prisons where defendants were held had to be "hardened" to accommodate terrorism prosecutions and the attendant threats they entail for participants and the public. Can you provide me with what the cost was for these upgrades? Has the Justice Department considered what the cost will be for upgrading facilities for detainees who may be transferred to the civilian court system.

The Honorable Eric H. Holder, Jr.  
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I am also concerned about the precedent that the standards set in *Boumediene v. Bush*, the Supreme Court case regarding al Qaeda operative Lakhdar Boumediene, which granted habeas corpus rights to Guantanamo detainees, would set for future cases. In his dissent in this case, Justice Antonin Scalia raised the issue that if enemy combatants currently housed at Guantanamo Bay are given habeas corpus rights, the same rights would have to be given to any combatant detained where the U.S. military conducts operations. Recently, Justice Scalia's admonition has proved prescient as a federal judge in Washington ruled that *Boumediene's* grant of habeas corpus rights now extends to Afghanistan:

The process in deciding where the detainees will ultimately be housed and under what means they will be tried should be transparent so the American people know who is making these important decisions. I believe that the Justice Department should meet with those who lost loved ones in the 9/11 attacks as well as the families of service members who have died in Iraq and Afghanistan and ask for their perspective on the fate of these detainees, especially those who played a lead role in carrying out the attacks.

If you are convinced these combatants must be transferred to the United States, I believe an isolated part of the country away from population centers would be a better choice. As your department continues to consider plans for these combatants, I ask that you please address these issues as well as the questions I asked in my earlier letter. I also have these additional questions:

1. The trial of Zacharias Moussaoui in Alexandria, Virginia, lasted over four years due primarily to the judge's belief that the due process standards applicable in civilian trials required more disclosure than the Justice Department believed was required and safe to provide. I understand any appeal to the 4<sup>th</sup> Circuit Court could take up to an additional year per trial. Considering that a federal appeals court in New York just recently decided an appeal in the embassy bombing case -- more than a decade after the attack and eight years after the trial -- how long does your department envision civilian legal proceedings for Guantanamo detainees taking?
2. Khalid Sheikh Mohammed, Mohammed al Qatani and Ramzi Binalshibh have been linked directly to the September 11, 2001, attacks and appear far more culpable than Zacharias Moussaoui. Will the Justice Department seek the death penalty for detainees such as them? If so, does the Justice Department think seeking the death penalty would lengthen each trial, and, if so, for how long?
3. Will the defense attorneys for these combatants be given access to classified evidence that would inevitably lead to legal challenge and possible consideration by the Supreme Court, adding more time to trials?
4. If terror suspects are brought into the civilian system for trial and they insist on representing themselves, would the Justice Department allow them access to all discovery, including classified national defense information?

The Honorable Eric H. Holder, Jr.  
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5. Will defense attorneys be allowed discovery on all such evidence and be allowed to challenge its admission in court? Would this require allowing defense attorneys to enter combat zones to view evidence?
6. Will U.S. service members who collected evidence on the battlefield be forced to leave their duties in theater and return to the United States to give testimony in open court?
7. Will military personnel be required to have training on how to legally obtain evidence and preserve the chain of command needed to make such evidence admissible in court?
8. Will every combatant be given full legal rights and will these rights also be given to combatants detained in the future?
9. The system of military tribunals for these combatants was designed to avoid the difficulties inherent in civilian trials. If the military is trusted to run a system of justice good enough for members of our armed forces, why is it deemed insufficiently fair for these detainees who have openly stated they are "terrorists to the bone?"
10. If these combatants are transferred to the U.S. Court for the Eastern District of Virginia, how will the trials of other defendants in that court be affected?
11. If regular defense attorneys are not allowed to meet with clients at the jail facility in Alexandria due to increased security associated with these combatants, is the Justice Department concerned that those cases could be delayed to the point where those defendants have grounds for appeal?
12. The Moussaoui trial took a heavy toll on the prosecution team and I would be concerned that extended trials for numerous combatants could overwhelm the legal staffs. Do you have a plan for addressing how prosecution teams will work?
13. Are you concerned about the safety of the legal staff and the jurors who are assigned to these cases and have steps been taken to ensure their safety and the safety of their families?
14. Has the Justice Department considered establishing a separate court similar to the FISA court where judges would be assigned these cases on a rotating basis?
15. Has the Justice Department considered consulting with military experts, U.S. Marshals and other law enforcement officials before determining the safest place to house these detainees?
16. Have you consulted with the families of the victims of 9/11 as well as the families of the service members killed in Iraq and Afghanistan as to how these detainees should be prosecuted? If not, will you direct your staff to do so?
17. Will the Justice Department provide the Appropriations Committee with the costs for the security measures necessitated by the terrorism cases of the 1990s and the Moussaoui case?
18. The Congress has received your FY 2009 supplemental request, seeking \$47 million for some ongoing DOJ activities. But the majority of the funding, \$36.4 million, is for activities related to the closure of the Guantanamo detention facility. Can you tell the Appropriations Committee what exactly the department is doing related to Guantanamo, and what you are proposing to do in the future with the requested supplemental funding?
19. I understand that you have created three task forces to implement the executive orders regarding Guantanamo Bay. How many individual detainee cases must be reviewed and disposed of?

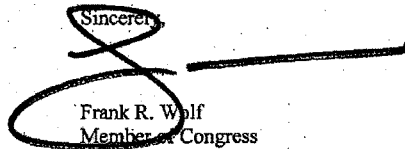
The Honorable Eric H. Holder, Jr.  
April 23, 2009  
Page 5

20. Can you provide a list of possible outcomes from these task forces, such as transferring detainees to their home countries or detaining them indefinitely without trial?
21. For any detainees released to third countries, what assurances are you seeking from those governments in order to minimize the risks of recidivism?
22. You have stated that the issues related to closing Guantanamo Bay represent your biggest challenge. If the task forces conclude that the risks associated with civilian trials in the United States are too dangerous and costly, will you recommend to the president that the closure of the detention facility be delayed?
23. Beyond the supplemental request, what other post-Guantanamo requirements will there be?

I realize that your department has numerous issues to address before Guantanamo Bay is closed and all the combatants housed there moved. As the Justice Department continues to consider the disposition of these combatants, I think it is important for Congress to play an active role. As my previous letter stated, I take Congress's oversight role seriously and believe that Congress must be consulted before any of these combatants are moved to the continental U.S.

Thank you for your service.

Sincerely,

A handwritten signature in black ink, appearing to read "Frank R. Wolf", with a long horizontal stroke extending to the right.

Frank R. Wolf  
Member of Congress

FRW:ccw



**FRANK R. WOLF**  
10TH DISTRICT, VIRGINIA

COMMITTEE ON APPROPRIATIONS

SUBCOMMITTEES:

RANKING MEMBER—COMMERCE, JUSTICE,  
SCIENCE

TRANSPORTATION-HUD

CO-CHAIR—TOM LANTOS  
HUMAN RIGHTS COMMISSION



**Congress of the United States**  
**House of Representatives**

May 13, 2009

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wolf.house.gov

The Honorable Eric H. Holder, Jr.  
Attorney General  
U.S. Department of Justice  
950 Pennsylvania Ave NW Rm 5111  
Washington DC 20530

Dear Attorney General Holder:

Although I am still awaiting your responses to my letters dated March 13 and April 23, and have yet to receive the briefings I have requested from the FBI, U.S. Marshals Service, and the Department of Homeland Security per your prohibition, I nonetheless write again for clarification regarding comments you made before the Senate Appropriations Committee on May 7.

During the hearing, you are reported as stating that, "With regard to those you would describe as terrorists, we would not bring them into this country and release them, anyone we would consider to be a terrorist." While this is important information that should have been provided in response to my letters, I am concerned that your failure to define who may be considered a terrorist will result in further confusion with regards to the administration's intentions.

Because neither this Congress nor the American people have been provided with a plan for the transfer, release, or prosecution of detainees held at Guantanamo Bay, I believe you must — at the very least — provide the American people with a list of the individuals held at Guantanamo Bay that this administration does not consider to be terrorists, especially given that information I have received indicates that all current detainees are considered medium- to high-security threats. Further, you should declassify and release all information regarding the capture, detention, and threat assessment of any detainees scheduled for release into the general public.

I have grave concerns that you are playing fast and loose with the definition of "terrorist" and may be misleading the American people regarding its plans to release the Uyghur detainees into the U.S. Let me be very clear — the Uyghurs held at Guantanamo Bay are trained terrorists and members or associates of the Eastern Turkistan Islamic Movement (ETIM), a designated terrorist group affiliated with al Qaeda, as designated by both the U.S. government and the United Nations (U.N.). Whether their intended victims were Chinese or Americans, a trained terrorist is a terrorist.

The Honorable Eric H. Holder, Jr.  
 May 13, 2009  
 Page 2

According to testimony and government documents, many of the Uyghur detainees have admitted to training at ETIM camps in Tora Bora under the direction of Abdul Haq prior to their capture by Pakistani authorities in the Federally Administered Tribal Areas (FATA) of Pakistan.

As you may know, the ETIM is a terrorist group that uses violence against civilians for the creation of an independent, Islamic state – in the image of the Taliban’s Afghanistan – in the Xinjiang region of China.<sup>1</sup> The group is linked to a number of terrorist attacks in China during the mid-1990s, including several bus bombings that killed dozens and injured hundreds of innocent civilians<sup>2</sup>, as well as threats of attacks against the 2008 Olympics in Beijing. Over the past decade, the group has predominantly operated out of Afghanistan and Pakistan and has developed close links with al Qaeda and the Taliban.

On August 19, 2002, then Deputy Secretary of State Richard Armitage designated the ETIM as “a terrorist group that committed acts of violence against unarmed civilians.”<sup>3</sup> The group was designated by the State Department under Executive Order 13224, “Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism,” which defines terrorist as “activity that (1) involves a violent act or act dangerous to human life, property, or infrastructure; and (2) appears to be intended to intimidate or coerce a civilian population; to influence the policy of a government by intimidation or coercion; or to affect the conduct of a government by mass destruction, assassination, kidnapping, or hostage-taking.”<sup>4</sup> In 2004, the State Department further added the ETIM to the “Terrorist Exclusion List” (TEL) under section 411 of the USA Patriot Act of 2001 (P.L. 107-56), which prohibits members of designated terrorist groups from entering into the U.S.<sup>5</sup>

Later in 2002, the U.S. Embassy in Beijing reported that two members of the ETIM were deported from Kyrgyzstan after allegedly plotting to attack the U.S. embassy there.<sup>6</sup> Following the attempted attack, the U.S., Peoples Republic of China, Afghanistan, and Kyrgyzstan asked the United Nations to designate the ETIM as a terrorist group under Security Council resolutions 1267 and 1390, which provide for the freezing of the group’s assets.<sup>7</sup>

Last month, the Obama Administration added the current leader of the ETIM (also recognized as the ETIP), Abdul Haq, to terrorist lists under Executive Order 13224, following U.N. recognition of Haq, under Security Council Resolution 1267, as an individual affiliated with Osama bin Laden, al Qaeda, or the Taliban. According to Stuart Levey, Treasury under

<sup>1</sup> CBS News Internet Terrorism Monitor. “East Turkistan Islamic Party Appeals For New Recruits in New Video.” <[http://www.cbsnews.com/blogs/2009/04/15/monitor/entry4948735.shtml?source=search\\_story](http://www.cbsnews.com/blogs/2009/04/15/monitor/entry4948735.shtml?source=search_story)>

<sup>2</sup> Gunaratna, Rohan and Acharya, Arubinda. *Islamic Terrorist Threats to China*. p. 42

<sup>3</sup> Congressional Research Service. *U.S.-China Counterterrorism Cooperation: Issues for U.S. Policy*. p. 5.

<sup>4</sup> CRS Report. P. 5

<sup>5</sup> CRS Report. P. 6

<sup>6</sup> CRS Report. P. 5

<sup>7</sup> CRS Report. P. 5

The Honorable Eric H. Holder, Jr.  
 May 13, 2009  
 Page 3

secretary for Terrorism and Financial Intelligence, "Abdul Haq commands a terror group that sought to sow violence and fracture international unity at the 2008 Olympic Games in China."<sup>8</sup>

The ETIM's relationship with al Qaeda has grown since it was invited by the Taliban to conduct training in Afghanistan in the late 1990s, followed by the move of the ETIM headquarters from the Xianjiang region to Kabul in September 1998.<sup>9</sup> By 2005, Abdul Haq had been admitted to al Qaeda's "Shura Council"<sup>10</sup> and on November 16, 2008, an al Qaeda spokesman "stated that a Chinese citizen named 'Abdul Haq Turkistani' was appointed by Osama bin Laden as the leader of two organizations – 'al Qaeda in China' and 'Hizbul Islam Li-Turkistan.'" This appointment was also confirmed by Abu Sulieman, a member of al Qaeda.<sup>11</sup>

It is abundantly clear that the Uyghur detainees held at Guantanamo Bay are affiliated with the ETIM and trained under Abdul Haq in 2001. According to the detainees' sworn statement to U.S. authorities, many acknowledged that they had trained in an ETIM training camp in Tora Bora from June to November 2001 and at least one confirmed, "The person running the camp was named Abdul Haq."<sup>12</sup>

Following the U.S. invasion of Afghanistan in fall 2001 cooperation between the ETIM and the Taliban increased. It is reported that the ETIM's leader prior to Abdul Haq, Hasan Mahsum, "led his men to support Taliban and fight alongside them against U.S. and the coalition forces. On 2 October 2003, Hasan Mahsum was killed, along with 8 other Islamic militants, by a Pakistani army raid on an al Qaeda hideout in South Waziristan area in Parkistan."<sup>13</sup>

Additionally, a January 2008 al Qaeda in Afghanistan publication, "Martyrs in Time of Alienation," identified 120 "martyrs" – including five Uyghurs from Xianjiang and who trained in Tora Bora – who fought with the Taliban in Afghanistan against U.S. troops. One is reported to have been killed fighting U.S. forces during the invasion in 2001.<sup>14</sup> Hasan Mahsum confirmed, prior to his death in 2003, that ETIM members trained and fought with al Qaeda forces in Afghanistan.<sup>15</sup>

In addition to their affiliation in a designated terrorist organization and association with al Qaeda leader Abdul Haq, these detainees fervently believe in the creation of a Taliban-style Islamist state in northwestern China and do not share American values of respect, tolerance, and

<sup>8</sup> U.S. Treasury Department. *Treasury Targets Leader of Group Tied to Al Qaeda*. <<<http://www.treas.gov/press/releases/tg92.htm>>>

<sup>9</sup> Gunaratna, p. 60

<sup>10</sup> CRS Report p. 6

<sup>11</sup> Gunaratna p. 54

<sup>12</sup> The Guantanamo Docket – The New York Times. <<<http://projects.nytimes.com/guantanamo/detainees/277-bahitay-mahnut#2>>>

<sup>13</sup> Gunaratna p. 52

<sup>14</sup> CRS Report. P. 7

<sup>15</sup> Gunaratna. P. 61

The Honorable Eric H. Holder, Jr.  
 May 13, 2009  
 Page 4

religious pluralism. In fact, one recent press account stated that, "Not long after being granted access to TV, some of the [Uighurs] were watching a soccer game. When a woman with bare arms was shown on the screen, one of the group grabbed the television and threw it to the ground, according to the officials."<sup>16</sup>

I am certainly no friend of the Chinese government. I have long been critical of their repressive treatment of Uyghur Muslims as documented in the State Department's most recent human rights report. But we ought to have no tolerance for terrorism in any form. Further, violent aims of this nature do not know national boundaries. Thousands of Americans, including the president and high-ranking U.S. government officials, traveled to the 2008 Beijing Olympics, a stated terrorist target for the ETIM.

If their affiliation, associations, and recent behavior were not troubling enough, I am also concerned about their potential further radicalization over the past eight years while held with al Qaeda members at Guantanamo Bay. Without a declassified threat assessment, how can the American people know for sure if the Uyghurs have not been further radicalized since their capture? How can we assess their potential threat once released into the U.S.? Will they attack Chinese targets within the U.S., provide intelligence to the ETIM or al Qaeda abroad, or even stage an attack on Americans at the direction of these terrorist groups?

Reports indicate that the ETIM's philosophy has dramatically evolved as a result of their training and cooperation with al Qaeda and the Taliban over the last decade. According to two experts, Rohan Gunaratna and Arabinda Acharya, "In the post-9/11 era, ETIM began to believe in the global jihad agenda. Today, the group follows the philosophy of al-Qaeda and respects Osama bin Laden. Such groups that believe in the global jihad do not confine their targets to the territories that they seek to control... [The ETIM] is presenting a threat to Chinese as well as Western targets worldwide."<sup>17</sup>

Without detailed information about each Uyghur detainee, including a threat assessment, the American people cannot be expected to tolerate trained terrorists being released into their communities. If your actions over the past two weeks are any indication, I would not be surprised if this administration were to ride roughshod over the security of the American people and release the Uyghurs into the U.S. on some quiet Friday evening, when members of Congress are traveling home and the members of the press have already filed their weekend reports.

That is not the transparency nor sound judgment you promised you would bring to the Justice Department when you appeared before the House Commerce-Justice-Science Appropriations subcommittee last month. If you will not share this information with Congress or the American people, how can we be expected to accept your assurances that the Uyghur

<sup>16</sup> Hook, Janet. "Democrats face hard time over Guantanamo." Los Angeles Times.  
 <[http://www.latimes.com/news/nationworld/nation/la-na-gitmo-politics7-2009may07.0.3870315\\_story](http://www.latimes.com/news/nationworld/nation/la-na-gitmo-politics7-2009may07.0.3870315_story)>

<sup>17</sup> Gunaratna. P. 65

The Honorable Eric H. Holder, Jr.  
May 13, 2009  
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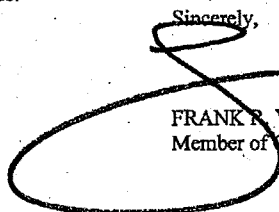
detainees you intend to release into the U.S. are not "terrorists," according to your definition of the word? However, according to our definition, anyone who trains to kill civilians in Tora Bora, whose leader is a member of al Qaeda's Shura Council, does not share our most basic values of tolerance and diversity, and who may have been further radicalized over the last eight years is most unequivocally a terrorist and should not be released into the U.S.

As the ranking member of the appropriations subcommittee that will be charged with considering funding your proposal to transfer or release detainees to the U.S., I believe that your plan could cost upwards of a billion dollars. Before you ask this Congress and the American people to write this check to fund your plan, we have a right to see it.

I continue to await your responses to my three letters, dated March 13, April 23, and today, as well as the briefings I have requested from the FBI, U.S. Marshals Service, and Department of Homeland Security that have been denied over the last two weeks at your insistence.

Best wishes.

Sincerely,



FRANK R. WOLF  
Member of Congress

FRW:tc

**FRANK R. WOLF**  
10TH DISTRICT, VIRGINIA

COMMITTEE ON APPROPRIATIONS

SUBCOMMITTEES:

RANKING MEMBER—COMMERCE—JUSTICE—  
SCIENCE

TRANSPORTATION—HUD

CO-CHAIR—TOM LANTOS  
HUMAN RIGHTS COMMISSION



**Congress of the United States**  
**House of Representatives**  
July 7, 2009

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wolf.house.gov

The Honorable Eric H. Holder, Jr.  
Attorney General  
U.S. Department of Justice  
950 Pennsylvania Ave NW Rm 5111  
Washington DC 20530

Dear Attorney General Holder:

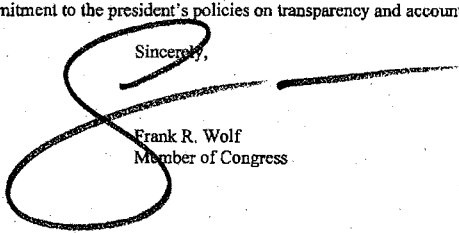
It has been nearly four months since I wrote you on March 13 asking for basic information, which has yet to be provided to this Congress or the American people, about the transfer of detainees from Guantanamo Bay to the United States. I have not received a response to that letter and my two subsequent letters on April 23 and May 13 on this matter nor my June 8 letter on your dismissal of a voter intimidation case. This is unacceptable.

If I -- as the ranking member on the House Commerce-Justice-Science Appropriations subcommittee that funds your department -- cannot receive any information about how the department is spending these funds, I doubt any other member or committee can expect you to be any more forthcoming. Indeed, I understand from comments from a recent Senate Judiciary hearing that letters sent to you by Senators Leahy, Sessions, and Grassley have similarly gone unanswered.

During his May 21 speech at the National Archives, President Obama stated, "I ran for President promising transparency, and I meant what I said. That is why, whenever possible, we will make information available to the American people so that they can make informed judgments and hold us accountable... In this system of checks and balances, someone must always watch over the watchers."

Your failure to respond is a disservice to this president and this country. Congress has a fundamental obligation to conduct robust and thorough oversight of the executive's application of law and taxpayer funds. Your blatant obstruction of this most basic responsibility leads me to question your commitment to the president's policies on transparency and accountability.

Sincerely,

  
Frank R. Wolf  
Member of Congress

**U.S. Department of Justice**

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

July 9, 2009

The Honorable Frank R. Wolf  
U.S. House of Representatives  
Washington, D.C. 20515

Dear Congressman Wolf:

The President forwarded your letter of May 1, 2009 to the Department of Justice for response because, under the President's Executive Order 13492, the Attorney General has the responsibility for coordinating the interagency review of Guantánamo Bay detainees. We are responding to that letter, as well as to your letters to the Attorney General, dated March 13, April 23, May 13, and July 7, 2009, each of which raises questions about the disposition of the detainees held at Guantánamo.

We appreciate receiving your views on this important subject, and regret our delay in replying to your letters. Some of the issues you raised in these letters were also raised in written questions you posed to the Attorney General following his testimony on FY10 appropriations for the Justice Department, and we have already submitted responses to those questions.

As you know, the President has announced his intention to close the detention facility at Guantánamo Bay by January 2010. To that end, he issued Executive Order 13492 which established an interagency task force and a review panel to determine the appropriate disposition of each detainee held at Guantanamo in light of all relevant facts and circumstances. The President also issued Executive Order 13493, which established an interagency task force to conduct a comprehensive review of the lawful options available to the Government for the disposition of individuals captured or apprehended in connection with armed conflicts and counterterrorism operations.

While we have not been in a position to brief Congress on ongoing Executive Branch deliberations with respect to individual detainees, we were pleased to make available to you and your staff the head of the Guantánamo Detainee Review Task Force to describe the process by which that Task Force is carrying out its work. As he explained, the Attorney General is coordinating an interagency process and comprehensive review of each detainee currently held at Guantánamo to determine an appropriate disposition consistent with the national security and foreign policy interests of the United States, as well as the interests of justice.

The Honorable Frank R. Wolf  
Page Two

We appreciate your concern about the security implications of transferring detainees from immigration detention at Guantánamo Bay to the United States, and we agree that the American people must be reassured that the Government is taking all necessary and appropriate steps to combat terrorism. As Attorney General Holder stated in a hearing before the House Judiciary Committee on May 14, 2009, "We will not release anybody into the United States that we think would pose a danger to the American people."

Moreover, the recently enacted conference report on the Supplemental Appropriations bill (H.R. 2346) limits the circumstances under which individuals detained at Guantánamo may be transferred to the United States or elsewhere. Section 14103 of the conference report precludes the release of Guantánamo detainees into the United States for any reason, and places conditions on the transfer of detainees to the United States for prosecution.

Your letters focus on the circumstances surrounding the Uighur detainees at Guantánamo. As you know, the Uighurs have always been something of an anomaly within the Guantánamo detainee population because they were not present in Afghanistan to take up arms against the United States. As early as 2003, the Bush Administration approved most of the Uighurs for transfer or release from Guantánamo Bay. In 2006, five Uighurs detained at Guantánamo Bay were transferred to Albania for release. Four of them are currently living in Albania; one now lives in Sweden, where he was granted asylum. Last year, the Bush Administration formally abandoned any legal claim that the Uighurs are enemy combatants.

Accordingly, all of the Uighurs currently at Guantánamo must, by operation of law, be transferred or released. The current Administration is committed to ensuring that this is done in a manner that ensures the safety of these individuals and the security of the United States. To that end, four Uighur detainees who had been held at Guantánamo Bay were resettled in Bermuda on June 11, 2009. Efforts to transfer the other Uighur detainees remain ongoing.

As you are aware, decisions have been made about other detainees held previously at Guantánamo. On June 9, 2009, Ahmed Khalfan Ghailani, a Tanzanian national who had been held at Guantánamo Bay since September 2006, was transferred to the Southern District of New York to face prosecution in federal court pursuant to a March 12, 2001 indictment for the 1998 bombing of the American embassies in Kenya and Tanzania in which over 200 people were killed. Ghailani was safely transferred to the Southern District by the United States Marshals Service and is being housed at the Metropolitan Correctional Center, which has housed numerous terror suspects over the years during their prosecutions in the Southern District of New York.

On June 12, 2009, three Saudi nationals were transferred from Guantánamo Bay to the Kingdom of Saudi Arabia where they will be subject to appropriate security measures and be required to participate in a rehabilitation program. And on June 10, 2009, two additional detainees held at Guantánamo were transferred, one to Iraq and the other to Chad.

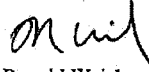


The Honorable Frank R. Wolf  
Page Three

We have not been able to provide a comprehensive response to all of the questions set forth in your letters because policy deliberations and case-by-case determinations within the Executive Branch are incomplete. Nonetheless, we look forward to working with you and other Members of Congress to address these complex issues in a manner that fully protects the immediate and long-term security interests of the United States.

We hope this information is helpful. Please do not hesitate to contact this office if we can be of assistance regarding this, or any other matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Ronald Weich".

Ronald Weich  
Assistant Attorney General

**FRANK R. WOLF**  
 NORTH DISTRICT, VIRGINIA

COMMITTEE ON APPROPRIATIONS

SUBCOMMITTEES:

RANKING MEMBER—COMMERCE, JUSTICE,  
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 HUMAN RIGHTS COMMISSION



**Congress of the United States**  
**House of Representatives**

July 10, 2009

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wolf.house.gov

The Honorable Eric H. Holder, Jr.  
 Attorney General  
 U.S. Department of Justice  
 950 Pennsylvania Ave NW Rm 5111  
 Washington DC 20530

Dear Attorney General Holder:

Yesterday I received the enclosed response to my letters to you of March 13, April 23, and May 13 not signed by you, but by Ronald Weich in your Office of Legislative Affairs. His response failed to answer any of the questions posed in my three letters and appears to be merely a summary of the enclosed press releases issued by your office earlier this year, as was the information you submitted for the committee record in response to the April 23 Commerce-Justice-Science Appropriations subcommittee hearing. Unfortunately, the transcripts of this hearing have not yet been publicly released.

Frankly, this response is a poor attempt to avoid answering the most basic and relevant questions regarding your plans to close the detention facility at Guantanamo Bay. Your response is an insult to the American people who have legitimate questions about your intentions with regards to the transfer, trial, and/or release of Guantanamo detainees into the United States. This, along with your brazen dismissal of a voter intimidation case, I believe points to politicization at the Department of Justice.

I also take this opportunity to remind you of the role of congressional oversight with regard to the executive branch, including your office and department:

The *1946 Legislative Reorganization Act* mandated that committees exercise "continuous watchfulness" of the administration of laws and programs under their jurisdiction. (60 Stat. 832, 1946)

The *1970 Legislative Reorganization Act* reaffirmed the oversight function of congressional committees: "... each standing committee shall review and study, on a continuing basis, the application, administration, and execution of those laws or parts of laws, the subject matter of which is within the jurisdiction of that committee." (84 Stat. 1156, 1970)

The Honorable Eric H. Holder, Jr.  
July 10, 2009  
Page 2

I continue to find troubling your unwillingness to allow career federal employees to brief members on the backgrounds of the detainees held at Guantanamo Bay. When your office finally allowed the FBI to provide a briefing, your office sent a political handler, Mr. Weich, to prevent the agent from speaking freely. I bring your attention to:

*The 1912 Anti-Gag Legislation and Whistleblower Protection Laws for Federal Employees* guaranteed that **"the right of any persons employed in the civil service . . . to petition Congress, or any Member thereof, or to furnish information to either House of Congress, or to any committee or member thereof, shall not be denied or interfered with."** (37 Stat. 555, 1912; codified at 5 U.S.C. § 7211, 1994)

As the ranking member of the House Appropriations Subcommittee on Commerce-Justice-Science, I take seriously the responsibilities of my office to pursue answers to these questions by every means under the law. Given that it took 118 days to receive this cursory response, I will be introducing a Resolution of Inquiry in the House to ensure answers are provided.

Sincerely,

Frank R. Wolf  
Member of Congress



**FRANK R. WOLF**  
10TH DISTRICT, VIRGINIA

COMMITTEE ON APPROPRIATIONS

SUBCOMMITTEES:  
RANKING MEMBER—STATE-FOREIGN  
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TRANSPORTATION-HUD

CO-CHAIR—CONGRESSIONAL  
HUMAN RIGHTS CAUCUS



**Congress of the United States**  
**House of Representatives**

October 1, 2009

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wolf.house.gov

The Honorable Eric H. Holder, Jr.  
Attorney General  
U.S. Department of Justice  
950 Pennsylvania Ave NW Rm 5111  
Washington DC 20530

Dear Attorney General Holder:

It has come to my attention that at least 27 detainees held at Guantanamo Bay have been cleared for release to Yemen. I received official notification about the release of one of these transfers, Alla Ali Bin Ali Ahmed, but was only made aware of the additional 26 Yemenis allegedly cleared for release after reading a Reuters report titled, "Obama team clears 75 at Guantanamo for release" on September 28, 2009.

I urge you to reconsider any pending or future releases of detainees to Yemen, particularly in light of the country's deteriorating security and growing al-Qaeda presence. Earlier this week, *Time* magazine reported that "about two-thirds of the country is out of government control," and that "al-Qaeda is turning the lawless mountain areas of Yemen into a new staging area." According to an AFP report today, U.S. counterterrorism officials believe that al-Qaeda's "presence in Yemen threatens to turn that country into a dangerous base for training and plotting attacks."

You will recall the September 2008 al-Qaeda attack on the U.S. Embassy in Yemen using vehicle bombs, rocket-propelled grenades and automatic weapons to mount a coordinated assault, killing 10 guards and civilians. Since that time, al-Qaeda's posture in Yemen has grown stronger with merger of the Saudi and Yemeni arms of al-Qaeda into one group -- al-Qaeda in the Arabian Peninsula -- with Yemen as its base for training and operations.

We have seen the consequences of these developments. Last August, a Yemeni al-Qaeda loyalist detonated a suicide bomb in an attempt to kill Saudi Prince Mohammed bin Nayef. He was able to gain access to the prince by pretending to be an al-Qaeda defector before detonating the explosives. This case is particularly concerning because it demonstrates an evolution and sophistication in the type of attacks being planned and launched by al-Qaeda leaders in Yemen.

While I continue to be troubled that, according to the Reuters report, the detainees at Guantanamo Bay currently have more information about their release than do members of Congress or the American people, it is of particular concern that detainees who have spent the last eight years living among the most dangerous terrorists in the world, including Khalid Sheikh

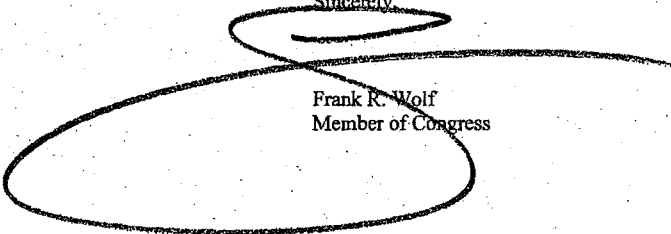
The Honorable Eric H. Holder, Jr.  
October 1, 2009  
Page 2

Mohammed, the mastermind of the 9/11 attacks and who beheaded journalist Daniel Pearl, would be released into countries with a strong al-Qaeda presence. Such a disposition is only adding kerosene to a fire.

Although we have clear differences of opinion on how best to deal with the situation in Guantanamo Bay, I think we can both agree that a rushed release of terrorist detainees to countries with a strong al-Qaeda presence is not in America's best interest. I strongly urge you to halt all transfers of detainees to unstable countries, including Yemen, Afghanistan, and Algeria, until evidence is provided to this Congress demonstrating that the detainee can be properly received and monitored in the receiving country.

I look forward to your response, as well as your responses to my letters to you dated March 13; April 23, May 13, June 8, July 7, July 10, July 17, July 22, and July 31. Please do not hesitate to contact me or my staff member, Thomas Culligan, at 202-225-5136.

Sincerely,



Frank R. Wolf  
Member of Congress

THIS IS VERY IMPORTANT  
FOR THE SAFETY OF  
OUR COUNTRY.



HOUSE OF REPRESENTATIVES  
WASHINGTON, D.C. 20515

FRANK R. WOLF  
TENTH DISTRICT, VIRGINIA

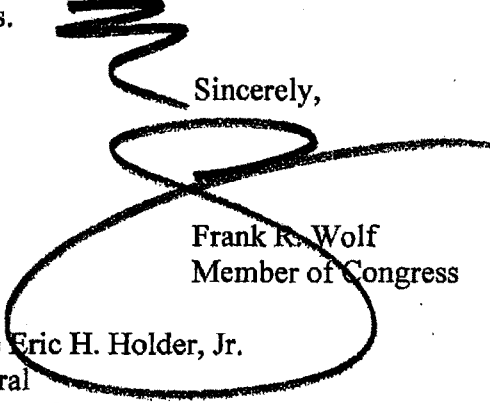
November 5, 2009

Dear Attorney General Holder:

Please see the enclosed Associated Press article about insurgent violence on the Saudi Arabia-Yemen border.

Does the Obama Administration really want to release terrorist detainees from Guantanamo Bay to this country? This is a dangerous policy that could cost American lives.

Sincerely,



Frank R. Wolf  
Member of Congress

The Honorable Eric H. Holder, Jr.  
Attorney General  
U.S. Department of Justice  
950 Pennsylvania Ave NW Rm 5111  
Washington DC 20530

BEST WISHER

## The Washington Post

### Saudis launches offensive against Yemen rebels

By AHMED AL-HAJ and SALAH NASRAWI  
The Associated Press  
Thursday, November 5, 2009 3:59 PM

SANA, Yemen -- Saudi Arabia sent fighter jets and artillery bombardments across the border into northern Yemen Thursday in a military incursion apparently aimed at helping its troubled southern neighbor control an escalating Shiite rebellion, Arab diplomats and the rebels said.

The Saudis - owners of a sophisticated air force they rarely use - have been increasingly worried that extremism and instability in Yemen could spill over to their country, the world's largest oil exporter. The offensive came two days after the killing of a Saudi soldier, blamed on the rebels.

Yemen denied any military action by Saudi Arabia inside its borders. But Yemen's president is a key ally of the Saudis, making it highly unlikely the kingdom would have launched the offensive without tacit Yemeni agreement.

A U.S. government official said the Yemenis were not involved militarily in the fighting. The official spoke anonymously because he was not authorized to discuss the matter publicly.

The offensive immediately raised concerns of another proxy war in the Middle East between Iran and Saudi Arabia, a key U.S. ally. Shiite Iran is believed to favor the rebels in Yemen while Saudi Arabia, which is Sunni, is Iran's fiercest regional rival.

The same dynamic has played out in various forms in Lebanon, where Iran supports the Shiite militant Hezbollah and Saudi Arabia favors a U.S.-backed faction, and in Iraq, where Saudi Arabia and Iran have thrown support to conflicting sides in the Sunni-Shiite struggle.

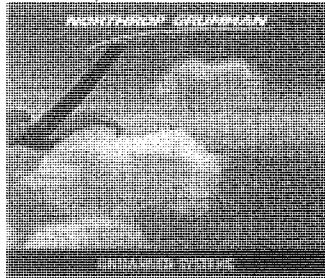
A top Saudi government adviser confirmed "a large scale" military operation underway on the Saudi-Yemeni border with further reinforcements sent to the rugged, mountainous area.

"It is a sustained operation which aims to finish this problem on our border," he said, speaking on condition of anonymity because of the sensitivity of the issue. He said Saudi troops were coordinating with Yemen's army, but Yemen's defense ministry denied the Saudis were inside the country.

The northern rebels, known as Hawthis, have been battling Yemeni government forces the past few months in the latest flare-up of a sporadic five-year conflict. They claim their needs are ignored by a Yemeni government that is increasingly allied with hard-line Sunni fundamentalists, who consider Shiites heretics.

The rebels said the Saudi airstrikes hit five areas in their northern stronghold Thursday but it was not

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possible to independently verify the reports. They said there were dead and wounded, and that homes were destroyed. The rebels' spokesman said people were afraid to get near the areas being bombed, making it difficult to count the casualties.

"Saudi jets dropped bombs on a crowded areas including a local market in the northern province of Saada," Hawthi spokesman Mohammed Abdel-Salam told The Associated Press. "They claim they are targeting al-Hawthis, but regrettably they are killing civilians like the government does."

He said the attacks were followed by hundreds of artillery shells from the border.

"So far, three killed have been pulled out of the rubble, including a woman and a child who perished when their houses were bombed and burned down," said Abdel-Salam.

The fighting is more than 600 miles from Saudi Arabia's oil fields on the kingdom's eastern Persian Gulf coast. But northern Yemen overlooks the Red Sea, the world's busiest route for oil tankers.

Two Arab diplomats, speaking on condition of anonymity, said Saudi Tornado and F-15 warplanes had been bombarding targets inside Yemen since Wednesday afternoon, inflicting significant casualties on rebels. The diplomats spoke on condition of anonymity because they are not allowed to talk to the media.

They said army units and special forces also had been sent to northern Yemen, and that several Saudi towns on the border had been evacuated as a precaution.

State Department spokesman Ian Kelly told reporters he had no information about whether the conflict had spread across the border but expressed Washington's concern over the situation.

"It's our view that there can be no long-term military solution to the conflict between the Yemeni government and the Hawthi rebels," Kelly said. "We call on all parties to the conflict to make every effort to protect civilian populations and limit damage to civilian infrastructure."

The weak central government of Yemen, which has little control outside the capital San'a, is fighting on multiple fronts including the northern rebels and a separatist movement in the south. But the most worrisome is a lingering threat from al-Qaida militants.

The U.S. also fears any Yemeni fighting could spill over into Saudi Arabia and is concerned that Yemen could become a haven for al-Qaida militants hiding out in the nation, at the tip of the Arabian peninsula.

The Yemeni government openly accuses Iran of arming the Hawthi rebels, but there has been no public evidence to back those claims, said Joost Hiltermann, deputy program director of the Middle East program for the International Crisis Group think tank in London.

"I think Iran is probably pleased with what is happening, but that is not the same as saying they are supporting the Hawthi," Hiltermann said.

Simon Henderson, director of Gulf and energy policy at the Washington Institute for Near East Policy in Washington, agreed that there is no clear evidence that Iran funds the rebels. But he said there is a wide assumption that Iran favors the Hawthi and the Saudis are backing Yemen's Sunni president.

"So it is a Saudi-Iranian proxy war," he said.



Saudi Arabia, rich in oil, has one of the world's most sophisticated air forces but rarely uses it.

The bulk of its air power, with more than 350 combat aircraft, derives from squadrons of F-15s and British-supplied Tornados, according to the military and intelligence analysis group GlobalSecurity.org. The kingdom also for decades has received U.S. military assistance in the form of training.

The Saudi incursion marks the first time since the 1991 Gulf War that the country has deployed military might beyond its borders.

In that war, Saudi forces assisted the U.S. Marine Corps, providing staging grounds for airstrikes and in joint operations targeting Iraqi positions in Kuwait with artillery fire and ground offensives.

The incursion is not, however, Saudi Arabia's first involvement in internal Yemeni conflicts. During Yemen's 1962-70 civil war, sparked by a military coup that overthrew Yemen's royalist government, Saudi Arabia supported the royalists against the Egyptian-backed government.

When civil war erupted again in 1994, it was widely believed that the Saudis sided with southern secessionist rebels against the central government.

A security official told Saudi Arabia's state news agency that the soldier died when gunmen infiltrated from Yemen and attacked security guards patrolling the Mount Dokhan border area Tuesday. Rebels said that area was among the bombing targets Thursday.

The Gulf Cooperation Council, the region's main diplomatic forum, condemned what it called the "violation and infiltration" of Saudi Arabia's borders. "Saudi Arabia is capable of protecting its lands," it warned in a statement.

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Nasrawi reported from Cairo. Associated Press Writers Omar Sinan and Ben Hubbard in Cairo and Pamela Hess in Washington contributed to this report.

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**Congress of the United States**  
**House of Representatives**

November 12, 2009

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wolf.house.gov

The Honorable Eric H. Holder, Jr.  
Attorney General  
U.S. Department of Justice  
950 Pennsylvania Ave NW Rm 5111  
Washington DC 20530

Dear Attorney General Holder:

I wanted to share my enclosed letter to President Obama urging him to halt the release of Guantanamo Bay detainees to Yemen. The release of these individuals could have dangerous consequences for the American people.

Last month in a Voice of America interview, National Counterterrorism Center director Michael Leiter stated, "In Yemen, we have witnessed the reemergence of al-Qaida in the Arabian Peninsula and the possibility that that will become the base of operations for al-Qaida."

In light of Major Nidal Hasan's numerous alleged communications with radical cleric Anwar al-Aulaqi in Yemen, I am deeply concerned about the impact al-Aulaqi could have on newly freed detainees in Yemen.

I urge you to halt the release of any detainee to Yemen or other unstable countries.

Sincerely,

Frank R. Wolf  
Member of Congress

**FRANK R. WOLF**  
10TH DISTRICT, VIRGINIA

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**House of Representatives**

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November 12, 2009

The Honorable Barack H. Obama  
The President  
The White House  
Washington DC 20500

Dear Mr. President:

As the author of the language that created the National Commission on Terrorism in 1998 and the ranking Republican on the House Appropriations subcommittee with oversight authority for the Justice Department, I remain deeply concerned about the administration's imminent release of as many as 26 Guantanamo Bay detainees to Yemen -- a growing haven for al Qaeda in the Persian Gulf. It is my understanding that you are also preparing to release several other detainees to another country that anyone with a basic understanding of world affairs would agree is unacceptable.

The American people have the right to know who these detainees are and what acts of terror they were engaged in. If the public had this information, they would never tolerate the release of these men back into unstable countries with a sizeable al Qaeda presence.

If the administration does not halt these pending releases immediately, it could be responsible for creating a new revolving door of terrorism that will cost American lives. The security of the American people could be at risk because of your administration's relentless pursuit of a campaign promise to close Guantanamo Bay by January 22, 2010.

Why has the administration made basic information about these dangerous detainees so highly classified that it cannot be shared with the American people or the media? I have reviewed the materials. These are dangerous individuals. To release committed al Qaeda terrorists back to Yemen under these conditions would be an act of gross malfeasance that undermines the safety of the American people.

Earlier this year, I offered an amendment to the fiscal year 2009 supplemental appropriations bill requiring the administration to provide unclassified fact sheets and threat analyses of any Guantanamo detainees scheduled for release. The American people have the right to this information, which has direct implications on the safety of our military and civilians. The amendment was defeated by a partisan vote thus allowing your administration to operate under a cloak of secrecy to empty Guantanamo Bay.

The Honorable Barack H. Obama  
 November 12, 2009  
 Page 2

You receive intelligence briefings daily and must know that Yemen is undoubtedly one of the most unstable countries in the world today – and the country where al Qaeda has reconstituted its operations over the last year. The director of the National Counterterrorism Center, Michael Leiter, stated last month in a *Voice of America* interview, “In Yemen, we have witnessed the reemergence of al-Qaida in the Arabian Peninsula and the possibility that that will become the base of operations for al-Qaida.” His sentiment is shared by United Nations sanctions coordinator Richard Barrett who indicated that few places in the world provide a more perfect safe haven to al Qaeda than Yemen.

Instances of former Guantanamo Bay detainees launching terrorist attacks from Yemen include one just a month ago. On October 13, Saudi police prevented an imminent suicide bomb attack as two al Qaeda terrorists slipped across the border from Yemen. Notably, one of the would-be suicide bombers, Yousef Mohammed al Shihri, was a former Guantanamo detainee released in 2007 to Saudi Arabia. He quickly left Saudi Arabia for dangerously unstable Yemen where he rejoined al Qaeda.

Just over a year ago, in September 2008, another former Guantanamo Bay detainee, Said Ali al Shihri, helped orchestrate the terrorist attack on the U.S. embassy in Sanaa, Yemen, killing 10 guards and civilians. Since that time, al Qaeda's posture in Yemen has grown stronger with the merger of the Saudi and Yemeni arms of al Qaeda into one group--al Qaeda in the Arabian Peninsula--with Yemen as its base for training and operations.

Yemen is also now home to radical cleric Anwar al-Aulaqi, who influenced alleged Fort Hood gunman Major Nidal M. Hasan. As you may recall, al-Aulaqi mentored two of the 9/11 hijackers before fleeing to Yemen in 2004. He is believed by U.S. intelligence to be a critical link in al Qaeda's efforts to radicalize Muslim Americans and incite domestic terrorist acts. According to one expert cited in a 2008 *Washington Post* article, “Aulaqi is ‘a huge inspiration to home-grown terror cells in the U.K. and Europe.’”

As the facts surrounding the Fort Hood attack have emerged, it is becoming clear that anyone who is cited in the 9/11 Commission Report – as al-Aulaqi was on page 221 – as a “significant” contact for 9/11 terrorists Nawaf al-Hazmi and Khalid al-Mihdhar should be considered a “significant” connection to Hasan. Al-Aulaqi has subsequently praised Hasan's attack stating on his Web site: “Nidal Hassan is a hero... Nidal opened fire on soldiers who were on their way to be deployed to Iraq and Afghanistan. How can there be any dispute about the virtue of what he has done? In fact the only way a Muslim could Islamically justify serving as a soldier in the US army is if his intention is to follow the footsteps of men like Nidal,” according to a translation.

The American people deserve a full accounting of al-Aulaqi's relationship with Hasan and his incitement of terrorism in Yemen. Since fleeing to Yemen in 2004, al-Aulaqi has taught his radical ideology at the Iman University in Sanaa, Yemen – the same university attended by

The Honorable Barack H. Obama  
 November 12, 2009  
 Page 3

convicted terrorist John Walker Lindh. In 2002, the university was temporarily closed following a deadly attack by one of its students on three American citizens in Yemen. If al-Aulaqi were able to have this impact on a U.S. Army major at Walter Reed Army Medical Center and Fort Hood, what impact will he have on the newly freed detainees in Yemen?

Iman University's founder, Abd-al-Majid al Zindani, is a long-standing ally of Osama bin Laden and was designated by the U.S. Treasury Department in 2004 as a "specially designated global terrorist." However, the Yemeni government has refused to turn over Zindani to U.S. authorities amid speculation that President Salih is protecting him for political purposes. If the Yemeni government is obstructing the arrest of high-profile terrorist financiers like Zindani, how can we trust that they would even attempt to rehabilitate or monitor detainees released from Guantanamo Bay?

You were at Fort Hood on Tuesday for the memorial service. You saw the grief-stricken families of those who died. You saw the heartbreak of innocent children who will grow up without a parent, the gut-wrenching sorrow of spouses who are left to carry on alone, the tears of mothers and fathers, sisters and brothers, aunts and uncles of the fallen soldiers.

I raise these concerns directly with you because, according to everyone with whom I have spoken, detainee transfers and releases are being run directly out of the White House. Setting aside the obvious concerns about politicization of the National Security Council (NSC), it is clear that your consolidation of operational authority within the NSC could certainly be viewed as an attempt to thwart congressional oversight and exert greater political control over the process, as reflected in instructions not to inform Congress about the effort to release Uyghur detainees into the U.S. earlier this year.

In my May 1 letter to you -- to which I am still awaiting your response -- I expressed my ardent opposition to the transfer of any Uyghur detainees from Guantanamo Bay to northern Virginia. The planned-transfer was ultimately scrapped over congressional objections, including mine. It should be noted that according to the *New York Daily News*, the Dar al-Hijrah mosque where Major Hasan first encountered Anwar al-Aulaqi, "is directly across the street from a residence where a half-dozen Turkmen Muslims known as Uighurs were slated to be relocated from Guantanamo Bay, according to a law enforcement source. Lawmakers scuttled the plan." Had I not been informed about the NSC effort to release the Uyghur detainees into the U.S., your NSC would have completed the release without ever informing a member of Congress or the American people.

I raised these concerns as well in my November 2 letter to you. To date, I have not received a reply to either of these letters nor to my letters dated March 13, April 23, May 13, July 7, July 10, October 1, and November 2 to your attorney general on these matters. This is disappointing. Why is the administration not answering the legitimate questions of the American people?

The Honorable Barack H. Obama  
November 12, 2009.  
Page 4

In closing, I implore you to immediately halt the release of detainees to Yemen and other unstable countries. If the administration is intent, however, on proceeding with the release of detainees, it has an obligation to provide the American people with fact sheets and threat assessments for each and every detainee who leaves Guantanamo.

Best wishes.

Sincerely,

FRANK R. WOLF  
Member of Congress

P.S.

Having personally read the case histories of some of these dangerous detainees, I believe there is overwhelming certainty that most will return to terrorist activity that could result in the death of more Americans. Please do not let this happen. Thank You.

**FRANK R. WOLF**  
10TH DISTRICT, VIRGINIA  
  
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HUMAN RIGHTS COMMISSION



**Congress of the United States**  
**House of Representatives**  
December 16, 2009

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The Honorable Eric H. Holder, Jr.  
Attorney General  
U.S. Department of Justice  
950 Pennsylvania Ave NW Rm 5111  
Washington DC 20530

Dear Attorney General Holder:

I received a copy of the Obama Administration's letter to Rep. Mark Kirk yesterday answering some of his questions about your intentions to transfer detainees from Guantanamo Bay to the Thomson Correctional Center (TCC) in Illinois.

Given this example of the administration answering questions about its plans for the transfer and release of detainees, I would like to inquire as to when I may expect answers to the questions in my letters to you dated March 13, April 23, May 13, July 7, July 10, and October 1? As ranking Republican member on the House Appropriations subcommittee that funds your department, including the Bureau of Prisons which you indicate will acquire TCC, I believe these answers are deserved and long overdue.

I continue to await your response. The American people deserve these answers before billions of their tax dollars are spent replicating Guantanamo Bay on U.S. soil.

Sincerely,

Frank R. Wolf  
Member of Congress



HOUSE OF REPRESENTATIVES  
WASHINGTON, D.C. 20515

FRANK R. WOLF  
TENTH DISTRICT, VIRGINIA

January 12, 2010

Dear Attorney General Holder:

Please find enclosed the two letters that I sent to President Obama and John Brennan earlier today.

In the letter to the president, I outlined three immediate steps that should be taken to address the recent domestic terrorist threats. First, I urged him to bring back the co-chairmen of the 9/11 Commission to evaluate the implementation of the panel's recommendations. I have also asked for the creation of a "Team B" made up of outside experts who could provide new perspectives on dealing with the al Qaeda and the terrorist threat. Additionally, I announced my intention to introduce legislation to provide that the administrator of the Transportation Security Administration be appointed for a 10-year term like the director of the FBI.

In my letter to Brennan, I warned about the danger of the 55,000 Americans visiting, living, and studying in Yemen. I have also asked a series of questions whose answers will be of interest to members of Congress as they provide oversight of counterterrorism programs.

Best wishes.

Sincerely,

Frank R. Wolf  
Member of Congress

The Honorable Eric H. Holder, Jr.  
Attorney General  
U.S. Department of Justice  
950 Pennsylvania Ave NW Rm 5111  
Washington DC 20530



**FRANK R. WOLF**  
10th DISTRICT, VIRGINIA

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**House of Representatives**  
January 12, 2010

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The Honorable Barack H. Obama  
The President  
The White House  
Washington DC 20500

Dear Mr. President:

"National Security is too important to become a partisan issue." This sentence was the opening line in a January 11 *USA Today* op-ed jointly authored by Lee Hamilton and Thomas Kean, co-chairs of the 9/11 Commission. Last week, you, too, said, "Now is not a time for partisanship, it's a time for citizenship -- a time to come together and work together with the seriousness of purpose that our national security demands." I could not agree more with this sentiment.

No nation, including America, can hope to win this long battle against al Qaeda and like foes if the war effort is marked by partisanship. Sadly, not only has partisanship infused the rhetoric surrounding national security discussions, it has actually obstructed the critical role of congressional oversight. Too often in recent months partisanship has resulted in withholding of information, unanswered letters and briefings denied by this administration.

The stakes are too high and the cost of failure is too great for petty politics to rule the day. The White House has a moral obligation to actively and consistently reach out to the minority party in Congress, to be forthcoming with information and to provide access to all levels of government.

Hamilton and Kean go on to write, "We intend to monitor the implementation of the 9/11 Commission's recommendations and report on new national security threats." I urge you to encourage this effort by bringing back these two co-chairs for a six-month period to conduct a formal review and 9/11 Commission follow-up. They would be charged with evaluating which of the Commission's original recommendations have been implemented and to what end, and which have failed to be implemented and at what cost.

This past weekend, *The Washington Post* featured an op-ed by Bruce Hoffman, respected professor of security studies at Georgetown University and a senior fellow at the U.S. Military Academy's Combating Terrorism Center. Hoffman wrote, "(W)hile al-Qaeda is finding new ways to exploit our weaknesses, we are stuck in a pattern of belated responses, rather than anticipating its moves and developing preemptive strategies. The 'systemic failure' of intelligence analysis and airport security that Obama recently described was not just the product

The Honorable Barack H. Obama  
 January 12, 2010  
 Page 2

of a compartmentalized bureaucracy or analytical inattention, but a failure to recognize al-Qaeda's new strategy. The national security architecture built in the aftermath of Sept. 11 addresses yesterday's threats -- but not today's and certainly not tomorrow's. It is superb at reacting and responding, but not at outsmarting...a new approach to counterterrorism is essential."

Distinct from temporarily bringing back the two 9/11 Commission co-chairs, I also urge the creation of a "Team B." As you may know, historically the phrase "Team B" refers to a group of outside experts, commissioned by the Central Intelligence Agency in the 1970's and headed by Richard Pipes, to analyze the threats posed by the Soviet Union to the United States and counter the positions of intelligence officials within the CIA, known as "Team A." In your remarks last week following the review of the attempted Christmas Day terrorist attack, you rightly referred to our enemy as "nimble." Too often our response to the evolving threat posed by al Qaeda, and others sympathetic to their murderous aims, is anything but.

The Team B concept has been successful in previous administrations when fresh eyes were needed to provide the commander-in-chief with objective information to make informed policy decisions. I believe it can work now, too, and suggest that among the individuals, but not exclusively, whose expertise and forward-thinking would be well-suited to a Team B are: Bruce Hoffman; Andrew McCarthy and Patrick Fitzgerald, both of whom were involved in the prosecution of Sheik Omar Abdel Rahman in the first World Trade Center bombings; Fouad Ajami, professor at the School of Advanced International Studies (SAIS), Johns Hopkins University; Jean Bethke Elshtain, professor of social and political ethics at the University of Chicago; economist Judy Shelton, National Endowment for Democracy board member; foreign policy columnist and author Anne Applebaum; Andrew F. Krepinevich Jr., author of *Seven Deadly Scenarios: A Military Futurist Explores War in the 21st Century*; Elliot Cohen, professor of Strategic Studies at SAIS; Phillip D. Zelikow, diplomat and author who worked as executive director of the 9/11 Commission, and Joshua Muravchik, formerly a scholar at the American Enterprise Institute and presently a Foreign Policy Institute fellow at SAIS.

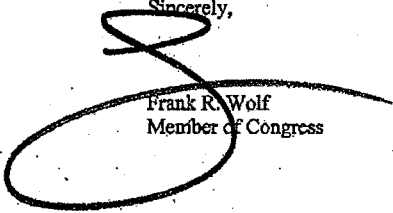
The 9/11 Commission report was issued nearly six years ago. Even if every recommendation had been implemented, which it has not, our enemy has evolved since that time. Our current intelligence infrastructure is at times overwhelmed by data, information and the urgency of daily events, and as such is unable to dedicate the time and resources necessary to think outside the box and better comprehend this multidimensional threat. "Team B" would possess the necessary expertise but would be free from these daily pressures. The team would represent a "new approach to counterterrorism" which focuses not just on connecting the dots of intelligence, but which seeks to stay a step ahead in understanding how to break the radicalization and recruitment cycle that sustains our enemy, how to disrupt their network globally and how to strategically isolate them.

The Honorable Barack H. Obama  
January 12, 2010  
Page 3

I also believe there is an urgent need to make the Transportation Security Agency (TSA) administrator a long-term position. Since TSA's inception following the 9/11 attacks, there have been six Transportation Security Agency administrators and acting administrators. For a position of this import to turn over with such frequency and to automatically change hands with each new administration simply does not make sense. I am introducing legislation that mirrors the language used to establish a 10-year term and Senate confirmation for FBI directors. I am hopeful that members of both parties will see the merits of this proposal and I urge your support for this change.

America is a great nation facing an enemy unlike any other we have ever known. We must steel ourselves for the struggle ahead, frankly assessing the nature and scope of the threat we face and guarding against partisanship at all costs. The people of this country deserve nothing less.

Sincerely,



Frank R. Wolf  
Member of Congress

FRW:ea

Thank You

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**FRANK R. WOLF**  
10TH DISTRICT, VIRGINIA

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HUMAN RIGHTS COMMISSION



**Congress of the United States**  
**House of Representatives**

January 12, 2010

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wolf.house.gov

Mr. John Brennan  
Deputy National Security Adviser  
The White House  
1600 Pennsylvania Ave NW  
Washington DC 20500

Dear Mr. Brennan:

I write today in light of the proliferation of attempted al Qaeda-sponsored attacks against the U.S. homeland last year to request that you work to engage both Congress and the administration in the process of making the prevention of future attacks our nation's paramount priority. I come to this issue as the author of the language in 1998 creating the National Commission on Terrorism and the ranking Republican on the House Commerce-Justice-Science Appropriations Subcommittee that funds key counterterrorism programs, including the Federal Bureau of Investigation (FBI) and the High-Value Detainee Interrogation Group (HIG) -- which was established by your administration to address the concerns about detainee interrogations in Guantanamo Bay -- and the U.S. Marshals Service. From that experience, I am concerned that there has been inadequate oversight by this Congress on federal counterterrorism programs and responses.

I have recently learned from the State Department legislative affairs office that there are an estimated 55,000 Americans currently visiting, living, or studying in Yemen, along with other Westerners. As you know, alleged Fort Hood terrorist Major Nidal Hasan was radicalized by Yemeni-American cleric Anwar al Aulahi. The alleged terrorist who killed the U.S. Army recruiter in Little Rock, Arkansas, was also reportedly radicalized by al Aulahi. Now we have learned that the alleged Christmas Day terrorist, Umar Farouk Abdulmutallab, was also in contact with al Aulahi in Yemen. You may also be aware that convicted terrorist John Walker Lindh was radicalized in Yemen while studying Arabic in 1998 and 2000, leading to his collaboration with the Taliban in Afghanistan. How many of the 55,000 Americans now in Yemen are subject to radicalization by al Aulahi and other al Qaeda recruiters? How is your administration planning to deal with the possible radicalization of those who can fly back to the U.S. with American passports? This is especially troubling in light of the fact that the Yemeni government does not control large portions of the country outside the capital city.

In his remarks last week, President Obama said, "Now is not a time for partisanship, it's a time for citizenship -- a time to come together and work together with the seriousness of purpose that our national security demands." I could not agree more. However, working together demands that both the Congress, including Republicans and Democrats, and the administration

Mr. John Brennan  
 January 12, 2010  
 Page 2

work in good faith to provide information, answer questions, consider solutions, and to develop a strategy to defeat al Qaeda wherever it may be active.

It is disappointing that this administration has been, thus far, unresponsive to my letters and requests for information as well as letters from other Republican members of the House and Senate. I have sent six letters to the president and administration officials since October 1, 2009, expressing concern over the security situation in Yemen and the efforts of al Qaeda in the Arabian Peninsula's to attack the U.S. I have read the classified biographies of the Guantanamo Bay detainees that have been released to Yemen and other unstable countries and have urged that this information be provided in unclassified form to the American people. If the American people could see the backgrounds of some of these detainees being sent back to these countries, I believe they would be shocked. For example, Ayman Batarfi, one of the Yemeni detainees released by this administration on December 19, 2009, has worked closely with Osama bin Laden in Afghanistan and trained with a microbiologist who taught al Qaeda how to produce anthrax in August 2001, according to unclassified Pentagon documents from 2004. These detainees are, in many cases, highly trained terrorists with close ties to al Qaeda.

In December, I offered an amendment to the fiscal year 2010 omnibus appropriations legislation that would have required unclassified notifications about impending detainee releases. Unfortunately, my amendment was defeated along party lines. We can and must do better to end this reflexive partisan opposition. To this end, I would appreciate your responses to the following questions relating to Yemen and the recent terrorist acts committed against the United States:

1. The president has indicated that six Guantanamo detainees released to Yemen in December remain in government custody, although other accounts indicate that they may have been paroled to their families. What is the current custody status of these former detainees?
2. According an article in today's *Washington Post*, "Yemen's fragile government fears that Somali fighters from al-Shabab will swell the ranks of Yemen's Islamist militants at a time when links between the Somali group and al-Qaeda in the Arabian Peninsula are growing." Do the same security concerns expressed by the administration with regard to Yemen apply to Somaliland?
3. Does the U.S. government now recognize Somaliland as an independent state? Does it have relations with the region's government? Are U.S. officials receiving cooperation from the Somaliland regional government?
4. It is my understanding that Umar Farouk Abdulmutallab indicated to authorities that he had trained in Yemen with other al Qaeda members prepared to launch

Mr. John Brennan  
January 12, 2010  
Page 3

- similar attacks targeting U.S. airliners. Is this correct? If so, what countries are these suspected terrorists from?
5. Following the thwarted Christmas Day attack, who interrogated Mr. Abdulmutallab? Which agencies were consulted for questions prior to the interrogation? Which agencies submitted questions for the interrogation? Was he interrogated prior to being read Miranda rights? Given that this attack occurred on the Christmas holiday, did the appropriate high-level officials come to Detroit to conduct or support the interrogation?
  6. Was Mr. Abdulmutallab considered a "high-value" detainee upon his arrest? What qualifies a detainee to be considered of "high-value"? Was the new High-Value Detainee Interrogation Group (HIG) involved in his interrogation? Did every agency (that is represented on the HIG) participate in the interrogation?
  7. I was told in September 2009 that the Interrogation Task Force had made recommendations to the president, which he had approved. What is the new interrogation policy and how was it applied, if at all, in the interrogation of Mr. Abdulmutallab? If it was not applied, why not?
  8. Does the new interrogation policy draw distinctions based upon whether the detainee is apprehended inside or outside the U.S.? If so, please specify.
  9. What are the restrictions -- legal, policy or procedure -- that limit which agencies can take part in such interrogations? Were other intelligence agencies involved?
  10. Who made the decision to arrest Mr. Abdulmutallab rather than transfer him to military custody to be held as an enemy combatant? Which agencies were consulted in this decision?
  11. Was Mr. Abdulmutallab advised to stop cooperating with interrogators after being provided with legal counsel? If so, did he?
  12. Why were the terms "al Qaeda," "Yemen," "terrorism," or "jihad" not mentioned to describe Mr. Abdulmutallab's activities in the seven-page charging instrument?
  13. Was Christmas Day chosen for attack by al Qaeda for symbolic value?
  14. What connections exist between the radical cleric al Aulahi and the Christmas Day, Fort Hood, and Arkansas attacks -- as well as other terrorist plots last year?
  15. How many former Guantanamo detainees have returned to terrorism?

Mr. John Brennan  
January 12, 2010  
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16. Has the Defense Intelligence Agency (DIA) report on detainee recidivism been revised upward? If so, when will this report be released publicly? Has the president seen the updated report?
17. In a recent op-ed in *The Washington Post*, Professor Bruce Hoffman, a respected professor of security studies at Georgetown University and a senior fellow at the U.S. Military Academy's Combating Terrorism Center, wrote, "During the past 18 months, American and British intelligence officials have said, well over 100 individuals from such countries have graduated from terrorist training camps in Pakistan and have been sent West to undertake terrorist operations." Is this assessment low or high?
18. Does al Qaeda monitor congressional hearings or think tank publications relating to U.S. counterterrorism strategy?
19. What are the primary strategies al Qaeda uses to recruit Westerners? Which strategies have been most successful?

I would appreciate a response to these questions as soon as possible. The answers to these questions will be critical in helping Congress play an active and participatory role in working with the administration on counterterrorism matters. This can only happen, however, if the legislative branch -- including the minority party -- is included in this process.

I look forward to your response. Please do not hesitate to contact me or my staff member, Thomas Culligan, at 202-225-5136 if I can be of assistance.

Best wishes.

Sincerely,

Frank R. Wolf  
Member of Congress



**FRANK E. WOLF**  
10th District, Virginia

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HUMAN RIGHTS COMMISSION



**Congress of the United States**  
**House of Representatives**

January 15, 2010

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wolf.house.gov

The Honorable Eric H. Holder, Jr.  
Attorney General  
U.S. Department of Justice  
950 Pennsylvania Ave NW Rm 5111  
Washington DC 20530

Dear Attorney General Holder:

I saw the reports today that you are considering trying Guantanamo Bay detainee Riduan Isamuddin, also known as Hambali, at the federal courthouse in Washington, D.C. Such a plan is unacceptable and I will vehemently oppose it in Congress as the ranking member on the House Commerce-Justice-Science Appropriations Subcommittee, which funds the Federal Bureau of Investigation (FBI) and U.S. Marshals Service.

I have been receiving classified briefings on terrorist threats to the U.S., including briefings as recently as this week, and my concerns about civilian trials for Guantanamo detainees have only been heightened. If the American people knew these threats, they would never tolerate the transfer of these detainees to major urban population centers for trial. Such a plan also will place an overwhelming burden on federal and local law enforcement to protect the public. You may recall that I raised these same concerns in my enclosed April 23, 2009, letter to you to which you have still not responded.

I am also concerned about the staggering costs of holding such a trial inside the U.S. My staff has been briefed on the costs of the trial of the 9/11 conspirators in New York City and have been told that your administration expects that trial alone to cost more than \$250 million a year. Given that the Moussaoui trial in Alexandria lasted more than four years, we can logically assume that the New York trial will take just as long, if not longer – costing taxpayers more than \$1 billion. Similar assumptions could be made for security costs for any trial held in Washington, D.C. could be made.

A better solution would be to try these cases at the secure, state-of-the-art courthouse that has been constructed at Guantanamo Bay for this very purpose. To ensure a fair and transparent trial, the administration could allow the International Red Cross, Amnesty International, and other human rights groups to observe the trials at Guantanamo. Alternatively, if the administration is determined to try these cases inside the U.S., they should only be held at remote, secure facilities far away from population centers. Washington D.C., New York City, Alexandria, Virginia, are far too populated to ensure adequate security for the civilians in those cities.



The Honorable Eric H. Holder, Jr.  
 January 15, 2010  
 Page 2

Finally, I believe that this administration's primary rationale behind the urgent need to transfer detainees to the U.S. is based on a fundamentally faulty assumption. As you will recall, there was no detainee detention facility at Guantanamo Bay when terrorists were recruited to attack the World Trade Center 1993, nor when the U.S. Air Force's Khobar Towers housing complex in Saudi Arabia was attacked in 1995, nor when the U.S. embassies in Kenya and Tanzania were attacked in 1998, nor when the USS Cole was attacked in 2000 in Yemen, nor when the World Trade Center and Pentagon were bombed on September 11, 2001.

Guantanamo Bay is not even the primary recruitment tool used by al Qaeda today. Last month, Thomas Joscelyn wrote in the *Weekly Standard*:

"During a press conference last week, White House press secretary Robert Gibbs said that al Qaeda's senior leaders have referred to Guantanamo some 32 times in their recruitment videos since 2001. Gibbs implied that this is a lot. It isn't. Al Qaeda refers to the wars in Iraq and Afghanistan, as well as the existence of Israel, as reasons to wage jihad far more frequently in its propaganda.

"Gibbs pointed to the fact that senior al Qaeda leaders referred to Guantanamo four times in 2009 alone. Gibbs did not specify which messages he had in mind, but Zawahiri's August 5 tape, entitled 'The Facts of Jihad and the Lies of the Hypocrites,' is a typical example of al Qaeda's Gitmo-related propaganda. According to a 26-page translation published online by the NEFA Foundation, Zawahiri mentioned Guantanamo five times. By way of comparison, words related to 'Iraq' and 'Afghanistan' appear more than 70 times each. The words 'Israel' and 'Israelis' appear 39 times. The word 'Zionist' appears another four times—in the context of an imagined American-Zionist conspiracy against the Muslim world. (According to Ayman al-Zawahiri, by the way, Obama is himself a participant in this conspiracy.) And the words 'Jew,' 'Jewish,' and 'Jewishness' appear another 12 times.

"Guantanamo has simply never been a major part of al Qaeda's recruitment strategy. But even if it were and we closed it, the terror masters would simply find the next pretext for justifying their acts. After all, if we are to close Guantanamo because al Qaeda objects to it, then why not abandon America's entire foreign policy agenda?"

I urge you to reevaluate your rationale for rushing to close Guantanamo Bay – both with regard to the Hambali and Khalid Sheik Mohammed trials, as well as your reckless plan to release dangerous detainees to unstable countries like Yemen, Afghanistan, Somaliland, and Algeria.

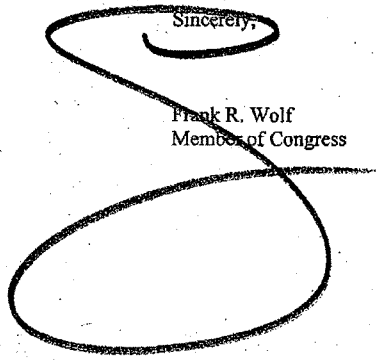
Thirty constituents from my congressional district died at the Pentagon on September 11, 2001. I have visited the site of the attack on the U.S. Embassy in Lebanon and laid a wreath

The Honorable Eric H. Holder, Jr.  
January 15, 2010  
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there. I went to Ground Zero in New York City when the dust was still in the air. These experiences are very real reminders of the dreadful consequences of terrorist attacks for American families. Every member of this Congress and the administration has a moral obligation to do everything within our power to reduce the risk of terrorism to Americans, not to bolster it.

Sincerely,

Frank R. Wolf  
Member of Congress

A large, stylized handwritten signature in black ink, appearing to be 'FRANK R. WOLF', is written over the typed name and title.

**FRANK R. WOLF**  
10TH DISTRICT, VIRGINIA

COMMITTEE ON APPROPRIATIONS

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HUMAN RIGHTS COMMISSION



**Congress of the United States**  
**House of Representatives**

February 2, 2010

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The Honorable Eric H. Holder, Jr.  
Attorney General  
U.S. Department of Justice  
950 Pennsylvania Ave NW Rm 5111  
Washington DC 20530

Dear Attorney General Holder:

I wanted to share the enclosed letter that I sent to General Jones earlier today regarding the High-Value Detainee Interrogation Group (HIG).

Yesterday, I met with the top interagency leadership of the HIG. I am concerned that the administration is not moving quickly enough to establish this important group. I urge you to accelerate these efforts in order to have the HIG operational as soon as possible.

As part of this effort, I believe that the HIG should be given a permanent facility at the National Counterterrorism Center within 30 days. In a letter I received earlier today from Deputy National Security Adviser John Brennan, the administration has taken rightly great pride in its efforts to halt "stove-piping" of classified information with regard to the Guantanamo detainees. I would hope that this same effort would extend to strengthening terrorist interrogation by placing the HIG in the NCTC within the month.

Sincerely,

Frank R. Wolf  
Member of Congress

**FRANK R. WOLF**  
10TH DISTRICT, VIRGINIA

COMMITTEE ON APPROPRIATIONS  
SUBCOMMITTEES:  
RANKING MEMBER—COMMERCE-JUSTICE-  
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CO-CHAIR—TOM LANTOS  
HUMAN RIGHTS COMMISSION



**Congress of the United States**  
**House of Representatives**

February 2, 2010

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wolf.house.gov

General James Jones  
National Security Adviser  
The White House  
1600 Pennsylvania Ave NW  
Washington DC 20500

Dear General Jones:

I met yesterday at FBI headquarters with the top interagency leadership of the High-Value Detainee Interrogation Group (HIG). The administration's intent to establish this new entity was announced in August 2009 pursuant to the recommendations of the President's Task Force on Interrogation and Transfers. Those recommendations indicated that the principal function of interrogations of high-value detainees shall be intelligence gathering rather than law enforcement.

As you know, I and others have observed that the interrogation of Umar Farouk Abdulmutallab does not appear to have been handled in a way that maximized intelligence gathering. I wrote your deputy, John Brennan, the enclosed letters on January 12 and again on January 21 with a number of questions and concerns on this matter. There has been considerable confusion among agencies as to what their role was, what their role should have been, whether the HIG should have been involved, whether the HIG is intended to operate inside the United States, and even whether the HIG exists. There also seems to be a surprising number of individuals and entities that were never consulted as to how the interrogation should have been handled. There is clearly an urgent need for action and clarification to ensure that future interrogations are conducted properly and effectively.

Toward that end, I urge you to consider the following steps:

1. Formalize a new interrogation policy and make sure that all relevant agencies and entities understand their operational roles.
2. Ensure that all relevant congressional entities and committees are fully briefed on what the policy is and how it will be carried out.
3. Prepare an addendum to the president's review of the Christmas Day case that deals specifically with the facts concerning Mr. Abdulmutallab's interrogation to determine whether our government maximized intelligence gained with the choices and decisions

General James Jones  
February 2, 2010  
Page 2

made. Any findings and recommendations should be shared with the Congress and corrective actions taken as soon as possible.

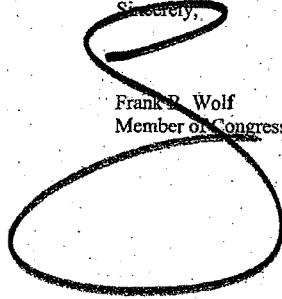
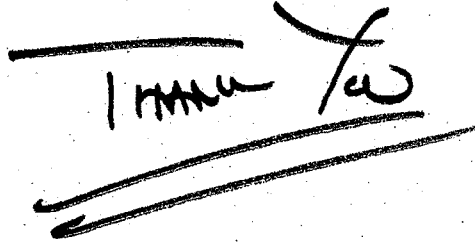
4. Move expeditiously to establish the HIG staff in a permanent facility within 30 days. While the HIG is administratively housed in the FBI, given the importance of interagency coordination with the HIG and the urgency of its mission, I believe it should be collocated with the National Counterterrorism Center.

I appreciate your attention to this important matter. Please do not hesitate to contact me or Thomas Culligan in my personal office at 202-225-5136 or Mike Ringler in my subcommittee office at 202-225-3481.

Best wishes.

Sincerely,

Frank R. Wolf  
Member of Congress

A large, stylized handwritten signature in black ink, appearing to be 'Frank R. Wolf'.A handwritten signature in black ink, appearing to be 'Thomas Culligan', with a horizontal line above and below it.

**Congress of the United States**  
**Washington, DC 20515**  
 February 16, 2010

Dear Attorney General Holder:

We urge you to reconsider trying Khalid Sheikh Mohammed and four other 9/11 conspirators in federal civilian court in New York City or other alternate sites under consideration. This is a dangerous and expensive proposal that is opposed by a growing bipartisan coalition of federal, state, and local leaders, including New York City Mayor Michael Bloomberg and Police Commissioner Ray Kelly.

Last week, Mayor Bloomberg stated, "It would be great if the federal government could find a site that didn't cost a billion dollars, which using downtown [New York City] will. [The trial] is going to cost an awful lot of money and disturb an awful lot of people." We couldn't agree more with the mayor.

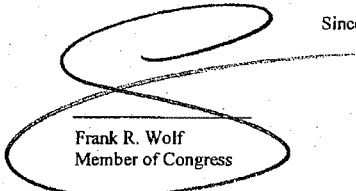
We believe your decision to try these detainees in New York City is neither in the best interest of the American people nor does it provide the most appropriate venue for the trial of Mohammed -- the admitted mastermind of the 9/11 attacks and murderer of journalist Daniel Pearl -- and his co-conspirators. We are deeply concerned that you never consulted with Commissioner Kelly or Members of Congress before declaring your intention to hold this trial in New York City. If you had, you would have found bipartisan concern with regard to the security and cost.

First, the security implications of holding such a trial in the heart of New York City, or any urban center, expose such areas to an unnecessary security threat. These detainees would not be transferred to a "supermax" facility, as the administration has wrongly implied, but to a less secure, local jail for years during this trial. This is the same local jail where Mahmud Salim, charged with participating in the 1998 U.S. Embassy bombings in East Africa, stabbed prison guard Louis Pepe in an escape attempt. Despite efforts to secure the jail and the courthouse, the continued danger of holding a high-profile terrorist in New York City for an extended period seems ill conceived in light of recent terrorist plots against American citizens. Furthermore, the director of the Federal Protective Service testified on November 18, 2009, that currently he does not have sufficient resources to fully secure key federal buildings that will be related to the planned trial.

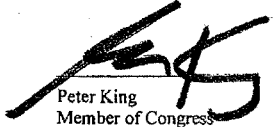
Additionally, it is our understanding that this trial would cost taxpayers approximately \$250 million per year for the next 4-6 years -- a total of more than \$1 billion. This is fiscally reckless, especially considering that there are secure facilities at Guantanamo Bay and on military bases that have been constructed to accommodate such a trial. The trial would also place a dangerous strain on officers and deputies of the New York City Police Department and the U.S. Marshals Services, respectively, whose other important work could be compromised due to the extraordinary security measures that would be required for the trial.

We stand ready to work with you and the administration to support a military tribunal for Khalid Sheikh Mohammed and these co-conspirators. A military tribunal would enjoy wide support from Members of Congress and the American people while providing a fair and appropriate trial for these detainees.

Sincerely,



Frank R. Wolf  
Member of Congress



Peter King  
Member of Congress

*David P. Roe*

Phil Roe  
Member of Congress

*Jean Schmidt*

Jean Schmidt  
Member of Congress

*John J. Duncan, Jr.*

John J. Duncan, Jr.  
Member of Congress

*Harold Rogers*

Harold Rogers  
Member of Congress

*Rodney Alexander*

Rodney Alexander  
Member of Congress

*Bob Inglis*

Bob Inglis  
Member of Congress

*Charles W. Dent*

Charles W. Dent  
Member of Congress

*Todd Tiahrt*

Todd Tiahrt  
Member of Congress

*Howard "Buck" McKeon*

Howard "Buck" McKeon  
Member of Congress

*Michael T. McCaul*

Michael T. McCaul  
Member of Congress

*Anh "Joseph" Cao*

Anh "Joseph" Cao  
Member of Congress

*Jim Gerlach*

Jim Gerlach  
Member of Congress

*Dan Burton*

Dan Burton  
Member of Congress

*Todd Russell Platts*

Todd Russell Platts  
Member of Congress

*Mike Castle*

Michael N. Castle  
Member of Congress

*Pete Olson*

Pete Olson  
Member of Congress

*Candice S. Miller*

Candice Miller  
Member of Congress

*Spencer Bachus*

Spencer Bachus  
Member of Congress

**FRANK R. WOLF**  
10TH DISTRICT, VIRGINIA

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SCIENCE

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HUMAN RIGHTS COMMISSION



**Congress of the United States**  
**House of Representatives**

March 3, 2010

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The Honorable Eric H. Holder, Jr.  
Attorney General  
U.S. Department of Justice  
950 Pennsylvania Ave NW Rm 5111  
Washington DC 20530

Dear Attorney General Holder:

I was deeply concerned by Assistant Attorney General Ronald Weich's response to Senator Grassley with regard to the department officials involved in crafting Guantanamo Bay detainee policy who previously advocated for represented detainees. I believe that the decision to allow attorneys who advocated for terrorists held at Guantanamo to craft detainee policy during the War on Terror would be akin to allowing attorneys for the Mafia to draft organized crime policy during the 1960s. The American people deserve a full accounting of who is crafting detainee policy in the Department of Justice.

According to Mr. Weich's letter, "Department appointees have been authorized to participate in policy and legal discussions regarding detainee matters and decisions relating to the disposition of detainees, except in those particular matters involving specific parties from which they are recused." To have appointees who had represented detainees now setting the federal detention policies for the detainees is an inherent conflict of interest, whether or not the appointees were recused from discussing a certain case.

Mr. Weich's assertion that "the Department does not maintain comprehensive records of such information about individual Department employees" is an insufficient response. He acknowledged that at least five detainee lawyers currently serve as department political appointees and that four others were involved in advocacy for detainees. Additionally, *The Washington Times* reported on February 26 that there are at least 14 attorneys at the Justice Department "whose firms at least did significant detainee work." Given this information, I respectfully request a full accounting of the names and titles of department officials involved in detainee policy that previously represented or advocated for terrorist detainees.

I appreciate Senator Grassley and the Senate Judiciary members who have worked to raise awareness of this important issue. The lawyers who represented detainees should not be involved in crafting detention policy.

Sincerely,

Frank R. Wolf  
Member of Congress





U.S. Department of Justice  
Office of Legislative Affairs

*Assistant Attorney General*

*Washington, D.C. 20530*

March 12, 2010

The Honorable Frank R. Wolf  
U.S. House of Representatives  
Washington, D.C. 20515

Dear Congressman Wolf:

Thank you for your letters, dated October 1, November 2, 5, and 12, and December 16, 2009, which raise a number of concerns about the potential transfer of Guantanamo detainees to Yemen, Afghanistan, and Algeria. We appreciated the opportunity to have Matthew Olsen, Executive Director of the Guantanamo Review Task Force, meet with you and Chairman Mollohan on February 25, 2010 to discuss this and related subjects.

As Mr. Olsen indicated during the meeting, pursuant to Executive Order 13492, an interagency task force conducted a comprehensive review of each detainee at Guantanamo to determine whether the detainees could be transferred, released, prosecuted, or otherwise lawfully detained consistent with the national security and foreign policy interests of the United States and the interests of justice. The agencies participating in the review included the Department of Justice (including the Federal Bureau of Investigation), Department of Defense, Department of State, Department of Homeland Security, Office of the Director of National Intelligence, Central Intelligence Agency, and the Joint Chiefs of Staff.

In considering whether to transfer detainees to other countries, the review participants carefully evaluated on a case-by-case basis the threat posed by each detainee and the ability of potential destination countries to adequately mitigate any such threat. The review participants recognized that security conditions in Yemen and Afghanistan posed particular challenges and carefully considered those concerns as they reviewed each case. Detainees were approved for transfer only if the transfer was consistent with U.S. national security interests and only if any threat posed by the detainee could be sufficiently mitigated through feasible and appropriate security measures. In addition, decisions to transfer detainees abroad to date have been made only with the unanimous agreement of the agencies identified in the Executive Order.

The Honorable Frank R. Wolf  
Page Two

In some cases, we must transfer or release detainees because their release has been ordered by a U.S. court. In your October 2009 letter, you specifically reference Alla Ali Bin Ali Ahmed and express concern over his transfer from Guantanamo to Yemen. On May 4, 2009, a federal district court held that there was not sufficient evidence to conclude that Ahmed was part of, or substantially supported, al-Qaida, Taliban, or associated forces engaged in hostilities against the United States or coalition partners. Accordingly, the court granted Ahmed's *habeas* petition and ordered the government to take all necessary diplomatic steps to facilitate Ahmed's release forthwith. The government transferred Ahmed in compliance with the court order.

Your letter also raised the question of whether Congress has been informed about detainees approved for transfer. Pursuant to Section 319 of the Supplemental Appropriations Act of 2009, the Department of Justice and the Office of the Director of National Intelligence has submitted classified reports to Congress setting forth, among other things, (1) the name and country of origin of each detainee held at Guantanamo as of that date; (2) a current summary of the evidence, intelligence, and information used to justify the detention of each such detainee; and (3) a current accounting of the measures taken to transfer each detainee to the individual's country of citizenship or another country (including whether the detainee had been approved for transfer as a result of the interagency review). An updated report has been submitted recently.

Finally, our records reflect that on July 9, 2009, we responded to your letters of March 13, April 23, May 13, and July 17, 2009. Further, on July 13, we responded to you June 8 letter. Additionally, on September 11, 2009, we responded to your letters, dated July 17, July 22, July 30, and July 31. Please let us know if you did not receive these responses, and we will be pleased to send duplicates to your office. We did not believe that your letter of July 10, 2009 raised any additional questions.

We hope this information is helpful. Please do not hesitate to contact this office if we may be of assistance with this, or any other matter.

Sincerely,



Ronald Weich  
Assistant Attorney General



**U.S. Department of Justice**  
Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

March 15, 2010

The Honorable Frank R. Wolf  
U.S. House of Representatives  
Washington, D.C. 20515

Dear Congressman Wolf:

This responds to your letter, dated March 3, 2010, concerning the Department's response to Senator Grassley's request for certain information about political appointees and detainee matters. Enclosed please find our response to Senator Grassley's follow-up letter of February 26, 2010. That response covers many of the issues raised by your letter.

We also enclose a recent statement signed by a range of leading lawyers, including many former Bush Administration political appointees who worked on detainee policy and litigation. That statement reads, in part, as follows:

The American tradition of zealous representation of unpopular clients is at least as old as John Adams's representation of the British soldiers charged in the Boston massacre. People come to serve in the Justice Department with a diverse array of prior private clients; that is one of the department's strengths.

The War on Terror raised any number of novel legal questions, which collectively created a significant role in judicial, executive and legislative forums alike for honorable advocacy on behalf of detainees. In several key cases, detainee advocates prevailed before the Supreme Court. To suggest that the Justice Department should not employ talented lawyers who have advocated on behalf of detainees maligns the patriotism of people who have taken honorable positions on contested questions and demands a uniformity of background and view in government service from which no administration would benefit.

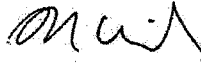
We respectfully suggest that your analogy to "attorneys for the Mafia" is misplaced. The lawyers referenced in our response to Senator Grassley bring to the Department a broad range of experience. The detainee-related briefs that they filed, all in cases that involved "novel legal questions," represent but a small portion of their professional work product. To preclude such lawyers from any involvement in detainee policy or litigation due to the filing of these briefs would do a disservice to the government. Such preclusion would be comparable to barring any

The Honorable Frank R. Wolf  
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lawyer who ever filed a brief in support of a death-sentenced convict from ever working on any litigation or policy issue involving violent crime. Neither the standards of ethics and professional responsibility (as noted in our letter to Senator Grassley) nor the government's interest in attracting and employing excellent lawyers mandates such a broad rule. Accordingly, that has never been, and is not, the Department's policy. Rather, the Department hires skilled lawyers who are dedicated to its mission and assigns them to projects based upon their abilities and the Department's needs.

We hope that this information is helpful. Please do not hesitate to contact this office if you would like additional assistance.

Sincerely,



Ronald Weich  
Assistant Attorney General

Enclosures

WEDNESDAY, MARCH 17, 2010.

**FEDERAL BUREAU OF INVESTIGATION FY2011 BUDGET  
OVERVIEW**

**WITNESS**

**ROBERT MUELLER, DIRECTOR, FEDERAL BUREAU OF INVESTIGATION**

OPENING STATEMENT OF CHAIRMAN MOLLOHAN

Mr. MOLLOHAN. The hearing will come to order.

Good afternoon. The subcommittee would like to welcome Robert Mueller, Director of the Federal Bureau of Investigation, to discuss the FBI's 2011 budget request and related issues.

We are pleased to have you here, Director Mueller, and thank you for your appearance.

The FBI's budget request for 2011 totals nearly \$8.2 billion. Within such a large total there are clearly many programmatic and policy issues to cover. Too many, in fact, for any one hearing to cover exhaustively, but I do hope that we can use this opportunity to focus on at least a few important areas which we consider high priority.

The first of these areas, for me, is white collar crime. Our economy has suffered billions of dollars in losses due to the illegal and immoral behavior of individuals who capitalized on weaknesses in the regulatory and enforcement system to profit at the expense of shareholders, investors, homeowners, workers and taxpayers. While many firms on Wall Street have recovered and are, in fact, making substantial profits again, there are millions of regular Americans who are still hurting and have yet to see any real justice for the economic violence that was perpetrated on them.

I am glad to see that this administration has recognized the error of past practices and is now proposing to invest in your fraud enforcement programs rather than raiding those resources year after year to pay for other priorities, Mr. Director. This is the priority now. What remains to be determined is whether the size of this investment is sufficient to the size of the problem. Your budget request proposes to add 62 new agents for white collar crime, but compared to the thousands of active cases and billions of dollars of losses, the question is, does that seem small? I am anxious to explore this during your testimony.

The second area of concern is law enforcement in Indian country. This subcommittee has heard many times and from many different people how desperate the law enforcement situation really is in Indian Country. Unfortunately, it's not obvious exactly how to solve this problem. Will clarifications to the jurisdictional construct help? Will more agents or more prosecutors or better evidence processing capabilities do the trick? Do we need to focus on building community trust between the tribes and Federal law enforcement entities,

or on significant substance abuse problems among tribal populations?

I am sure that these are all elements of the solution, and the key is to find the right mix of those elements. Your budget contains some resources to address one part of this mix, and that request is certainly welcome. For too long, the FBI has failed to request the resources necessary to improve its presence in Indian Country or to follow up aggressively on the execution of existing funds to make sure that the resources you have are actually reaching the Native American communities for which they are intended.

The final area that I think needs to be addressed is the treatment of terrorism suspects apprehended in the U.S. This issue emerged as a major subject of debate after the arrest of Umar Farouk Abdulmutallab in December when a whole spectrum of public figures alleged that the FBI's provision of Miranda rights to Abdulmutallab was unnecessary, misguided, and perhaps even detrimental. It is the position of the administration that there was no difference between the handling of this case and the way the FBI always handled these cases in the past, and there were apparently no criticisms when the FBI gave virtually identical treatment to David Headley and Najibullah Zazi, to name recent examples, or to dozens of others apprehended during the previous administration.

I would like to think that much of the current criticisms and misrepresentations are just the result of some misunderstandings about what has taken place in this case. The fact of the matter is that the FBI has made it clear that it sent experienced knowledgeable agents to question Abdulmutallab. Beyond this one particular case, I believe there are also some fundamental misunderstandings of the overreaching legal framework in which you operate when someone is apprehended within our borders for committing or attempting to commit a terrorist act. Can that person legally be held without charge or without the provision of certain constitutional rights? Whether he is a U.S. citizen or not, once in custody, what are the provisions with regard to his advice on his right to remain silent, his right to retain counsel, and the government's right to use statements against him?

These are all questions which I am sure will be explored. The FBI simply cannot take a suspect apprehended domestically and just pack him off to Guantanamo Bay. You can't turn him over to CIA, which does not have authority to operate domestically, and you can't decide to give him to the military where, by the way, he would still be entitled to constitutional rights. I understand that there are differences of opinion, and we look forward to exploring them in the context of the Constitution and the reality in which we find ourselves. I intend to pursue these topics in more detail during our rounds of questioning, and I also hope to address some newly emerging problems with the development of the Sentinel case management system. This is a critical effort and one that absolutely must succeed in order for the FBI to fully bring its investigative technology into the new century.

Before we get into these issues, however, I would like to recognize our ranking member, Mr. Wolf, for any comment he may have.

Mr. WOLF. Thank you, Mr. Chairman.

## OPENING STATEMENT OF MR. WOLF

Director Mueller, I join the chairman in welcoming you this morning to testify before the committee. I am pleased that we are holding the hearing. For 2011, you are seeking an appropriation of \$8.3 billion, an increase of \$366 million or 4.6%. We look forward to your testimony on the new increases you are seeking as well as on the FBI's continuing with transformation activities to fulfill its role as the key domestic counterterrorism and intelligence agency. In addition, I am interested to hear more about the FBI-led effort to establish a new interagency capability for the interrogation of high-value terrorist suspects pursuant to the recommendations of the interrogation task force set up last year by executive, and yesterday I asked the Attorney General and I sent a letter down to the administration asking that the HIG be relocated at the counterterrorism center.

The whole purpose of establishing a counterterrorism center was to bring people of different backgrounds, different agencies together, and rather than having it in a separate building away from there; so I would like to get your comments with regard to this. This function is critical to the intelligence gathering, and as the Christmas Day bombing revealed, there is an unacceptable level of confusion about how such interrogation should be handled.

Lastly, I would like you to pass on to your people our appreciation for their hard work, the work of your agents, your analysts and support staff to protect the Nation from terrorism and crime is perhaps the most important activity that we support in this subcommittee. I recognize the tireless efforts that are required to carry out those responsibilities, and your people should be commended, and quite frankly, speaking for myself, I think you should be commended. I think you have provide a great service to the country.

Your wife and I would probably differ but I am not looking forward to the day that you leave because I think you really have in this difficult time done an outstanding—I would say your people have done a good job, but I think you have too, and I want to go on the record with that.

I yield back to the chairman.

Mr. MOLLOHAN. Mr. Mueller, as you may know, your written statement will be made a part of the record and the committee invites you to proceed with your oral testimony. Thank you.

## ORAL REMARKS OF DIRECTOR MUELLER

Mr. MUELLER. Thank you. Chairman, members of the subcommittee, Congressman Wolf, thank you for your comments. You probably do differ with my wife who is looking forward to that time. I appreciate the opportunity to appear here today before this committee to discuss the budget for 2011. The FBI is requesting approximately \$8.3 billion to fund more than 33,000 FBI agents and staff and to build and maintain our infrastructure. This funding is critical to continue our progress in transforming the FBI into an intelligence-driven, threat-based agency and to carry out our mission of protecting the Nation from ever-changing national security and criminal threats.

Let me start by discussing a few of the most significant threats. Fighting terrorism remains our highest priority at the FBI. Over the past year, the threat of terrorist attacks has proven to be both persistent and global. Al Qaeda and its affiliates are still committed to striking us in the United States. We saw this with the plot by an al Qaeda operative to detonate explosives in New York subways and the attempted airline bombing plot on Christmas Day to which, Mr. Chairman, you have alluded. Both incidents involved improvised explosive devices, or IEDs, and underscore the importance of our continuing to develop explosives intelligence to support and guide terrorism-related investigations.

Homegrown and lone wolf extremists pose an equally serious threat. We saw this with the Fort Hood shootings and with the attempted bombings of an office tower in Dallas and a Federal building in Springfield, Illinois. We have also seen U.S.-born extremists plotting to commit terrorist acts overseas, as was the case with the heavily armed Boyd conspiracy in North Carolina, and David Headley's involvement in the Mumbai attacks from his home base in Chicago, Illinois.

These terrorist threats are diverse, far reaching and ever-changing. Combating these threats requires the FBI to continue improving our intelligence and our investigative programs and to continue engaging with our intelligence and law enforcement partners both domestically and overseas. Accordingly, for fiscal year 2011, we are requesting funds for 90 new national security positions and \$25 million to enhance our national security efforts.

Next let me spend a moment discussing the cyber threat. Cyber attacks come from a wide range of individuals and groups, many with different skills, motives, and targets. Terrorists increasingly use the Internet to communicate, to recruit, to plan and to raise money. Foreign nations continue to launch attacks on U.S. Government computers and on private industry hoping to steal our most sensitive secrets or benefit from economic espionage. Criminal hackers pose a dangerous threat as well as use the anonymity of the Internet to steal identities and money, across the country and around the world. These attacks undermine our national security and pose a growing threat to our economy. We are seeking 163 new positions and \$46 million for our cyber programs to strengthen our ability to defend against cyber attacks.

Let me turn for a moment to white collar crime. Mortgage fraud is the most significant threat in our efforts to combat white collar crime. Mortgage fraud investigations have grown five-fold since 2003, and more than two-thirds of these cases involve losses of more than \$1 million each. If trends continue, we will receive more than 75,000 leads regarding mortgage fraud in this year alone. Securities fraud is also on the rise. We have 33 percent more security fraud cases open today than we had 5 years ago, and the economic downturn has exposed a series of historically large Ponzi schemes and other investment frauds. And of course, health care fraud remains a priority for the FBI given the estimates on the billions lost to fraud each year in health care programs.

Investigating and bringing to justice those who commit fraud is critical to restoring public confidence in our Nation's mortgage, financial securities, and health care industries. We are requesting



funds for 367 new positions and \$75 million for our white collar crime program.

The fiscal year 2011 budget also requests new funding for the threats from crimes in Indian country and international organized crime, and we are also seeking additional funds for our infrastructure to address these national security threats and crime problems including funding for training facilities, information technology, forensic services, and as you point out, Mr. Chairman, my written statement I submitted for the record discusses these requests in far greater detail.

I will say that over the past several years, we have worked to better integrate our strategic direction with a 5-year budget approach and with a more focused human resources management. Indeed, the FBI's fiscal management has been recognized by the Inspector General's annual audit as being among the top performers in the Department of Justice and we are on pace to achieve our hiring and staffing goals this year.

Chairman Mollohan, Ranking Member Wolf, I would like to conclude by thanking both of you and the other members of the committee for your support and particularly in your support of the men and women of the FBI, and I am happy to answer any questions you might have.

[The information follows:]

**STATEMENT OF ROBERT S. MUELLER, III  
DIRECTOR OF THE FEDERAL BUREAU OF INVESTIGATION  
BEFORE THE UNITED STATES HOUSE OF REPRESENTATIVES  
COMMITTEE ON APPROPRIATIONS  
SUBCOMMITTEE ON COMMERCE, JUSTICE, SCIENCE, AND RELATED  
AGENCIES  
March 17, 2010**

Good morning, Chairman Mollohan, Ranking Member Wolf, and members of the Subcommittee. On behalf of the more than 30,000 men and women of the Federal Bureau of Investigation (FBI), I am privileged to appear before the Subcommittee to present and discuss the FBI's Fiscal Year (FY) 2011 Budget. At the outset, I would like to thank you for your past support of the Bureau. Your support enables the FBI to achieve its three-fold mission: Protecting and defending the United States against terrorism and foreign intelligence threats, upholding and enforcing the criminal laws of the United States, and providing leadership and criminal justice services to federal, state, municipal, and international agencies and partners.

The FBI's FY 2011 Budget requests a total of \$8.3 billion in direct budget authority, including 33,810 permanent positions (13,057 Special Agents, 3,165 Intelligence Analysts (IAs), and 17,588 Professional Staff). This funding, which consists of \$8.1 billion for Salaries and Expenses and \$181.2 million for Construction, is critical to continue our progress started toward acquiring the intelligence, investigative, and infrastructure capabilities required to counter current and emerging national security threats and crime problems.

Consistent with the Bureau's transformation towards becoming a threat-informed and intelligence-driven agency, the FY 2011 Budget request was formulated based upon our understanding of the major national security threats and crime problems that the FBI must work to prevent, disrupt, and deter. We then identified the gaps and areas which required additional

resources. As a result of this integrated process, the FY 2011 Budget proposes \$306.6 million for new or expanded initiatives – \$232.8 million for Salaries and Expenses and \$73.9 million for Construction – and 812 new positions, including 276 Special Agents, 187 Intelligence Analysts, and 349 Professional Staff. These additional resources will allow the FBI to improve its capacities to address threats in the priority areas of Terrorism, Computer Intrusions, Weapons of Mass Destruction, Foreign Counterintelligence, White Collar Crime, Violent Crime and Gangs, Child Exploitation, and Organized Crime. Also, included in this request is funding for necessary organizational operational support and infrastructure requirements; without such funding, a threat or crime problem cannot be comprehensively addressed.

Let me briefly summarize the key national security threats and crime problems that this funding enables the FBI to address.

#### **National Security Threats**

***Terrorism:*** Terrorism, in general, and al-Qa'ida and its affiliates in particular, continue to represent the most significant threat to our national security. Al-Qa'ida remains committed to its goal of conducting attacks inside the United States and continues to leverage proven tactics and tradecraft with adaptations designed to address its losses and the enhanced security measures of the United States. Al-Qa'ida seeks to infiltrate overseas operatives who have no known nexus to terrorism into the United States using both legal and illegal methods of entry. Further, al-Qa'ida's continued efforts to access chemical, biological, radiological, or nuclear material pose a serious threat to the United States. Finally, al-Qa'ida's choice of targets and attack methods will most likely continue to focus on economic targets, such as aviation, the energy sector, and mass transit; soft targets such as large public gatherings; and symbolic targets, such as monuments and government buildings.

Homegrown violent extremists also pose a very serious threat. Homegrown violent extremists are not clustered in one geographic area, nor are they confined to any one type of setting--they can appear in cities, smaller towns, and rural parts of the country. This diffuse and dynamic threat – which can take the form of a lone actor – is of particular concern.

While much of the national attention is focused on the substantial threat posed by international terrorists to the Homeland, the United States must also contend with an ongoing threat posed by domestic terrorists based and operating strictly within the United States. Domestic terrorists, motivated by a number of political or social issues, continue to use violence and criminal activity to further their agendas.

**Cyber:** Cyber threats come from a vast array of groups and individuals with different skills, motives, and targets. Terrorists increasingly use the Internet to communicate, conduct operational planning, propagandize, recruit and train operatives, and obtain logistical and financial support. Foreign governments have the technical and financial resources to support advanced network exploitation, and to launch attacks on the United States information and physical infrastructure. Criminal hackers can also pose a national security threat, particularly if recruited, knowingly or unknowingly, by foreign intelligence or terrorist organizations.

Regardless of the group or individuals involved, a successful cyber attack can have devastating effects. Stealing or altering military or intelligence data can affect national security. Attacks against national infrastructure can interrupt critical emergency response services, government and military operations, financial services, transportation, and water and power supply. In addition, cyber fraud activities pose a growing threat to our economy, a fundamental underpinning of United States national security.

***Weapons of Mass Destruction:*** The global Weapons of Mass Destruction (WMD) threat to the United States and its interests continues to be a significant concern. In 2008, the National Intelligence Council produced a National Intelligence Estimate to assess the threat from Chemical, Biological, Radiological, and Nuclear weapons and materials through 2013. The assessment concluded that it remains the intent of terrorist adversaries to seek the means and capability to use WMD against the United States at home and abroad. In 2008, the Commission on the Prevention of WMD Proliferation and Terrorism concluded that “the United States government has yet to fully adapt....that the risks are growing faster than our multilayered defenses.” The WMD Commission warned that without greater urgency and decisive action, it is more likely than not that a WMD will be used in a terrorist attack somewhere in the world by the end of 2013.

Osama bin Laden has said that obtaining WMD is a “religious duty” and is reported to have sought to perpetrate a “Hiroshima” on United States soil. Globalization makes it easier for terrorists, groups, and lone actors to gain access to and transfer WMD materials, knowledge, and technology throughout the world. As noted in the WMD Commission’s report, those intent on using WMD have been active and as such “the margin of safety is shrinking, not growing.”

***Foreign Intelligence:*** The foreign intelligence threat to the United States continues to increase as foreign powers seek to establish economic, military, and political preeminence and to position themselves to compete with the United States in economic and diplomatic arenas. The most desirable United States targets are political and military plans and intentions; technology; and economic institutions, both governmental and non-governmental. Foreign intelligence services continue to target and recruit United States travelers abroad to acquire intelligence and information. Foreign adversaries are increasingly employing non-traditional collectors – e.g.,

students and visiting scientists, scholars, and businessmen – as well as cyber-based tools to target and penetrate United States institutions.

To address current and emerging national security threats, the FY 2011 Budget proposes additional funding for:

- **Counterterrorism and Counterintelligence investigations and operations:** 90 new positions (27 Special Agents, 32 IAs, and 31 Professional Staff) and \$25.2 million to enhance surveillance and investigative capabilities, improve intelligence collection and analysis capabilities, and enhance the Bureau's Legal Attaché presence in Pakistan and Ethiopia.
- **Computer Intrusions:** 163 new positions (63 Agents, 46 IAs, and 54 Professional Staff) and \$45.9 million for the Comprehensive National Cybersecurity Initiative to continue the enhancement of the FBI's capacities for combating cyber attacks against the U.S. information infrastructure.
- **Weapons of Mass Destruction:** 35 positions (15 Special Agents and 20 Professional Staff) and \$9.1 million to develop further the FBI's capacity to implement countermeasures aimed at detecting and preventing a WMD incident, improve the capacity to provide a rapid response to incidents, and enhance capacities to collect and analyze WMD materials, technology, and information.
- **Render Safe:** 13 new positions (6 Special Agents and 7 Professional Staff) and \$40.0 million to acquire necessary replacement aircraft critical to the timely deployment and response of specialized render safe assets.

#### **Major Crime Problems and Threats**

**White Collar Crime:** The White Collar Crime (WCC) program primarily focuses on: Corporate Fraud and Securities Fraud; Financial Institution Fraud; Public Corruption; Health

Care Fraud; Insurance Fraud; and Money Laundering. To effectively and efficiently combat these threats, the FBI leverages the resources of our civil regulatory and criminal law enforcement partners by participating, nationally and on a local level, in task forces and working groups across the country. For example, the FBI participates in 86 Corporate Fraud and/or Securities Fraud working groups, 67 Mortgage Fraud working groups, and 23 Mortgage Fraud task forces. By working closely with our partners, to include the sharing of intelligence, the FBI is better able to develop strategies and deploy resources to target current and emerging WCC threats.

Financial Institution Fraud: Mortgage Fraud is the most significant threat within the Financial Institution Fraud program. The number of pending Mortgage Fraud investigations against Real Estate professionals, brokers and lenders has risen from 436 at the end of FY 2003 to over 2,900 by the end of the first quarter of FY 2010. This is more than a 500 percent increase. Over 68 percent of the FBI's 2,979 mortgage fraud cases involved losses exceeding \$1 million per case. Suspicious Activity Reports (SARs) regarding Mortgage Fraud increased from 6,936 in FY 2003, to 67,190 in FY 2009. If first quarter trends of FY 2010 continue, the FBI will receive over 75,000 SARs by the end of FY 2010.

Corporate Fraud: The majority of Corporate Fraud cases pursued by the FBI involve accounting schemes designed to deceive investors, auditors, and analysts about the true financial condition of a corporation. While the number of cases involving the falsification of financial information has remained relatively stable, the FBI has observed an upward trend in Corporate Fraud cases associated with mortgage-backed securities (MBS).

Securities Fraud: The FBI focuses its efforts in the Securities Fraud arena on schemes involving high yield investment fraud (to include Ponzi schemes), market manipulation, and

commodities fraud. Due to the recent financial crisis, the FBI saw an unprecedented rise in the identification of Ponzi and other high yield investment fraud schemes, many of which each involve thousands of victims and staggering losses – some in the billions of dollars. With this trend, and the development of new schemes, such as stock market manipulation via cyber intrusion, Securities Fraud is on the rise. Over the last five years, Securities Fraud investigations have increased by 33 percent.

Public Corruption: The corruption of local, state, and federally elected, appointed, or contracted officials undermines our democratic institutions and sometimes threatens public safety and national security. Public corruption can affect everything from how well United States borders are secured and neighborhoods protected, to verdicts handed down in courts, and the quality of public infrastructure such as schools and roads. Many taxpayer dollars are wasted or lost as a result of corrupt acts by public officials.

The FBI also created a national strategy to position itself to effectively address the increase in corruption and fraud resulting from the Federal Government's economic stimulus programs, including expanding our undercover capabilities and strengthening our relationships with the Inspectors General community on a national and local level.

Health Care Fraud: Some of the most prolific and sophisticated WCC investigations during the past decade have involved health care fraud. It is estimated that fraud in health care industries costs consumers more than \$60 billion annually. Today, the FBI seeks to infiltrate illicit operations and terminate scams involving staged auto accidents, online pharmacies, Durable Medical Equipment, outpatient surgery centers, counterfeit pharmaceuticals, nursing homes, hospital chains, and transportation services. Besides the federal health benefit programs



of Medicare and Medicaid, private insurance programs lose billions of dollars each year to blatant fraud schemes in every sector of the industry.

Insurance Fraud: There are more than 5,000 companies with a combined \$1.8 trillion in assets engaged in non-health insurance activities, making this one of the largest United States industries. Insurance fraud increases the premiums paid by individual consumers and threatens the stability of the insurance industry. Recent major natural disasters and corporate fraud scandals have heightened recognition of the threat posed to the insurance industry and its potential impact on the economic outlook of the United States.

Money Laundering: Money Laundering allows criminals to infuse illegal money into the stream of commerce, thus manipulating financial institutions to facilitate the concealing of criminal proceeds; this provides the criminals with unwarranted economic power. The FBI investigates Money Laundering cases by identifying the process by which criminals conceal or disguise the proceeds of their crimes or convert those proceeds into goods and services. The major threats in this area stem from emerging technologies, such as stored value devices; as well as shell corporations, which are used to conceal the ownership of funds being moved through financial institutions and international commerce. Recent money laundering investigations have revealed a trend on the part of criminals to use stored value devices, such as pre-paid gift cards and reloadable debit cards, in order to move criminal proceeds. This has created a "shadow" banking system, allowing criminals to exploit existing vulnerabilities in the reporting requirements that are imposed on financial institutions and international travelers. This has impacted our ability to gather real time financial intelligence, which is ordinarily available through Bank Secrecy Act filings. Law enforcement relies on this intelligence to identify potential money launderers and terrorist financiers by spotting patterns in the transactions

conducted by them. The void caused by the largely unregulated stored value card industry deprives us of the means to collect this vital intelligence. Moreover, stored value cards are often used to facilitate identity theft. For example, a criminal who successfully infiltrates a bank account can easily purchase stored value cards and then spend or sell them. This readily available outlet makes it much more unlikely that the stolen funds will ever be recovered, thus costing financial institutions and their insurers billions of dollars each year.

*Transnational and National Criminal Organizations and Enterprises:*

Transnational/National Organized Crime is an immediate and increasing concern of the domestic and international law enforcement and intelligence communities. Geopolitical, economic, social, and technological changes within the last two decades have allowed these criminal enterprises to become increasingly active worldwide. Transnational/National Organized Crime breaks down into six distinct groups: (1) Eurasian Organizations that have emerged since the fall of the Soviet Union (including Albanian Organized Crime); (2) Asian Criminal Enterprises; (3) traditional organizations such as the La Cosa Nostra (LCN) and Italian Organized Crime; (4) Balkan Organized Crime; (5) Middle Eastern Criminal Enterprises; and (6) African Criminal Enterprises.

Due to the wide range of criminal activity associated with these groups, each distinct organized criminal enterprise adversely impacts the United States in numerous ways. For example, international organized criminals control substantial portions of the global energy and strategic materials markets that are vital to United States national security interests. These activities impede access to strategically vital materials, which has a destabilizing effect on United States geopolitical interests and places United States businesses at a competitive disadvantage in the world marketplace. International organized criminals smuggle people and

contraband goods into the United States, seriously compromising United States border security and at times national security. Smuggling of contraband/counterfeit goods costs United States businesses billions of dollars annually, and the smuggling of people leads to exploitation that threatens the health and lives of human beings.

International organized criminals provide logistical and other support to terrorists, foreign intelligence services, and hostile foreign governments. Each of these groups is either targeting the United States or otherwise acting in a manner adverse to United States interests. International organized criminals use cyberspace to target individuals and United States infrastructure, using an endless variety of schemes to steal hundreds of millions of dollars from consumers and the United States economy. These schemes also jeopardize the security of personal information, the stability of business and government infrastructures, and the security and solvency of financial investment markets. International organized criminals are manipulating securities exchanges and perpetrating sophisticated financial frauds, robbing United States consumers and government agencies of billions of dollars. International organized criminals corrupt and seek to corrupt public officials in the United States and abroad, including countries of vital strategic importance to the United States, in order to protect their illegal operations and increase their sphere of influence.

Finally, the potential for terrorism-related activities associated with criminal enterprises is increasing due to the following: alien smuggling across the southwest border by drug and gang Criminal Enterprises; Columbian based narco-terrorism groups influencing or associating with traditional drug trafficking organizations; prison gangs being recruited by religious, political, or social extremist groups; and major theft criminal enterprises conducting criminal activities in association with terrorist related groups or to facilitate funding of terrorist-related groups. There

also remains the ever present concern that criminal enterprises are, or can, facilitate the smuggling of chemical, biological, radioactive, or nuclear weapons and materials.

***Violent Crimes/Gangs and Indian Country.*** Preliminary Uniform Crime Report statistics for 2008 indicate a 3.5 percent decrease nationally in violent crimes (murder and non-negligent manslaughter, forcible rape, robbery, and aggravated assault) for the first six months of the year compared to the same period in 2007. This follows a slight decline (1.4 percent) for all of 2007 compared to 2006. While this overall trend is encouraging, individual violent crime incidents such as serial killings and child abductions often paralyze entire communities and stretch state and local law enforcement resources to their limits. In addition, crimes against children, including child prostitution and crimes facilitated through the use of the Internet, serve as a stark reminder of the impact of violent crime on the most vulnerable members of society. Since the inception of the Innocence Lost National Initiative in 2003, the FBI has experienced a 239% increase in its investigations addressing the threat of children being exploited through organized prostitution. The FBI addresses this threat by focusing resources on criminal enterprises engaged in the transportation of children for the purpose of prostitution using intelligence driven investigations and employing sophisticated investigative techniques. These types of investigations have led to the recovery of 915 children, 549 offenders convicted, and the dismantlement of 44 criminal enterprises.

**Gang Violence:** The United States has seen a tremendous increase in gangs and gang membership. Gang membership has grown from 55,000 in 1975 to approximately 960,000 nationwide in 2007. The FBI National Gang Intelligence Center (NGIC) has identified street gangs and gang members in all 50 states and the District of Columbia. Thirty-nine of these gangs have been identified as national threats based on criminal activities and interstate/international

ties. NGIC estimates the direct economic impact of gang activity in the United States at \$5 billion and the indirect impact as much greater. Furthermore, NGIC identified a trend of gang members migrating to more rural areas. NGIC has also seen an expansion of United States based gangs internationally, with such gangs currently identified in over 20 countries.

Indian Country: The FBI has 104 full-time dedicated Special Agents who currently address 2,406 Indian Country (IC) cases on approximately 200 reservations. Seventy-five percent of the cases are investigated in the Minneapolis, Salt Lake City, Phoenix, and Albuquerque Field Offices. Fifty percent of the cases involve death investigations, sexual and physical assault of children, and felony assaults, with little or no support from other law enforcement agencies due to the jurisdictional issues in IC. As a consequence, there are only half as many law enforcement personnel in IC as in similar sized rural areas. Furthermore, Tribal authorities can only prosecute misdemeanors of Indians, and state/local law enforcement do not have jurisdiction within the boundaries of the reservation, with the exception of Public Law 280 states and tribes.

To address current and emerging crime problems and threats, the FY 2011 Budget requests additional funding for:

- **White Collar Crime** – 367 new positions (143 Special Agents, 39 IAs, and 185 Professional Staff) and \$75.3 million to address increasing mortgage, corporate, and securities and commodities fraud schemes, including a backlog of over 800 mortgage fraud cases with over \$1 million in losses per case.
- **Child Exploitation** – 20 new positions (4 Special Agents, 1 IA, and 15 Professional Staff) and \$10.8 million to enhance on-going Innocence Lost, child sex tourism, and Innocent Images initiatives.

- **Organized Crime** – 4 new positions (3 Special Agents and 1 Professional Staff) and \$952 thousand to establish, in partnership with the Criminal Division of the Justice Department, a new integrated international organized crime mobile investigative team to focus on combating illicit money networks and professional money laundering.
- **Violent Crime/Gangs and Indian Country** – 2 new positions and \$328 thousand to provide enhanced forensic services for Indian Country investigations. Additionally, \$19.0 million is requested as a reimbursable program through the Department of the Interior to hire an additional 45 Special Agents and 36 Professional Staff to investigate violent crimes in Indian Country.

**Operational Enablers** – FBI operations and investigations to prevent terrorism, thwart foreign intelligence, protect civil rights, and investigate federal criminal offenses require a solid and robust enterprise infrastructure. Our operational and investigative programs are vitally dependent on core information technology, forensic, intelligence, and training services. Growth in FBI national security and criminal investigative programs and capabilities require investments in our core infrastructure. The FY 2011 Budget proposes 118 new positions (15 Agents, 69 Intelligence Analysts, and 34 Professional Staff), and \$99.0 million for key operational enablers - intelligence training and transformation, information technology upgrades, improved forensic services, and facility improvements – including construction of a new dormitory building and renovations to existing facilities at the FBI Academy, Quantico.

**Program Offsets.** The proposed increases for the FY 2011 Budget are offset, in part, by \$17.3 million in program reductions, as follows: \$10.3 million in travel; \$3.2 million in training; and a \$3.8 million reduction in vehicle fleet funding. The FY 2011 Budget also proposes an elimination of \$98.9 million of balances for the construction of a permanent facility to house the

Terrorist Explosive Device Analytical Center (TEDAC), but maintains current funding and personnel for the FBI's TEDAC program, which is responsible for analyzing Improvised Explosive Devices that are used in Iraq and Afghanistan. In addition, to provide long-term support for overseas operations, the FY 2011 Budget proposes to recur \$39 million of the \$101.6 million enacted for Overseas Contingency Operations in the Consolidated Appropriations Act, 2010, a non-recurrence of \$62.7 million.

**Reimbursable Resources.** In addition to directly appropriated resources, the FY 2011 Budget includes resources for reimbursable programs, including \$134.9 million and 776 full time equivalents (FTE) pursuant to the Health Insurance Portability and Accountability Act (HIPPA) of 1996; \$148.5 million and 868 FTE under the Interagency Crime and Drug Enforcement Program; and \$189.9 million and 1,303 FTE for the Fingerprint Identification User Fee and the National Name Check Programs. Additional reimbursable resources are used to facilitate a number of activities, including pre-employment background investigations, providing assistance to victims of crime, forensic and technical exploitation of improvised explosive devices by the Terrorist Explosive Device Analytical Center, and temporary assignment of FBI employees to other agencies.

#### **Conclusion**

Chairman Mollohan and Ranking Member Wolf, I would like to conclude by thanking you and this Committee for your service and your support. Many of the accomplishments we have realized since September 11, 2001, are in part due to your efforts and support through annual and supplemental appropriations. I'm sure you will agree that the FBI is much more than a law enforcement organization. The American public expects us to be a national security organization, driven by intelligence and dedicated to protecting our country from all threats to

our freedom. For 100 years, the men and women of the FBI have dedicated themselves to safeguarding justice, to upholding the rule of law, and to defending freedom.

From addressing the growing financial crisis to mitigating cyber attacks and, most importantly, to protecting the American people from terrorist attack, you and the Committee have supported our efforts. On behalf of the men and women of the FBI, I look forward to working with you as we continue to develop the capabilities we need to defeat the threats of the future.



Mr. MOLLOHAN. Thank you, Director Mueller.

INTERROGATION OF TERRORISM SUSPECTS IN THE U.S.

I would like to begin by revisiting the Abdulmutallab case and attempting to clarify some issues that have been subject to a lot of controversy in the press and in the public and on the Hill. Some of those controversies stem from confusion or a misunderstanding, perhaps, about how you proceeded on the day that Abdulmutallab was arrested and whether the Intelligence Community was consulted about the handling of the case.

So Mr. Director, can you walk us through the basics of what occurred on Christmas Day and how you interacted with the Intelligence Community, almost a chronology?

Mr. MUELLER. Yes. Starting around noon, word was received, and again, I am not specific on the particular time; so please don't hold me to those, but approximately noon or a little afterwards we received word that an individual on a plane bound to Detroit, I believe from Amsterdam, had apparently attempted to set off something. Initial reports indicated it may have been firecrackers. When the plane landed, first on the scene were those at the airport, principally Customs and Border Patrol and ICE agents. We were shortly there ourselves and learned that an individual had attempted to trigger an explosive device on the plane and had been stopped by one or more passengers.

He was placed into the custody of—I believe it was Customs and Border Patrol, and because the device, as he attempted to ignite it, had burned him, he was taken in custody to the hospital. As we found out about that, we immediately attempted and did find out information about him, understood that he was of Nigerian background and had flown in from Amsterdam. Immediately e-mail traffic began from both Detroit to our National Joint Terrorism Task Force here in Washington, and out to various agencies, including the Department of Homeland Security, National Counter Terrorism Center, and the Intelligence Community about what little information we had. That correspondence carried through the afternoon.

At approximately 2 o'clock, our agents went to the hospital and interviewed Abdulmutallab with the specific objective of finding out whether there was any immediate threat of additional bombs on other planes or additional persons on that plane who might constitute a threat. They spent up to an hour interviewing Abdulmutallab.

As has been pointed out, the determination was made not to provide Miranda warnings on the belief that this was information that was absolutely essential to determine public safety and so that interview was conducted along those lines. We continued to obtain information from various entities in the Intelligence Community throughout the afternoon, and at 5 o'clock that evening, there was a video teleconference that was established by John Brennan at the National Security Council.

We attended that video teleconference where most of the members of the Intelligence Community representatives of the Department of Justice, NCTC, National Security Council, and of course, representatives of the FBI, reviewed what had happened and what

was going to happen thereafter. There was the ongoing assumption at that time that Abdulmutallab, having been arrested on United States soil, would proceed through the Article III process. There was no debate at that time whether there was the issue of whether or not to Mirandize him.

Later that night it was determined to try again to interview Abdulmutallab, and at that time, it was determined both by the Department of Justice and the FBI that we would follow our ordinary procedures and attempt to interview him and provide him his Miranda warnings. When the agents went in that evening, he was less responsive to interviewing. He was not providing basic booking information. He was read his Miranda rights and discontinued any conversation afterwards. He remained in custody in the hospital that night and was brought before the magistrate the following day, as is required under rule 5 of the Federal Rules of Criminal Procedure, later on the following day. That, in brief overview, is what happened that day, consistent with the practices that we have utilized generally throughout any arrests that we do in the United States.

Mr. MOLLOHAN. Was there communication with the Intelligence Community about how this case was being handled? Was there cooperation among the various law enforcement agencies and intelligence agencies during this process?

Mr. MUELLER. Well, there was continuous coordination in obtaining information to the extent that we could pull it from our various archives the afternoon of Christmas, and the communication was between persons not at the highest level. In other words, I would not have been necessarily involved in that communication nor Secretary Napolitano nor the Attorney General. But yes, in the discussions throughout that afternoon, there was a colloquy between various elements of the Intelligence Community and the law enforcement community as the events unfolded.

Mr. MOLLOHAN. Were his arrest and the process that you just described handled any differently than the process followed for any other terrorist suspect arrested in the United States either before or after 9/11?

Mr. MUELLER. The only distinction I would say is that we made the determination early on not to Mirandize him in the initial interview. We knew we had a relatively short window of time in order to conduct that interview and believed that in that window of time we had to focus on immediate information relating to public security.

Mr. MOLLOHAN. You indicated that the next day the suspect was taken before a magistrate?

Mr. MUELLER. Yes. We are required under the rules to present the individual in custody before the magistrate. Generally we are required to do it within a 24-hour period.

Mr. MOLLOHAN. Is there a Mirandizing requirement at that time?

Mr. MUELLER. That happens whenever you are presented to the magistrate. The magistrate will review your rights for you. And it was done on that occasion. At least that is my understanding.

Mr. MOLLOHAN. So the court itself would advise the defendant of Miranda rights at that time?

Mr. MUELLER. Yes.

Mr. MOLLOHAN. So really there is a requirement that, except for the public safety aspect of this, a suspect arrested in the United States would be subject to Mirandizing under the law?

Mr. MUELLER. Yes. Once that person has been presented to the magistrate for any initial appearance.

Mr. MOLLOHAN. There has been considerable discussion about Miranda warnings and how they may or may not impact suspects from cooperating with investigators. I would like to just explore that a bit with you. Given that a suspect is going to be advised of his rights by a court within hours after his or her arrest, the FBI, is it correct, generally provides Miranda warnings itself so that you can take full advantage of anything he might say in the intervening period and preserve it for an Article III court? Many people have contended that the moment a suspect is provided Miranda warnings he will immediately cease cooperating with you.

So I am asking in your experience, is it the case that suspects become uncooperative and invoke their right to remain silent after being read Miranda rights, and does that attitude persist?

Mr. MUELLER. Let me divide it up in two parts if I could. The first part with regard to our policy, we make hundreds of arrests a day across the country. State and local law enforcement make thousands of arrests across the country daily. It is generally the protocol for ourselves as well as State and local law enforcement to provide Miranda warnings before interrogating somebody who is in custody to maximize the opportunity for utilizing whatever is said by that individual in the case against him in court.

Turning to the second part of that in terms of what one can anticipate, it really depends on the case. I think prosecutors and agents and police officers would say that on many occasions, persons who are Mirandized agree to cooperate afterwards and reach some sort of understanding whereby they would have to truthfully cooperate in order to get some consideration in terms of sentence. There are others who will never cooperate.

Richard Reid is an example of an individual, the shoe bomber, whose arrest was I think in 2002, who has never cooperated to this day even given Miranda warnings, and there probably are others out there who might have cooperated had they not been given Miranda warnings. So it really depends on the circumstances of the case.

Mr. MOLLOHAN. There has been a lot of discussion of whether Abdulmutallab was willing to talk to you and whether the provision of Miranda warnings prevented you from achieving some form of cooperation from him. When agents spoke to him following his medical procedure, was he uncooperative?

Mr. MUELLER. My understanding is that he did not display the same willingness to respond to questions that he had displayed earlier in the day when we first interviewed him.

Mr. MOLLOHAN. What about now? Did he cooperate with you some time post-hospitalization or post-operation, after having been advised of his right to remain silent and the right to retain counsel? Is he cooperating with you now?

Mr. MUELLER. He has been providing information, yes, sir.

Mr. MOLLOHAN. He has been?

Mr. MUELLER. He has been, yes.

Mr. MOLLOHAN. I don't know that you can answer this, but what causes his cooperation now?

Mr. MUELLER. It may well have been a combination of factors, and I can generally say that I think his family had some role in that. The fact that he faced substantial—life imprisonment probably played some role in that. There may be a number of other factors.

Mr. MOLLOHAN. Well, there is no clear lawful authority to move a defendant out of the civilian system; is that correct?

Mr. MUELLER. I think that, when you say no clear authority, I do believe that this issue has been litigated and come up with different results in different circuits. So to the extent the question is, is there any certain authority on that, I don't believe there is.

Mr. MOLLOHAN. Well, we have heard in the media and elsewhere that the military should have taken custody of Abdulmutallab. That is a contention that is out there, with the implication being that the government would have gotten more out of him if the military had been allowed to handle his case. Since 9/11, has the FBI ever arrested a suspected terrorist inside the United States and immediately turned the person over to the military?

Mr. MUELLER. No, we have not.

Mr. MOLLOHAN. And for both the past administration and this administration, that's a true statement?

Mr. MUELLER. We have not done that. Let me just put it this way: assuming the President has the authority to direct that, we have not been directed to do that ourselves.

Mr. MOLLOHAN. Have you ever turned such a person over to the military later in the process, such as after their first appearance in court?

Mr. MUELLER. The FBI has not. There have been other occasions where the Marshals Service, upon the direction of the President, has, I believe, turned at least two individuals over to the military.

Mr. MOLLOHAN. Do you know who those two individuals were?

Mr. MUELLER. I think one is named Padilla and the other was al-Mari, both of whom were directed into military custody for a period of time, and then were returned to the Article III courts for disposition of their cases.

Mr. MOLLOHAN. And who had custody of those individuals?

Mr. MUELLER. At the outset, we probably did the arrests on both of them. I think we did the arrests on both of them. They went into the Article III court system, into the custody of the U.S. Marshals Service as their cases were going to the courts. They were then transferred to the military for a period of time and then transferred back into the custody of the Marshals Service for disposition of their cases.

Mr. MOLLOHAN. Just backing up a little bit, you didn't make that decision?

Mr. MUELLER. No, we did not. That is the President's decision.

Mr. MOLLOHAN. In those two cases did the President make that decision?

Mr. MUELLER. I believe that is the case.

Mr. MOLLOHAN. President Bush made the decision to transfer those two individuals over to the military—

Mr. MUELLER. I believe that to be—

Mr. MOLLOHAN [continuing]. For disposition. Are those defendants still in military custody?

Mr. MUELLER. Mr. Padilla went to trial before an Article III court, I believe in Florida, was convicted, and is serving his sentence in the U.S. prison system.

Mr. MOLLOHAN. So that implies to me that they came back from military custody into the civilian forum?

Mr. MUELLER. Yes, sir. In both of those cases, they came back into civilian—

Mr. MOLLOHAN. How did that happen?

Mr. MUELLER. I believe it was directed by the President that they be returned to the custody of the Attorney General. That was exercised through the Marshal Service. As for al-Mari, I believe he was sentenced. He may well still be in jail or may have been released. I would have to check on that.

Mr. MOLLOHAN. But was there not an intervening challenge by the defendants to their detention in the military system? The judiciary issued contradictory decisions about whether the transfers were legal and both the civilians moved back into civilian custody. My question is, did the courts direct that they be sent back, or did the Bush administration send them back before a court's determination was made whether they were illegally detained in the military system?

Mr. MUELLER. I have not reviewed their cases recently, but I do believe one circuit ruled against the transfer of the individual into the military system whereas the other circuit upheld the transfer. Neither of the cases reached the Supreme Court and both were resolved in Article III courts before it could go to the Supreme Court.

Mr. MOLLOHAN. So I guess faced with conflicting decisions in different circuits, the administration pulled them out of military custody and put them back over into the civilian forum?

Mr. MUELLER. I was not involved in the decision-making process, but I can say that they did come back into that—

Mr. MOLLOHAN. Both of them, although one circuit determined that a transfer to military custody was lawful; so there was a contradictory—

Mr. MUELLER. Yes. Excuse me a second.

That is right, sir. I just wanted to check up and make certain I was on solid ground.

Mr. MOLLOHAN. So there is no clear legal authority to transfer terrorism suspects arrested inside the United States to the military?

Mr. MUELLER. You would have to go to constitutional scholars other than myself to—

Mr. MOLLOHAN. Based on court decisions, we have a conflict in the court decisions.

Mr. MUELLER. I think there is a conflict. Again, the cases may have been somewhat different. All I can say is that I am probably not the person to opine on to what extent it still remains unsettled.

Mr. MOLLOHAN. I probably should know, but do you know whether those cases went to the district court or circuit court?

Mr. MUELLER. Both went to circuit courts.

Mr. MOLLOHAN. So we have a difference of opinion in two different circuits.

Being in the civilian system does not mean an interrogation won't be useful; that is the point of this next line of questioning I have. So we have established for this purpose that there really aren't any constitutional alternatives that the FBI's handling these cases directly. Let's turn then to the contention that your interrogation of Abdulmutallab wasn't necessarily effective. That is an accusation. Some critics have charged that you could have achieved a more effective interrogation if there were better interrogators available. As I say that, I have not seen a shred of evidence to substantiate that from my position. But just to explore this contention, do you believe that you had the right mix of agents on the ground for the initial interviews of Abdulmutallab?

Mr. MUELLER. Well, I think if you put this into context, in the middle of Christmas Day there is this attempt by an individual to blow up a jet as it was coming into Detroit. Nobody could quite obviously have anticipated that and it could have gone into any city in the United States. I believe that the Special Agent in Charge there and the agents on the ground did an admirable job in identifying persons available to conduct the initial interview. They chose an agent who had substantial terrorism experience who had served overseas—I am not certain if it was Iraq or Afghanistan, and was fairly familiar with terrorism issues and—

Mr. MOLLOHAN. Both domestically and internationally, then?

Mr. MUELLER. Yes. And also an individual who—he may not have been a certified bomb technician, but was expert when it comes to explosives because of the necessity of identifying what kind of explosive was on the plane and what we were dealing with. So I believe they did an admirable job in pulling together the right persons to conduct the interviews on the day. Now, down the road—

Mr. MOLLOHAN. Excuse me—

Mr. MUELLER. I am sorry.

Mr. MOLLOHAN. No. You keep that thought. But before we get down the road, these individuals who conducted these interrogations, am I accurate in saying that they were members of the FBI's Detroit Joint Terrorism Task Force?

Mr. MUELLER. I would have to check on that. It may well have been. At least one was, but I am not certain. It may have been—the bomb technician or another may not have been a member of the Joint Terrorism Task Force but had the type of expertise that they believed was necessary immediately.

Mr. MOLLOHAN. You may want to clarify that for the record.

Mr. MUELLER. We will get back to you on that.

[The information follows:]

IF ANY OF THE AGENTS WHO DID THE INITIAL ABDULMUTALLAB INTERVIEW WERE  
PART OF THE LOCAL JTTF

Yes. Both FBI Agents who were involved in the initial interview of Mr. Abdulmutallab were members of the Detroit Joint Terrorism Task Force.

Mr. MOLLOHAN. Excuse me. Down the road?

Mr. MUELLER. Well, I think one of the benefits of the HIG program, the High-Value Interrogation Group program, is that you want to pull together persons with a variety of capabilities. You want a strong interrogator. You want a strong subject matter expert. You want a person who is knowledgeable of the individual. You may need language experts. And we, thereafter as the process went on, increased our numbers of persons with various degrees of expertise that could contribute to that interrogation, but we were dealing with on that day a necessity to respond and within very few moments, to get the information we thought was essential. And so I do believe that, yes, we could have brought in and had afterwards brought in greater number of subject matter experts, but they were not readily available on the ground at that time.

Mr. MOLLOHAN. The administration recently established the High-Value Interrogation Group, the HIG, to interrogate individuals of significant interest to the government overseas; that is my understanding. Why wasn't the HIG deployed to interrogate Mr. Abdulmutallab instead of your Detroit Joint Terrorism Task Force agents, and do you believe your interrogation was effective without HIG involvement?

Mr. MUELLER. Well, by Christmas the HIG had not been formally set up, but that did not mean that we did not use the same concept prior to that time. We recognized for a period of time and certainly our agents who are far more expert than I, understand the advisability of having any number of areas of expertise to contribute to the success of a particular interrogation. We had used that concept previously last fall in Chicago with an individual by the name of David Headley, where we pulled various experts to contribute to that interrogation.

On that particular day, we would have been anticipating down the road what we would need to flow into Detroit to complement the individuals who were doing the initial interrogation, and indeed that is what happened.

Mr. MOLLOHAN. Well, my understanding, and I think your testimony substantiates it, is the proposition that Abdulmutallab was interviewed by anybody but absolutely expert experienced interrogators, members of the Detroit Joint Terrorism Task Force, would be unfounded. And the HIG, as I understand it, might be available for consultation on domestic cases. Let me ask you if they would, but primarily they are a deployment group for overseas interrogation; is that correct?

Mr. MUELLER. That is correct, but that does not preclude them from being used in the United States and that expertise has been and will be used in the United States.

One point I do want to make because I have heard some criticism of the fact that he was interrogated by FBI who were in Detroit. The fact of the matter is our agents are very experienced. As they go through new agents class, one of the key areas that is covered is interrogations and many of our agents that come in have spent a great deal of time as police officers and that is what you do day in and day out.

I might also add that we have had some successes, some of them fairly renowned. An individual by the name of George Piro was selected by the military to do the interrogation—long interrogation—

of Saddam Hussein. So I do believe we have the expertise. I do believe we had the expertise on the ground that day to do a very good job and that the HIG would only augment what we have been doing for a number of years.

Mr. MOLLOHAN. At the risk of asking a leading question, I don't suppose you get on the Detroit Joint Terrorism Task Force without being seriously experienced.

Mr. MUELLER. Generally that is the case. We certainly have a lot of experience on that task force.

Mr. MOLLOHAN. Mr. Wolf.

Mr. WOLF. Thank you, Mr. Chairman.

My views are as follows: I really want to find out what have we learned. What have we learned to protect the American citizens so that next time something happens we are safer? There has been a lot of effort by the administration trying to defend themselves, and I want to make sure that I don't get into any political questions with you, and then there have been those on the other side who wanted to perhaps exploit that. Judge Mukasey did a piece where he said Abdulmuttalab should have been held as an enemy combatant. I don't know if you read this. It was in The Wall Street Journal.

Mr. MUELLER. I generally read his pieces, yes, whether Wall Street Journal or—

Mr. WOLF. And I will submit that for the record. Judge Mukasey, if I recall, was the judge in the '93 World Trade Center; is that correct.

[The information follows:]



## The Washington Post

### Where the U.S. went wrong on the Christmas Day bomber

By Michael B. Mukasey  
Friday, February 12, 2010; A27

It seems to me unlikely that Umar Farouk Abdulmutallab will be known to future generations of lawyers for generating any groundbreaking legal principle or issue. But when it comes to illuminating our public discourse about the "global war on terror," he is right up there with Clarence Earl Gideon, Ernesto Miranda or even Jose Padilla. His case presents in one tidy package virtually all the issues that arise from the role intelligence plays in this struggle and compels us to examine what the law requires and what it doesn't.

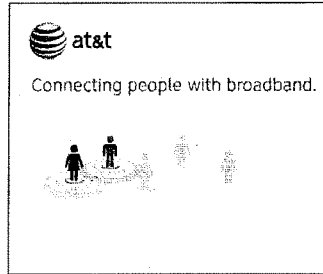
When Abdulmutallab tried to detonate a bomb concealed in his undershorts, he committed a crime; no doubt about that. He could not have acted alone; no doubt about that either. The bomb was not the sort of infernal device readily produced by someone of his background, and he quickly confirmed that he had been trained and sent by al-Qaeda in Yemen.

What to do and who should do it? It was entirely reasonable for the FBI to be contacted and for that agency to take him into custody. But contrary to what some in government have suggested, that Abdulmutallab was taken into custody by the FBI did not mean, legally or as a matter of policy, that he had to be treated as a criminal defendant at any point. Consider: In 1942, German saboteurs landed on Long Island and in Florida. That they were eventually captured by the FBI did not stop President Franklin Roosevelt from directing that they be treated as unlawful enemy combatants. They were ultimately tried before a military commission in Washington and executed. Their status had nothing to do with who held them, and their treatment was upheld in all respects by the Supreme Court.

If possible, FBI custody is even less relevant today in determining someone's status. In 1942 the FBI was exclusively a crime-fighting organization. After Sept. 11, 2001, the agency's mission was expanded beyond detection of crime and apprehension of criminals to include gathering intelligence, helping to prevent and combat threats to national security, and furthering U.S. foreign policy goals. Guidelines put in place in 2003 and revised in September 2008 "do not require that the FBI's information gathering activities be differentially labeled as 'criminal investigations,' 'national security investigations,' or 'foreign intelligence collections,' or that the categories of FBI personnel who carry out investigations be segregated from each other based on the subject areas in which they operate. Rather, all of the FBI's legal authorities are available for deployment in all cases to which they apply to protect the public from crimes and threats to the national security and to further the United States' foreign intelligence objectives."

"As with criminal investigations generally, detecting and solving the crimes, and eventually arresting and prosecuting the perpetrators, are likely to be among the objectives of investigations relating to threats to the national security. But . . . other measures needed to protect the national security . . . may

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Michael B. Mukasey - Where the U.S. went wrong on the Christmas D... <http://www.washingtonpost.com/wp-dyn/content/article/2010/02/11...>

include . . . providing threat information and warnings to other federal . . . agencies and entities; diplomatic or military actions; and actions by other intelligence agencies to counter international terrorism or other national security threats."

Contrary to what the White House homeland security adviser and the attorney general have suggested, if not said outright, not only was there no authority or policy in place under the Bush administration requiring that all those detained in the United States be treated as criminal defendants, but relevant authority was and is the opposite. The Supreme Court held in *Hamdi v. Rumsfeld* that "indefinite detention for the purpose of interrogation is not authorized" but also said in the same case that detention for the purpose of neutralizing an unlawful enemy combatant is permissible and that the only right of such a combatant -- even if he is a citizen, and Abdulmutallab is not -- is to challenge his classification as such a combatant in a habeas corpus proceeding. This does not include the right to remain silent or the right to a lawyer, but only such legal assistance as may be necessary to file a habeas corpus petition within a reasonable time. That was the basis for my ruling in *Padilla v. Rumsfeld* that, as a convenience to the court and not for any constitutionally based reason, he had to consult with a lawyer for the limited purpose of filing a habeas petition, but that interrogation need not stop.

What of Richard Reid, the "shoe bomber," who was warned of his Miranda rights and prosecuted in a civilian court? He was arrested in December 2001, before procedures were put in place that would have allowed for an outcome that might have included not only conviction but also exploitation of his intelligence value, if possible. His case does not recommend the same procedure in Abdulmutallab's.

The struggle against Islamist extremists is unlike any other war we have fought. Osama bin Laden and those like-minded intend to make plain that our government cannot keep us safe, and have sought our retreat from the Islamic world and our relinquishment of the idea that human rather than their version of divine law must control our activities. This movement is not driven by finite grievances or by poverty. The enemy does not occupy a particular location or have an infrastructure that can be identified and attacked but, rather, lives in many places and purposely hides among civilian populations. The only way to prevail is to gather intelligence on who is doing what where and to take the initiative to stop it.

There was thus no legal or policy compulsion to treat Abdulmutallab as a criminal defendant, at least initially, and every reason to treat him as an intelligence asset to be exploited promptly. The way to do that was not simply to have locally available field agents question him but, rather, to get in the room people who knew about al-Qaeda in Yemen, people who could obtain information, check that information against other available data and perhaps get feedback from others in the field before going back to Abdulmutallab to follow up where necessary, all the while keeping secret the fact of his cooperation. Once his former cohorts know he is providing information, they can act to make that information useless.

Nor is it an answer to say that Abdulmutallab resumed his cooperation even after he was warned of his rights. He did that after five weeks, when his family was flown here from Nigeria. The time was lost, and with it possibly useful information. Disclosing that he had resumed talking only compounded the problem by letting his former cohorts know that they had better cover their tracks.

*The writer was U.S. attorney general from 2007 to 2009 and the presiding judge at initial proceedings against Jose Padilla in 2002.*

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Mr. MUELLER. That is true, yes, sir.

Mr. WOLF. It's true. And I think he has forgotten more about this than most people will ever, ever know. And the point was, and the whole purpose of the high-value detainee interrogation group is to deal with high-value detainees, not criminal detainees, but the high-value detainees as an intelligence point of view; is that correct?

Mr. MUELLER. Yes.

Mr. WOLF. And so we are not really saying that the guy who drew the short straw in Detroit on Christmas Day was a bad person. He may have been a wonderful person. I stipulate for the record they are wonderful people, but maybe there were some others that could have also added some value to that that were not there. And one of the recommendations that I made, and you might want to comment on it, is I have asked that the HIG be colocated at the National Counterterrorism Center for that very, very purpose because they were not involved—and based on what you said, they were not involved before the decision was made with regard to Miranda rights. And so therefore—and when Secretary Napolitano testified, she said she did not know.

I believe that Admiral Blair testified over on the Senate side. I can still see the hearing. I think the question was asked by maybe Senator McCain. I am not sure. I think Senator McCain. And he said he did not know. And I think Mike Leiter said he did not know. And I think Leiter does a great job. I am very impressed. I think the more people go out to the Counterterrorism Center and see the number of pieces of information that come in every day and how they have to boil it down—and so I think those of us or I—I am not speaking for the other side—felt that perhaps if he could have been considered an enemy combatant, as Judge Mukasey said, and had more opportunity, there may have been a chance to say to them, did you see this gentleman when you were in Yemen?

Did you ever talk to Awlaki? What building were you in? Did you ever see any of these pictures, people that have been sent back? Are there any American citizens that were in the class with you? There are a lot of things that could have been asked. And so I think the question is what did we learn? You can spend a lot of time going back either criticizing what took place on Christmas Day or you could go back and defend what took place. Now, the administration announced that the high-value interrogation—they announced it in August; correct?

Mr. MUELLER. I am not certain when they first announced it. It may have well been last summer, yes.

Mr. WOLF. In August. And this is one of the most significant issues that our Nation is facing because there are young men and women that are serving in Afghanistan and Iraq and serving us well and some of your people have really done a great job. So let's find out what we have learned from it rather than defending or tearing it down. And I would stipulate that as great as they may very well be, they were not the best people we had in the Nation at that time to have interrogated the Christmas Day bomber because they were on vacation. They were having—celebrating the birth of Jesus Christ on Christmas Day. They may have been at

church service. They may have been somewhere else. And that is not bad. It is okay for people to take off.

And so the point that I have tried to make at that time—because this is such an important issue because of the number of people who have died in this country, the number of people who died at Fort Hood who were impacted by Awlaki; correct? Did he have any impact on the major down in Fort Hood? Yes. Did he have any impact on the Army recruiter that was killed? Yes. Did he have any impact on John Walker Lindh, who may have been responsible for killing or involved in the killing of Michael Spawn, the first CIA person from my district? The answer is probably yes. And you could go on and on and on.

So I think it is what did we learn—without being defensive or without being protective, what did we learn to truly make sure that the next time, and unfortunately there may very well be a next time, to make sure that we do everything we possibly can? Now, I have talked to your people and they tell us, and I think you sort of acknowledged it, that the HIG will be used domestically. It won't only be for international. But that is accurate, it may very well be used for domestic—

Mr. MUELLER. Yes.

Mr. WOLF. So I think that is where I go. And I read the interview and I read the stories of the fellow Piro. He's a great guy, but how long did Piro have with Saddam?

Mr. MUELLER. Months.

Mr. WOLF. Months.

Mr. MUELLER. Months.

Mr. WOLF. Months. But he understood the culture. He understood—I can still remember the time that former Congressman and Secretary Richardson met with Saddam Hussein, when he put his sole up and Saddam got up and walked out. Culturally that was not appropriate. So to have someone who understood the culture and the language—and the point is they were probably very good people, but there are probably people that are better in the country and in order to make sure that America is safe and secure, I think we should do everything we possibly can.

Let me ask you some questions—

Mr. MUELLER. Can I respond if I could to a couple of aspects of that?

Mr. WOLF. Sure.

Mr. MUELLER. First of all, with regard to military commissions and the support of military commissions for the trials that Judge Mukasey argued for, I believe the President has the authority and the right to determine where a person is to be tried, whichever. And I also believe that the most important thing we need to get is intelligence to prevent additional attacks and we want the best possible people doing interrogation, as soon as possible.

The one thing I do think is lost in some of this dialogue is that one has to make decisions relatively quickly in order to maximize the opportunity to get that information and intelligence, and oftentimes where the opportunity is greatest is after the arrest. And most police officers, I think, will tell you that that is the time where you have the greatest opportunity to obtain the information you need.

I would have liked to have gotten out to Detroit. The plane came in around 12 o'clock. Abdulmutallab is at the hospital at 2 o'clock and we have got a very small window of opportunity to interrogate him before he goes under surgical procedures. I could not get an expert on Nigerian radicalism at that point. I could not get somebody from Quantico who does this for a living at that point. And the individuals were selected for their capabilities to do those interviews.

And what is lost in the dialogue is that we were relying on the people in the field who were doing this and reacting to a number of stimuli that come through either what is happening at the scene, what is happening dramatically, what is happening right after the scene, or the willingness for the person to talk at that particular time. And I think what our people did, and cannot be lost in the future, is to keep the opportunities open as long as you can but take advantage of those opportunities when they are presented to us.

Mr. WOLF. Sure, I agree with that. And I think it's important not to browbeat and go after—my dad was a Philadelphia policeman—not to go after the people who were on the scene. That is not the point. The point is what do we learn by that? And I think the article—and I wish I still had it. We will submit it for the record. I think what Judge Mukasey was asking for was not that he be tried in a military tribunal. I think he felt, and I could be corrected here because it has been a long while since I have read it, that he be held as an enemy combatant for a long time that would have given an opportunity for your very best people to have interviewed him and then after that he could have gone to an Article III.

So I think it's an issue of timeliness and length of time. And, listen, I have great respect. I mean the policemen or the person at that moment, you get these silk stocking lawyers from the big firms that come in and make a value judgment. That man or woman on the street at that time has to make a very tough call—and I respect that.

What do you think about the idea—and I have sent a letter down to the administration. I did not send it to you because on some of these I don't send it to the Bureau because it is a political judgment to a certain extent, but what I did was—and I talked to John Brennan and I sent a letter to the President's Foreign Intelligence Advisory Board, to the Secretary, to former Senator Boren and also Senator Hagel, both good people, asking them to look into the possibility of co-locating, the HIG at the Counterterrorism Center so that they are there at that very moment when something is coming in and also when you are out there at the center, the breaking down of the barriers because they are in the same cafeteria together. They kind of know each other and relationships develop. What are your thoughts about locating it there?

Mr. MUELLER. Well, I think you are aware from past discussions that I am a firm supporter of the National Counterterrorism Center. Early on we were one of the first occupants. I moved our Counterterrorism Division from FBI headquarters out there so that we co-located with NCTC and other elements of the Intelligence Community. I would have liked to have had the HIG located there. We talked about getting space there. And my understanding from

the response of those discussions is that they are stuffed to the gills and we could not get the space there for what we wanted to do.

I can tell you we are operating out there, putting together our HIG. Our people are out there today. But we needed additional space that they could not accommodate. Ideally it would have been nice but now the space that we do have, which I think you are familiar with, also gives us space that we can move in relatively quickly and also is well on its way to being SCIF'ed, and so that was a consideration. I agree with you. Ideally I would like to have them there but they did not have the space.

Mr. WOLF. Okay. They tell me they actually won't get into their current place until August 1.

Mr. MUELLER. I would love to have another building—

Mr. WOLF. Well, I am going to continue to push this because I think it is a bigger issue, and let me say, I am also going on record—having complimented you and your people, I also want to compliment Michael Leiter and the group at the Counterterrorism Center. If everyone who writes a critical article or makes a comment could go out there and spend a day and look at the number of things that come in every day and then to boil that down, I felt that there was maybe a political decision made that was wrong, but the fault was really not out there. And if you begin to browbeat the people out there, you begin to get them so skittish that they are going to make a mistake sometimes. So anyway I am going to continue to push to see if we could have it relocated there.

The administration has been unwilling to share with the Congress any details about the Nation's new interrogation policy, and based on the Christmas Day bomber case it looks like there is some confusion out there as to what is the policy, and so—not generally like a newspaper story but what is the real policy? So has a charter or an MOU been written for the establishment of the HIG, and if so, could the committee see it?

Mr. MUELLER. Yes. I think it is being modified to address the issue of—use of the HIG within the United States and I do believe there is every intent to provide it to Congress as it is finished.

Mr. WOLF. Okay. So the modification is so that the HIG will be used potentially here in the—

Mr. MUELLER. Could be, yes. Not—

Mr. WOLF. Well, when—

Mr. MUELLER [continuing]. But allows it to be used, yes.

Mr. WOLF. Allowed, sure. Well, when it is available if you could just submit it for the record—

Mr. MUELLER. I believe there is an intent to provide it to you.

Mr. WOLF. If the deployment is domestic, as the decision has been made, does HIG still adhere to the rule of intelligence gathering taking priority over the law enforcement.

Mr. MUELLER. Generally, yes. I would say yes. I think every circumstance is a little bit different, but one of the things that the HIG has to do is put together an interrogation plan that has the input not just from the bureau and others in the law enforcement community but also input from the Intelligence Community. So the plan would address that particular issue with input from the various communities.

Mr. WOLF. Okay. The last question is a budget issue too. What are the FBI's funding requirements associated with the HIG and how much are you allocating in fiscal year 2010 and how much are you requesting in fiscal year 2011 and what does the FBI estimate a full year recurrent cost of the HIG once it is fully set up.

Mr. MUELLER. We were—we were late in attempting to obtain the funding in the 2011. It will be in the 2012. As to the particular figures, I would have to get back to you on that. I will tell you that the FBI is footing the bill for the space. We hope to get contributions from the others. And the personnel will be contributions from the—contributing from various associated agencies.

[The information follows:]

#### BIG BUDGET NUMBERS

The FBI is bearing the initial administrative costs for the HIG in FY 2010; however, participating agencies are bearing the cost of the salaries and related expenses (travel, transportation, etc.) for their agencies' personnel. The initial costs of facility build-out and personnel cost of the HIG Director is approximately \$6 million.

There was no specific request for HIG funding in the President's FY 2011 Budget. By the time the Interrogation Task Force concluded, and recommendations were sent to the President, decisions on the FY 2011 Budget had already been made. The FBI will work with participating agencies to identify and relay funding requirements through appropriate channels to the Department of Justice, the Office of Management and Budget, and Congress.

Mr. WOLF. Will that be based on the number like if there is overhead and everything like embassies do abroad, will that be if you have three people, you will pay a percentage of it or how will—

Mr. MUELLER. I would like to split it up as much as I can. But I want to get as much input, whether it be from the perspective of people or funds, from other agencies who are participating, but I did not want to hold up the process as we went through this.

So I have got the people on the ground. We have got the experts together. We are well on our way. And with the building blocks, my hope is I would have contributions from other contributing agencies, and then my hope is that we would have something in the 2012 budget that would make this a continuous budget item down the road.

Mr. WOLF. Okay. Mr. Chairman, I have other questions, but since we are on that issue, I will just kind of end with that and go back to you.

Mr. MOLLOHAN. Mr. Ruppertsberger.

#### DEVELOPMENT OF THE NATIONAL SECURITY BRANCH

Mr. RUPPERSBERGER. Director, first I do want to congratulate you and all the men and women who work for the FBI. You do a good job. Our job in oversight, we have to look at certain things that we think how we can do better. One of the issues I want to talk about is your national security branch. You know, the intelligence is one of the best defenses against terrorism and we need to really focus on that.

In the beginning when the national security branch stood up, I was concerned it was more of the culture which is supposed to be of the FBI—investigate, arrest, and convict. But when you are dealing in the intelligence arena you need a certain kind of culture and collecting and analyzing and issues like that. Then there were

some problems with certain people leaving, whatever, but I understand that the national security branch is really coming together pretty well, and could you explain where you are on that.

Mr. MUELLER. Yes. First of all, I do think that because you are an FBI agent and well versed in law enforcement techniques, that does not mean you cannot utilize those skills to develop intelligence. And I do believe early on, our organization, agents, analysts, and professional support understood that we had to prevent terrorist attacks, and that is a result of good intelligence, not necessarily putting people in jail.

The caliber and quality of the intelligence analytical corps has dramatically improved over the last several years. Actually, Harvard Law School is doing a study, and has looked at us under the microscope in terms of an organization going through change, and we had a professor go out and visit offices he wanted to go to. He visited them 2 years apart, and he came back and he basically said, This is a different, completely different analytical corps than I saw 2 years ago.

I do believe that the quality of our products, the ability of a Special Agent in Charge of a division to look at what is happening in his or her domain and understand the intelligence threats and then task persons to collect against the gaps that we don't have has dramatically improved.

Mr. MUELLER. The areas in which we still need improvement are to continue to grow our analytical corps and the persons who can support that analytical corps; and data input and the tasks that are necessary to accumulate the data that can then be analyzed. The other side of it is data aggregation and better search tools on the IT side.

So those are the areas in which we still need to drive forward, again, continuing to improve our analyst capacity with additional personnel as well as improved information technology.

#### JURISDICTIONAL ISSUES BETWEEN FBI AND DHS

Mr. RUPPERSBERGER. Now, you were a prosecutor years ago and then in this role, so you knew law enforcement pretty well. Anyone who has been in law enforcement understands sometimes there are turf battles, whether they are Federal, State or local.

What I am concerned about—because I am on another subcommittee, Appropriations with Homeland Security—is really the issue of who is in charge with respect to the FBI and Homeland Security. If I were the President, I would have the FBI in charge, by the way.

There have been turf battles that I have been aware of and whatever, and these were years ago, but I think it is really important that you and Secretary Napolitano really focus on where we are and on who is in charge of what, not only in Homeland, but you are talking cybersecurity, as an example.

The President gave a directive to Homeland Security that they are supposed to be involved in dot-com and dot-gov. I see Homeland Security as having so many missions on their table that I don't know how they are going to accomplish all of them, and I think there are 22 different areas that they have to deal with.



I am really focusing more on the issue of terrorism and on how you deal with them on that issue.

Secondly, if you could address the cyberattack. We know cyber is a very serious issue. It is a serious threat to our country, to our businesses. Yet Homeland Security has a long way to go in order to be able to develop the programs that are necessary to deal with this issue. I feel more secure that NSA, who has the military side, has the technology—they need to know where it goes—but I think Homeland Security has a ways to go.

So, in working together with them on those two issues, how are you dealing with Napolitano? Do you have any recommendations on who should be in charge of what or who should have certain responsibilities?

Mr. MUELLER. I don't disagree. There has been some ambiguity, let me say, in terms of certain areas when it comes to terrorism, most particularly in terms of the delivery of information to State and local law enforcement. In the past there has been confusion as to their relationship with fusion centers, which have been established in every State, generally through the Governors and the Joint Terrorism Task Forces. Almost everyone I know defers to the Joint Terrorism Task Forces when it comes to action.

Mr. RUPPERSBERGER. Can I stop you there?

I think that the Joint Terrorism Task Force is probably our best defense right now against terrorism because of the strike force concept. You are in charge, and you know you are in charge, but you have disciplines from every major agency in the United States there to fight terrorism. So I think it is a great program.

Mr. MUELLER. And I believe that that is acknowledged.

The issue that we are working out with DHS, and we are doing it jointly, is the relationship of the fusion centers to Joint Terrorism Task Forces. No two fusion centers are necessarily the same. They are different. They have been established often for different purposes in different aspects of the local government. Our effort is to contribute to the success of the fusion centers and also to make certain that fusion centers are contributing to the success of the Joint Terrorism Task Force, and we are doing that jointly with DHS.

Very briefly, on the cyber side, our role is investigating cyber attacks, preventing cyber attacks. Our principal vehicle to do that is the National Cyber Investigative Joint Task Force, which has the contribution of any number of agencies, including NSA, to identify particular threats and to investigate the sourcing of those threats and attribute them to either a country, an individual or a group of individuals. That is our role.

I think it is relatively clear that we do not have a role in protecting dot-com, dot-edu or the rest. That is DHS's responsibility. I do believe that our role, and the principal role that we should play—and I think we play it fairly well—is to bring to the Cyber Task Force arena what we have learned and have utilized in the Joint Terrorism Task Force arena.

#### HOMEgrown TERRORISTS

Mr. RUPPERSBERGER. Another area is homegrown terrorists. When you are looking at what we are doing throughout the world—

and I think our military, our CIA and NSA are doing a really good job in other parts of the world, but more and more, I am concerned. We are getting information that we are going to see homegrown terrorists, and it already started just last week, and then we had the Colorado issue. You know, there are certain people who might be in certain minority populations or whatever who have been treated very poorly throughout their whole lives, and who are very much vulnerable to having an al Qaeda-type situation recruit them for jihad or whatever.

How are you dealing with homegrown terrorists? What is your opinion on the homegrown terrorist issue?

Mr. MUELLER. I do not think you can really attribute homegrown terrorists—I would call them lone wolves—to any particular segment of any society. Abdulmutallab had one of the best educations you could get in the U.K. He came from a very wealthy family, and he was not homegrown, quite obviously.

Mr. RUPPERSBERGER. Part of my question, and where I am leading, though, is like the woman who was—

Mr. MUELLER. Yes, I know. She is the one who was just arrested, “Jihad Jane.”

Mr. RUPPERSBERGER. Right.

Mr. MUELLER. There are a number of ways that we do that. We try to pick up on communications, whether it be the Internet or otherwise, in which a person has gone from First Amendment protected activity to undertaking some attack. We have a number of tripwires around, whether it be in chemical companies or in weapon shops, where we ask people to alert us to persons who may display the characteristics of somebody who may utilize a weapon or explosives to kill others.

It is the most difficult thing we address because you don’t have the opportunity to pick up on communications. You don’t have the opportunity to pick up on persons who may be on the periphery to this to whom this person may have talked, and it is the biggest single threat that we face in the counterterrorism arena in the United States.

Mr. RUPPERSBERGER. Sir, I have one more question. Do I have any time left?

Mr. MOLLOHAN. You are fine. Continue to march.

Mr. RUPPERSBERGER. Okay. I want to talk about domestic gangs. Gangs are a serious problem in this country.

Mr. MUELLER. It is also in the domestic terrorism arena. In 1995, McVeigh blew up the Oklahoma City building. That is still the type of domestic terrorist incident that can kill many people and that we have to be alert to. So it is not just somebody who follows an international terrorist ideology; it is also somebody who is much more domestic oriented.

#### THREATS FROM GANGS

Mr. RUPPERSBERGER. Okay. The issue of gangs. Gangs are a very serious problem. A lot of times you have children in middle school who are being recruited for gangs. There is a lot of reason for that. Their family lives are not very good, and the gangs become their families, but there are a lot of issues there.

What do you feel are the biggest threats for gangs and which gangs at this point? I mean, you have Crips. You have Bloods. You have MS-13. It is on the east coast, west coast and in a lot of parts of the country.

The other issue, too, is that we have spent so much money on terrorism, and we have not spent as much money on drugs, and drugs probably still impacts more people in this country in a negative way than terrorism does. It is unfortunate that we have not been able to give the resources to drugs that we should. And that ties into some of the gang issues, too, because a lot of the gangs are dealing with drugs, prostitution and that type thing.

Mr. MUELLER. We have doubled, if not tripled, Safe Street Task Forces since 2001, which have, in my mind, the same types of capabilities that Joint Terrorism Task Forces have. Gangs have proliferated since the last time we were here. I am not certain that hundreds of thousands of the percentage of growth in gangs, but gangs have proliferated over the last several years. You mentioned a few. MS-13 is still bloody and violent.

The other aspect that we have seen is where gangs used to be fairly localized and then became nationalized, now they are internationalized. We have close working relationships—for instance, if you talk about MS-13—with El Salvador, Honduras, Guatemala, and Mexico, because there are substantial components of those gangs operating in those countries. We have a task force down in El Salvador now that focuses on the MS-13 gangs, because it is a revolving door between El Salvador and the United States. It is true with many other gangs at this point, but we have asked, and have received over the last several years—and I believe we have a request in this budget—for additional capabilities when it comes to addressing the gang phenomenon.

Mr. RUPPERSBERGER. Okay. Thank you for your testimony.

Mr. MOLLOHAN. Mr. Serrano.

Mr. SERRANO. Thank you, Mr. Chairman.

Welcome, Mr. Director.

Mr. MUELLER. Sir.

#### NEW AGENTS VISITING THE HOLOCAUST MUSEUM

Mr. SERRANO. Prior to asking you a couple of questions, does the FBI still continue the practice of bringing new agents to the Holocaust Museum?

Mr. MUELLER. Yes, sir.

Mr. SERRANO. Just to have you on the record once again, because you know I am a big supporter of that action, could you tell the committee why you think that is important, why the Bureau thinks that that is important?

Mr. MUELLER. The worst thing that can happen to law enforcement or, for that matter, to an intelligence agency is to lose sight of the fact that the public has given you an immense amount of power to exercise. They give you a badge and a gun, and you have tremendous power to affect persons' lives. It is important that each of our agents, analysts and others understand that power, and, most particularly, that you have an obligation not to abuse that power. So the trip to the Holocaust Museum is to impress upon people what can happen when you lose sight of the authority you

have been given and the constraints upon that authority to do good.

Mr. SERRANO. Well, I thank you. I thank you for that statement, and I wanted to put you on the record again, because I think it is really something that is very, very important and something that I commend you for.

Mr. MUELLER. Let me just check on one thing, if I may. I haven't been asked that question in the last few months. I wanted to make sure I was right when I said absolutely. If they discontinued it, I didn't know about it. But no, it is firm that that is the case.

Mr. SERRANO. Well, I am glad they didn't.

#### WHITE COLLAR CRIME

In past hearings we have discussed publicly, you and I, my concern and the concerns of others that the focus on the war on terror, which is extremely necessary—at the top of our list—would take away from the whole issue of the war on white-collar crimes. In view of what happened on Wall Street, and in view of what happened to our economy, we know that some people have been convicted and have gone to jail who had certain dealings within our economy, but as for so-called insiders, to my knowledge, none have been indicted or convicted.

So, first, am I correct? If not, then what has happened there to make people like me feel that while we are fighting the very important and necessary war on terrorism, we are not short on resources or on man/womanpower, if you will, to fight the other wars that we have to fight? The drug war is also included in that.

Mr. MUELLER. We have been given additional resources for white-collar crime, and we requested additional resources in the 2011 budget, but we have probably close to, the last I saw, 2,900-some—I am sure it is up to at least 3,000 or over in terms of just mortgage fraud cases. We are not talking about corporate fraud, securities fraud, other fraud. This is just in mortgage fraud cases.

Now, our effort has been to identify those cases with losses in excess of \$1 million, and we have taken the most serious cases and are running with them. We have set up a number of working groups and task forces around the country to enlist State and local support, but also to triage the cases, attempting to get State and local law enforcement to follow up on cases that we don't have the resources to meet and to track. We would like to be dealing with more, but the fact of the matter is, that there are so many out there that we can't reach all of them.

We have been very successful in the cases we have brought, and we have brought cases against insiders. We have brought cases against banking executives and securities firms executives. We currently have a number of pending prosecutions of high-profile persons who have abused their trust at the top of various organizations.

I would be happy to give you more of a breakdown of the number of indictments and the number of persons and what we have done. I cannot tell you that we are able to do all we would want. We do have to triage, but it is much like that which we saw immediately after 2001–2002 when we had a series of corporate cases—Worldcom, Healthcom, Enron—where we had a substantial chal-

lenge to get through those cases in the same way we are going through these cases now.

Mr. SERRANO. So, when you say you wish you could do more, is that because there is so much out there that it is hard to keep up with all of it, which is a terrible sign, or is it that there is a shortage of resources?

Mr. MUELLER. It is a shortage of resources. We can use many more forensic accountants. I can use far more agents who have spent time on Wall Street, who know Wall Street, who have done well—I mean, the good agents from Wall Street who know Wall Street.

Mr. SERRANO. I got worried for a minute.

Mr. MUELLER. We do have a number of those. They help to prosecute them because they know the ins and outs. It is always a question of resources, and I think we are making a substantial dent in the workload, but yes, it is always a question of resources.

Mr. SERRANO. Now, at the expense of getting the obvious answer, which is that it is a great relationship, what is the relationship between the Bureau and the Securities and Exchange Commission in terms of their turning over information to you or their doing some legwork, if you will, if that may help you?

Mr. MUELLER. There has been a wholesale change at the Securities and Exchange Commission. The individuals who come over to take over the investigative side of the Securities and Exchange Commission are former Assistant United States Attorneys, who have worked well with the FBI over the years and with whom both we and the Department have a very close relationship.

There is one area I know we are working closely on, and that is making certain that documents that are subpoenaed by one entity go to a database so that, if there is authority for the other entity to have those documents, you don't have to replicate what had been done by the previous entity. It seems basic and simple, but we have been working with them so that there is a common database structure. When we pull in documents, we want to ensure that they can be utilized and searched, given the appropriate authorizations by the FBI and the Securities and Exchange Commission, and then be ready for the prosecutors. That has not always been the case.

That is just a small example of an area we are working on to make certain that we coordinate the civil on their side with our criminal activities.

Mr. SERRANO. Thank you.

#### HATE CRIMES ENFORCEMENT

Let me take you over to the area of hate crimes. As you know, the President has signed new legislation that covers issues that we needed to cover in this area. There is also the concern that many of us have about hate crimes directed at immigrants or having to do with the whole immigration issue. As we get closer, hopefully, to an immigration reform bill, I think there will be more people acting out their anger and their hate and their differences with the immigrant community. Also, if this economy doesn't turn around quickly, there will be more feelings somehow that immigrants are causing problems.

So, in general, as to the issue of hate crimes, what can you tell me about the involvement of the FBI? Again, is the Bureau in the situation where it can't do as much as it would want to do for whatever reasons—resources or that it is just focusing in on the war on terror?

Lastly, what kind of requests, if any, are you getting from local authorities on issues that they feel they need FBI involvement?

Mr. MUELLER. Well, we have augmented our agents and our focus on civil rights in general, of which hate crimes, quite obviously, are a strong part.

As I believe you are aware, we had an initiative looking at the civil rights cases that had been unaddressed for 40 or 50 years, and that initiative we have been involved with for now 2 years. We have had some very successful prosecutions even though they are 30 or 40 years after the events themselves took place.

But when it comes specifically to hate crimes, we generally back up State and local authorities. They want to handle them. If we do not believe they are being handled appropriately, we and the U.S. Attorney's Office will move in to make sure they are handled appropriately. It is not an overwhelming workload, and we should be available, because if we are not available to do that, nobody is.

So we have not seen, I don't believe, an uptick in hate crimes, although, with the new legislation, we undoubtedly will see an uptick in the numbers, and we will have to address those.

The other thing I would say we are pressing on is when it comes to reporting the numbers for the reports that we produce in terms of crime up and down and the like. State and local law enforcement have not been amongst the leaders in terms of reporting hate crimes, and so we continuously push State and local law enforcement to record that so that we have some accurate accounting throughout the country as to what is happening with that type of criminal activity in the same way we do with rapes and murders and robberies and burglaries.

#### RECRUITMENT IN DIVERSE COMMUNITIES

Mr. SERRANO. One last point and question, Mr. Director. In the past, at public hearings, in private and over the phone, I have discussed with you incidents where I have felt that the Bureau was taking actions that I thought were unfair—not taking actions, but things that have happened historically about the treatment of certain communities by the FBI in general. For the record, you and I have discussed this, and I believe it has been very helpful, for instance, in releasing documents about 60 years of FBI behavior towards the Puerto Rico independence movement and so on.

Having said that, you know I have great respect for the Bureau, and I have great respect for you, and I think that anyone who is a member of the FBI is a person who should be proud of the work they do. So, with that in mind, every chance I get, I encourage people from my community to consider the Bureau as a career. So I bring the question of recruitment.

How do you recruit these days? Where are you recruiting these days? Are you recruiting? How do people from communities like mine, both the physical community and the racial and ethnic community that I represent, get a shot at joining the Bureau?

Mr. MUELLER. Everybody has a shot at joining the Bureau.

I will tell you, though, that it goes back to what I say about the power that one has when you give one the authority of being an FBI agent. We generally take persons who have had another career beforehand. In other words, the most important criterion, in our mind, is judgment, maturity and integrity in terms of becoming an FBI agent. Consequently, we don't do as well as other agencies who recruit out of college, and it is for the reason that we believe that the Bureau is enhanced by having persons with a number of skills. It can be military. It can be police. It can be a teacher. It can be an accountant. It can be, in this day and age, somebody with regional expertise or languages. But generally, they will be 3 or 4 years out of college when they come to us. We have recruiting drives for particular specialties.

I will tell you I think last year we had something like 73,000 individuals who sought to become special agents, but that does not mean that we want you to, in any way, reduce your encouragement, your recruiting a person from your community. We need the representation of every person in this country.

Mr. SERRANO. Well, I am considering a next career at this point.

Mr. MUELLER. I can give waivers.

Mr. SERRANO. I am glad you cleared that up about 3 or 4 years out of college. The way you were saying it, for a while it sounded like the Bureau was going to have a lot of older people. I am glad you cleared that up.

Thank you so much, Mr. Director.

Thank you, Mr. Chairman.

Mr. MOLLOHAN. Thank you, Mr. Serrano.

Mr. Fattah.

Mr. FATTAH. Thank you.

Let me first applaud your efforts. I wrote to you about this whole mortgage fraud area over, I think, 2 years ago and about the fact that these numbers of cases are, well, quite close to 3,000 now, up from, I think you testified in your written testimony, 400. So, from 2003, I think it is extraordinary and important, and I note that there have been significant arrests in Pennsylvania, in and around Philadelphia, and I am very pleased that the FBI has been quite aggressive on this matter.

I want to go through a couple of things.

#### TERRORISM INTERROGATIONS, CONTINUED

One, your long public service from your days of leaving the Armed Forces goes over any number of Presidencies; as best as I can count, you know, Ford, Reagan, Bush I and II, Clinton, Carter, and now President Obama. So you have served in a variety of capacities. You took this job a few days before 9/11. Since that fateful day, you have done a great deal to make sure that our country could be safe, and you should be applauded for that.

Given your entirety of your experience, I know there is probably some discomfort about the criticism about how we are handling some of these cases now, and I just want to go back over some material because I think that you said—and I want to make sure that we get it on the record—that no arrests in the United States of

America are being handled any differently for suspected terrorists since 9/11 up until this moment; is that correct?

Mr. MUELLER. With the rest of the United States, we have followed essentially the same procedures, yes, sir.

Mr. FATTAH. So, in fact, what is being criticized by this Christmas Day activity is kind of like somehow we played a weak hand. From my read of this, it is not actually true. That is to say that what you had was you had a suspect who was injured—that is, an explosive went off, and he was injured—and before he could get medical treatment, surgery, he was questioned to make sure that there was no other immediate public danger. Then he went into surgery. When he came out of surgery, as many who have been in surgery, he was less responsive. Then after that point, he became more responsive and has been cooperating.

Am I mischaracterizing that in any way?

Mr. MUELLER. No. I think—and that is accurate. The only thing I would say is that after he came out of the medical procedures—I am not sure it was surgery, but there were certainly medical procedures—

Mr. FATTAH. Whatever it was. Okay.

Mr. MUELLER [continuing]. He was suffering burns, and that he was less responsive that evening than he had been before in terms of answering questions.

Mr. FATTAH. Right; but that the notion that somehow he was being coddled just doesn't square with the facts in this instance.

Mr. MUELLER. I am sorry, sir. I had not heard that word.

Mr. FATTAH. Well, coddled. There has been a lot of criticism that he is being treated—you know, that we should be so much more aggressive somehow, you know, like we have been in the past with the shoe bomber. But your testimony is that this is exactly the same way these matters have been handled?

Mr. MUELLER. I think they have been handled pretty much identically, yes, sir.

Mr. FATTAH. Okay. I want to just cover one other thing.

#### CIVILIAN TRIALS FOR TERRORISM SUSPECTS

Now, there has been a lot of discussion about trials. You are aware and you testified about all of the threats facing the country from the national criminal enterprises, you know, both the Albanian mafia and the African criminal organizations. You can go through a whole list. We have domestic terrorists and the drug cartels. We have had a lot of trials in America.

Mr. MUELLER. Yes, sir.

Mr. FATTAH. So you have an expert view about the threats that face our country.

Is there any circumstance in which you would advise our country that we couldn't put someone on trial that we had captured because we would be unsafe? I mean, have we gotten to the point where these threats outweigh our pursuit of justice, and that the FBI could not protect an American city in which a trial was taking place?

Mr. MUELLER. I think we are getting a little bit beyond where I feel comfortable testifying. It is really speculative.



Mr. FATAH. Okay. Well, you can see, heretofore all of the cases that have gone on, and there have been some 300 trials of terrorists in the country. Have there been incidences where those trials were taking place in which Americans have been harmed or have been under some threat?

Mr. MUELLER. Not to my knowledge.

Mr. FATAH. Okay.

Mr. MUELLER. That is to say I don't believe any have been harmed. As to say under a threat, I can't speak to that because I am not familiar with the circumstances, but I am not aware of a person's being harmed or of any serious threats in the course of one of those trials.

Mr. FATAH. You just had very significant success today, in terms of the Mumbai attacks, at a trial in which someone was found guilty of the attacks in India where 136 people lost their lives, right?

Mr. MUELLER. Well, I believe there is an individual who is going to plead guilty—

Mr. FATAH. Pled guilty.

Mr. MUELLER [continuing]. Either today or tomorrow.

Mr. FATAH. Today. You have been in here. I have been out there.

Okay. So, you know, what I am saying is that we are going after drug cartel leaders, and we are going after people involved in criminal enterprises in a variety of ways. I just want to be clear because there is a lot of political dialogue as to whether we could put someone on trial in New York City or not. Rather, we have gotten to the point—in many developing countries, you know, putting someone on trial is a dangerous thing. You know, it could be a problem. I just thought in the United States of America that we would not be in a position where we would be fearful of taking someone who had harmed American citizens and of putting him before the bar of justice.

Mr. MUELLER. I understand your concern, Congressman.

Mr. FATAH. Thank you very much.

Mr. MOLLOHAN. Mr. Schiff.

Mr. SCHIFF. Thank you, Mr. Chairman.

Thank you, Mr. Director, for being here.

#### DNA AND FINGERPRINT ANALYSIS

I have two questions. The first is an issue of great concern to hundreds of jurisdictions around the country, dealing with the backlog of DNA profiles collected from crime scenes and offenders. In Los Angeles, as you know, the LAPD and the sheriff's department have backlogs of several thousand sexual assault kits. In order to close those backlogs, the city and county have often outsourced their samples to private labs. You know, that has been helpful, but there is now a second backlog that has been created because once the samples come back from the private labs, the city and county need to do a technical review of every case to ensure that the private lab did the job right.

So, last year, for example, with the Chairman's help, we got \$500,000 for the City of Los Angeles to get through the backlog. They used that money to contract out. They got through the back-

log by contracting out, but now they still have not uploaded them in CODIS because of this 100 percent technical review requirement.

That doesn't make sense to me for a couple of reasons. One, it is expensive. Two, none of the technical reviews have come up with any errors that I am aware of in terms of the private labs. Three, you could have a 100 percent requirement of a technical review where there is a match made once it is uploaded into CODIS. Therefore, only when it is actually utilized do you need to go through, you know, what looks increasingly like a redundant step.

So my question is: Is this really necessary? Can't we really cut down on the backlog, really at no expense, by eliminating this 100 percent review requirement except in a case where it is a hit in CODIS where it could actually make a difference? That is the first question.

The second question on mentoring. One area we have tried to make progress in dealing with circumstances where sex offenders take advantage of volunteer programs is to have a system of screening volunteers for mentoring programs. Congress tried to accomplish that goal first with the National Child Protection Act of 1993 and later with the Volunteers for Children Act. Youth-serving organizations got access to FBI checks working with their States. Still, though, more than two-thirds of the States don't have a workable, affordable system for youth-serving organizations to screen the people who want to volunteer with them.

In 2003, we passed the PROTECT Act, which was a national pilot, allowing youth-serving organizations to conduct national fingerprint-based background checks. The FBI has now run, I think, 60,000 checks through the pilot. In 6 percent of those cases, they have turned up criminal records of serious concern. For example, the pilot identified an applicant who was a registered sex offender for having intercourse with a child under the age of 15, but because he was applying in a different State, only a national check would have turned up his record. These checks can be conducted for a fee of less than \$25.

I have introduced legislation, with the support of Chairman Conyers, the Child Protection Improvements Act, which is bipartisan legislation to build off the success of that pilot and to put in place a permanent fee-supported system to ensure that every child-serving organization has the ability to quickly and cheaply do these checks. Senator Schumer introduced identical legislation in the Senate, but the bill has been stymied, notwithstanding bipartisan, bicameral support, in large part because we were told, despite repeated requests to the DOJ and the FBI, no formal comment has been offered on the bill, so they are reluctant to move the bill without having the DOJ or the FBI weigh in one way or the other, we like it and go forward, or we don't like it and would like to see it fixed.

So I wrote, along with Senator Schumer, Congressman Mike Rogers, Senator Hatch, to the Justice Department, asking for the Department's views on the bill, and we still have not heard back. If you could get us an answer, let us know whether you support it so we can move forward, or if you think things need to be changed in it, let us know that, too.

Mr. MUELLER. Addressing the second question first, I will say I will carry back to the Department of Justice your request for their views on that particular legislation. I understand the importance of that legislation, but I will carry the request back to the Department of Justice.

[The information follows:]

VIEWS ON THE CHILD PROTECTION IMPROVEMENT ACT

The FBI does not have any comments at this time. Any Department of Justice or Administration views will be provided through the normal Executive Branch legislative review process.

Mr. SCHIFF. Well, I think, you know, they are going to be principally interested in what is the FBI's view on this because it implicates the FBI more than any other part of the DOJ.

Mr. MUELLER. If it is a question of additional name checks, we can handle that. If it is a question of who pays, then that is another issue altogether. I don't know the ins and outs of the bill. I would expect that someplace in there the cost of doing this is a factor in somebody's view, but we do millions of name checks now. We are through our name check backlog, and I can't imagine that that would be a substantial issue for us, but I don't know what other issues there might be. In any event, I will take it back to Justice and try to get back to you on that.

Mr. SCHIFF. Thank you.

Mr. MUELLER. On the DNA backlog, and from the dialogue we have had over the years on the DNA backlog and on the ingestion of the samples, addressing, first of all, your question in terms of the request for quality control and where it is reviewed by a separate set of experts before it is put into CODIS, we are looking at that.

My expectation is we will remove some of those hurdles in the very near future. I know that has been an issue. I know you raised it yesterday with the Attorney General. It is one we have been looking at, and we want to remove the obstacles to the providing of those samples to CODIS. So I think we will be able to get back to you relatively shortly with what we hope will be a fix in that area.

[The information follows:]

ANSWER ON FIX FOR THE DNA TECHNICAL REVIEW PROBLEM

Many law enforcement agencies collaborate with private laboratories for analysis of their DNA samples. The FBI Laboratory is currently reviewing its existing policies, standards and protocols, to include requirements for outsourcing DNA analysis to private laboratories and review of their results by public law enforcement laboratories, to enhance NDIS efficiency. Private laboratories are and will continue to be an integral part of the process and a contributor to the success of NDIS. The current policy assessment will engage both public and private laboratories in identifying ways to enhance these contributions.

More generally, I would say that the backlog that we have had in terms of processing DNA samples will be reduced to almost nothing by September. We now ingest, I think it is, 25,000 samples a month. Now we will go up to 90,000 a month given the resources that were appropriated for us back in 2009. We have now brought those persons onboard. We are reorienting how we do things, and we are also using robotics in ways we have not in the past so that,

by September, our hope is that there will be no more than a 30-day delay in ingesting any new samples that come in regardless of the amounts that have tripled or quadrupled over the years, as I know you understand.

Mr. SCHIFF. Do you know where the backlog is now? What kind of numbers do you have?

Mr. MUELLER. I would have to get back to you on that. I have charts showing the elimination by September, but where we are right now in March, I would have to get back to you on it.

Mr. SCHIFF. If you would, which would be where we are now compared to a year ago—

Mr. MUELLER. Yes.

Mr. SCHIFF [continuing]. And how fast we are processing them as compared to a year ago. That would be very helpful.

[The information follows:]

#### UPDATE ON DNA BACKLOG

As of March 2010, the backlog of offender samples at the FBI Laboratory was 298,749 samples. One year ago, the FBI Laboratory's capacity for analyzing offender samples was less than 700 samples per month. Because of enhancements and technology improvements, the capacity of the FBI Laboratory for offender sample analysis has increased in the past year to approximately 25,000 samples per month, with the eventual goal of analyzing approximately 90,000 samples per month. With the capacity of 90,000 samples per month, the FBI will be able to analyze all samples received with a 30 day turnaround time once the backlog is eliminated. At this time, the FBI anticipates the backlog will be eliminated by fall 2010.

Mr. SCHIFF. I would like to work with you also on a couple of related issues. One is the lack of uniformity in the loci that we look at and those that others in Europe and other parts of the world look at. Our databases can't talk to each other because of that. I would love to see if we could work on an international effort to harmonize, you know, what part of the DNA strand we look at to compare.

The arrestee issue, which the President recently spoke in favor of, we would love to try to advance.

Finally, a couple of other, I know, controversial issues, but the running of partial DNA as well as—

Mr. MUELLER. Familial DNA.

Mr. SCHIFF [continuing]. Familial DNA, both of which I support and think make sense, which will take violent people off the streets, and I think we can have the right safeguards in place not to violate anyone's privacy.

So I look forward to working with you on those issues. Thank you.

Mr. MUELLER. I do, too.

If I might add, of the universe of samples that are to be ingested in, we also look at what we are going to have to do to ramp up to obtain those samples.

The other thing I would say, in terms of working with Europe, one of the biggest concerns we have with Europe is their privacy rules that inhibit dialogues and discussions in terms of exchanges and the capability of identifying criminals who populate both our side of the pond and the other side.

Mr. FATTAH. Will the gentleman yield?

Mr. SCHIFF. If I have time, yes.

Mr. FATAH. I know in the European Union, all of those in law enforcement have been cooperating one to another in between their various countries on all of this.

Are you saying that, in terms of interacting with us, there is still a ways to go?

Mr. MUELLER. Yes, but in terms of the action amongst themselves, it is the lowest common denominator. Then it is a question of if they have different views on privacy than, perhaps, we do, and that becomes a problem when the law enforcement elements of both countries want to work things out and exchange information.

Mr. SCHIFF. Thank you, Mr. Chairman.

#### LAW ENFORCEMENT IN INDIAN COUNTRY

Mr. MOLLOHAN. Director Mueller, it is well established and sad fact that public safety services in Indian Country are severely lacking, the result being that the criminal victimization rate on tribal lands is significantly in excess of the national average. I know you know that, and I know of the kind of scarce resources you are dealing with as you address that problem.

A Native American living on reservation lands can expect fewer police officers, longer emergency response times and higher crime rates than the average person living outside of Indian Country. I know that I am not alone in finding these disparities disturbing and unfair.

I am pleased to see that this administration, the Department of Justice and the FBI are all supplementing the increased resources provided by this committee last year to address this problem.

I know it is further disturbing, fundamentally disturbing, that the victims and the targets of these crimes are predominantly women. Because of the jurisdictional issues, there are structurally difficult questions about going into an investigation and helping to provide law enforcement activities in Indian Country. But there is also just a fundamental lack of resources, too.

So can you describe the trends the FBI has seen in the level and types of crimes committed in Indian Country over some reasonable period, say, over the last 5 years?

Mr. MUELLER. I will probably have to get back to you with specific statistics on that.

Mr. MOLLOHAN. You may submit that for the record.

Mr. MUELLER. I will do that.

[The information follows:]

### **Trends in the Level and Types of Crimes Committed in Indian Country**

The FBI continues to observe a consistent level of criminality within the Native American communities. Since FY 2005, the criminal threat on Indian Reservations has gone basically unchanged. Traditional violent criminal acts; more specifically, murder, rape, serious violent assault, and the sexual/physical abuse of a children account for approximately 75 percent of all crimes investigated by the FBI within Indian Country.

There are 563 Indian Tribes residing on 310 Indian Reservations. The FBI has federal jurisdiction on approximately 200 of those reservations. Currently, Congress funds 70 FBI Special Agent positions to work Indian Country matters. However, over the last three years the FBI has dedicated approximately 105 Special Agents toward Indian Country investigations; 70 percent of those resources are utilized in the Minneapolis, Salt Lake City, Albuquerque and Phoenix Field Offices.

There is a lack of reliable crime data within Indian Country as a result of inconsistent statistical reporting by many of the tribes. Tribes may or may not provide misdemeanor crime data to the Bureau of Indian Affairs (BIA). Moreover, some of the tribes reporting crime data, may also duplicate the crime data reported by BIA, FBI or the United States Attorney's Office.

The greatest threats with respect to Native Americans and reservation life continue to be intra-communal violence and sexual assaults, especially among children. Three quarters of all FBI Indian Country investigations center around death, rape, assault and sexual/physical abuse of children. Over the past three years the FBI has averaged opening 220 death, 186 rape, 476 assault and 511 sexual/physical abuse of child investigations. The high number of sexual/physical abuse of children investigations continues to be the most alarming statistic, representing almost one third of the FBI's criminal investigations on reservations (729 out of 2,514). In addition, the FBI is mandated to investigate gang/drug violations, white collar crime matters, public corruption, domestic violence, trafficking in Indian human remains, and numerous other federal crimes.

During the last five years, the FBI has more than doubled the number of pending narcotics investigations on Indian Reservations. A large part of this increase can be attributed to the greater emphasis placed upon the utilization of the Safe Trails Task Force (STTF) Program. By leveraging FBI resources with state, local, and tribal partners, the FBI is able to greatly expand its efforts in meeting this threat. The FBI is determined to continue these efforts and is looking to add a minimum of two new STTFs by the end of FY 2011.

In order to better understand the threat the gang/drug-distribution based criminal enterprises pose on Indian Reservations, the FBI has partnered with the National Drug Intelligence Center to conduct regional Indian Country Gang Assessments. The project, which began in March 2010, is scheduled to conclude in February 2011. The assessment will provide the law enforcement community with the needed strategic intelligence regarding how violent gangs and related criminal enterprises, are affecting reservation life and contributing to the violence on reservations. Furthermore, the FBI's Violent Crime Section is partnering with the National Gang Intelligence Center to conduct reservation specific gang and drug threat assessments. These reservation specific assessments will provide both tactical and strategic intelligence to field offices and Safe Street Task Forces, in order to develop comprehensive strategies for meeting the criminal enterprise threats related to each specific reservation. Both the aforementioned intelligence projects will foster a better understanding of these relationships.

Mr. MUELLER. I can tell you I have tried to corral off the resources the Bureau is putting into Indian Country. From September 11th, I had to reassign a number of criminal agents. I have left the same numbers of criminal agents working in Indian Country since that time, but it still is inadequate. It is not enough.

When you say crimes against women, it is crimes against women and children. We take the most serious ones, but it is inadequate, and I am not certain ultimately that we in the FBI can satisfy the need for police services in Indian Country. It is going to take other organizations to be ramped up and to have the training and the capability of addressing crimes on Indian reservations as well as ourselves. It is an issue that we try to address with the resources that have been allocated to it. We have requested additional resources and are getting some, but it still is not necessarily adequate to the crime that we have seen grow over the last several years.

Mr. MOLLOHAN. I commend you for your request for additional resources, and I can assure you that this subcommittee is going to be inclined to be responsive.

On a practical level, as I understand it, there are over 200 individual reservations and you have, approximately, 100 officers to cover those 200 reservations.

Does that sound right?

Mr. MUELLER. That is correct. That is correct.

Mr. MOLLOHAN. I guess it just prompts me to ask: What can you expect to accomplish when you are spread that thin? I mean, on the face of it, that is inadequate.

Mr. MUELLER. What we accomplish is we address the most serious cases with the United States attorneys, but our agents' work is stretched. Their caseloads are unbelievable. The time they spend away from their families and other life to provide the services to the Indian Country is truly remarkable, but every one of them thinks that they are contributing substantially in the work that they are doing; but we are overstretched.

There are others with the State and local authorities who may have some concurrent jurisdiction who are also overstretched, but we do what we can with the resources that are allocated to it. The one thing I have made certain is that they have not been reduced even though we have the first priority of stopping the next terrorist attack.

Mr. MOLLOHAN. Here, if you are able to provide it accurately, or for the written record, how would you compare your law enforcement presence in Indian Country to your presence in comparably-sized rural areas?

Mr. MUELLER. I think it really would be difficult to look at apples and oranges. There are areas in the far West where we have very, very low coverage, but where the population is fairly low. I would have to get back to you in response to that question.

[The information follows:]

COMPARISON OF AGENT COVERAGE IN INDIAN COUNTRY TO COVERAGE IN  
COMPARABLY-SIZED RURAL AREAS

The FBI does not currently have this data available; however, the FBI has been specifically appropriated funding for 70 Special Agent positions to address its responsibility to investigate crimes in Indian Country. The FBI has supplemented those 70 specifically appropriated positions with additional Violent Crime Special

Agents and has consistently dedicated over 100 agents full-time to investigate crime in Indian Country over the past 10 years. In addition to the full-time dedicated Indian Country agents, over 40 Special Agents work part-time on Indian Country cases. The majority of the Special Agents working on Indian Country cases are assigned to small rural Resident Agencies.

Mr. MOLLOHAN. Maybe this would be an even better comparison. How about the areas where crime rates are comparable to those in Indian Country? In other words, where are the areas with comparable crime rates to crime rates in Indian Country, and how do you compare your coverage in those areas to Indian Country?

Mr. MUELLER. I would have to get back to you on that.

[The information follows:]

COMPARISON OF AGENT COVERAGE IN INDIAN COUNTRY TO COVERAGE IN AREAS WITH COMPARABLE CRIME RATES.

The Bureau of Indian Affairs submits crime data within Indian Country to the FBI's Criminal Justice Information Services Division (CJIS) in aggregate at the end of the year, which is published in the FBI's Uniform Crime Report. The crime data submitted only reflects crimes where the sentence is less than one year (due to sentence limitations within the tribal communities). Therefore, it is not possible to compare the level of FBI resources dedicated to an Indian Country region with the level of resources dedicated to a similarly-sized region elsewhere in the country with a similar crime threat.

Mr. MOLLOHAN. Did you follow that?

Mr. MUELLER. Yes, sir.

Mr. MOLLOHAN. Okay. Good.

President Obama's budget request proposes to add 45 new agents to your Indian Country program. As I understand it, those agents are to be funded out of the Bureau of Indian Affairs.

Why that arrangement? Why aren't the requests for that increased number of agents in your budget?

Mr. MUELLER. I would have to get back to you on that, sir. I am not familiar with the intricacy of that arrangement.

Excuse me. Just a second.

I would have to get back to you on that. I do believe that we want to prioritize it, but we have the white-collar crime, terrorism and the like. Consequently we are looking for support in terms of adding agents for this particular responsibility. We have the same understanding when it comes to health care fraud, for instance, with other departments—HHS—so we are hoping to have—

Mr. MOLLOHAN. Transferring the money to pay for your agents?

Mr. MUELLER. Yes.

Mr. MOLLOHAN. Well, I don't know. Maybe with health care or white-collar crime, there are spikes in these areas, so maybe it makes sense to fund them out of other budgets. It doesn't make sense to me for these agents to be paid for from the Bureau of Indian Affairs because I don't think there is any contention that this is a spike that is going to go away. I think funding them in the Bureau of Indian Affairs creates the situation where you are not building your base, and where those dollars could disappear very easily.

Different subcommittees have different priorities and different demands on their dollars. I think we would rather see this funding particularly included in your request so that it becomes a part of your base, and so that there is a consistency and a dependability



about the availability of the agents we are able to increase who are dedicated to these assignments.

Mr. MUELLER. I will have to get back to the committee on that, sir.

[The information follows:]

OFFICIAL RESPONSE ON WHY THE INDIAN COUNTRY AGENTS ARE BEING FUNDED THROUGH BIA

Twenty-five percent of all violent crimes prosecuted by United States Attorneys occur on Indian Reservations. As of March 2009, the FBI had over 2,300 pending cases, of which 75 percent involved homicides, sexual/physical abuse of children, rape, and aggravated assault. Given the large geographic size and complexity of federal laws in Indian Country, coordination between FBI and BIA is critical. The reimbursable funding through BIA fosters such coordination. The FBI believes additional resources are imperative to combat crimes in Indian Country, whether they be directly funded or through a reimbursable program.

Mr. MOLLOHAN. I would like to get some other information highlighting the problems in Indian Country. The FBI budget request also proposes to add two forensic examiners to your lab to address evidence processing for Indian Country cases. Two forensic examiners. The budget notes that the 164-day average turnaround time for Indian Country cases is so lengthy that the results are often useless for purposes of intelligence and lead generation. I mean, there is almost an inadequacy to the point of not being able to really provide the service in Indian Country. So we are very pleased to see this requested increase, and I think we will be very responsive to it.

If you know, give us for the record how the 164-day average turnaround time for lab case processing compares to the labwide average turnaround for evidence processing?

Mr. MUELLER. I would have to get back to you on that.

[The information follows:]

LAB-WIDE AVERAGE EVIDENCE PROCESSING TURNAROUND TIME

The average turnaround time for Indian Country casework in Fiscal Year 2009 was 168 days. The average turnaround time for all casework completed by the FBI Laboratory in this same time period was 274 days.

Mr. MUELLER. Also, one of the things we had requested is, yes, additional examiners in the FBI laboratory, but there are other laboratories that are closer to Indian Country that might provide the same services if they had funding.

Mr. MOLLOHAN. Okay. Well, we will certainly look at it from that perspective as well.

My understanding is that the violent crime rate in Indian Country is about two-and-a-half times higher than the national average, and that 25 percent of all violent crimes prosecuted by U.S. Attorneys occur on Indian reservations. Seventy-five percent of the FBI's 2,368 current cases in Indian Country involve homicides, child abuse, as you pointed out, or violent assaults. They are really just terrible statistics. We appreciate the fact that the administration is focusing on it, and we look forward to being responsive to that.

Mr. Serrano asked a number of questions about white-collar crime, so we have some questions for the record that we will submit there to supplement those.

## SENTINEL

Mr. MOLLOHAN. One last line of questioning, Mr. Director. I understand that the FBI has recently discovered some problems with phase 2 of the Sentinel program, which will affect the budget and the schedule for both that phase and, perhaps, for the overall project. That news, of course, makes everybody nervous because of the experience with Sentinel's predecessor, the Virtual Case File.

What are the problems? What is the nature of the problems that we are experiencing with Sentinel?

Mr. MUELLER. Let me start by saying that we sent in the requirements for the system back in, I think, 2005, and the contract was let in 2006.

I believe we put in the first phase in 2007. It is a successful system in that we have a number of agents who are already using it out in the field. Phase 2 was to go to the field at the end of 2009, the beginning of 2010 in terms of pilots. We have delayed that, and that delay is attributable to basically three reasons. Over a period of time, both the technology, as well as our business practices, have changed, and the users have looked for additional items in phase 2 that had not been, and could not have been, anticipated back in 2005.

Mr. MOLLOHAN. Added requirements from the agency?

Mr. MUELLER. Yes, but not large-scale requirements; they were rather minimal requirements, but before we pushed it out into the field, we wanted to make certain that we maximized the usability so it would have a high degree of user acceptance. To the extent that we have had it out in the field, it already has a high degree of user acceptance.

The three issues were, first of all, some design changes from the perspective of the users that we have been very reluctant to do, but these make some sense. Secondly, there are issues relating to coding that we needed to address before we sent it out. Thirdly, there are system requirements that we wanted to make absolutely certain that we had in place so that, when we rolled it out, it would be successful. So the pilots that we anticipated rolling out just about now or a little bit before now—

Mr. MOLLOHAN. For phase 2?

Mr. MUELLER [continuing]. For phase 2, will be rolled out this summer. We had expected to have the whole system completed in 2010. It will push the system completion into 2011.

But I can tell you I am the one who made the decision to delay until we got these issues addressed, and I am comfortable and confident that the system is working. It is a good system and will be beneficial when we are through.

Mr. MOLLOHAN. Phase 2 is a good system, and it is working?

Mr. MUELLER. Yes, which is completely different from our previous experience, which I would not want to replicate in any way in the future. I can also say, with our contractor, while there have been issues, we have a very close relationship. Both ourselves and Lockheed want to make certain this works.

Mr. MOLLOHAN. Well, let me ask questions about that. The problems that you have described, are they agency problems because of added requirements, or are they contractor problems?

Mr. MUELLER. There are certainly problems on both sides. This is always the case in something like this.

Mr. MOLLOHAN. How does that impact the question of the award fees?

Mr. MUELLER. We are in discussions with the contractor on that right now. We partially halted the continued work on phases 3 and 4 until these issues are resolved.

Mr. MOLLOHAN. Can you describe those? What are those issues that you are talking about?

Mr. MUELLER. The three that I described.

On the one hand, there were certain things that users requested. Secondly, there were coding issues. Thirdly, we wanted to make certain that the system, when it goes out, meets the infrastructure requirements.

Mr. MOLLOHAN. Do those changes to the contract and the requirements have a budgetary impact?

Mr. MUELLER. They will. What size? I cannot tell you at this point.

Mr. MOLLOHAN. But it has a budgetary impact?

Mr. MUELLER. It will increase the cost, yes. In looking at it, we believe we can address those costs with what we have in our budget; but again, that is something that we are discussing with—

Mr. MOLLOHAN. In the 2011 budget request, do you propose to pay for those increased costs as a result of these problems?

Mr. MUELLER. We are at the initial stages of determining exactly—

Mr. MOLLOHAN. Well, we have your request.

Mr. MUELLER. Pardon?

Mr. MOLLOHAN. We have your 2011 request. Is it contained in it?

Mr. MUELLER. No, it is not.

Mr. MOLLOHAN. Is it possible that you would pay for some or all of those cost increases through—what do you call the payments—the reward fees, the performance award fees?

Mr. MUELLER. Yes. There will be give on both sides. Let me put it that way.

Mr. MOLLOHAN. So those discussions are ongoing?

Mr. MUELLER. Yes, they are ongoing.

Mr. MOLLOHAN. Otherwise you would be looking at a reprogramming?

Mr. MUELLER. I am not certain the vehicle we would use, but we will keep what we have to date, and we will continue to keep you apprised.

Mr. MOLLOHAN. Right now you are holding back a portion of the contractor's fees perhaps as a means to pay for it?

Mr. MUELLER. We have partially stopped the work on phases 3 and 4 until we get satisfactory resolution of the issues that we won't resolve before we move it.

Another point I might make is that our experience in the past is we had one solid contract. You either lived or died in that contract. After phase 1, we went into an incremental development where we decided to develop phases so we could accept a particular phase before we moved on to the next phase, and so we could make certain that it met our expectations. This is exactly why we went

to incremental development as opposed to the development process we had used before.

Mr. MOLLOHAN. You expect to have this system up and operating by?

Mr. MUELLER. Well, the system is operating now.

Mr. MOLLOHAN. Okay.

Mr. MUELLER. For phase 2, the pilots will begin this summer, which will be pushed out to the field as a whole. Basically this is the largest phase. The most momentous part of the project is phase 2. Phases 3 and 4 will follow relatively quickly after that.

Mr. MOLLOHAN. It sounds like you are on top of it.

Mr. MUELLER. One has to stay on top of it weekly, absolutely.

Mr. MOLLOHAN. Mr. Wolf.

#### GANG ENFORCEMENT

Mr. WOLF. Let me ask you a couple of questions because we do have a vote, and I will submit.

On the gang issue, the committee plused up the gang issue. The National Gang Intelligence Center has determined that gangs are active in every State of the Union, and that 39 of the gangs have been identified as national threats. In 2008, 58 percent of the local law enforcement agencies reported that criminal gangs were active in their jurisdictions, an almost 30 percent increase since 2004. The committee included a significant increase of \$25 million above your request to specifically address this issue.

Could you tell the committee how many Safe Street Task Forces exist? How many additional agents and task forces will be added as a result of the fiscal year 2010 increase? Is this a top law enforcement priority?

Mr. MUELLER. Excuse me just 1 second.

I needed to know the background from those who are more knowledgeable with the figures. Approximately 13 million is going to additional personnel. We intend to establish three new Safe Street Task Forces, and to augment the Safe Street Task Forces we already have. As I mentioned before, and I can get you the statistics, we have doubled, if not tripled, the number of Safe Street Task Forces we put up in the last several years.

Mr. WOLF. But is the money used in a way—because as you recall, there had been a request that maybe you use the same approach that was during used during the 1960s with regard to organized crime, that this becomes a major effort, that you actually have someone in the Bureau who is focusing like a laser beam, because if you live in a neighborhood where you are terrorized by gangs, in essence that is a form of domestic terrorism that the people can't really live and—

Mr. MUELLER. We certainly have a gang intelligence center. We have gang task forces. But what we have come to understand is we need fusion centers focusing on particular gangs. And as I think you are aware, we have a specific MS-13 Task Force with persons operating not just in headquarters, but also in the various communities like yours, but also Los Angeles, adjunct task forces in places like El Salvador.

So we have focused on gangs in general, but we also are pushing to make sure that we focus on particular gangs and take out the

leadership and, to the extent possible, remove those gangs from particular neighborhoods. I think we have had some success in neighborhoods in northern Virginia, for instance. And I know that the new Assistant Director in Charge has, as one of the mandates, to work very closely with you to address that continuous phenomenon that we see there.

Mr. WOLF. Okay. Hopefully, we can continue the additional funding. Again, if somebody is living in a poor neighborhood, they fear for their family. What impact do you see in the killings that took place in Mexico the other day, that violence spreading across the border?

Mr. MUELLER. We have had pockets of violence spreading across the border; in particular, when it has come to kidnappings, cross-border kidnappings, San Diego, El Paso, Juarez, San Diego, Tijuana. And we have task forces in both of our cities to address that. This occurred on Saturday afternoon and we are working very closely with our Mexican counterparts to identify the persons responsible and assure that they see justice.

I sent an inspector down to take charge of combining the resources, not just the FBI, but DEA, ATF, and others who wish to participate to address that circumstance. This is the first instance that we have seen, I believe, of individuals associated with the American Consulate in Juarez attacked in such a brazen manner.

Mr. WOLF. Did the car have a Texas license, a U.S. license plate, the car that—

Mr. MUELLER. I am not sure whether it did or not.

Mr. WOLF [continuing]. That the people who were murdered were in? Was that an American car—

Mr. MUELLER. I would have to get back to you on the specifics. But in one car there were two individuals murdered. In another car there was one individual murdered. His family was actually in another car, but both those cars had come from the same birthday party on that day.

[The information follows:]

LICENSE PLATE ON CAR DRIVEN BY CONSULAR EMPLOYEE MURDERED IN JUAREZ

The license plate of the vehicle driven by the American citizen victim was a Texas license plate, and the license plate of the vehicle driven by the Mexican national victim was a Mexican license plate.

Mr. WOLF. Okay. I would be interested to know if they were U.S. license plates, embassy license plates or Texas license plates. There are a number of other questions I will ask on that.

TERRORIST RADICALIZATION

The radicalization issue, over the last year or so, we have seen a disturbing trend of terror attacks planned and carried out by individuals, including Americans, who had been radicalized often through contact with violent Islamist influences. The Fort Hood killings, the Christmas Day bombing, now Jihad Jane, and others, Mobley, the fellow the other day, Mobley. There have been reports in recent days of Americans being detained in Yemen, Pakistan, and other countries. Does this represent a significant shift in the terrorist threat facing the Nation, and how is the FBI adjusting to counter these new developments?

Mr. MUELLER. I think those in the Intelligence Community, including ourselves, would say there has been a shift in the degree of concern about affiliates of al Qaeda growing in strength and presenting a more enhanced threat to the United States. By that I am talking about the FATA, the Federally Administered Tribal Areas—Waziristan, western Pakistan, eastern Afghanistan—which has been the heartland of al Qaeda and still presents a threat. We saw with Najibullah Zazi, the individual from Denver who went back to New York, and anticipated attacking the New York subways back in September. He was recruited and trained in Afghanistan.

We also are concerned about Yemen individuals. In the last year, year and a half, an individual, Bledsoe, who was responsible for the Little Rock shootings of the military recruiters, one of them died—

Mr. WOLF. Did he have contact with Awlaki when he was in Yemen?

Mr. MUELLER. He was in Yemen at the time. He was in Yemen and then came back to the United States, but was radicalized in Yemen. Abdulmutallab originated in Yemen. We have a number of ties now with Yemen; so Yemen is an issue as well as Somalia. And we have had a number of individuals from communities in the United States who have traveled to Somalia to train and to fight with al Shabab, and we have continuing concerns about that being exported back to the United States.

So those are three focal points of our concerns overseas, and then we have, quite obviously, what we discussed before, homegrown terrorists who have been radicalized on the Internet or otherwise.

Mr. WOLF. Does it trouble you that there are 50,000 Americans living in Yemen today?

Mr. MUELLER. I think that is the case. Many of them are dual citizens, but I believe it is that many.

Mr. WOLF. And the Bureau is dealing with that insofar as—

Mr. MUELLER. Yes. Not just the Bureau, but in terms of identifying individuals who may have been radicalized in Yemen and want to come back to the United States and undertake terrorist attacks, we are attempting to identify those persons. We are also attempting to identify persons who were radicalized by Awlaki or others overseas; never traveled overseas, but were radicalized to the point where they want to undertake terrorist attacks in the United States.

Mr. WOLF. I am going to submit others for the record. I am just wondering who do you think is doing a better job with regard to the radicalization issue? Does Great Britain do a better job than we do? We used to hear the story, well, that is a problem over there, but we don't have the problem. Now we see Jihad Jane from Philadelphia. I mean, I read your bio. You are from the Philadelphia area. She is from Pennsburg, I think it is. We see the five now in Alexandria. We see Major Hassan, a Virginia Tech graduate, born here.

Are we doing everything we should? And maybe there should be a development of a different approach. Clearly what we used to say is no longer the case because it is a problem. Are you thinking deep insofar as how do we deal with this from a different way that we

continue to adjust because maybe we were not doing as well as maybe people said we were in comparison to other countries?

Mr. MUELLER. Well, I do think there are somewhat different problems that the U.K. faces where it has communities that have been alienated, and to a certain extent, I guess you would say, dispossessed, and they are focused on deradicalization in many of these communities.

We have diverse communities of Muslims in the United States, and we are all immigrants, and we have immigrants from any number of African countries, Middle Eastern countries and the like. So there are very few areas that you can look at and say, okay, these are pockets—

Mr. WOLF. Correct. I am from an immigrant family, too. The tie is green, and my grandfather could barely speak English. He was German. He had a German bakery in south Philadelphia. What I meant was the radicalization. Jihad Jane was not from Yemen. She was from the United States, born and raised, and so that is what I am talking about from that perspective. You find Mobley, who—I think he was.

So I am talking about a radicalization of a domestic population that we hadn't thought of before. You had me confused thinking that in England they talk about the Pakistan community. I am talking about domestic recruitment of people who were born and raised here in the United States that normally you would not think, because if you look at—I looked at the Senate Foreign Relations Committee. They talked about a number of "blonde hair, blue eye" types moving to Yemen who had been radicalized in prisons. So to think a little bit differently—and we don't have enough time. Maybe we can talk about it. Are you open to seeing if there is some other way to kind of deal with that?

Mr. MUELLER. Absolutely. And we have looked at places of radicalization, points of radicalization, prisons, for instance, with the Federal as well as State and local prison systems, the various communities, and working with the leaders, outreach in the communities.

But I will tell you the one that is most worrisome is the Internet. I think everybody will tell you that the influence of the Internet not just in radicalization, but moving from radicalization to organization to undertaking terrorist attacks, is the greatest, most serious phenomenon that has resulted, I believe, in many of the radicalization cases we have seen in the United States. It has not been the communities or persons in the communities, it has been the Internet.

Mr. WOLF. Right. Well, maybe you can have someone come up and we can see—there may be something that the committee can do with regard to giving you some resources to kind of deal with that issue.

Mr. MUELLER. Thank you, sir.

Mr. WOLF. Anyway, thank you. I will have questions for the record, too, Mr. Chairman.

Mr. MOLLOHAN. Thank you, Mr. Wolf.

Mr. Schiff.

Mr. SCHIFF. Thank you, Mr. Chairman.

## FIREARMS TRAFFICKING

I will be real quick, and then we are going to have to run. But is there any indication in the case of the three that were killed in Mexico that came from the same party that they were targeted because they were American, or do we still not know whether it was a case of mistaken identity?

Mr. MUELLER. I think it is too early in the investigation to reach a conclusion. I know there has been speculation in the media, but I do believe it is too early to reach any conclusion.

Mr. SCHIFF. On the broader issue of guns going down to Mexico from the United States, I know this is an area where ATF probably has primary jurisdiction, but what do your agents tell you about the willingness of U.S. Attorneys to prosecute these cases, even cases that may involve straw purchasers that are fairly low on the hierarchy, but nonetheless might lead to the prosecution of those enlarged—those engaged in the larger gun trafficking?

Mr. MUELLER. I have not heard the attitude of U.S. Attorneys. Periodically I hear that judges would just as soon not do gun cases in Federal court, but it has been some time since I have actually been in Federal court, but that is what I picked up. I am going to meet with the U.S. Attorneys next week, and that is something I will try to remember to mention to them, but I have not heard one way or the other.

Mr. SCHIFF. Please let us know if they need the resources to do it or they need the encouragement to do it.

Mr. MUELLER. I can tell you they will tell you they need the resources to do it.

Mr. SCHIFF. I am sure that is right.

## FOLLOW-UP ON THE ROBERT HANSSSEN CASE

Very quickly, and you may need to get back to me in writing on this, but in my prior lifetime as an assistant U.S. Attorney, I prosecuted the Miller spy case. So I followed with great interest the Hanssen case and now the Aragoncillo case.

The inspector general did a follow-up report on some recommendations that were made after Hanssen about changes the FBI could make to improve its ability to ferret out people who were attacking the FBI from the inside, and the follow-up—the recent follow-up assessment found that there were several very important recommendations that had not yet been implemented, including the establishment of a new unit detailed—or dedicated exclusively to internal penetration; there was the need to have a need-to-know system; the computers, which had probably been set back by the Virtual Case File system, Sentinel problems. But also one of the key concerns in Hanssen was Hanssen's ability to walk out of the FBI headquarters with these classified documents undetected, and the IG also found that the FBI Information Assurance Program didn't address that key concern.

Can you respond back to us in writing and let us know where FBI is in—

Mr. MUELLER. I think that is at least 2 years ago, I may be wrong, that IG report. But I know, for instance, we have had that unit in place for a period of time, and we have addressed the other



concerns that the IG had. But overall, in terms of the recommendations in the wake of Hanssen, we have adopted, I would say, 90, 95 percent of them. These were several, and I think very few given the overall suggestions that were made, that we had to close up, but I do believe they were closed.

[The information follows:]

PROGRESS IN RESPONDING TO IG REPORT ON HANSEN FOLLOW-UP

In September 2007, the Department of Justice Office of Inspector General issued a special report entitled "A review of the FBI's progress in responding to the recommendations in the Office of Inspector General Report on Robert Hanssen." Of the 21 recommendations issued, only nine still remain open. The FBI is working diligently with the Office of Inspector General to resolve these issues, and will keep the Committee apprised of the status.

Mr. SCHIFF. Thank you.

Thanks, Chairman.

Mr. MOLLOHAN. Director Mueller, thank you very much for your testimony here today, and thank you for your service to the country and the service of all your employees at the FBI. We will have some questions for the record, and I know you will respond to them.

Mr. MUELLER. Thank you.

**Chairman Alan Mollohan**

Questions for the Record

- 1. How would you compare the size and capabilities of your current white collar crime program to those of the program as it existed during previous periods of significant financial turmoil, such as the saving and loan crisis?**

**Answer:** It is difficult to make an exact comparison between size and capabilities of the FBI's current white collar program and the program in place during prior periods, such as during the savings and loan crisis, for several reasons. First, though the peak of the savings and loan crisis is often identified as 1989, FBI records did not delineate resource allocation by investigative program in 1989. Instead, agent staffing levels for the FBI's criminal investigative programs were simply classified at that time in general terms as "criminal." Beginning in Fiscal Year (FY) 1990, the FBI maintained statistics regarding the resources allocated to the White Collar Crime Program, though even at that point the statistics did not capture assets devoted specifically to the savings and loan crisis as distinguished from other white collar crime. In FY 1990, the agent Funded Staffing Level (FSL) for the White Collar Crime Program as a whole (not limited to financial fraud investigations related to the Savings and Loan crisis) was approximately 1,800. That number can be compared to an FSL of approximately 1,900 in FY 2009.

While the "size" of the FBI's White Collar Crime program is not significantly greater now than it was in 1990, the FBI's "capabilities" are far greater now. This is in large part because of the FBI's use of task forces, working groups, and other force multipliers to ensure the efficient use of resources. These improved capabilities are also the product of substantial improvements in automation and other investigative technologies over the intervening years. While it is impossible to assess whether the FBI's increase in capabilities has outpaced the improvement in the capabilities of those committing these crimes, it is clear that technology has changed not only how the FBI fights these crimes but also how it quantifies them. For example, while the FBI maintained records of "referrals" from complainants, including financial institutions and bank supervisors, in 1991, we now record such statistics as Suspicious Activity Reports, which are filed by financial institutions to report known or suspected violations of banking laws or suspicious financial activity. While both sets of statistics have enabled the FBI to detect trends and adjust resource allocation to meet changing needs, it is difficult to compare the "apples" of the savings and loan crisis with the "oranges" of the current mortgage fraud crisis.

- 2. In order to handle the current deluge of white collar crime cases, have you instituted any operational thresholds for accepting new cases (e.g., only accept cases with losses of a certain amount)? If so, what happens to the cases below those thresholds?**

**Answer:** The Department has not established an investigative threshold for white collar cases. Instead, we take into consideration the impact an illegal scheme may have on a community and the potential of the perpetrator to adversely affect the community and the financial system. For example, in some jurisdictions an industry insider may be investigated and prosecuted regardless of the dollar losses due to the damage that individual can cause by virtue of his or her position. In the mortgage fraud context, the FBI has also focused on those lenders and buyers involved in multiple frauds or cases in which the profits went to drug crews, to gangs, or to organized crime. That said, a substantial number of the FBI's white collar cases do involve large sums of money. For example, in January 2010, approximately 68 percent of the FBI's mortgage fraud investigations involved losses of more than \$1 million.

- 3. The budget request proposes to annualize white collar crime resources previously provided via supplemental appropriations and to expand the white collar program by 62 new agents. Will this be sufficient both to improve your current agent to case ratio and to address any anticipated increase in caseload that might be realized over the year?**

**Answer:** The resources Congress has provided are making a difference. The FBI's FY 2011 request represents a significant increase in resources, including the full recurral of resources acquired through the 2009 Supplemental Appropriations Act (P.L. 111-32). These resources will further increase the FBI's ability to address complex financial crimes. However, like many FBI programs, the volume of the workload requires a targeted response to the most serious cases.

- 4. Given the billions and billions of dollars of government credit and recovery programs that have been distributed over the past few years, why does the budget request not propose any new agents for the investigation of government fraud?**

**Answer:** The FBI's budget reflects a balance of requirements, available resources, priorities, and hiring and training capacity limitations. While the FY 2011 budget request does not include additional agents, it does include additional intelligence analysts (IAs) to support government fraud investigations. IAs serve as a force multiplier for countering the threat of government fraud. The FBI is continuing to deploy its current resources for maximum effect and will continue to work with the Department of Justice, OMB, and Congress to ensure that we are able to meet the threat of fraud against the government.

5. **With the white collar crime resources included in the President's budget, will the FBI be able to proactively search out new or unique cases that might otherwise go unnoticed, or are all of those new resources needed simply to reactively address those cases that are brought to your attention?**

**Answer:** Mortgage fraud, a crime problem that has existed in various degrees for decades, emerged as a daunting challenge to the FBI in recent years. Similarly, the next large white collar crime challenge is likely to be a previously known crime problem that is exacerbated by internal and external factors.

For example, the FBI is closely monitoring trends in Commercial Real Estate (CRE) and commercial lending where Suspicious Activity Reports (SARs) have increased and losses reported in those SARs have reached levels similar to what we witnessed in FY 2007 and 2008 residential mortgage fraud SARs. Current commercial real estate delinquency rates are rising in areas that have had high rates of mortgage fraud and commercial lending is vulnerable to many of the same schemes that affected residential mortgage lending. Although the FBI does not currently anticipate that the incidence of fraud among commercial real estate will reach the levels of residential mortgage fraud, it notes that the magnitude of losses from such fraud could be significant.

Bank failures, which have continued to rise throughout last year and will likely continue through this year, are also of concern to the FBI. The FBI works closely with its regulatory partners and allies in private industry to ensure that it is able to investigate those banks that have failed through fraud or malfeasance and address the potential frauds that can emerge as an institution fails or nears failure.

Additionally, the high rate of foreclosures, unemployment and debt can exacerbate existing problems with insurance fraud and bankruptcy fraud, both of which can have significant impacts on the economy and financial systems.

To address tomorrow's white collar crime (WCC) threats, the FBI plans to apply the lessons learned over the past decade. One of the primary tools is the incorporation of intelligence into criminal investigations. The FBI uses the extensive analysis of intelligence to identify current and emerging WCC threats. Part of the intelligence gathering process includes the use of techniques such as undercover operations and Title III wire intercepts to target the most sophisticated WCC perpetrators. The intelligence gained from such techniques is analyzed and disseminated within the FBI and to its law enforcement partners in order to help paint an accurate threat picture. Also, one of the FBI's many tripwires to identify WCC threats involves frequent communication/coordination with regulatory partners who, due to their powers as regulators, are periodically able to identify issues within certain entities/financial markets before they

otherwise would have appeared on the FBI's threat radar. Further, the FBI employs teams of Intelligence Analysts and others who carefully sift through intelligence obtained by the FBI from its voluminous sources, and then "connect-the-dots" and identify trends to add to the accuracy of the threat picture. In doing so, the FBI is then able to appropriately deploy resources to address the identified current and emerging WCC threats.

The FBI has also established the Financial Intelligence Center, or FIC, at FBI Headquarters to aid in proactively addressing WCC threats. The FIC was established in September 2009 to provide tactical analysis of intelligence data, data sets, and databases, by using evolving technology and data exploitation techniques, to create targeting packages to identify the most egregious criminal enterprises and to enhance current criminal investigations.

Lastly, the FBI recognizes that tomorrow's problems can be mitigated by maintaining vigilance over today's threats. The FBI is aware that taking attention off mortgage fraud, securities fraud and corporate fraud can have significant consequences. For example, some mortgage fraud schemes that have declined due to the slow housing market have the potential to resurface as the housing market recovers and lending resumes. Current high foreclosure rates have the potential to spark new speculation and the accompanying falsified appraisals and "flipping" activity. Those same high foreclosure rates also provide fraudsters with a large pool of victims for foreclosure rescue scams and short sale schemes. Mitigating these future threats will require continued vigilance today.

**6. The Director testified that the processing of evidence in Indian Country cases could be improved by providing funding to non-FBI forensic labs that are closer to Indian Country. Was this a reference to state or local crime labs, private forensic labs or some other entity?**

**Answer:** This reference relates to the two contracts currently pending with Arizona and South Dakota to process Indian Country (IC) evidence. Specifically, the Arizona Department of Public Safety Laboratory and the South Dakota Forensic Laboratory have offered to provide forensic services to augment the FBI Laboratory and reduce turn-around time for the processing of evidence. From 1995-2006, the FBI had a similar contract with the Arizona Department of Public Safety Laboratory until funding became unavailable.

The purpose of these contracts is to reduce delays in receiving the forensic results, which impact how quickly IC cases can be prosecuted. Turn-around time for IC cases by the FBI Laboratory in 2008-2009 was approximately 65 days for latent prints, trace evidence and mitochondrial DNA cases, and 190 days for serology/nuclear DNA cases.

7. **After receiving \$25 million for violent crime enforcement through the Safe Streets and Safe Trails program in FY 2010, the FBI chose to allocate over 90% of that funding to the Safe Streets program. One of the reasons cited for the low allocation of resources to Safe Trails was that many of the Safe Streets task forces were already working on Indian Country initiatives, and, thus, the resources would reach Indian Country cases even if they were not dedicated to the Safe Trails program. Please provide additional clarification (including personnel and budget numbers, if possible) on the overlap between Safe Streets and Safe Trails and the extent to which you have resources in other programs that may impact Indian Country without being labeled as such.**

**Answer:** The concept of the Safe Streets and Safe Trails programs is to unite the FBI with other federal, state, local, and tribal law enforcement agencies toward a common law enforcement goal. Consolidating resources strengthens and leverages the capabilities of the participating agencies. Each task force addresses violent gang, drug, violent crimes and other Indian crimes depending on the type of task force, location and crime problems identified by the member agencies of the task force.

The primary reason behind the allocation of resources was based on the distribution of current Safe Streets and Safe Trails task forces. The Safe Streets program includes the gang (160), violent crimes (42) and major theft (7) task forces for a total of 209 task forces. The Safe Trails program consists of 18 task forces.

A portion of the enhancement to the Safe Streets program will be used to create three FBI squads to target violent gang and violent crime criminal enterprises in their Area of Responsibility. These squads will be hybrid squads composed of gang and violent crime resources. One of the new hybrid squads will be created in the Phoenix Division, which has two Safe Trails task forces. It is anticipated that some of the new squad's investigations will reach Indian Country cases, even if they were not dedicated to the Safe Trails program.

In addition, there is investigative collaboration between the Safe Streets task forces in the west region and the adjacent Indian lands. Specifically, there are violent gang cases currently under investigation by the Four Corners Safe Streets Task Force (Farmington, NM), the Northern Arizona Safe Streets Task Force (Pine Top, AZ), the North County Safe Streets Task Force (Carlsbad, CA) and the South Shore Safe Streets Task Force (Tacoma, WA). These active gang investigations have an impact on Indian Country.

In FY 2010, the Safe Streets and Gang Unit are sponsoring the Arizona Indian Country Gang Summit, hosted by the Arizona Department of Public Safety, in Fort McDowell, Arizona.

**8. Please confirm the total amount available for Sentinel under your FY 2011 budget request.**

**Answer:** The total funding available for Sentinel in the FY 2011 President's Budget is \$45.5 million in base resources. There are no projected unobligated balances to be carried forward into FY 2011.

**9. Why does the budget propose to non-recur \$9.5 million in Sentinel funds? What is the expected impact on the program of having \$9.5 million less available in FY 2011?**

**Answer:** Congress has established a funding cap of \$451 million for Sentinel. Continuation of the full \$55 million in base funding from the FY 2010 budget into FY 2011 would result in the cumulative funding appropriated to Sentinel exceeding the cap by \$9.5 million. Therefore, a reduction in base funding was proposed. There will be no impact from the reduction if Sentinel is able to adhere to the cost and schedule planned under the funding cap. However, this may not be possible, as resolution of issues raised concerning Phase 2, Segment 4, may adversely impact Sentinel's cost and schedule. Full recerral of the \$55 million in base funding would help mitigate the expected, but not yet quantified, cost increase.

**10. Is any portion of the \$67.6 million requested for FBI Academy construction intended to pay for architecture and engineering? If not, how has the FBI addressed the A&E requirement when the FY 2010 A&E request was funded at 50% of the request level?**

**Answer:** The FBI is approaching the FBI Academy dormitory construction as a design-build contract. As such, the FBI has adjusted requirements based on funding availability. Funding provided in the FY 2010 Appropriation was used for the Request for Proposal and preliminary studies and testing. The funding requested in the FY 2011 Request to Congress will provide funding for the remainder of the design and construction.

**11. Without A&E estimates, how did you produce the cost estimate for FBI Academy construction? How sure are you that the FY 2011 request covers all of the construction costs, leaving only furniture, utilities and O&M for FY 2012?**

**Answer:** Over the past fifteen years, the FBI has managed the design and construction of several major, many medium-sized, and numerous minor construction projects. The estimate for the construction of the FBI Academy dormitory was prepared by using: FBI architect and engineering staff familiar with the existing Quantico site and infrastructure conditions; outside independent cost estimating firms; FBI Task Order A & E firms who have costing experience and

who have designed multiple dormitory facilities; lessons learned from previous Quantico construction projects; annual published industry standards; and the project scope based on the programming documents. The FBI believes the estimate for the FBI Academy dorm construction is complete and reasonably accurate based on the current programming. As the project moves forward, programming and design documents will be refined to ensure the project remains within the estimated budget.

**12. What is the total amount projected to be available to CJIS in FY 2011 through user fees? Please break out the total: 1) between prior year fees and new fees to be collected in FY 2011, and 2) by fee source.**

**Answer:** CJIS will collect fees for fingerprint-based and name-based Criminal History Record Information checks and other identification services for requests submitted by authorized users for noncriminal justice purposes, including employment and licensing. In addition to the base fee, which is available for one year to pay expenses incurred by the FBI for conducting the identification services, fees collected will include an additional amount, which is available until expended, to defray expenses for the automation of fingerprint identification and criminal justice information services and associated costs. CJIS expects to have a total of \$644.6 million available in FY 2011 through user fees. The breakout is as follows:

Prior Year Balances:

- \$188.6 million = Anticipated No Year Carryover from FY 2010
- \$71.5 million (\$23 million for the Biometric Technology Center and \$48.5 million for Next Generation Identification) = Expired FY 2007 Base Fees, to be transferred through the Department of Justice's Working Capital Fund

New Fees Projected to be Collected in FY 2011:

- \$237.1 million = Surcharge fees (no year)
- \$147.4 million = Base Fees

**13. Which programs, projects, or activities proposed in the budget are unauthorized? For each such unauthorized program, project or activity, what was the last authorization (public law reference); the last fiscal year of authorization; and the authorized funding level in the last fiscal year of authorization? What was the amount of the appropriation provided for each such program, project or activity for the last fiscal year in which it was authorized?**

**Answer:** None of the programs, projects, or activities proposed in the FBI's FY 2011 budget request is unauthorized. The FBI's most recent authorization Act is the 21st Century Department of Justice Appropriations Authorization Act, Public Law 107-273, 116 Stat. 1758 (11/2/02). Title II, Section 201(b)(4) of that Act (116 Stat. 1769) provides as follows: "Funds available to the Attorney General for the



Federal Bureau of Investigation for the detection, investigation, and prosecution of crimes against the United States may be used for the conduct of all its authorized activities.”

- 14. Provide for each appropriation and by major program element, the actual obligation rates by quarter for each of the last three fiscal years. Provide planned obligation rates for fiscal years 2010 and 2011, also by quarter.**

**Answer:** See the table below for obligation rates for FYs 2007, 2008 and 2009 for the FBI's direct Salaries and Expenses account and for its Construction account.

<b>FY 2007 Direct Salaries and Expenses Obligations</b>					
<b>Decision Unit</b>	<b>First Quarter</b>	<b>Second Quarter</b>	<b>Third Quarter</b>	<b>Fourth Quarter</b>	<b>Total</b>
<b>Intelligence</b>	\$106,317,147	\$276,028,060	\$259,976,179	\$227,007,745	\$869,329,131
<b>CT/CI</b>	213,199,912	765,703,297	608,495,675	533,626,582	2,121,025,466
<b>CEFC</b>	239,818,423	736,416,981	635,080,697	635,433,769	2,246,749,870
<b>CJS</b>	38,741,317	141,636,384	116,814,733	104,303,143	401,495,577
<b>Total</b>	<b>\$598,076,799</b>	<b>\$1,919,784,722</b>	<b>\$1,620,367,284</b>	<b>\$1,500,371,239</b>	<b>\$5,638,600,044</b>

<b>FY 2008 Direct Salaries and Expenses Obligations</b>					
<b>Decision Unit</b>	<b>First Quarter</b>	<b>Second Quarter</b>	<b>Third Quarter</b>	<b>Fourth Quarter</b>	<b>Total</b>
<b>Intelligence</b>	\$223,342,976	\$418,541,908	\$214,458,616	\$289,136,269	\$1,145,479,769
<b>CT/CI</b>	568,635,552	763,602,931	455,349,785	693,324,512	2,480,912,780
<b>CEFC</b>	451,782,491	677,149,253	520,248,870	641,400,677	2,290,581,291
<b>CJS</b>	124,571,481	143,556,159	74,943,366	117,528,022	460,599,028
<b>Total</b>	<b>\$1,368,332,500</b>	<b>\$2,002,850,251</b>	<b>\$1,265,000,637</b>	<b>\$1,741,389,480</b>	<b>\$6,377,572,868</b>

FY 2009 Direct Salaries and Expenses Obligations					
Decision Unit	First Quarter	Second Quarter	Third Quarter	Fourth Quarter	Total
Intelligence	\$315,711,058	\$320,115,256	\$294,294,071	\$238,521,697	\$1,168,642,082
CT/CI	612,176,723	727,745,510	765,732,022	744,296,030	2,849,950,285
CEFC	483,047,781	708,063,899	557,139,819	842,194,231	2,590,445,730
CJS	114,955,583	123,875,080	127,690,443	106,662,557	473,183,663
<b>Total</b>	<b>\$1,525,891,145</b>	<b>\$1,879,799,745</b>	<b>\$1,744,856,355</b>	<b>\$1,931,674,515</b>	<b>\$7,082,221,760</b>

FY 2007 Construction					
	First Quarter	Second Quarter	Third Quarter	Fourth Quarter	Total
<b>Obligations</b>	196,379	127,633	16,202,052	16,510,071	<b>33,036,135</b>

FY 2008 Construction					
	First Quarter	Second Quarter	Third Quarter	Fourth Quarter	Total
<b>Obligations</b>	127,914	9,587,973	13,608,990	10,743,598	<b>34,068,475</b>

FY 2009 Construction					
	First Quarter	Second Quarter	Third Quarter	Fourth Quarter	Total
<b>Obligations</b>	4,169,617	7,434,234	26,207,482	39,161,393	<b>76,972,726</b>

For FY 2010, the FBI obligated approximately 22 percent of its single-year, direct Salaries and Expenses budget in the first quarter, during which the FBI was under a Continuing Resolution (CR) until December 16, 2009. It is estimated that the FBI obligated an additional 27 percent of its budget in the second quarter, with all remaining funds to be obligated before the end of FY 2010. For FY 2011, which by all accounts will likely begin under a CR, the FBI anticipates an obligation rate similar to that of FY 2010 should the CR last for a comparable length of time.

**15. Provide end-of-year FTE data for each agency component for each of the last five fiscal years. For fiscal year 2010, provide the current on-board FTE level and end of year (EOY) planned levels. For fiscal year 2011, provide anticipated EOY proposed FTE levels.**

**Answer:** The table below shows the number of FBI employees on-board at the end of each fiscal year from FY 2005-2009, as well as the number on-board in March 2010 and the numbers projected to be on-board at the end of 2010 and 2011. These positions are separated by Special Agents (SAs), Intelligence Analysts (IAs), and Professional Staff. It should be noted that the FBI has not yet finalized its FY 2011 hiring plan, which will depend on the number of enhancements received, final FY 2010 on-board numbers, and any other unanticipated adjustments, such as any unaffordable positions generated by unfunded pay raises. It should also be noted that these figures represent fill rate data from both direct and reimbursables.

Fiscal Year	End-of-Year Onboard Employees			
	Special Agent	Intelligence Analyst	Professional Staff	Total
2005	12,392	1,998	15,570	29,960
2006	12,663	2,188	15,882	30,733
2007	12,453	2,169	15,815	30,437
2008	12,883	2,467	16,085	31,435
2009	13,335	2,663	17,217	33,215
2010 (as of 3/15/2010)	13,515	2,706	17,613	33,834
2010 (projected EOY)	13,785	3,033	18,547	35,365
2011 (projected EOY)				

**16. Provide similar FTE data as requested above for all political appointee positions.**

**Answer:** The FBI's only political appointee is the FBI Director. The FBI does not anticipate that this will change.

**17. What is the annual average cost of a fully-loaded FTE in fiscal years 2010 and 2011?**

**Answer:** The table below shows the average total salary (including agent availability pay (AVP)) and benefit costs for FBI employees as of March 15, 2010, and projected averages for FY 2011. The averages are based on regular pay and benefits and exclude Overtime Pay, Night Pay, Sunday Pay, Holiday Pay, Post Differential, Hazardous Duty Pay, Awards, Recruitment Incentives, Relocation Incentives, and Retention Incentives. The President's FY 2011 Budget proposes a pay raise increase of 1.4 percent. Assuming that this passes as requested, the FY 2011 average costs would be 1.4 percent higher than current averages.

Employee Type	Average Pay, AVP, and Benefits	
	FY 2010	FY 2011*
Special Agent	172,100	174,500
Intelligence Analyst	108,200	109,700
Professional Staff	97,400	98,800

\* FY 2011 projection based on 1.4 percent pay increase

**Representative Adam Schiff**  
**Questions for the Record**

**FBI Intellectual Property Enforcement Agents**

The FY09 CJS Appropriations bill provided an increase of over \$9,393,000 for not less than 26 additional FBI agents, dedicated solely to investigating criminal intellectual property rights (IPR) cases. They are to be placed in the same localities as the Computer Hacking and Intellectual Property (CHIP) units which the Attorney General has determined most merit assistance in IPR investigations. The funding level also provides for the creation of an additional operational unit at FBI Headquarters with at least 5 full-time, permanent agents dedicated to working solely on complex, multidistrict and international criminal IPR cases with the Department of Justice's Computer Crime and Intellectual Property Section.

The FY10 CJS Appropriations bill provided an additional increase of \$8,000,000 to the FBI for additional IP dedicated agents as well as \$2,000,000 for dedicated federal prosecutors. The report directed that an expenditure analysis be provided to the Appropriations Committee in mid-April to ensure that these agents are solely investigating and supporting the criminal prosecution of violations of those Federal intellectual property laws cited in the statement accompanying Public Law 111-8. The report is to provide an accounting of the agents placed in specific field offices with Computer Hacking and Intellectual Property units and the types of intellectual property investigations pursued by these agents.

1. **What is the status of appointing the 26 agents in the field and the 5 at headquarters to work exclusively on IPR cases from FY09?**

**Answer:** Through funding received in April 2009 from the Prioritizing Resources and Organization for Intellectual Property (PRO-IP) Act, the FBI designated 31 Special Agents to work IPR investigations (26 Field Office Special Agents and five FBI Headquarters (HQ) Special Agents). The 26 Field Office Special Agents were placed in 20 Field Offices with CHIPs units. The five FBIHQ Special Agents were assigned to the operational Intellectual Property Rights Unit (IPR Unit), embedded within the National Intellectual Property Rights Center (IPR Center). Three of the five FBIHQ Special Agents will conduct investigations and deconflict matters with partner agencies. The remaining two FBIHQ Special Agents were designated as Headquarters Program Managers to provide strategic guidance, develop intelligence, and oversee the field office IPR programs, agents and investigations.

**2. Where have the FBI agents deployed with FY09 funding been assigned?**

**Answer:** The 26 Field Office Special Agents were placed in 20 Field Offices with CHIPs units as follows: Atlanta, Baltimore, Boston, Chicago, Dallas, Detroit, Kansas City, Los Angeles, Memphis, Miami, New York, Newark, Philadelphia, Pittsburgh, Sacramento, San Antonio, San Diego, San Francisco, Seattle and Washington, D.C.

The five FBIHQ Special Agents were assigned to the National IPR Center in Crystal City, Virginia.

**3. What progress have you made on FY10 plans to deploy and assign additional agents and prosecutors?**

**Answer:** The FY 2010 Consolidated Appropriation Act provided funding for 20 additional Special Agents dedicated to the investigation of intellectual property crimes. The FBI has initiated hiring and has an established IPR training program to ensure these new investigators will have immediate impact upon the threats to IPR upon assignment. The addition of these 20 investigators has driven the FBI to conduct a strategic review to develop the most effective national program for management of these resources.

On April 26th, it was announced that the 20 new FBI Special Agents will be deployed to specifically augment four geographic areas with intellectual property squads, and increase investigative capacity in other locations around the country where IP crimes are of particular concern. The four squads will be located in New York, San Francisco, Los Angeles and the District of Columbia. The squads will allow for more focused efforts in particular hot spot areas and increased contact and coordination with our state and local law enforcement partners.

The FBI has been conducting extensive analysis of the current IPR caseload, and threat information from our partners in industry associations, international and domestic law enforcement, and the intelligence community. In addition, the FBI is reviewing and analyzing the current case portfolio to ensure we are addressing the most significant threats. The squads will facilitate the development of subject matter experts in priority IP areas, and allow for the surging of resources and greater use of complex investigative techniques in penetrating, disrupting, and dismantling criminal organizations that thrive on the counterfeiting of goods.

The development of the strategy and the hiring, training, and staffing of these 20 personnel will be completed before the end of this fiscal year.



**4. Have these assignments resulted in any additional IP investigations?**

**Answer:** From October 1, 2009 to March 2010, the FBI opened 59 new IPR investigations in the offices staffed with FY 2009 IPR-designated Special Agents.

**5. Can you provide us with information on the types of cases that have been pursued?**

**Answer:** From October 1, 2009 to January 31, 2010, the FBI had 528 pending IP investigations. The 20 offices with FY 2009 IPR-designated Special Agents accounted for 64 percent of the 528 pending cases as detailed below:

31	Computer Intrusions-IPR
54	Theft of trade secret
73	Copyright infringement (software)
90	Copyright infringement (other than software)
39	Trademark infringement
28	Copyright infringement (signal theft)
8	Counterfeit aircraft parts
6	Counterfeit electrical parts
2	Counterfeit automotive parts
6	Counterfeit (other)

**Ranking Member Frank R. Wolf**

Questions for the Record

**High-value Detainee Interrogation Group**

- 1. The Interrogation Task Force created by executive order recommended last year the creation of a High-Value Detainee Interrogation Group or HIG. The administration has indicated that this entity will be administratively housed in the FBI, and led by an FBI agent. Has this entity been established?**

**Answer:** Yes, the HIG has been established.

- 2. Has a charter or MOU been written for the establishment of the HIG?**

**Answer:** The HIG Charter, which establishes the essential structure and operating procedures for the HIG, was approved by the National Security Council in late January 2010; however, it has been subsequently revised and is under final review for approval.

- 3. Can you please provide that charter immediately to the Committee and also for inclusion in the record for this hearing?**

**Answer:** The Executive Branch has not yet released the HIG Charter; however, we understand that a copy of the Charter may soon be provided to certain Congressional committees.

- 4. Could you briefly describe the HIG concept, and the FBI's role?**

**Answer:** The HIG has three key functions:

- **Mobile Interrogation Teams (MITs)**
    - Interagency teams trained to MIT standards, equipped with latest intelligence, will deploy to interrogate high-value terrorism subjects in custody overseas
    - Primary goal: the collection of intelligence to prevent terrorist attacks
    - Coordinate HIG high-value detainee criteria and selection
  - **Research**
    - Scientific studies to determine comparative effectiveness of current techniques
    - Scientific studies to identify and develop new effective, lawful interrogation techniques
    - Coordination of interrogation research across the US Intelligence Community (USIC)
  - **Mission Support**
    - Work with USIC partners to establish training criteria for MIT members, and disseminate information to other agencies
- MIT Basic Training**
- Advanced courses for full-time team members
  - Manage HIG administrative functions

The HIG consists of expert interrogators and analysts drawn from across the USIC, the military and law enforcement to interrogate high-value detainees who are identified as having access to information with the greatest potential to prevent terrorist attacks against the United States and its allies. The HIG is currently staffed by an FBI Director, two Deputy Directors (one CIA and one DIA) and a small staff. The HIG will expand to full staffing capacity (approximately 30-35 positions) once it moves to a more permanent facility in the fall of 2010.

- 5. When the recommendations of the task force were first announced last August, it was stated that the “principal function” of interrogations of High Value Detainees is “intelligence gathering rather than law enforcement”. Does the HIG, as you understand it, follow this concept of intelligence gathering as the top priority?**

**Answer:** Yes, the HIG's primary responsibility will be the collection of intelligence to prevent a terrorist attack against the United States and its allies.

- 6. Is the HIG intended to be deployed only in cases where the individual is outside the U.S., or also in domestic cases?**

**Answer:** The HIG was designed to ensure the availability of interagency interrogation teams (the MITs) to interrogate high-value detainees who are captured outside the United States; there is no plan to consult with the HIG before proceeding in accordance with applicable law when an arrest occurs within the United States. The FBI's 106 interagency Joint Terrorism Task Forces (JTTFs) lead immediate, expert responses to terrorism incidents inside the United States. Unlike the HIG, JTTFs are specifically designed to provide an immediate crisis response to terrorism incidents. JTTFs are staffed and/or supported by FBI, CIA, Diplomatic Security Service, ICE, Secret Service, and local law enforcement, and are located throughout the United States. The interagency MITs, on the other hand, train together against targeted individuals with a view toward deploying if and when its target is captured outside the U.S. (assuming the capturing country will allow the MIT to deploy into that country).

- 7. If a deployment is domestic, does the HIG still adhere to the rule of intelligence gathering taking priority over law enforcement?**

**Answer:** Yes, the HIG's primary objective will be the collection of intelligence to prevent a terrorist attack against the United States and its allies.

8. **You have previously stated that there was not a HIG deployment in the Christmas Day bomber case. Why not?**

**Answer:** The HIG was not yet operational on Christmas Day 2009.

9. **There was a Presidential Review of that incident that did not address the interrogation. I have written to the National Security Council and recommended a thorough review of the way that interrogation was handled, with recommendations for corrective action. Is that being done to your knowledge?**

**Answer:** The FBI is not aware of any such review being done.

10. **What are the FBI funding requirements associated with the HIG? How much are you allocating in FY10? How much are you requesting for FY11? And what is the FBI's estimated full year recurring cost of the HIG, once it is fully stood up?**

**Answer:** There was no specific request for HIG funding in the President's FY 2011 Budget. In FY 2010, the FBI is bearing the initial administrative costs for the HIG, and participating agencies are bearing the cost of their personnel salaries and related expenses (travel, transportation, etc.). If necessary, the FBI and participating agencies will work to identify and request funding requirements through appropriate channels to the Office of Management and Budget, and Congress.

#### **Violent Crime/Gangs**

11. **The Committee included a significant increase, \$25 million above your request, to specifically address this issue. Could you provide for the record the details of your spending plans for the additional Safe Streets/Safe Trails Task Forces funding provided?**

**Answer:** The \$25,000,000 received in the Consolidated Appropriations Act of 2010 will be used towards the expansion of the Safe Streets and Safe Trails Task Force programs in the United States as well as in Indian Country. The funding increase will focus on the most significant threats and utilize a multi-disciplinary approach to include the use of sophisticated investigative techniques and intelligence. The enhancement will also provide funding for the Arizona Department of Public Safety Laboratory and South Dakota Forensic Laboratory for timely processing of Indian Country DNA evidence. As requested by the Committees, the FBI will submit a detailed report describing the overall strategy, funding, and activities of the FBI's anti-gang program to include a comprehensive

spend plan for the Safe Streets and Safe Trails Task Force Programs within the designated timeframe. More details follow below:

**FY 2010 Enhancement for FBI Gangs/Violent Crime Resources (\$25,000,000):**

Task Force	Special Agent	Supervisory Special Agent	Police Officer	Other	FY 2010	FY 2011	Total
Safe Streets	26	16	21	63	\$ 10,902	\$ 11,109	\$ 22,011
Safe Trails	6	2	3	11	\$ 2,139	\$ 850	\$ 2,989
<b>Total</b>	<b>32</b>	<b>18</b>	<b>24</b>	<b>74</b>	<b>\$ 13,041</b>	<b>\$ 11,959</b>	<b>\$ 25,000</b>

□ **Safe Streets and Gang Unit (SSGU)** – 63 positions and \$3,782,000 of the non-personnel funds will be allocated to address various SSGU initiatives.

The majority of the enhancement will be used to target violent gang/violent crime criminal enterprises. The Phoenix, San Diego and Philadelphia Field Offices will each receive seven Special Agent and one Supervisory Special Agent positions in support of these squads. All three Field Offices have engaged their state and local law enforcement partners who have committed to participating in the Task Force. The Field Offices were selected to receive the resource enhancements based on analysis showing an immediate need and a high likelihood for a positive outcome/impact on the crime threat.

□ **Violent Crime** - \$2,327,000 in non-personnel funding to support Violent Crime and Major Theft Task Force investigations. This includes outfitting the Cellular Analysis and Survey Team (CAST) users with Wireless Internet and Tracking Tools (WITT) equipment to conduct highly sensitive investigations and to efficiently testify in the courts of law.

• **Indian Country** – 11 positions and \$2,989,000 to support Safe Trails Task Forces. Of this amount, \$850,000 in non-personnel funding will be used to improve the turnaround of forensic evidence submissions by utilizing the services at the Arizona Department of Public Safety Laboratory and the South Dakota Forensic Laboratory.

**12. Does your FY11 request include sufficient funds to maintain this increase to your Safe Streets Task Forces?**

**Answer:** Yes. The FY 2011 President's Budget includes funding to annualize the positions received in the FY 2010 Appropriation for Safe Streets Task Forces.

**13. Are you requesting any gang-related funding enhancements for FY11?**

**Answer:** No, the FY 2011 President's Request does not include any enhancements for gang-related programs.

**14. GAO and the Justice OIG have made some recommendations about the need to straighten out roles and responsibilities within the Department pertaining to anti-gang efforts. How are you coordinating your anti-gang efforts with those of ATF, and what has been done to clarify the functions of the National Gang Intelligence Center and GangTECC? How would you assess their performance?**

**Answer:** The FBI's National Gang Intelligence Center (NGIC) was established to address increased violent gang-related criminal activity. The NGIC is comprised of Intelligence Analysts (IAs) from various federal agencies. The NGIC routinely collaborates with the ATF on various anti-gang related efforts. More specifically, the NGIC is supported by two ATF IAs who address actionable intelligence between both agencies. Also, efforts are underway to develop connectivity between the ATF's and the FBI's GangNet data-bases. This connectivity will significantly enhance gang-related intelligence sharing and facilitate an easier exchange of operational information between both agencies.

In addition, the Gang Targeting, Enforcement and Coordinating Center (GangTECC) was established as a national anti-gang de-confliction, coordinating, targeting and enforcement center designed to serve as a critical catalyst in a unified federal effort to help disrupt and dismantle the most prolific and violent gangs in the United States. GangTECC has enhanced agency efforts by directing government resources to obtain tactical, operational, and strategic intelligence, and to share this cultivated information in gang-related investigations nation-wide.

Currently, GangTECC and the NGIC are co-located at an off-site in Crystal City, Virginia. Although GangTECC does not have any dedicated IAs, all of its analytical assistance is furnished by the NGIC.

To clarify the functionality of each unit, the Directors of GangTECC and the NGIC updated the Mission Statements of both units, restructured its de-confliction and coordinating methodologies, and merged investigative personnel with the Organized Crime Drug Enforcement Task Force (OCDETF) Fusion Center. This will enable both units to effectively track historical gang trends and operational patterns resulting in the production of intelligence products which specifically address nation-wide violent gang-related criminal activity.

**SENTINEL**

- 15. I understand that you just recently issued a stop work order to the SENTINEL program contractor based on problems with the completion of Phase II. Can you describe for the Committee what the problem is, and how you intend to address it?**

**Answer:** The SENTINEL Program Manager (PM) has identified concerns with the products to be deployed under Phase 2, Segment 4. These concerns include system performance not within standards and refinements to forms and workflow needed to improve usability. In addition, independent assessments have identified issues with SENTINEL's software code, which at times has adversely affected previously working functions. The FBI has delayed pilot testing and deployment of Segment 4 to address these and other concerns. The FBI issued a partial stop-work order on March 3, 2010 for certain Phase 3 activities and all Phase 4 activities. This will allow Lockheed Martin to release development resources to expedite the completion of Phase 2, Segment 4, while continuing work on key Phase 3 activities. When the defects are corrected and Segment 4 is determined to be acceptable, it will be pilot tested for approximately one month in selected field offices. Based on the results of the field pilot, full deployment to all FBI offices will occur shortly thereafter.

- 16. What is the current life cycle cost estimate for SENTINEL, and do you expect the current issues will impact the overall cost and schedule of the program?**

**Answer:** The current cost estimate for SENTINEL, including operations and maintenance (O&M) through FY 2012, is \$451 million. However, resolution of the issues associated with Phase 2, Segment 4, may result in a cost increase and a delay in the final completion date. New cost and schedule targets are currently being discussed with Lockheed Martin.

- 17. Your budget proposes a \$9 million cut to SENTINEL. Is that sustainable in light of the current situation?**

**Answer:** The Congress has established a funding cap of \$451 million for SENTINEL. Continuation of the full \$55 million in base funding from the FY 2010 budget into FY 2011 would result in the cumulative funding appropriated to SENTINEL exceeding the cap by \$9.5 million. Therefore, a reduction in base funding was proposed. However, resolution of issues associated with completion of Phase 2, Segment 4, may adversely impact SENTINEL's cost and schedule. Full recurreal of the \$55 million in base funding would help mitigate the expected, but not yet quantified, cost increase.

**18. Have you resolved all OIG recommendations on SENTINEL and are they reviewing the problems with the deliverables for Phase II?**

**Answer:** The OIG recently released its 6th audit of the SENTINEL program. The FBI is currently in the process of validating the concerns in the OIG report. However, it is the FBI's opinion that the issues identified in the report have been previously identified by the FBI, and that resolution is currently in progress or completed. All 31 recommendations from the first 4 audits have been closed, and the 6 recommendations in the 5th audit have been resolved. The OIG plans to continue regular audits of the SENTINEL program.

**Overseas Contingency Operations**

**19. Your FY10 appropriation included \$101 million for overseas contingency operations. This funding was intended to continue your activities in Iraq, Afghanistan and elsewhere that were previously funded through Supplemental War on Terror funds. I understand that your request for FY11 includes a reduction of \$62.7 million in this area. What is the rationale for this cut of over 60% just at the moment we are ramping up operations in Afghanistan? Is the FBI planning to scale back its presence in Iraq and Afghanistan in FY11?**

**Answer:** The FBI will maintain its current level of activities in Iraq and Afghanistan, but will reduce some supporting functions such as: Overtime and Hazardous Duty Pay, Quick Capture Platforms, In-Theatre IT Connectivity, National Security Branch (NSB) Training, Body Armor and Protective Equipment for Field Personnel for CT operations overseas.

**20. Is the FBI seeking supplemental funding in FY10 to support these ongoing activities?**

**Answer:** The FBI's FY 2010 appropriation included the full \$101.1 million for OCO activities; therefore, the FBI does not require additional funding in FY 2010 to continue its current level of activity.

**21. Please provide to the Committee the true amount you would need, above the FY11 request, to continue a current services level of activity related to your international work to combat and prevent terrorism?**

**Answer:** The FBI has Legal Attaché (Legat) offices in locations around the world. When requesting a new Legat location, the FBI works with DOJ, OMB, Department of State, and Congress to determine space, personnel and funding requirements. Outside of the Legat program, the FBI has personnel deployed to Iraq and Afghanistan to work to combat and prevent terrorism. The FBI will be able to support its presence in Iraq and Afghanistan.



**Training**

**22. Your request includes a significant increase of \$74 million to renovate facilities at the FBI Academy. I understand that this funding will be used to construct new dormitory and classroom space. Can you describe why these increases are necessary, and what benefits and cost savings you hope to get as a result?**

**Answer:** The FBI Academy was established at the Quantico Marine Corps Base in 1940, complete with firing ranges, two classrooms, dining, and a dormitory for 64 students. In 1972, the FBI expanded the FBI Academy to include two dormitories and more classroom space. By 1988, another dormitory was added to increase the bed space to 910 beds. Since 1988, the available bed-space at the Academy has remained at 910 beds or less, due to deteriorating conditions and renovations.

With the extensive growth of the FBI's mission and workforce since 9/11, the FBI Academy is at maximum service capacity. Additionally, the FBI Academy no longer just trains Special Agents like it has in past, it also provides the overall FBI community to include Intelligence Analysts, Staff Operational Specialists, National Academy, and in-service operational training. As a consequence, the FBI Academy lacks the required training and housing capacity to accommodate this growth, and has been using temporary classroom structures at Quantico or in private sector space, with students being housed in local area hotels.

In FY 2009, the FBI spent approximately \$3.5 million on local hotels to house FBI Academy students. However, due to expanded training needs, it is becoming increasingly costly and challenging to get the hotel rooms needed to support the FBI's requirements. Every year, travel is increasing along the I-95 corridor with many of the local hotels not having vacancies or unwilling to accept the government rate for hotel rooms when they can charge a higher rate for travelers. The additional dorm capacity also ensures that trainees are in close proximity to the other Academy facilities, which reduces travel times and allows for more effective study time after-hours.

Construction of a new facility/dormitory is critical to meet the increased requirements. For FY 2011, the FBI requests \$73.9 million for facility infrastructure at the FBI Academy in Quantico, Virginia. This includes \$67.6 million to expand training facilities at the FBI Academy. In advance of official architectural and engineering (A&E) cost estimates, it is anticipated that this facility will include:

- 325 rooms (650 beds, 2 per room);
- 12 secure classrooms (50 students each);
- 200-student conference room (that can be split into smaller conference areas); and
- 700-student cafeteria (to meet additional food service demands).

**23. You have had a difficult time finding, or training, enough agents, analysts and linguists with critical language skills, especially Arabic. Could you bring the Committee up to date on those hiring and training efforts? In terms of language capabilities, how close are you to achieving your goals in terms of having agents, analysts and linguists with the right skills to match the missions? And what resources are you devoting to that effort?**

**Answer:** The FBI has dedicated staff solely responsible for the development and implementation of targeted Middle Eastern recruitment strategies. These strategies include building relationships (national and regional outreach, public/private sector, and academia), education, direct recruitment, candidate referrals, special career invitational events, collegiate recruitment, high school information sessions and career days, enhanced advertising/marketing, and the promotion of cultural awareness. Advertisements have also been placed in various media, to include, but not limited to: Production of AD Advocates and Leaders for police and Community Trust, Anti-Discrimination committee, Lebanese Heritage Gala, and Hiiraan.com. The FBI continues to identify and participate in career/job fairs and events throughout the country (such as the Arab American Institute Foundation Khalil Gibran Awards, 13th Annual Arab American Festival, and Spinning Wheel Skikh Film Festival) in an effort to reach Middle Eastern applicants for the Special Agent position.

In addition, the FBI pilot tested a new program during FY 2008, in concert with the Department of Homeland Security, entitled the National Security Internship Program. This program is designed to afford students possessing limited fluency in a critical language with an opportunity to study Arabic during the summer at George Washington University and receive on-the-job training at the same time. Pursuant to this pilot project, the FBI has reached out to some of America's brightest students who speak or are studying languages, as well as those studying Homeland Security, Intelligence, and Area Studies, many of whom have participated in the pilot program during the summers of 2008 and 2009. This is the third year of the program, with candidates in the background stage of the process for the 2010 session.

The FBI also provides Foreign Language (FL) training to Special Agents. These trainees augment the FBI's efforts to hire FL-capable special agents. The FBI's goal is that 9 percent of the agent population has level-2 proficiency or higher (the FBI is presently at 8.6 percent; to reach 9 percent 52 additional agents must achieve level-2 proficiency). Due to a recent funding grant from the Office of the Director of National Intelligence (ODNI), the FL training program will be able to provide level-2 training to approximately 20 additional Agents this fiscal year.

Linguist hiring efforts continue with 34 Language Analyst employees hired so far in FY 2010, and 40 candidates currently in the hiring process. Currently, the FBI employs 518 Language Analysts and 910 contract linguists.

**Legat Program/Overseas Presence**

- 24. The growth of your counterterrorism and counterintelligence missions has made overseas presence an absolute necessity. How many legal attaché offices and sub-offices do you have at present? Are you requesting FY11 funds to expand your overseas presence? Could you describe where you are proposing to put additional personnel overseas and why?**

**Answer:** The FBI currently has 61 Legal Attaché offices and 14 Sub-Offices in 66 different countries.

The FBI's FY 2011 budget requests 3 foreign positions (1 Agent, 1 intelligence analyst, 1 professional support) to expand Legal Attaché Islamabad, Pakistan, and 5 foreign positions (2 Agent, 1 intelligence analyst, 2 professional support) to open a Sub-Office in Addis Ababa, Ethiopia. Justifications for these increases are as follows:

**Legat Islamabad, Pakistan**

Director Mueller recently moderated a US/Pakistan/Afghanistan trilateral meeting which included the Ministers of Interior from Pakistan and Afghanistan. The trilateral meeting was a part of the United States Government's (USG) overall effort to increase cooperation and coordination between Pakistan and Afghanistan. The trilateral meeting identified the need for capacity-building efforts in Pakistan to support the USG's national security mission related to the threat emanating from FATA region of Pakistan. The additional training and coordination efforts will be led by Legat Islamabad personnel, thus requiring additional personnel.

**Sub-Office Addis Ababa, Ethiopia (under Legat Sanaa, Yemen)**

There have been increased terrorist attacks in the Horn of Africa to include at least 10 bombings in Ethiopia in 2008, one of which killed an American citizen. Additionally, because of the Al-Shabaab threat in Somalia, Ethiopia and Djibouti have seen an increase in investigative activity originating from the U.S. Legat Sanaa cannot adequately support this region and address the increased terrorist activities with one Assistant Legal Attaché and one Legat from Yemen. Therefore, the opening of Sub-Office Addis Ababa, Ethiopia is proposed to alleviate the operational strain on Legat Sanaa and better address Al-Shabaab and other terrorist threats originating from the region.

**Records Management**

**25. In the past, this Committee has supported the Bureau's efforts to improve management of its central investigative records and to automate those records so agents and analysts can share information more easily. Last year's bill included \$9 million that the FBI requested for a multi-year nationwide inventory of case files. The budget request for FY11, however, eliminates that base funding. Can you give us a quick update on the status of this program?**

**Answer:** As of March 31, 2010, the FBI's multi-year nation-wide file inventory program, the Document Inventory Management Capture Program (DIMCaP) is proceeding on schedule, and is 31 percent complete, having processed 55.25 linear miles of the 178 linear miles of FBI files. Of the 55.25 total miles, 18.18 linear miles are ready for relocation to the Central Records Complex (CRC). The remaining 31.56 linear miles were destroyed since they had reached the end of their retention period; 5.51 linear miles were accessioned to NARA; and an additional 5.19 linear miles await only final processing, which will bring the total processed to 60.44 linear miles (34 percent).

To relieve overcrowded field offices, and in anticipation of the CRC, DIMCaP has relocated 16 linear miles of field office files to the current leased warehouse in Alexandria, Virginia. The \$9 million dollars provided in FY 2010 will allow an additional 6 field office inventories. DIMCaP will continue to reduce file inventory by identifying and disposing FBI records no longer required to maintain, developing an electronic database containing criteria for each FBI file to automate records life-cycle management; digitizing records identified as "popular" in each field office, preparing the files to be stored at the CRC for controlled and automated storage and access; and ultimately developing tools that, once linked to Sentinel, will provide universal searchability to digitized records or immediate access to paper records.

**26. Does the proposal to cut this funding in FY11 mean that the FBI will have completed the inventory and file destruction program by the end of this year? If not, what is the true requirement for FY11 and beyond?**

**Answer:** DIMCaP will not be complete until the end of FY 2016, four years later than planned. The FBI still requires funding to complete the FBI's remaining files by its planned completion date of FY 2012.

THURSDAY, MARCH 4, 2010.

**BUREAU OF ALCOHOL, TOBACCO, FIREARMS, AND  
EXPLOSIVES**

**WITNESS**

**KENNETH MELSON, DEPUTY DIRECTOR, BUREAU OF ALCOHOL, TO-  
BACCO, FIREARMS, AND EXPLOSIVES**

OPENING STATEMENT OF CHAIRMAN MOLLOHAN

Mr. MOLLOHAN. The hearing will come to order. Good morning, I would like to welcome Kenneth Melson, Deputy Director of the Bureau of Alcohol, Tobacco, Firearms, and Explosives to discuss his agency's fiscal year 2011 budget request.

We are pleased to have you here, Mr. Melson, and thank you for your time. I would like to note for members of the public who may be present that Mr. Melson, as Deputy Director, is currently heading the agency since the director position is vacant.

While we are here today to discuss all aspects of your budget request, I suspect that a significant portion of collective conversation will focus on firearms trafficking enforcement and your efforts to control the movement of weapons across the U.S./Mexico border.

This Subcommittee has provided you with more than \$100 million over the past few fiscal years to address an ever-growing case load of border related trafficking investigations, and we are pleased to see some positive results coming out of this effort.

ATF agents have achieved more than 800 convictions, seized almost 7,000 firearms, and trained nearly 900 Mexican law enforcement counterparts through your Southwest Border programs.

As valued as these successes are, however, much work remains to be done to rein in the violence being perpetrated by Mexican drug cartels on both sides of the border.

In addition to the focus on your Southwest Border mission, I do also expect the conversation to touch on a few of your other program areas this morning. One of particular interest to me is your regulatory program, which has experienced some challenges since your split with the Department of Treasury. The general public relies on the timely issuance of regulations to protect public safety, and regulated businesses rely on the timely issuance of regulations to guide their commercial behavior. Neither group is well served when the regulatory process becomes unnecessarily bogged down.

I know this is an area that ATF has been focused on improving for a few years now, and I am anxious to hear about your progress.

I am sure other members have a variety of other topics they will raise with you, and we look forward to having a lively exchange.

Your written statement will be made a part of the record. Before you begin with your summary of your remarks, I would like to call on Mr. Culberson for any introductory comments he may have.

## INTRODUCTORY REMARKS BY MR. CULBERSON

Mr. CULBERSON. Thank you, Mr. Chairman. Director Melson, thank you for being with us and particularly for the service that you and all of the officers that serve with you do for the Nation to help protect us, we generally do appreciate it and commend you for all that you do.

You are requesting an appropriation of \$1.16 billion, an increase of \$42.2 million or 3.8 percent. And considering what the scope of your responsibilities are it is actually not that substantial because a good portion of that money is simply to maintain staffing levels that were provided in the Stimulus Bill for Project Gun Runner to address illegal firearms trafficking along the southwest border, which is a terrible problem. There is sort of an undeclared war going on along the southwest border on the Mexican side that has been a continuing catastrophe and a real concern, and we appreciate the good work that you and your officers are doing along the southwest border.

But the Committee would be interested to hear about the progress the ATF has made with Gun Runner and what the next steps are in the fight against the drug cartels.

And on behalf of Ranking Member Wolf, he also will have some questions about the substantial increase above the request that the Committee provided in fiscal year 2010 for the anti-gang activities of the Violent Crime Impact Teams, something that is vitally important language that Mr. Wolf put in a number of years ago.

Again, welcome, we thank you for your service and look forward to hearing your testimony.

Mr. MOLLOHAN. Thank you, Mr. Culberson.

Mr. Melson, your written statement will be made a part of the record.

## OPENING REMARKS OF DEPUTY DIRECTOR NELSON

Mr. MELSON. Thank you. Mr. Chairman, Mr. Culberson, thank you so much for allowing us to come today to discuss our budget request for 2011 for the ATF. On behalf of the men and women of ATF I would like to convey our appreciation to the Subcommittee for your interest in our mission and our activities to help protect the American public.

I would like to particularly thank you for your support in our 2010 budget submission. We are aware that you have many competing priorities and are cutting the budget up to serve all those, which is a difficult task.

As Mr. Culberson indicated, for this coming year, we are requesting \$1.16 billion. The request includes \$1.15 billion for current services and \$12 million for building ATF's capacity to carry out its law enforcement missions.

As you know, ATF's primary mission is to protect our community from violent crime and terrorism by investigating and prosecuting, with the help of the U.S. Attorney's Office, the illicit use of firearms and explosives. The synergy between our regulatory authorities and investigative expertise makes the ATF the pre-eminent agency for investigating firearms and explosives.

You may know that we have approximately 601 industry operation investigators, what we call IOIs, who are responsible for inspecting approximately 115,000 Federal firearms licensees, and 11,000 explosive licensees around this country, which is a total of 126,000 licensees that we have to inspect. These inspections help us identify possible diversion of firearms and explosives from legal commerce to illicit activities thereby producing leads for criminal investigation.

Many of the 126,000 licensees do not get inspected for five years or more because of a lack of ATF personnel. This really hampers our ability to conduct inspections that help us protect the American people by providing leads to law enforcement to take crime guns out of the hands of criminals.

The complementary nature of our regulatory and criminal jurisdictions is evident in our history of successes with investigating bombings, including the identification and the arrest in 2009 of a suspect in West Memphis, Arkansas who had used a bomb to attempt to kill Dr. Trent Pierce.

Similarly, we have a long and proud history of investigating arsons, including the rash of church arsons in Alabama several years ago, and more recently the church fires in Texas.

I would also like to note that ATF proudly shares our explosives expertise with our state and local partners as well as with the Department of Defense through our training in Virginia and the National Center for Explosives Research and Training in Huntsville, Alabama.

You know that a recent OIG report made recommendations to clarify the jurisdictional issues between ATF and the FBI with respect to bombings. I want to assure the Subcommittee that the ATF and FBI have agreements in place which clarify our roles in the vast majority of cases which we work together. And we are working diligently with the Department of Justice and the FBI to address these areas which remain in need of clarification. ATF has worked successfully with the FBI for over 30 years, and we will continue to ensure the safety of the American people.

Another core mission of ATF is to deny organized crime its profits by stopping the illegal diversion of tobacco products, which are depriving the states and localities of approximately \$5 billion in tax revenue a year.

For example, in one recent case, the ATF and the Fairfax County, Virginia, police department dismantled an organization that trafficked more than \$2 million worth of contraband cigarettes to New York. This organization was also involved in money laundering and bank fraud, and had solicited an undercover agent to murder two of its own members.

For the first quarter of this fiscal year, fiscal year 2010, ATF seized \$21 million in crime proceeds in tobacco cases. Our Budgetary Division Unit for tobacco cases for the entire year is only about \$20 to \$22 million, suggesting that even after equitable sharing and administrative costs these investigations will be paid for by the recovery of illicit crime proceeds.

With respect to firearms, ATF has the expertise and experience to combat the threat to public safety posed by gangs which use guns to carry out their illicit activities. Thus ATF has led many

successful investigations against well known street gangs like the Crips, the Bloods, and MS-13, as well as outlaw motorcycle gangs. We have established Violent Crime Impact Teams, known as VCITs, in some of the Nation's cities most impacted by violent crime to help identify and arrest the worst of the worst criminals, including gang members. We have 31 VCITs currently in such cities as Richmond, Virginia; Birmingham, Alabama; Camden, New Jersey; and Houston and Laredo, Texas.

Our regulatory authority and investigative expertise are also directed at dismantling firearms trafficking networks. Through the use of trafficking schemes, criminals divert guns from lawful commerce to be used in illicit activities. Firearms trafficking networks extend throughout the United States and affect communities nationwide.

In recent years ATF has focused its attention on these networks, particularly those that exist primarily to supply weapons to the Mexican drug cartels.

Between fiscal year 2005 and 2009, ATF has had a significant impact on firearm trafficking in the Southwest Border states.

ATF has recommended for prosecution 900 cases involving 2,034 defendants. 497 of those cases have charged violations relating to trafficking an estimated 14,923 firearms. In all the investigations, over 6,680 firearms have been seized and are no longer available to the Mexican drug cartels.

Of the additional funding we are seeking for fiscal year 2011, approximately \$11.8 million is to annualize 37 positions we received in the American Recovery and Reinvestment Act to establish Project Gunrunner teams in New Mexico, California, and Texas. The annualization of these positions is necessary because we were not provided the base funding for the salaries or operational requirements of the three new Project Gunrunner locations.

The fiscal year 2011 budget cycle is the first opportunity we have had to ask for that annualization. Absent that annualization we would suffer an \$11.8 million operating deficit.

We are also asking for approximately \$2 million in additional resources for our participation in the National Response Framework, which is a federal strategy for providing a unified national response to national disasters and acts of terrorism.

During the past five years ATF has funded these efforts from our base budget; we have received no dedicated funds. Instead, we have been forced to divert money from other very important programs to ESF 13.

Mr. Chairman, Mr. Culberson, and others, I thank you again for the support that you give us and the support of your Subcommittee. With the backing of your Committee I think ATF can certainly build on our accomplishments and make our Nation much more secure.

We look forward to working with you in pursuit of our shared goals. Thank you.

[The information follows:]



**Statement of Kenneth E. Melson  
Deputy Director  
Bureau of Alcohol, Tobacco, Firearms and Explosives  
Before the House Committee on Appropriations  
Subcommittee on Commerce, Justice, Science and Related Agencies**

**March 4, 2010**

Chairman Mollohan, Congressman Wolf and distinguished Members of the Subcommittee, I am pleased to appear before you today to discuss the President's Fiscal Year (FY) 2011 budget request for the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF). I very much appreciate the Subcommittee's support of ATF and the interest you have taken in our mission and programs. The men and women of ATF recognize and are grateful for your commitment and contributions to the law enforcement community. I particularly would like to thank the Subcommittee for your support of ATF during the FY 2010 appropriations process; ATF is aware of the competing priorities that the Subcommittee had to balance and appreciates the funding we received.

**MISSION**

ATF is dedicated to protecting our Nation from the illicit use of firearms and explosives. We protect our communities from violent crime and terrorism by investigating and preventing the illegal use and trafficking of firearms and the illegal use and improper storage of explosives. We deny organized crime its profits by stopping the illegal diversion of alcohol and tobacco products. And we protect lives and property by investigating acts of bombing and arson.

Combating violent crime is our specialty. ATF's regulatory and law enforcement missions are interwoven, providing a comprehensive approach to reducing violent crime, protecting the public and defending national security. The integrated efforts of our special agents, industry operations investigators (IOIs), attorneys, forensic scientists, forensic auditors and administrative professionals enable ATF to effectively identify, investigate and recommend for prosecution violators of Federal firearms and explosives laws. Their integrated efforts also ascertain that Federal firearms and explosives licensees and permittees are operating within established laws and regulations.

In pursuit of our mission, ATF actively fosters partnerships with other Federal, State, local, foreign and tribal law enforcement agencies. Such partnerships, which are fundamental to our strategic approach, greatly increase the efficiency and efficacy of all parties involved. We are particularly proud of the outstanding relationship we have developed with local law enforcement agencies throughout the country and will continue to make those relationships even stronger.

### RECENT ACCOMPLISHMENTS

I would like to take this opportunity to highlight some of our accomplishments over the last fiscal year to illustrate ATF's invaluable contributions to the cause of public safety, as well as the assistance we provide to our law enforcement partners and the service we provide industry.

In FY 2009, ATF recommended 11,495 criminal cases against 17,677 defendants for prosecution -- 3,850 of those cases involve 4,076 defendants engaged in gang related criminal conduct. Of the defendants recommended for prosecution, nearly 62% are previously convicted felons and 84% have prior arrest records.

In addition, in FY 2009, ATF arrested 10,892 defendants, which led 10,630 indictments and 8,489 convictions. As a result, 2,987 defendants were sentenced to prison in FY 2009 received an average sentence of 155.3 months, excluding the 30 defendants who received life sentences and nine who received death sentences.

We initiated criminal investigations in the following specific areas:

- 18,406 firearms cases, including illegal possession and firearms trafficking;
- 2,927 arson and explosives cases, including bombing and attempted bombing cases;
- 129 alcohol and tobacco diversion cases and
- 26 explosives thefts.

In FY 2009, ATF explosives detection canine teams participated in 625 investigative searches, assisted in 200 search warrants, safeguarded over 28 million spectators at major events, and recovered 178 firearms, more than 6,600 shell casings, 580 explosive devices, and 19 homemade explosive devices.

In addition, our analytical, forensic and technical staffs were extremely active in supporting criminal investigations this past fiscal year. The National Tracing Center (NTC) traced more than 343,746 firearms for our agents and our law enforcement partners. Our National Integrated Ballistic Information Network (NIBIN) imaged over 187,283 bullets and casings, which resulted in over 5,358 matches, linking and solving firearms crimes—without these links many of these crimes would have remained unsolved. Our state-of-the-art laboratories, which examine forensic evidence such as ballistics and DNA, as well as reconstruct and test arson scenarios—completed examinations for 3,553 cases. These scientific efforts are crucial to the success of our enforcement mission.

ATF's regulatory enforcement operations staff—which inspect Federal firearms and explosives licensees (FFLs and FELs)—verify that licensees are in compliance with Federal regulations and help detect and prevent the diversion of firearms and explosives into illegal commerce. In FY 2009, ATF conducted 11,375 compliance inspections of FFLs and 5,745 inspections of FELs. We also processed:

- 834,328 National Firearms Act (NFA) registrations and/or transfers;

- 6,931 FFL applications and renewals;
- 1,121 FEL applications and renewals; and
- 9,295 import permit applications.

In addition to providing training for our own employees, ATF shares our specialized investigative knowledge and experience through extensive and sophisticated training courses offered to all levels of government, both domestic and foreign. In FY 2009, we provided PSN training for 2,475 Assistant U.S. Attorneys, State and local prosecutors, State and local police officers and sheriffs, and ATF special agents. We provided training for over 4,000 members of the international law enforcement community. We also trained:

- Approximately 3,700 military personnel in post-blast investigative techniques, including training conducted in Iraq and Afghanistan, and in collaboration with the Joint Improvised Explosive Device Defeat Organization at Fort Irwin, California;
- More than 900 law enforcement personnel, including 635 State and local investigators and bomb squad personnel, in explosives-related courses, including post-blast investigations;
- 235 explosives detection canine teams on National Odor Recognition Testing (NORT) and 425 on peroxide-based explosives;
- 68I personnel in arson-related courses; and
- U.S. Marshal Court Security Officers on improvised explosive device (IED) familiarization and security.

While the list of ATF activities I have just noted is far from comprehensive, it is intended to provide the Subcommittee with a sampling of the depth and breadth of our operations. Mr. Chairman, with the Subcommittee's support, we will build upon these accomplishments.

#### **FY 2011 BUDGET REQUEST**

For FY 2011, ATF is requesting \$1,162,986,000. This request includes \$1,150,850,000 for current services and \$12,136,000 for building ATF's capacity to carry out its law enforcement and regulatory missions. The request would provide 5,145 positions and 5,111 full time equivalents (FTE), of which 5,101 positions and 5,071 FTE are for current services and 44 positions and 40 FTE are for capacity building.

We developed this budget to directly support ATF's and the Department of Justice's priorities of detecting, preventing and investigating violent crime and terrorism. The additional funding we are seeking in FY 2011 would annualize positions we received to combat firearms trafficking along the US-Mexican border and provide resources for ATF to fulfill its role of coordinating a unified law enforcement response to national disasters and emergencies.

#### **ANNUALIZATION OF GUNRUNNER TEAMS**

The additional funding we are requesting to annualize a number of positions would support ATF's Project Gunrunner. Project Gunrunner is ATF's strategy to disrupt the illegal flow of firearms across the US-Mexican border and curb the associated violence perpetrated on both sides of the border by Mexican drug traffickers. We accomplish this by using our

regulatory authority and investigative expertise to identify the sources of illicitly trafficking firearms and dismantling trafficking networks, many of which extend beyond the border region and traverse the entire United States. Our strategy incorporates indispensable partnerships with other US agencies and the Government of Mexico. As of mid-February, ATF has assigned approximately 190 special agents, 145 IOIs and 25 support staff to Project Gunrunner in the four contiguous southwest border States.

Between fiscal year 2005 and fiscal year 2009, ATF has had significant impact on the trafficking in the Southwest Border States. ATF has recommended 984 cases involving 2,034 defendants for prosecution. To date, 1,397 defendants have been arrested, 1,303 defendants have been indicted, 850 defendants have been convicted, and 636 defendants have been sentenced to an average of 86 months incarceration. Three-hundred and seven of the cases and 881 of the defendants recommended for prosecution involve gang related offenses. Four hundred and ninety-seven cases have charged violations related to the trafficking of an estimated 14,923 firearms. One hundred and fifty-nine of these cases involved gang-related trafficking of over 3,665 firearms. In all investigations, over 6,688 firearms have been seized and are no longer available to violent criminals and gang members.

I would like to note several examples of our successes in disrupting the flow of firearms to Mexico. In December 2008, ATF agents arrested ten individuals involved in a conspiracy to straw purchase firearms in Arizona for the purpose of supplying weapons to the Sinaloa drug cartel in Sonora, Mexico. We believe they were responsible for trafficking approximately 120 firearms, including .50 caliber rifles. The suspects were indicted in February 2009, and subsequently several cooperated and identified the Sinaloa cartel member who headed the conspiracy, Ruben Javier Elense Ruiz, who goes by the name "Rambo." ATF forwarded Rambo's fingerprints to the FBI who matched them to prints connected to the murder of a Mexican Federal prosecutor in 2004. In March 2009, Rambo and several other cartel members were arrested in Mexico.

To illustrate the synergy between ATF's regulatory enforcement operations and criminal investigative responsibilities, I would like to note a case that was initiated after ATF IOIs identified a firearms trafficking scheme through the inspection of a federally licensed gun dealer in Houston in 2007. Using information uncovered by the IOIs during that inspection, ATF agents targeted and interviewed suspected straw purchasers, who were paid \$500 per firearm, and ultimately identified the three ring leaders of the trafficking operation. ATF ascertained that after the firearms were purchased in Houston they were transported to Mexico and turned over to the Gulf Cartel. ATF believes that over 330 firearms worth over \$367,000 were trafficked over a 15-month period. Eighty-eight of those weapons have been recovered in Mexico and four in Guatemala. The firearms purchased by this organization have been traced to 51 separate criminal incidents in which 18 law enforcement officers and civilians and 37 gunmen have died. Thus far, 16 individuals in this case have been charged with firearms trafficking violations. Thirteen of these individuals have pled guilty and during the week of January 18, 2010, eight were sentenced.

To strengthen ATF's efforts to combat firearms trafficking along the US-Mexican border, the American Recovery and Reinvestment Act (P.L. 111-5) provided \$10 million to ATF for the

establishment of Project Gunrunner teams in Las Cruces, NM, El Centro, CA, and McAllen, TX, and to support existing staff at the US consulates at Tijuana and Juarez, Mexico. ATF is requesting \$11,815,000 and 37 positions to annualize those resources. The annualization is necessary because the Act did not provide base funding for the salaries of the new special agents assigned to, nor the operation requirements of the three new Project Gunrunner locations. The FY 2011 budget cycle is the first opportunity ATF has had to request annualization of the 37 positions, which include 21 special agents based in the US, four special agents deployed to Mexico, six IOIs, three intelligence research specialists and three investigative assistants. Absent the annualization, ATF will be unable to sustain the three new Gunrunner teams without suffering an \$11.8 million operating deficit.

### **EMERGENCY SUPPORT FUNCTION #13**

ATF is also seeking additional resources to support our responsibilities under the National Response Framework (NRF), which is the Federal strategy for providing a unified national response to natural disasters and acts of terrorism. The NRF provides for 15 "emergency support functions" (ESFs), including ESF #13, which covers public safety and security. More specifically, the mission of ESF #13 is to assist Federal, State, local, tribal and territorial law enforcement agencies when they are overwhelmed by a disaster or terrorist attack. The Department of Justice has appointed ATF as the lead coordinating agency for ESF #13.

As such, ATF has been tasked with managing day-to-day ESF #13 operations that involve planning and coordinating at the national, State and local level in preparation for emergencies. For example, on a daily basis ATF serves as liaison between the Federal Emergency Management Agency (FEMA), the governors' offices, State public safety officials and all levels of law enforcement. We also participate in numerous planning sessions and exercises. In addition, we have developed and maintain a "concept of operations" plan and provide information to States on Federal law enforcement resources available during times of emergencies.

When a national emergency occurs, ESF #13 is activated and ATF deploys to the affected area within six hours of notification. On scene, ATF partners with State law enforcement to evaluate the situation in terms of public safety. We also act as a clearing house to match available Federal law enforcement resources with needs of the requesting jurisdictions and work to ensure that those resources are deployed as quickly as possible. While deployed, ESF #13 resources are typically under the administrative and operational control of the law enforcement agency that requested their assistance; however, at the request of the agency we will provide safety and security for responding ESF resources, as well as administrative support. ESF #13 activations have included the 2007 California wildfires, hurricanes Humberto, Dean and Flossie in 2007, hurricanes Bertha, Dolly, Ike and Gustav in 2008, the 2009 Presidential inauguration and the 2009 Red River Floods. ESF #13 personnel have also been involved with planning security for special events such as Super Bowls.

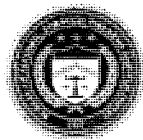
ATF has been responsible for the coordination of ESF #13 for approximately five years. During that time, ATF has funded these efforts from our base budget; we have received no dedicated funds. As ESF #13 has matured and the level of responsibility has increased, we have

found that diverting money from our core budget has adversely affected ATF's other programs. Moreover, the lack of resources, manpower, equipment and training dedicated to ESF #13 hinders our ability to properly develop a foundation for the program. Additional resources would ensure ATF's ability to immediately provide the American public with the caliber of law enforcement preparation and response expected from the Department of Justice and the Federal government in a time of crisis.

Our FY 2011 request for ESF #13 is \$1,228,000, seven positions and three FTE. That includes \$1,078,000 for personnel, \$34,000 to fund two national training sessions per year, and \$116,000 for travel expenses. The personnel are responsible for developing a national logistics program, coordinating logistics during emergencies, coordinating training at the national and field levels, and maintaining computers in the ESF #13 National Coordination Center.

#### **CLOSING**

Chairman Mollohan, Congressman Wolf, distinguished Members of the Subcommittee, on behalf of the men and women of ATF, I again thank you and your staffs for your support of our crucial work. With the backing of this Subcommittee ATF can continue to build on our accomplishments, making our Nation even more secure. The funding we have requested for FY 2011, including the annualization of the Gunrunner teams and resources for ESF-13, would constitute an important investment in public safety. We look forward to continue working with you in pursuit of our shared goals.



**U.S. Department of Justice  
Bureau of Alcohol, Tobacco, Firearms and Explosives**

**Kenneth E. Melson  
Deputy Director  
Bureau of Alcohol, Tobacco, Firearms and Explosives  
U.S. Department of Justice**

Kenneth E. Melson was named as Acting Director of the Bureau of Alcohol, Tobacco, Firearms and Explosives by President Obama. He assumed the post on April 12, 2009. Under the Vacancies Reform Act, he now heads the agency as the Deputy Director.

Most recently, Mr. Melson served as the Director of the Executive Office for U.S. Attorneys, where he was responsible for administrative oversight of the 94 U.S. Attorneys Offices and for liaison between the U.S. Attorneys and other Federal agencies and Department of Justice (DOJ) components.

Mr. Melson is a graduate of the National Law Center at The George Washington University. After serving as a state prosecutor in Arlington County, Virginia, he joined the United States Attorney's Office for the Eastern District of Virginia in 1983, becoming the First Assistant United States Attorney in 1986.

Mr. Melson is a co-chair of the Subcommittee on Forensic Science, Committee on Science of the National Science and Technology Council within the Executive Office of the President. He is a Past President of the American Academy of Forensic Sciences (AAFS) and in 2006, became Chair of the Council of Scientific Society Presidents. He currently represents DOJ as a board member of the American Society of Crime Laboratory Directors/Laboratory Accreditation Board (ASCLD/LAB), serves on the editorial board of the Journal of Forensic Sciences, on the Ethics Committee for the AAFS, and on the Advisory Council of the National Clearinghouse for Science, Technology and the Law at Stetson University College of Law.

Mr. Melson has been an adjunct professor at The George Washington University for over 30 years, teaching law and forensic science courses at both the law school and the Department of Forensic Sciences, and publishes in both scientific texts and legal journals.

Mr. MOLLOHAN. Mr. Melson, the recorder records off a live mic.  
 Mr. MELSON. Yes, and I have the mic on now.  
 Mr. MOLLOHAN. You do. Okay. Thank you.

## PROJECT GUNRUNNER

Project Gunrunner. Update us on Project Gunrunner, talk to us a little bit about your successes and what the positive statistics that you have cited tell us about what we are really achieving with Project Gunrunner and where you think it can take us.

Mr. MELSON. Well, Project Gunrunner has been a very important part of our southwest border strategy, obviously. It has allowed us to focus on the trafficking of guns to Mexico, allowed us to work with our other federal partners such as DEA and ICE to combat gun trafficking, and has created the ability for us to have many successes.

For example, just recently in Phoenix we disrupted a ring that was in the process of taking over 40 AK variants down to Mexico. We have had great cases and successes in Texas as well where we have recently taken of a similar number of guns that were headed towards Mexico.

With the increased leads coming from our tracing and inspections and the increased personnel that we have, we are able to build on our investigative capabilities, and I think that Gunrunner is a very significant effort on our part, with your support, to combat gun trafficking to Mexico.

One of the efforts we had last year was what we called GRIT, which was the Gunrunner Impact Team. That was a surge in ATF personnel in Houston where we sent 100 of our personnel to Houston for 120 days. It was a combined effort of sending IOIs, our investigators, down to inspect the licensees as well as agents to follow up on a backlog of leads that they had in the Houston area; It was very successful. We were able to arrest 189 defendants, 150 of whom were associated with trafficking an estimated 644 firearms. We actually seized 443 firearms.

Our leads that we developed out of this led to leads for local law enforcement and they seized 171 firearms for a total of 614 firearms over this 120 days.

Mr. MOLLOHAN. Can you put all those numbers in some perspective for us? What increase does that represent, or what percentage of the weapons that are in transit to Mexico does this represent?

Mr. MELSON. Well, it is hard to give you a specific percentage, because—

Mr. MOLLOHAN. No, not specific.

Mr. MELSON. We don't know how many guns are going across the border. Because if we had that information we would be more likely to be able to interdict them. So we don't know the universe of guns going across.

Mr. MOLLOHAN. So when you talk about this in your offices and your strategy sessions, you don't have a sense of what the scope and scale of the problem really is to beginning with?

Mr. MELSON. We know—

Mr. MOLLOHAN. I know you don't know the exact number, but—



Mr. MELSON. Right, we know the scope of the problem by the types of seizures that are occurring in Mexico. When they raid these homes that have caches of weapons in them that gives us an idea of the number that is going over. And we can be assured that it is only a minimal number that they are recovering in Mexico as related to the number that are there. So I think we are probably only hitting the tip of the iceberg.

With guns going across. It is a multi faceted problem. It is not just being able to identify the rings that are taking them across, but it also is going to include, and this is outside our jurisdiction, the southbound check of people going into Mexico, which is not traditionally what the U.S. has done. We usually do the northbound checking, the Mexicans do the southbound checks.

As part of our southwest border strategy we have been working very closely with our partners in Mexico. With the resources you have given us, by the end of this year we hope to have 19 special agents in Mexico in various consulates and in our embassy in Mexico City where we are developing very strong relationships with the federal police, SSP, with the prosecutors, PGR, with Aduanas, which is the customs people, and others there so that we can get better intelligence and better information from their seizures, which gives us leads to come back to the U.S.

And try and determine—

Mr. MOLLOHAN. Right. My line of questioning right now is just to get some sense of the scale of this problem. So if you can't give us a really useful estimate of what percentage you are seizing of the guns that are going across, give us some sense of the increase in seizures that Gunrunner has represented versus pre-Gunrunner days. How many more weapons are you seizing today than you were seizing before?

Mr. MELSON. I will have to get back to you with that number, but I can tell you in general that it is a significant increase because of the additional resources we have along the southwest border.

I think as our resources grow we are obviously going to seize more weapons. I think there is an unlimited number of weapons we should seize.

[The information follows:]

#### COMPARISON OF WEAPONS SEIZURE STATISTICS

While ATF has steadily increased the number of firearms seizures relating to Project Gunrunner, it is difficult to determine what percentage of firearms destined for Mexico are actually intercepted. ATF can, however, illustrate the increase in the number of firearms seizures as well as the number of firearms traces submitted by Mexico relating to pre and post Gunrunner enforcement.

The four years preceding the initiation of Project Gunrunner (FY 2002–2005), ATF's four Southwest Border Field Divisions seized 18,267 firearms, as compared to the seizure of 31,157 firearms in those same Southwest Border Field Divisions during Project Gunrunner (FY 2006–2009). This represents an increase of more than 70 percent.

In 2009, a total of 53,329 firearms recovered in Mexico were submitted to ATF for tracing; this is nearly five times the number of traces submitted in 2008. As of February 1, 2010, over 3,500 firearms recovered in Mexico have been submitted for tracing this year.

Mr. MOLLOHAN. Okay, well let me get to that, because that is really my point here. What more could we be doing? This is a huge problem, particularly on the Mexican side. For the record, will you

get use of those numbers? And I would also like the numbers on the pattern in Mexico, what they are experiencing what they are seizing, and maybe estimates about what percentage of the guns coming across they are seizing. I suppose they could probably identify the weapons that have come across, or maybe not. But, any way, give us some sense of the scale of this problem for the record.

Do you have any requests in this budget to augment Gunrunner in terms of new programs, new dimensions, improvements looking forward that you see could be implemented that would make the program increasingly effective? Like you said, checking on the southbound traffic, for example.

Mr. MELSON. The President's Budget asks for the annualization of last year's recovery funds.

Mr. MOLLOHAN. How many agents did the recovery funds hire?

Mr. MELSON. It gave us a total of about 25 agents for the recovery. And we need those. And there were additional—

Mr. MOLLOHAN. I'm sorry, how many?

Mr. MELSON. Twenty-five.

Mr. MOLLOHAN. So only 25 Gunrunner agents were funded in the Recovery Act.

Mr. MELSON. Well, there were non-agents as well. We had IOIs—

Mr. MOLLOHAN. Agents and non-agents?

Mr. MELSON. Yes.

Mr. MOLLOHAN. Okay.

Mr. MELSON. So we had additional Intelligence Research Specialists (IRS) and IOIs that were down there.

Mr. MOLLOHAN. Okay.

Mr. MELSON. And this budget just asked for those annualizations because they have done great.

Mr. MOLLOHAN. Well, let me ask a question about that. It is great that you are asking for the annualization. So the Recovery Act funding was important, obviously, to the Gunrunner program.

Mr. MELSON. Yes, absolutely.

Mr. MOLLOHAN. And you are asking to annualize those 25 new hires.

Mr. MELSON. Yes.

Mr. MOLLOHAN. Why does the budget not ask for additional agents or other additional personnel for Gunrunner?

Mr. MELSON. We are hoping that as our budget goes through the process in the upcoming years that we may have requests for that in the budget. I think with more resources down there we can do a tremendous amount of work on Gunrunner projects and other programs, and not just along the Southwest Border, because this has become a national problem.

Mr. MOLLOHAN. Right. So I guess my question is, why aren't we requesting more resources? If Gunrunner is the signature program and in your judgment is really having a beneficial payoff, why aren't we scaling that program up if the problem continues to exist and we are only seizing a fraction of the guns that are going across?

Mr. MELSON. I think certainly if there were more funding available we could do a lot more. The President's Budget just asked for the annualization.

Mr. MOLLOHAN. If we were to look for places to address this problem, forgetting about the funding for a second, what would be the most effective effort you could undertake to further reduce gun running across the border?

Mr. MELSON. It would be twofold. One would be for additional agents not just along the Southwest Border, but throughout the Nation, because the guns are coming from the interior as well.

The second is for industry operation investigators. Right now we have so few to handle so many inspections, which is the real backbone of our investigative capability. Without the compliance by the licensees regarding the regulatory matters, which are designed solely to help us in law enforcement, we lose a lot of very, very good intelligence.

When we did the GRIT, for example, in Texas, we did in the 120 days with our surge 1,100 inspections, and some of those licensees had never been inspected before. As a result of that, we develop relationships with our gun dealers and we develop intelligence. We make sure there is regulatory compliance, which assures us that when we recover a crime gun we can trace it to the first retail buyer, which helps us in our investigation of these gun trafficking organizations.

The combination of agents and investigators allows us to do more—we would love to be able to get on a three-year cycle on inspections. We have a very good relationship right now with the industry and the organizations that represent the industry. I think they understand why we do this.

Mr. MOLLOHAN. You are still talking about efforts that would impact the problem that Gunrunner is focused on.

Mr. MELSON. Absolutely.

Mr. MOLLOHAN. Because there are some inspections for which an increase wouldn't benefit this effort. What is the target with regard to the inspection aspect of this?

Mr. MELSON. Certainly with respect to explosive licensees that would not necessarily pertain to the trafficking of firearms going southbound, but all of the other inspections of dealers would.

Mr. MOLLOHAN. All across the country?

Mr. MELSON. All across the country. For example, we just took down a case from Minnesota where there was an individual there trafficking guns to Mexico. The State of Washington is a source state for guns to Mexico. Florida is a source state for guns to Mexico.

So this is no longer just a Southwest Border state problem. This is a national problem that we are seeing. Now the more we squeeze down there, because of your helping us to put resources down there, the more that activity comes into the interior of the country.

Mr. MOLLOHAN. Does your budget complement Gunrunner by requesting additional funds for these inspections across the territory? It does not?

Mr. MELSON. No, not the 2011 budget.

Mr. MOLLOHAN. Okay. Mr. Culberson.

#### GUN DEALER COMPLIANCE

Mr. CULBERSON. Thank you, Mr. Chairman, Mr. Wolf. And following up on some of the Chairman's questions, Director Melson.

The surge that you did in Houston, we have in Texas a long and proud history of, you know, the right to keep and bear arms and take a lot of pride in our dealers and owners honoring the law and following it.

Of the inspections that you performed of licensed gun dealers what percentage of the dealers that you encounter do you discover violations of the law that they are not following the law?

Mr. MELSON. Well out of the 1100 that we inspected during GRIT there were 440 notices of violations. Now those could be very minor violations, it could be a couple 4473's that are missing, the forms that you have to fill out when you purchase a weapon, or they could be a little bit more serious. But 440 violations out of the 1100 inspections; there were 78 adverse actions.

Nationwide over the period of last year, about 53 percent of the inspections discovered no violation whatsoever, and less than one percent of licenses were revoked as a result of serious violations that affected public safety.

I don't believe that the firearms dealers are the primary source of the problem in the U.S. with respect to a knowing involvement in providing guns for trafficking going south. Their important role for us is the regulatory compliance, making sure that their acquisition and disposition book is in order, that they do the 4473's, that they do the multiple sales reports.

We have found in Texas, when we were down there on the GRIT, that there were some firearms dealers that proactively called us and told us there was suspicious activity in their gun shop, which led us to an investigation that resulted in arrests. So these gun dealers are cooperating with us. And I really think that the more we get out there and work with them in inspections the more they understand that we are not out to get them, we are not out to get lawful gun purchasers or possessors; we are out after the criminals. And the regulatory scheme is designed solely for us to be able to do that trace, to create the investigative lead, to capture the criminal.

Mr. CULBERSON. So it is fair to say that over 99 percent of the gun dealers in the United States are following the law, and if they have a problem it is paperwork and minor?

Mr. MELSON. I think it is correct to say that 99 percent of the inspections that we do each year are of gun dealers that substantially follow the law.

Mr. CULBERSON. And the problem we see with guns going south, those guns in your experience are coming from what type of sources? Because some of my colleagues love to point to the weapons flowing south is some indication of gun dealers breaking the law, of law-abiding citizens breaking the law, and therefore we need gun control, which of course defies common sense, because Washington, D.C. has gun control and is one of the most dangerous cities in the United States, and Houston, probably at least a third of my constituents are carry concealed carry permit holders and the crime rates, you know, we don't have a real crime problem. That law enforcement officer's best friend is concealed carry permit holder.

Mr. MELSON. And that is the same argument being made in Chicago right now.

Mr. CULBERSON. Right.

Mr. MELSON. There are several sources of the weapons, and there is no single source that we can look to. Assuredly there are guns that are sold by dealers that end up in Mexico. That does not mean the dealer is doing anything wrong. It could very well, and almost in all these instances, it is a lawful sale. The person may be a straw purchaser, but unknown to the dealer. I mean there is no way you can necessarily tell the intent of the person.

Mr. CULBERSON. Fair to say though that the gun dealers, the licensed gun dealers, law-abiding gun owners are not the problem?

Mr. MELSON. Right. Every once in a while we have a misfit, but that is true in any profession or business, but it is not them.

The other areas could be from purchases at gun shows, they could be thefts from interstate shipments, it could be thefts from individual homes during burglaries, things—

Mr. CULBERSON. Right.

Mr. MELSON [continuing]. And personal—

Mr. CULBERSON. Criminal activity.

Mr. MELSON. Yes.

Mr. CULBERSON. Is it also fair to say that in your experience and the experience of your officers that concealed carry permit holders are not a problem, and that they are, as we believe in Texas and have seen and experienced, that a concealed carry permit holder is a law enforcement officer's best friend in your experience?

Mr. MELSON. Well they certainly have not impacted us negatively or helped gun trafficking going south. There is no impact that they have in our law enforcement.

Mr. CULBERSON. Your paths don't cross with those guns.

Mr. MELSON. They don't cross.

Mr. CULBERSON. The Southwest Border of course is a continuing problem. We in Texas have a wonderful program that is working very well in Laredo and Del Rio sectors and in the Yuma sector called Operation Streamline where the—in cooperation with you, your officers, all the law enforcement agencies are working together beautifully to enforce existing law, and one of these days I hope to get the Chairman and Mr. Wolf down to see this, because the local community supports it, the crime rate has plummeted in Laredo and Del Rio and in Yuma as a result of simply enforcing existing law and prosecuting people that cross illegally.

On the flip side however in the Tucson sector they don't—if you are arrested by the Border Patrol you have a 99.6 percent chance of never being prosecuted if you are carrying less than 500 pounds of dope, which is just unbelievable. So Tucson is like a super highway, it is wide open.

Are you aware of problems with your officers, ATF? I was told by law enforcement officials in the Tucson sector when I visited there that it is not just the Border Patrol that is having trouble getting prosecutions of people they arrest, but also ATF and DEA. Are you aware of problems of getting prosecutions of people you arrest in the Tucson sector?

Mr. MELSON. Well not so much currently. When I was the director of the Executive Office for U.S. Attorneys, those issues were—

Mr. CULBERSON. You talked about that, right?

Mr. MELSON. Yes. They were abundant in the Arizona area—and I worked closely with CBP and others, the Border Patrol on Operation Streamline and so forth—but I believe that the new U.S. Attorney who is in place now is very aggressive.

When I was the director we gave Arizona a number of new Assistant U.S. Attorneys. There are more Assistant U.S. Attorneys positions that are being allocated as we speak now.

Mr. CULBERSON. Terrific, thank you.

Mr. MELSON. So I believe that situation will improve in Arizona.

Mr. CULBERSON. Thank you.

Mr. MELSON. We certainly hope it will.

Mr. CULBERSON. Thank you. If I could, one final question, Mr. Chairman? The Chairman has been very gracious with his time. You served in the Department of Justice, we met, and I thank you so much for your work, and I wanted to ask if I could finally, Mr. Chairman, and ask Director Melson, I may have a couple of follow ups.

What changes in policies at the ATF have you seen as a result of the new Administration? Have there been new directives or changes and policy? I know that my constituents in particular, I am a very passionate—I am a life member of the NRA and very passionate about the Second Amendment. My constituents are very concerned about this new Administration's direction in attempting to through administrative order impose gun control or restrictions on the ability to purchase and own weapons, and what can you tell me about changes in directions you have seen at the AF under the new Administration.

Mr. MELSON. At this point we have not received any new direction from them to change our manner of operation. We are still using the laws that are on the books to effectively combat gun trafficking and violent crime to the best of our resources and ability. We have done a lot, I think, in this last year to create a good working relationship with the industry. We have made personal visits to some of the places of business to actually see what goes on so we better understand what the problems and the issues are.

My personal goal is to make sure that everybody in ATF is accountable for what they are supposed to do both with respect to responsiveness to our constituents who are the gun industry and the explosives industry and the citizens who are trying to get licenses for an FFL or an FEL or an NFA weapon and so forth.

Mr. CULBERSON. Thank you. So I can tell my fellow Texans the ATF, you believe in the Second Amendment, it is written in plain English, you are not going after ammunition or going after people's guns. Thank you. Thank you very much, I appreciate it.

Mr. MOLLOHAN. Thank you, Mr. Culberson. Mr. Wolf?

Mr. WOLF. Thank you, Mr. Chairman, and Mr. Melson, we want to welcome you.

Mr. MELSON. Thank you.

#### VIOLENT CRIME IMPACT TEAMS

Mr. WOLF. Thank you for your service and I thank the men and women who work for your agency for their service.

I wanted to ask you a little bit and we talked a little bit about it when you came by the office, but ATF plays a lead role in the

Department's program to combat gang and gang violence. Your Violent Crime Impact Team concept seems to be very effective. Can you give us the thoughts behind it and tell us what you are doing if you can with regard to the gang issue?

And secondly, can you tell us where the biggest problems in the country today are with regard to gangs?

Mr. MELSON. All right. The VCIT Program is very important in our gang reduction efforts. The concept behind it is to put our resources where there are the worst gang issues in the cities, and we have 31 VCITs now. We've placed them around the country, one in Richmond as you know, and these are designed to focus resources specifically on the gang issues. As a result we have had some tremendous successes with respect to gangs; MS-13 and others.

In fact if you have read the Washington papers you will know that we've had a number of very good gang cases in Maryland taking down networks that have spanned all the way from Maryland to California.

So our success with that has been very good. Our desire is to expand the VCIT cities from the 31 we have now to other cities where there are gang problems as well.

The gangs have now spread all over the United States. They are no longer limited to one or two cities as perhaps they were in prior years, and so I don't know that I can tell you where the worst is, except to the extent that, in the larger cities, there are significant gang problems such as in Los Angeles. We have done tremendous work there. There is still a lot of work to be done in Los Angeles and in Chicago, and in some of the other bigger cities.

Mr. WOLF. Would the 31 be an indication of the 31 worst areas in the country?

Mr. MELSON. They were at the time that we put them there. They were placed strategically to respond to violent gang activity, but I think the number of cities that would fall in that category now could be expanded if we had the resources to do that, and certainly because of our successes in that area I think we could show you that we would be able to make a significant impact on it.

#### INTERNATIONAL NEXUS TO GANGS

Mr. WOLF. What percentage of the gang violence that you see has an international aspect to it? Like for instance, MS-13 obviously is controlled partially out of El Salvador and you have other gangs and Mexican cartels. But of the gang problem in the United States if it is 100 percent and you had to do an impact on what percentage of that gang violence had as international connection versus, you know, a local gang that may be operating somewhere where everyone is from Philadelphia, if you will, versus MS-13 or some of the others, can you tell us where the international aspect is?

Mr. MELSON. Not with a specific percentage. I think a significant number of these gangs have an international connection, if by international connection you mean they are ethnically based with respect to other countries like MS-13. But there are still a significant number of gangs that are purely home grown local gangs. Many of the motorcycle gangs, for example, are solely controlled by elements within the U.S. and not outside the U.S.

Mr. WOLF. I understand, but I am just trying to get a sense. How significant is the international aspect of it?

Mr. MELSON. Well there is a significant international aspect with respect to control in some of the gangs. I believe that the more these gangs are being dispersed around the United States that the control of these gangs, even though they may have begun with international gangs, are going to become more domesticated as they become more entrenched in our cities, but there is certainly a very significant involvement still of an international aspect. And of course if you consider gangs to be drug related as well you have the cartels that have a tremendous infusion into our economy and into our society, as well in our communities.

[The information follows:]

#### INTERNATIONAL NEXUS OF US GANGS

ATF is not aware of specific gang-related data that would allow for the calculation of the percentage of gang violence that is attributable to an international influence. The most comprehensive assessment of violent gangs is the 2009 National Gang Threat Assessment prepared by the National Gang Intelligence Center in collaboration with and based upon data collected and analyzed by the National Drug Intelligence Center. That report conservatively estimates gang membership in the United States at more than one million and states that "local street gangs, or neighborhood-based street gangs, remain a significant threat because they continue to account for the largest number of gangs nationwide."

It also states that "Currently, 11 national-level street gangs have been identified in the United States, and associates or members have been identified in foreign countries, according to analysis of federal, state and local law enforcement information. Established cells in foreign countries assist gangs operating in the United States in further developing associations with DTO's and other criminal organizations in those countries."

Mr. WOLF. So have you had any indication, and I have seen articles to this effect, that there has been a combination with regard to terrorism and gangs?

For instance, why would a person from an international terrorist group, why would they take the risk to fly into Dulles Airport and going through customs both wherever they are flying from here, versus why wouldn't they just go down south of the border and connect into MS-13 and for a fee be taken from some place down there to come across the border?

Have you seen any signs of that being the case that there have been gang connected to MS-13 or others just to get across the border and to come into the country?

Mr. MELSON. Or for terrorism related purposes?

Mr. WOLF. Not that they have committed terrorist activity—

Mr. MELSON. Right.

Mr. WOLF [continuing]. But certainly if you were the seed, you know, the cells to come in, but who would be potentially connected to terrorist activity?

Mr. MELSON. I will have to get back to you on how many, if any, that we have found specifically. There have been some that have been reported that other agencies have been involved with.

Our concern as has been reported by others, and is the same concern, is that this certainly provides an opportunity for terrorists to come in through the Southwest Border. How many have actually done that I don't know that we have an answer to that, but it is certainly an opportunity.

[The information follows:]



## CONNECTION WITH REGARDS TO TERRORISM AND GANGS

ATF is not aware of information currently linking U.S.-based street gangs to international terrorist groups.

Mr. WOLF. Or the northern border too.

Mr. MELSON. Or the northern border. That is an excellent point, and one that I hope that neither the Committee nor ATF forgets. We have a problem with the northern border as well, not only coming into the U.S., but with guns, drugs, and tobacco going across our border into Canada. We have focused so heavily on the Southwest Border that I think sometimes we neglect to look at the interior of the country as well as the northern border.

Mr. WOLF. The report language for the Committee directed you to coordinate with the FBI which also received a significant increase in appropriation for anti-gang activity. How are the ATF and FBI dividing the responsibilities and working together to maximize?

Mr. MELSON. Well it depends somewhat on the particular geographic area. For example, in Richmond when I was an Assistant U.S. Attorney over there, we divided it up geographically within the City of Richmond, where we had VCIT working in one area that was high crime and the Safe Streets from the FBI was working in another area.

So while we may work in different geographic areas, we work well together because we share our information and we work together in joint operations when our investigations overlap, or when we need additional help and resources from other agencies to take on.

Mr. WOLF. Is there a rivalry too much of the time? I mean frankly, you know, I like the Bureau and I like the ATF. I stipulate, I think both of you do a great job. It does seem that the Bureau sometimes gets a little more credit or publicity or notoriety than ATF.

Mr. MELSON. They do, but you know our people are out there to do the job.

Mr. WOLF. I know that.

Mr. MELSON. You know, I had been with the U.S. Attorney's Office for 25 years, so I have seen a lot of different agencies and personnel, and I can truly tell you before I even came to ATF that there was no other agency out there who was there just to do the job, to get it done, regardless of whether it was in their job description, and didn't really care whether they got the credit as long as the community was safe.

Mr. WOLF. That is good. Last question. There are others we will just submit for the record.

Do you still have staff assigned to the National Gang Intelligence Center over—

Mr. MELSON. Yes, We work closely with the FBI at both the Gang Tech and the Intelligence Center.

Mr. WOLF. Well how do you think that is working? Glenn Fine has been critical. Well, I think Glenn Fine is critical. I think somebody ought to investigate Glenn Fine's office some time to find out some of the things that he is critical about. It seems that every time they do an investigation they release it to the media before they tell the agency what they are doing. We are trying to get

Glenn Fine to look at the whole U.S. vs. New Black Panther Party Dismissal issue, and he doesn't want to kind of get involved in this one.

But on this, how effective is the National Gang Intelligence Center? Are there potential improvements? Is there anything that you would change or do different? Is there anybody participating or not participating? Did you look at Glenn Fine's comments about—

Mr. MELSON. Yes, we have, and we are satisfied that both the FBI and we, and the other participants are making the Intelligence Center a success. There is always room for improvements, and I think they are working on some of those. But it is an important element of our gang strategy. Because as you have pointed out, these gangs have fingers all over the place, and without a unified Intelligence Center we are not going to be able to work with them as much, we are not going to be able to focus on them as well as we could without it.

We also work with DOJ and with respect to their involvement in the DEA Fusion Center with gangs as well. So there is a good synergy between everybody.

I remember when I was in Virginia we were trying to work on a gang intelligence database for the State of Virginia and how hard that was to put together and how many competing interests there were there.

I think the National Gang Intelligence Center has really overcome some of those issues nationwide and is a very important asset to us.

Mr. WOLF. One last question. Do you think most state and local law enforcement people now know the Intelligence Center is there? Are they accessing it, I mean, a rural sheriff in an area? And if the answer is maybe not as much as they could, is there something that should be done to make sure that they are aware? I mean, if they pick up somebody that they can come to the center. Is there anything more that should be done?

Mr. MELSON. I would certainly hesitate to say that every sheriff in a county in the State of Virginia or other place knows of that Intelligence Center.

I think the way we can get the word out is to work through our field divisions and field offices to make sure when we have—in conjunction with the U.S. Attorneys, meetings with the head of law enforcement in the area—that we talk about this center and how important it is and what a resource it is to local sheriffs. This I think is a combination of work that can be done with the FBI, ATF, DEA, but led by the U.S. Attorneys because they get the law enforcement together to talk about these issues, and certainly that should be something that is on their radar as well as on ours individually when we meet with the local law enforcement.

Mr. WOLF. Thank you, Mr. Melson. Thank you, Mr. Chairman, I appreciate it.

Mr. MOLLOHAN. Thank you, Mr. Wolf.

I understand we have three votes starting now, so that probably means one 15 minute vote and two 5 minute votes. If we could keep it going as much as possible, I would like to during this time. So I will certainly be pleased to leave and let you—

Mr. WOLF. Do you want me to run down and vote?

Mr. MOLLOHAN. Sure, that would be great.

SPANISH ETRACE

I understand the Spanish version of the eTrace system will finally be completed and deployed this month and that it is expected to have a big impact on the volume of cases that you could trace and requests you have. Can you quantify the expected impact on the number and quality of the trace requests you will receive from Mexican law enforcement counterparts?

Mr. MELSON. Well it is hard to quantify because we are not sure what the level of their tracing activity will be based upon prior experience, because the prior experience has been somewhat minimal. [The information follows:]

SPANISH VERSION OF ETRACE

ATF projects that we will receive about 354,000 trace requests in FY 2010 and about 364,000 trace requests in FY 2011. Spanish eTrace usage will be expanded in Mexico, Central America, and likely South America before the end of FY 2011.

Mr. MOLLOHAN. Well, what do you mean the prior experience has been somewhat minimal?

Mr. MELSON. There has been some difficulty in getting the coordination on eTrace throughout the Mexican government. While we have had a lot of individual eTraces and we have gone in and obtained information to submit for traces ourselves with the cooperation of the Mexican government, the network has not been sufficiently placed throughout Mexico to have a universal access to the tracing firearms.

However, having said that, both PGR, which is the Attorney General's department, and SSP, which is the federal police, have taken a very strong interest in eTrace, and they will be increasing, I believe, their activity with respect to eTrace as a result of the Spanish version of it.

Mr. MOLLOHAN. Right. Well the information we have is that it is increasing pretty quickly right now because the firearms traces requested by Mexican law enforcement have steadily increased over the years. You processed more than 53,000 Mexican trace requests in 2009, which is five times as many requests as processed the year before. So even without the Spanish augmentation to the program you are getting a dramatic increase, if those numbers are correct.

Mr. MELSON. That is right, but that is a small part of what I think can be traced. We got a disk with 60-some thousand trace requests on it that they had not given us, so we are working on that, and that is going to cause somewhat of a spike.

But I think that with respect to the federal police, when they start integrating Spanish eTrace into what is in essence their fusion center in Mexico City, that we will see an even greater increase in the number of traces, and that is going to have several impacts on ATF.

First of all it is going to—

Mr. MOLLOHAN. And that is my question, actually. What is the impact on the ATF?

Mr. MELSON. The first impact is it is going to start overwhelming our tracing center. Already with the people we have that are actu-

ally responding to the trace requests we are at capacity, if not over-capacity already. So that is going to burden us.

Secondly, our tracing system itself, the computers and the software need to be refreshed. We are in the process of doing that, and hopefully as we do that we can stay up with the increase in the tracing.

Thirdly, these trace requests give us more leads throughout the country. Every time a trace is done and it comes back to an FFL in some part of the country or some city our agents have that as a lead.

So as these traces come in we are going to have a tremendous number of leads to follow up on.

Mr. MOLLOHAN. Okay, well I am back at handling the traces in the National Tracing Center.

Mr. MELSON. Right.

Mr. MOLLOHAN. Right now you are at the maximum capability of doing traces.

Mr. MELSON. Absolutely, if not beyond it.

Mr. MOLLOHAN. If you have had a fivefold increase over the last year, then you can expect a dramatic increase when spanish eTrace is deployed. Does your statement today anticipate this increase?

Mr. MELSON. Not currently.

Mr. MOLLOHAN. Not currently? Do you plan on submitting an amended budget request to address this?

Mr. MELSON. We will have to work with the department on that, but we could certainly use additional people in our tracing center.

Mr. MOLLOHAN. Do you have estimates of how many additional people you would need in your tracing center to adequately handle—

Mr. MELSON. I could certainly get back—

Mr. MOLLOHAN. Excuse me, let me ask you the question first—

Mr. MELSON. Sorry.

Mr. MOLLOHAN [continuing]. The anticipated increase in requests based upon the implementation of the Spanish language version of eTrace?

Mr. MELSON. I don't have a specific number right now only because it is a little bit early to see what that impact is, but I surely can get with you.

Mr. MOLLOHAN. Surely somebody has looked at that at ATF. I mean, you are going to have an increase.

Mr. MELSON. I can go out to the tracing center and get that specific information for you.

Mr. MOLLOHAN. Okay. I wonder if that has already happened and somebody sitting behind you might know the answer to that. Or, if you are more comfortable submitting it for the record, that is fine too.

Mr. MELSON. Yes, they confirmed that. We don't have an exact number yet because of the transition, but we can get back to you with a specific number on that.

Mr. MOLLOHAN. Okay. It is going to be a problem. ETrace is going to be implemented, isn't it? So it is going to be an issue for this year, let alone next year.

Mr. MELSON. Yes, it will be an issue this year. We actually released the Spanish eTrace version at the end of December, so it has

been out there for a couple of months. It was sort of a beta testing period where we are trying to determine whether we were totally successful. We are making some changes to that and updating the version of it, but yes, it is going to be coming quickly.

Mr. MOLLOHAN. Okay. Well, would you please get to the Committee what your needs are going to be for this year, or what the deficit is going to be for this year and then the anticipated need for additional resources next year. All right?

Mr. MELSON. Okay.

[The information follows:]

#### IMPACT OF SPANISH ETRACE ON NATIONAL TRACING CENTER CAPABILITIES

ATF projects that the NTC's workload will exceed its capacity by 27% in FY 2011. The NTC is currently staffed with 61 FTE government employees and 272 contractor employees. The NTC requires 17 additional FTE government employees and 74 additional contractor employees (\$3.7 million) which is a total of 91 personnel (a 27% staffing increase consistent with the workload increase). The NTC has considered converting a large portion of its contractor employees to FTE, which if properly structured would result in a slight reduction in costs.

In the long term, ATF requires additional improvements to its tracing workflow system to improve the accuracy, efficiency and timeliness of firearms tracing (est. \$1.2 million). Further, ATF recommends expanding this workflow to include other related firearms databases that affect the tracing process. This would benefit the public both in terms of improved services related to firearms commerce as well as improved services relative to firearms tracing and criminal enforcement matters.

Mr. MOLLOHAN. Thank you. The eTrace system offers an efficient and systematic method for fulfilling trace data requests, but a large portion of ATF's current record holdings are either in paper or microfilm. For eTrace to work, it has to work in a digital format. Therefore you have to transition to a paper search of paper records. Are you dealing with that problem, is there a conversion effort going on, and what's the status of it?

Mr. MELSON. That is a huge problem that we have. We have like 14.4 million out of business records coming in per year, and they are almost all, if not all, in paper format. We don't have at this point a significant conversion process in place. We are doing some electronic scanning of the microfiche images, but they are not being indexed. So still if we get a hit from a manufacturer that says the gun was shipped to X, Y, and Z FFL, we can go to that FFL, but that may pull up hundreds and hundreds of weapons that we will have to search through by hand for purposes of identifying the weapon.

That is an area that if we could fix by being able to electronically search them through indexing we would become so much more efficient that in the long run, those resources could be put to answering the actual trace request. Our response time on traces has increased 40 percent over the last year from 10 days to 14 days.

#### REGULATORY BACKLOG

Mr. MOLLOHAN. Okay, thank you. We have talked about the regulatory backlog for more years than I can remember. I am quite sure Mr. Wolf was chairman of this Subcommittee when I raised this issue many years ago. Of course, it wasn't that many years ago that he was chairman, but the point is I have been raising this issue. Give us a sense of the accumulated regulatory backlog that exists at ATF.

Mr. MELSON. Well we have about 17 now that are really in the process which have either gone over to the Department or—

Mr. MOLLOHAN. Seventeen what? Rule makings?

Mr. MELSON. Rule makings, or have been returned to us. We were able to complete four of them last year either by determining that we would no longer go ahead with them or they have been completed and published. I have signed I think two this year.

This is a problem, and I am embarrassed about it. I haven't been on long enough to fix it and I haven't been able to examine it well enough, but there are I think three things that we need to do. One is to make sure we have sufficient resources attributed to the reg writing. We've added a couple over the last year. We now have four reg writers, but the team that writes these regs include not only the reg writers; you also have to have the subject matter expert and you have to have an attorney on, so we have to look at that.

Secondly—

Mr. MOLLOHAN. Talk a little bit now about the staff. You have an inadequate staff. I don't want you to forget what you were going to say next, but I want to know more about the staff aspect of it.

Mr. MELSON. We have four regulation writers right now that work on these regulations.

Mr. MOLLOHAN. Is that an improvement?

Mr. MELSON. Yes.

Mr. MOLLOHAN. From when?

Mr. MELSON. It is an increase of about 50 percent from a year or two ago. So this should help some.

Mr. MOLLOHAN. Well, I think we could Xerox so far this testimony on this issue of four years ago, but go ahead, excuse me.

Mr. MELSON. Yes. Well, I understand that, but I am here to fix it if I can. One way is for us to focus more resources on that, the other is to do better coordination with the Department, because they are an integral part of the process of reviewing these regulations. And so I think with those types of improvements we can do that.

The other thing, Mr. Chairman, that we are doing is in some of the changes we are making in ATF. I am creating a quality assurance, quality control office within the directorate that has not only the regulation writers, but also the national tracing center and the licensing centers, so that we have an oversight office that makes sure that we are not only responsive to the public and the industry, but also responsive with respect to your concerns on regulation writing. It is a cumbersome system and it has to go to many different places to get approved. There are regulations that require us to publicize these in the federal register.

Mr. MOLLOHAN. No, I understand, and I am sure the committee understands the process. It is akin to making legislation, which can be extremely cumbersome.

When you were moved to DOJ, 15 of your regulation writers were left at Treasury. Do you need anything near 16 regulation writers to keep up with the need? If you do, your request is woefully inadequate.

Mr. MELSON. Well yes, we need 16.

Mr. MOLLOHAN. No, I want the real answer. I want the real answer.

Mr. MELSON. But I don't want to give you just a guess and ask for more than we actually need. I would have to talk to our chief counsel and EPS to find out how many more we need.

Mr. MOLLOHAN. You know, that would really be a good start.

Mr. MELSON. Okay.

Mr. MOLLOHAN. To find out what your needs were.

Mr. MELSON. And we may have figured that out and have put it in our budget request.

[The information follows:]

#### NEED FOR ADDITIONAL REGULATION WRITERS

ATF currently has four regulation writers who are responsible for approximately 30 open rulemaking proceedings that are under development or review, and an additional 20 concepts for rulemaking projects. The Bureau still does not have sufficient resources to process its rulemaking proceedings in a timely manner, particularly in the firearms area. As a result of additional petitions received from the industry and rulemaking needs identified during industry meetings, we would like to recruit four additional regulation writers. These individuals would help reduce the backlog of open rulemakings and address the significant number of pending rulemaking projects.

Mr. MOLLOHAN. I take you at your word. I sense your sincerity, and I look forward to working with you on this.

Industry, you know, needs this clarity that comes from good rule making, and I know you want to do that. Mr. Wolf?

Mr. WOLF. Yes.

Mr. MOLLOHAN. I am going to run and vote.

Mr. WOLF. Thank you, Mr. Chairman. Back briefly to the gang issue and then I have a couple others.

#### ANTI-GANG COORDINATION

Do you think we need a major effort with the FBI and ATF similar to what was done with Cosa Nostra back in the '60s, a major comprehensive government-wide effort to eradicate other gangs? If you have living in an area that is infested with gangs, it is a form of domestic terrorism for those families, many of them poor, that live in an area like that. Does it make sense to have a major effort similar to what was done in the '60s, or do you think the current approach, you are doing your thing, FBI does its, DEA does its, and I know so much effort has been gone into the counter terrorism. What are your thoughts about that?

Mr. MELSON. I also have a concern, and I hope I am not speaking out of school, of duplication of responsibilities, because then you do get a clash of personalities and of agencies trying to do the same thing in a particular jurisdiction.

But having said that, I think there could be much more that can be done with gangs, and given a unified Department approach to it, along with the sufficient resources, I think we could do a lot in that regard.

Mr. WOLF. Well you all do a good job. Should we do a letter to the Attorney General asking—or maybe this is already done. Is there sort of a coordinating council on this issue whereby the U.S. Attorney's, Marshal Service, DEA, ATF, everyone is kind of touching gloves every other week just sort of coordinated to make sure? Is that done?

Mr. MELSON. Yes, it is done through the Criminal Division, Gang TECC and the Fusion Centers. It is also done through the Attorney General's Advisory Committee and other areas.

Mr. WOLF. Is that advisory committee, is it an advisory committee on gangs or is it—

Mr. MELSON. Well it is the Attorney General's Advisory Committee, but they have—

Mr. WOLF. On gangs?

Mr. MELSON. No, it is a full one, but they have subcommittees, and they have subcommittees on violent crime and gangs that deal with this.

There is also an anti-gang coordinating group at the Department that looks at that.

Mr. WOLF. And how often do they meet?

Mr. MELSON. I am not sure how often they meet.

Mr. WOLF. Well maybe we will do a letter to the Attorney General. I am sure he wants to deal with this issue, and maybe it is already being done, but to see if there could be some sort of formal structure. Iron sharpens iron. You are all together on a periodic basis and making sure, on the issue of gangs, not that gangs happens to be one of the things we talk about today, but on just gangs to deal with. Because I think those who live in areas that are gang infested that is as much of an act of terrorism on them as it is if an international terrorist group is coming in.

Mr. MELSON. Yes, Mr. Hoover pointed out to me that the anti-gang coordinating group meets once a month at the Department.

Mr. WOLF. Once a month. Well let us look into that and see.

#### ATF ACTIVITIES IN IRAQ AND AFGHANISTAN

One other issue is Congress provided funding and passed supplement bills for ATF to deploy personnel to Iraq. Can you describe what presence you have been able to stand up in Iraq and Afghanistan, and what training and other activities your people are engaged in?

Mr. MELSON. Yes. We have trained a number of Iraqi police. We have been participating in groups like what they call the Combined Explosive Exploitation Cell (CEEC) where they are looking at the IEDs. We are in preparation of sending people to Afghanistan to do the same thing. We work with the FBI on analyzing IEDs when they come back to the states, being sent over here to determine common sources and so forth. We are very involved in training the military with respect to the use of explosive canines for use over in Iraq and Afghanistan. In fact, there was a report back just recently that one of our dogs over there, being used by one of the military personnel has already discovered 14 IEDs before they have gone off.

Mr. WOLF. And how many dogs do you have over there?

Mr. MELSON. I think there is a real shortage of explosives dogs, canines both over there as well as in the U.S. We are pushing out as many as we can through our canine center, which is in your district I believe, and trying to train more and more of them.

We have a state of the art process for training them for odor detection of explosive devices. We are also training dogs down in Yuma for the military with respect to the same type of capability.



Mr. WOLF. Roughly how many dogs?

Mr. MELSON. From ATF? I am not sure I know.

Mr. HOOVER. We've trained over 200 for the U.S. military.

[The information follows:]

#### NUMBER OF BOMB SNIFFING DOGS IN IRAQ AND AFGHANISTAN

ATF has deployed numerous Special Agent Canine Handlers and their Explosive Detection Canines to Iraq to assist with the detection of improvised explosives devices (IEDs). Since 2004, there have been 39 ATF canine handlers deployed to Iraq and additional handlers are scheduled for rotation on an as-needed basis. In addition, ATF has entered into another Memorandum of Agreement with JIEDDO to imprint U.S. Marine Corps canines for homemade explosives. This training is conducted at Yuma, AZ, and to date, 206 canines have received the training. It is anticipated by the end of the calendar year, 352 canines will receive the imprinting.

Mr. MELSON. I don't know that they have told us how many they could use if they had an unlimited number. We can certainly find that out for you and get back to you. But just like in the U.S., these dogs certainly protect our human capital.

Mr. WOLF. Well let us talk about that. Thank you, Mr. Chairman.

Mr. CULBERSON. No further questions, but thank you for your service to the country, and we appreciate all that you and your agents do, and in particular we really appreciate in Texas the work that you do of getting—we are grateful for your service. Thank you, sir.

Mr. MELSON. Thank you very much.

#### ATF'S ETRACE SYSTEM

Mr. MOLLOHAN. Just a follow-up question on the eTrace system. My information is that a manual search can take up to ten times longer than an electronic one. Does that sound right?

Mr. MELSON. Well, I think it is common sense that a manual search will take much longer than an electronic one.

Mr. MOLLOHAN. But ten times longer? I mean, you must have to go to file boxes.

Mr. MELSON. Well in essence what you are going to are the microfiche, and you may have a roll that has 4- or 500 firearms on it that you literally have to scroll through and look for a particular firearm.

You should come out there with us. I was out there and I was absolutely appalled and depressed at what they are going through out there. You literally see pallets of these out of business records come in, and they are just absolutely overwhelmed. You see people in these cubicles going through the microfiche looking for these weapons.

Mr. MOLLOHAN. Well how does your budget address this problem?

Mr. MELSON. Right now we would be struggling severely to change that.

#### ATF/FBI EXPLOSIVES ENFORCEMENT EFFORTS

Mr. MOLLOHAN. Okay. I would like to hear you talk about jurisdictional overlap in explosives cases a little bit.

It seems ATF and FBI have always been at a point where the jurisdictional lines have not been clear. I know you have under-

taken efforts to address this, and in our 2009 CJS Bill we required the Department to review instances of overlap and to begin sorting through that. I assume you are not very far in sorting because we asked for a report, which is seven months overdue. So can you give us an update on that?

Mr. MELSON. Well as you know the IG came out with a report on that. The Deputy Attorney General's Office has formed several working groups between the FBI and ATF to look at various issues relating to the overlap of jurisdiction. Very soon the Deputy Attorney General is going to have a meeting with ATF and the FBI in his office to discuss these issues and a recommendation will be made from the deputy to the Attorney General on clarifying these issues of jurisdiction.

We believe that ATF has the expertise in explosives issues. 99.9-some percent of all the explosions by bombs in the United States are non-terrorism type of cases which we respond to now and have done it very successfully and professionally. We believe we can continue to do that and incorporate with our response individuals and representatives from the JTTFs, so if there happens to be a terrorism connection they can identify it quickly and take the case over.

Mr. MOLLOHAN. DOG's IG reviewed, as you point out, these jurisdictional problems last year. They had three areas of concern, the control of explosive investigations where it is unclear if there is a nexus to terrorism, the consolidation of multiple explosives or related data tracking systems, and the coordination of explosives training.

So I guess we are looking for a time frame, a status report, on what steps are going to be taken to address and hopefully eliminate those conflicts. So can we expect a report on that soon as requested?

Mr. MELSON. I think that the Attorney General will resolve all those issues in the near future.

Mr. MOLLOHAN. He is going to resolve all of these conflicts, all of these issues? That will be welcomed. That would be historic.

Mr. MELSON. Well my understanding—

Mr. MOLLOHAN. I am sure when the agents go out there in the field after an explosion and start bumping into each other, they will be thrilled.

Mr. MELSON. Well they will be, and hopefully we won't be bumping into each other; there will be a coordinated response.

Mr. MOLLOHAN. That was probably—

Mr. MELSON. Yes, I understand that. My understanding is that the Deputy Attorney General is going to make a recommendation to the Attorney General within the foreseeable future which will address these issues that the IG raised.

Mr. MOLLOHAN. Okay. Well we look forward to working with you on those. I know it would be in everybody's best interest—

Mr. MELSON. It would absolutely.

Mr. MOLLOHAN [continuing]. To try to sort through those difficult issues.

## EMERGENCY SUPPORT FUNCTION #13

Your budget request includes a small amount of money to set up a dedicated staff in dealing with ATF's Emergency Support Function 13 responsibilities. What is your ability? You have never had a dedicated budget line item for this. Are you requesting a dedicated line item now?

Mr. MELSON. Yes, that is what our request is for. I think it is seven positions and some operating funds in order to do that.

Mr. MOLLOHAN. How is your ability to perform your required ESF 13 duties constrained by the lack of a dedicated budget?

Mr. MELSON. We are obviously having to take resources from other operational areas to sustain our ESF 13 responsibilities, which we take very seriously, because we understand that local communities are going to be relying on us to help them provide—

Mr. MOLLOHAN. Will your request preclude the necessity of your going to the other budget line items to support this function?

Mr. MELSON. Yes.

Mr. MOLLOHAN. Really?

Mr. MELSON. If we get this line item we will have seven personnel that are dedicated.

Mr. MOLLOHAN. At the requested level?

Mr. MELSON. Yes, at the requested level. We should be able to fulfill our function of training and preparedness for purposes of establishing the ESF.

Mr. MOLLOHAN. So this requested funding level will take care of all of your ESF 13 responsibilities? Or will it only establish and dedicate funding for a portion of them?

Mr. MELSON. It is hard to say we will never need anything more, because with this program—

Mr. MOLLOHAN. Would you like to answer that for the record?

Mr. MELSON. Yes, I will, thank you.

[The information follows:]

## BUDGET REQUEST FOR ESF-13

In addition to the \$1.22 million budget request, ATF has forwarded another request seeking approximately \$9.6 million. This amount will provide:

- \$1.57 million for nine full-time employees to satisfy critical personnel needs in the implementation and responsibilities of ESF #13;
- \$500,000 for operational travel expenses of ESF #13 personnel whose travel throughout the Nation is critical in the preparation and planning for an effective Federal response;
- \$300,000 for government-wide ESF #13 training, education, and associated travel which is essential to the overall success of the initiative;
- \$3.75 million for the purchase of four command and control vehicles to be strategically placed throughout the country to provide centralized command platforms for responding Federal law enforcement assets;
- \$875,000 for computers and related software to equip the currently non-automated ESF #13 National Coordination Center with the proper mechanisms to effectively communicate with responding personnel and other law enforcement partners;
- \$500,000 for equipment for the currently unequipped ESF #13 Assessment Team which affords essential first responders the ability to remain self-sufficient and protected for a period of time while affected areas are initially recuperating;
- \$1.95 million for 14 emergency management contractor positions to be located in Washington, DC and within the FEMA Regional cities to provide FEMA and State partners with the everyday law enforcement guidance needed to prepare meaningful policy; and

- \$219,000 for ESF #13 National Coordination Center to be positioned in Sterling, Virginia, for continuity of operations assurance should an incident occur within the National Capital Region.

Because ATF has not received resources to support its responsibilities under ESF #13, existing staff are necessarily assigned ESF #13 responsibilities in addition to existing operational duties. This is limiting ATF's ability to consistently engage fully in required exercises regarding the planning for and the response to a natural disaster and/or act of terrorism.

The increased request for resources will allow ATF to fill essential vacancies within the existing ESF #13 program and expand critical readiness efforts nationwide. These additions will maximize ATF's ability to immediately provide the American people with the caliber of law enforcement preparation expected from the Federal government in a time of crisis.

#### RECOVERY ACT EXPENDITURES PER PROJECT GUNRUNNER

Mr. MOLLOHAN. Let me give you an opportunity for the record to respond to some of the IG's concerns about your Recovery Act expenditures.

The IG contended that several of your Recovery Act funded offices are located in areas that have relatively little direct nexus to firearms trafficking activities of Mexican drug cartels. How do you respond to that criticism?

Mr. MELSON. We disagreed with the IG in that regard. When we placed our resources along the Southwest Border we concluded that New Mexico was part of the Southwest Border and that gun trafficking was going to be an issue in the Roswell, Las Cruces area itself.

Since the recovery money has come, and even though we don't have all the people there yet because they are still going through the process of being hired, last year we had 38 cases involving illegal gun purchases. Four of them were tied to gun trafficking, and that is a funnel for one of the cartels to go through to Mexico.

We thought that we ought to take a strategic approach. Instead of being reactive to where the problems were going to exist, we thought we would put individuals in places where we knew there was not only an existing problem, but will be a growing problem. Roswell and Las Cruces were two of those places where we are trying to be predictive in our efforts. And we have expressed our disagreement to the IG with respect to that.

As I indicated before, the problem of gun trafficking is no longer right along the border, it is going to go into the interior, and we can't be complacent and just put resources there and forget about the rest of the country with respect to the source of these guns to Mexico.

Mr. MOLLOHAN. So with the funds you are requesting to annualize, you intend to continue supporting the plan that you have implemented and you will not be changing it in light of the IG's—

Mr. MELSON. No, sir, we are confident that our analysis is correct. It is beginning to come to fruition as we see the types of cases that they are developing there in our strategic analysis of not only the gun trafficking patterns, but the cartel trafficking patterns as well.

Mr. MOLLOHAN. The IG also raised a concern about being able to ensure that the GRIT personnel would be tasked solely with Mexican firearms trafficking enforcement cases. My first question is, is that your intention?

Mr. MELSON. Are you talking about the Gunrunner?

Mr. MOLLOHAN. Yes, I am.

Mr. MELSON. Okay. Yes, they are focused on the gun trafficking to Mexico.

Mr. MOLLOHAN. But that is your intention?

Mr. MELSON. Yes. Now, I was going to say, you have got to do the investigative ground work for one of these trafficking cases. So you may investigate straw purchasers who are collecting guns, but it may end up not being a ring or a group that necessarily is going to Mexico. We still have to prosecute that case. We can't tell necessarily at the beginning of an investigation that it is a trafficking case to Mexico; we have to investigate it. That type of information comes along during the investigation.

We wouldn't want the IG or anybody to come back and say hey, this Gunrunner team investigated three domestic gun trafficking organizations. Well it just didn't turn out to be one that went to Mexico. But that is our intent, yes.

Mr. MOLLOHAN. The answer to the question is that it is the intent that the GRIT personnel be solely tasked with Mexican traffic cases. The IG's concern was that there aren't procedures in place to ensure that, and I just wanted to give you an opportunity to speak to that or the importance of it.

Mr. MELSON. Yes, sir. That is why we have supervisors in each of these offices which—

Mr. MOLLOHAN. The IG's contention is that there are no procedures in place, so the supervisors could on their own discretion assign them to other duties.

Mr. MELSON. Well, I guess that—

Mr. MOLLOHAN. I am not arguing with you, I am just giving you an opportunity to—

Mr. MELSON. I understand that. I think we—

Mr. MOLLOHAN. I am sure you went back and defended yourself.

Mr. MELSON. Yes. I think that we have sufficient control over our supervisors to have them do what we want them to do with respect to these resources and what our priorities are.

Mr. MOLLOHAN. Sure. Well, that is the IG, don't look at me.

Mr. MELSON. Oh, I know, I know.

Mr. MOLLOHAN. I am just giving you a chance to respond.

Mr. MELSON. I understand that.

Mr. CULBERSON. Thank you, Mr. Chairman.

Mr. MOLLOHAN. Mr. Culberson.

Mr. CULBERSON. I did get a question too, I am a member of the Houston Gun Collectors Association, and that the director of the show had—that is why I stepped out to visit with him, because I remember there was a controversy in the Austin gun show. The Thursday before the show the local ATF agent showed up and asked the director of the Austin Gun Club to transfer all—all the private sales had to go through license dealers. Is that a new policy at the ATF, or is that just something that he did locally for that one time?

Mr. MELSON. No. It is not a policy of ATF, and it has never been a policy of ATF to do that.

As I understand the situation this was a contract dispute between the owner of the premise and the promoter of the gun show.

The owner of the premise wanted to make sure that the guns were lawfully sold on his or her premise, and asked the local police for suggestions as how they could ensure that. We were invited to attend that meeting and gave them a list, as I understand it, of different things they could do to make sure that guns were lawfully sold.

One of the suggestions, which is a common sense suggestion, is just have licensed FFLs there. And they made the decision as to what to do on their own after hearing from us.

Mr. CULBERSON. Local police?

Mr. MELSON. No, the owner of the premise.

Mr. CULBERSON. The owner of the facility. Okay.

Mr. MELSON. Who then said—

Mr. CULBERSON. You can image the uproar that caused.

Mr. MELSON. Oh, I understand, but the owner made his or her own decision as to what to do.

Mr. CULBERSON. Okay.

Mr. MELSON. And we discussed this very issue with the various industry organizations, including the organization that represents the gun show promoters at the shot show, and I think they understand that we did not suggest to them that that was the way it was going to be.

Mr. CULBERSON. Okay. But beyond the commonsense restrictions that all of us are under, you know, if I wanted to sell a gun to my friend Mr. Wolf or Chairman Mollohan, there is no restriction on that other than—there is no restriction on private individuals selling guns to each other or at a show if I want to go rent a table and sell some guns other than the commonsense ones, don't sell it if you know the guy is a felon, and don't sell it to an illegal alien. Other than those restrictions there are no restrictions on the rights of individual Americans to rent a table at a gun show and just go sell it if it is a hobby type thing or personal.

Mr. MELSON. That is right, but having said that, the owner or the promoter has the absolute right to impose whatever restrictions they want to.

Mr. CULBERSON. On the facility.

Mr. MELSON. On the facility.

Mr. CULBERSON. Got it.

Mr. MELSON. Right. That is up to them completely.

Mr. CULBERSON. Sure, yes, sir. And then the other question I got from the Houston Gun Collectors Association is how can a private individual—if a private individual is present, would a valid driver's license by somebody that wants to buy a gun, I rent a table at a show, a guy shows up, he has got a valid driver's license. Is that sufficient to protect the private seller from the probation against selling to an illegal alien? Because if you are presented with a driver's license, if you are just a private individual—

Mr. MELSON. May I have a second?

Mr. CULBERSON. Sure.

Mr. MELSON. One of these lifelines.

Mr. CULBERSON. Because that is a worry, you know, if you are just a private guy selling, you probably have individuals, Mr. Chairman, in your district that collect guns, have fun with them,

and they will go rent a table at a show and go sell guns. God bless America.

We are going to go vote here pretty quickly, but——

Mr. MELSON. Okay.

Mr. CULBERSON. Is a driver's license sufficient?

Mr. MELSON. The test is reasonableness on the part of the seller, and if it is reasonable to rely on that driver's license, then yes.

Mr. CULBERSON. That makes sense to me as an attorney. Thank you very much for your service and to all of your agents, we appreciate what you do. Thank you, Mr. Chairman.

Mr. MOLLOHAN. Which can only be answered in the context of each individual case.

Mr. MELSON. Yes.

Mr. MOLLOHAN. There'll be some questions for the record that I will certainly submit and perhaps other members of the Committee. I have a series of questions about tobacco diversion, trafficking, and how it pays off for increased enforcement.

Thank you very much for your testimony here today, Mr. Melson.

Mr. MELSON. Thank you.

Mr. MOLLOHAN. And thank you for the excellent job all of your agents and other employees do in defense of the country. We appreciate the assistance of your individual employees in every instance. They do excellent work. Thank you.

Mr. MELSON. Thank you very much. Thank you, Mr. Culberson.

**Chairman Alan Mollohan**

## Questions for the Record

- 1. How will your activities as part of the OCDETF strike forces differ from the activities undertaken by ATF as part of Project Gunrunner? How will these two groups of ATF employees interact with one another on southwest border cases?**

**Answer:** The OCDETF Program, including its Southwest Border Strike Forces and regional task forces, is a primary venue in which ATF actively coordinates its firearms trafficking enforcement mission, expertise and unique assets with those of its law enforcement partners. The effective implementation of ATF's Project Gunrunner strategy of attacking firearms trafficking along the Southwest Border includes ATF's full participation in OCDETF Strike Forces and regional task forces, and maximization of the available OCDETF resources.

Significant ATF firearms trafficking cases with a Southwest Border nexus, including those pursued under Project Gunrunner (Gunrunner) are recommended for consideration to the OCDETF Strike Forces or for designation as an OCDETF case in areas without a Strike Force. Rather than conflicting with ATF efforts under Gunrunner, ATF's participation in OCDETF enhances ATF's capabilities to achieve its mission objectives, while also greatly supporting the investigative efforts of other OCDETF agencies in this region. ATF internally coordinates its investigations among its field divisions and with other agencies through a variety of information sharing and de-confliction systems, including those utilized by OCDETF, High Intensity Drug Trafficking Areas (HIDTA) task forces and the OCDETF Fusion Center.

ATF recognizes that intelligence based targeting is the foundation for a successful response to the violence and firearms trafficking along the Southwest Border, and that these powerful criminal organizations may be disrupted and dismantled through OCDETF investigations and prosecutions. The OCDETF Program's success, resources and expertise are derived through the spectrum of participating federal, state, local and international investigative and prosecutorial agencies. OCDETF's ability to simultaneously coordinate investigations against multiple drug cartels, and its success in fostering efficient collaboration of law enforcement agencies from all jurisdictions, has affirmed the efficacy of OCDETF's operational model.

All ATF firearms trafficking cases with a significant Southwest Border nexus, including those under Project Gunrunner, could be advanced through the OCDETF Program. The criminal activities perpetrated by the Mexican drug trafficking organizations (DTOs) are not confined to the Southwest border, but rather extend throughout our country and internationally.



- 2. What is the current backlog of both paper-based and microfilm records waiting to be converted to digital format at the National Tracing Center? At what rate are you currently converting those paper and microfilm records?**

**Answer:** There are no microfilm records currently being converted to images. ATF has approximately 45,000 rolls of microfilm, which consist of 10,000 frames each that are estimated to contain information about the disposition of 855 million firearms. Additionally, all paper records are currently being converted to images.

- 3. When a trace request is submitted that requires information contained in those paper or microfilm records, that trace request must be processed manually. What is the number and percent of trace requests submitted annually that have to be addressed through this manual process?**

**Answer:** All firearms traces involve manual processes wherein ATF may review microfilm, digital images and contact active dealers to work through the chain of distribution for each firearm to identify the first unlicensed purchaser. Traces that require a search of out-of-business records stored on microfilm create an even greater manual burden. Currently, 23 percent of traces (i.e. 78,000 traces annually) require a manual search of those microfilm records. In addition, searches on non-indexed digital images also require greater manpower and slows our response time. While ATF is keeping up on digitizing paper out-of-business records, we stopped indexing them last year due to a lack of resources; there are about 15.9 million imaged but non-indexed records.

- 4. How much does it cost you, both in terms of dollars and delays in turnaround times, to do a manual trace request vs. an electronic one? What is the practical impact of those delays on law enforcement needs?**

**Answer:** All trace requests are processed manually. However, accessing records that have been indexed saves time. ATF estimates that if all out-of-business records (OBR) were imaged and indexed about 48,750 man-hours per year could be saved given the current volume of tracing, this equates to about \$1.2M of loss per year associated with this limitation. This would also allow ATF to process more traces per year and/or decrease the response time of each trace.

Delays in completing firearms trace requests slow down the investigative process, potentially delaying the apprehension of suspects and gathering of evidence, and ultimately endangering public safety. For example, this means that the National Tracing Center's (NTC) responses to 23 percent of the over 6,000 Urgent trace requests it receives each year, can take 40 minutes or more to respond.

5. **Based on your current conversion rates and the funds you have available now, how long will it take you to eliminate the paper and microfilm backlogs? How much would it cost you to speed that process up?**

**Answer:** No microfilm is being converted to images at the NTC, nor has it been for about four years. With the technology currently being used in the conversion process, ATF estimates that the one-time cost to convert the microfilm to images and fully index the firearms is about \$45 million per year for five years totaling \$225 million for the entire project.

ATF receives about 14.4 million additional out-of-business records each year, mostly on paper. Currently all paper records are converted to images, but they are not indexed by gun description. ATF expends about \$5.7 million per year for the conversion of the paper to images. However, without indexing these images, ATF is unable to realize any reductions in processing time. The estimated cost to index these records is an additional \$6.8 million per year ongoing cost and would require the addition of about 137 personnel (either contract employees or government employees) to index the incoming records.

6. **What is your funding strategy to address the backlog? Do you have funds available to reprogram for conversion activities, or will you request such funds in the future?**

**Answer:** ATF is considering abandoning its current manual indexing process and replacing its aged hardware and software with advanced equipment to obtain results at a much lower cost. ATF believes that new technology may help considerably in the conversion and indexing of both the paper and microfilm out-of-business records in terms of both time and cost. This would involve converting of all of the existing 45,000 rolls of microfilm with an automated indexing process. The microfilm conversion process would probably be outsourced to reduce costs by eliminating the need to provide permanent space and equipment for a one-time only project. ATF would also acquire advanced hardware and software to enhance its current capabilities to convert paper to images, retrieve and index images from the outsourced conversion process, automatically index firearms descriptions, and completely eliminate any microfilming within ATF. If ATF were to acquire new technology the estimated cost of this project will be a one-time expenditure of \$22.5 million with project completion in about 12 to 24 months following receipt of funding. ATF estimates that its current conversion process would take 5 years and \$225 million to complete; the cost of outsourcing and updating ATF's imaging technology is considerably lower than the estimated cost of ATF's current method of conversion.

7. Which programs, projects, or activities (PPA) proposed in the budget are unauthorized? For each such unauthorized PPA, what was the last authorization (public law reference); the last fiscal year of authorization; and the authorized funding level in the last fiscal year of authorization? What was the amount of the appropriation provided for each such PPA for the last fiscal year in which it was authorized?

Answer: Although the last authorization of appropriation, P.L. 109-162, expired at the end of FY 2009, annual appropriations extend the Department's authorities yearly until a new authorization bill is passed. This information can also be found on page 229 of the Department of Justice Budget and Performance Summary.

8. Provide for each appropriation and by major program element, the actual obligation rates by quarter for each of the last three fiscal years. Provide planned obligation rates for fiscal years 2010 and 2011, also by quarter.

Answer: The following information provides the planned obligated rates for fiscal years 2010 and 2011:

**Bureau of Alcohol, Tobacco, Firearms & Explosives  
Questions for the Record—Chairman Alan Mollohan (Question# 8 Response)  
FY2007 - FY2008**

	FY2007				FY2008				Total	
	Q1	Q2	Q3	Q4	Total	Q1	Q2	Q3		Q4
New Appropriation 1/		984,097,000								
Carryovers		504,597								
Actual Recoveries 2/		1,062,785								
Radio Transfer out		(362,623)								
		985,301,759								
										1,013,640,979
<b>Firearms</b>	155,943,098	205,996,405	188,319,916	170,542,569	720,801,988	156,220,645	242,398,356	190,977,185	137,519,773	727,115,960
Alcohol	4,104,479	5,017,507	4,704,285	3,507,913	17,334,184	3,828,770	6,069,072	4,805,555	5,900,964	20,604,362
Explosives	54,823,047	71,122,720	57,624,967	57,572,204	241,142,938	52,955,267	105,284,491	59,693,804	44,905,038	262,838,601
<b>Total</b>	<b>214,870,624</b>	<b>282,136,632</b>	<b>250,649,167</b>	<b>231,622,687</b>	<b>979,279,110</b>	<b>213,004,683</b>	<b>353,751,920</b>	<b>255,476,545</b>	<b>188,325,775</b>	<b>1,010,558,922</b>
Firearms	15.8%	20.9%	19.1%	17.3%	73.2%	15.4%	23.9%	18.8%	13.6%	71.7%
Alcohol	0.4%	0.5%	0.5%	0.4%	1.8%	0.4%	0.6%	0.5%	0.6%	2.0%
Explosives	5.6%	7.2%	5.8%	5.8%	24.5%	5.2%	10.4%	5.9%	4.4%	25.9%
<b>Total</b>	<b>21.8%</b>	<b>28.6%</b>	<b>25.4%</b>	<b>23.5%</b>	<b>99.4%</b>	<b>21.0%</b>	<b>34.9%</b>	<b>25.2%</b>	<b>18.6%</b>	<b>99.7%</b>

1/ Bureauwide is divided among the Decision units based on the target ratios of 72% (Firearms), 26% (Arson & Explosives) and 2% (Alcohol & Tobacco), except for FY09 were a Congressional Reprogramming Request was approved to change it to 75% (Firearms), 23% (Arson & Explosives) and 2% (Alcohol & Tobacco)

**Bureau of Alcohol, Tobacco, Firearms & Explosives**  
**Questions for the Record—Chairman Alu Malibran (Questions & Responses)**  
**FY2009 – FY2011**

	FY2008		FY2009		FY2010		FY2011		FY2011		Total				
	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Total		
New Appropriation 1/	182,753,279	165,674,672	264,878,403	176,533,933	181,222,219	181,222,219	221,884,068	291,961,687.08	124,387,865	819,475,930	180,553,878	233,138,176	288,517,171	162,230,451	644,479,372
Carryovers	84,534,852	52,317,482	73,520,767	44,941,024	47,890,537	47,890,537	70,777,333	105,417,631.44	46,957,680	285,642,400	63,017,863	84,011,181	81,537,223	66,819,118	266,352,315
Revolving Funds	261,784,137	222,750,753	344,498,217	231,219,657	244,342,602	244,342,602	298,168,884	465,630,121	174,707,263	1,122,589,830	289,426,848	372,945,185	346,677,668	233,834,204	1,163,008,080
Trade Transfer out	1,061,630,357	0	0	0	0	0	0	0	0	0	0	0	0	0	0
	1,061,630,357	0	0	0	0	0	0	0	0	0	0	0	0	0	0
	1,122,772,000	1,122,772,000	1,122,772,000	1,122,772,000	1,122,772,000	1,122,772,000	1,122,772,000	1,122,772,000	1,122,772,000	1,122,772,000	1,122,772,000	1,122,772,000	1,122,772,000	1,122,772,000	1,122,772,000
Firearms	18.2%	0.5%	15.6%	25.0%	16.5%	16.1%	19.8%	26.0%	11.1%	23.0%	16.4%	20.0%	22.2%	14.0%	23%
Alcohol	0.5%	0.4%	0.5%	0.4%	0.6%	0.6%	0.5%	0.7%	0.3%	2.0%	0.4%	0.5%	0.6%	0.4%	2%
Explosives	0.0%	5.0%	6.9%	4.6%	5.2%	5.2%	6.3%	9.4%	4.1%	25.0%	5.5%	7.2%	7.0%	5.1%	25%
Total	24.7%	21.0%	21.5%	21.8%	21.7%	21.7%	20.6%	26.1%	19.8%	19.0%	23.7%	21.9%	23.9%	20.1%	19.8%

1/ New Appropriation includes Appropriation for Construction and Southwest Border, FY11 is Departmental Budget figure.  
 2/ FY10 includes unexpended no-year recoveries.  
 3/ FY2009 Q1 & Q2 are actuals, Q3 (taken from the 321/0 appropriation plan) & Q4 (difference to get to 100% execution) were divided among the Decision Units based on the target ratios of 72% (Firearms), 26% (Arson & Explosives) and 2% (Alcohol & Tobacco).  
 4/ FY2011 quarterly data is based on the average quarterly data from FY09-2011.  
 5/ FY09 with a Congressional Reprogramming Request was approved to change to 15% (Firearms), 23% (Arson & Explosives) and 2% (Alcohol & Tobacco).

9. **Provide end-of-year FTE data for each department/agency/office component for each of the last five fiscal years. For fiscal year 2010, provide the current on-board FTE level and end of year (EOY) planned levels. For fiscal year 2011, provide anticipated EOY proposed FTE levels.**

**Answer:** Please see the data below for the Bureau of Alcohol, Tobacco, Firearms and Explosives. The FTE level from FY 2005 through FY 2009 is end-of-year data, FY 2010 is the current on-board, and FY 2011 and FY 2012 are anticipated levels.

Onboard levels:

End of FY2005: 4,852  
End of FY2006: 4,854  
End of FY2007: 4,834  
End of FY2008: 4,976  
End of FY2009: 5,071  
Current onboard in FY2010 (as of 1/30/10): 5,063  
End of FY2010 planned: 5,156  
End of FY2011 planned: 5,217

10. **Provide similar FTE data as requested above for all political appointee positions.**

**Answer:** The data below represents the Bureau of Alcohol, Tobacco, Firearms and Explosives' FTE data for all political appointee positions.

End of FY2005: 2  
End of FY2006: 1  
End of FY2007: 2  
End of FY2008: 3  
End of FY2009: 1  
Current onboard in FY2010 (as of 1/30/10): 0\*  
End of FY2010 planned: 0  
End of FY2011 planned: 1

\*Deputy Director is non-career, but not a Schedule C.

**11. What is the annual average cost of a fully-loaded FTE in fiscal years 2010 and 2011?**

**Answer:** The average annual cost of a fully loaded FTE in FY 2010 is \$249,200. The average annual cost of a fully loaded FTE in FY 2011 is \$272,388. (Note that for budgeting purposes, ATF does not use the fully loaded cost when calculating the first year costs of a new position because of inherent delays in allocating and hiring new positions.)

**Representative Adam Schiff**  
**Questions for the Record**

1. **Do you believe that the Recovery Act funding, along with any additional money that ATF is spending to confront gun trafficking to Mexico, is currently sufficient to take on the problem of illegal gun trafficking to Mexico? If it is not sufficient, what does ATF believe would be a sufficient amount of money to be effective?**

**Answer:** Over the past several years, there is an increasing body of evidence that demonstrates that the "southwest border" firearms trafficking issue is in fact a national issue – not limited to the four states bordering Mexico. The small arms market for Mexican drug trafficking organizations (DTOs) is international and mutable. The DTOs have proven their ability to develop and use alternate routes to deliver and receive contraband. Consequently, our goal is to cut off the flow of firearms to the DTOs, regardless of their geographic source, deny them a critical tool, and impede their ability to operate in the United States and in Mexico. The strategy is to attack all elements of the supply chain from source point to acquisition by the DTO, rather than focusing primarily on the U.S.-Mexico boundary.

ATF's strategy addresses the on-going movement of firearms from legal to illegal commerce, from source area to market area, from trafficker to triggerman. ATF agents, IOIs and federal prosecutors working together in a source area – thousands of miles from a criminal market area – can have as big an effect on violent crime and gang violence in a market area as do local police and prosecutors. This is equally true of firearms trafficking on the Southwest Border. In both instances, the agents, IOIs, and prosecutors targeting the firearms traffickers in the source areas are disarming the violent criminals and gangs in the market areas. When viewed nationally and internationally, dismantling a gun trafficking organization providing scores of guns to any of dozens of major cities and/or gangs will have a major impact on reducing the nation's overall violent crime rate.

Additional gunrunner teams solely devoted to investigating trafficking from targeted source areas to crime guns recovered in other states - and which affect the Southwest Border - could be deployed.

Additionally, to improve the identification of firearms traffickers, straw purchasers, and non-compliant Federal Firearms Licensees (FFLs), and hence reduce the threat and incidence of firearms trafficking, ATF could implement a national program that would permit the inspection of all active FFLs in the top 15 source states of trafficked firearms on a 3-year (once per license period) cycle and those FFLs in the remaining 35 states on a 5-year cycle. Repeated and increased IOI inspection of FFLs dramatically reduces the number of violations of Federal firearms regulations found on return inspections, dramatically reduces the



number of firearms missing and unaccountable from inventories, and dramatically reduces the number of prohibited firearm sales. The current workforce of 601 non-supervisory IOIs has responsibility to inspect the approximately 113,000 FFLs and 12,000 explosives licensees and permittees. Additional IOI resources will ensure that all business firearms licensees are inspected at a frequency that will detect diversion by straw buyers, traffickers, and corrupt licensees while serving as an incentive for voluntary compliance by the overall licensee population.

**2. The results of the Gun Runner Impact Teams deployment were encouraging, but it was temporary. Does ATF need to have more personnel permanently assigned to the Southwest border?**

**Answer:** In April 2009, ATF deployed approximately 100 special agents, IOIs and other personnel to its Houston Field Division for 120 days under an intelligence-driven effort known as the Gunrunner Impact Team initiative (GRIT). This temporary infusion of resources supplemented permanent resources to produce immediate results. During this 4-month deployment, the ATF seized 443 firearms, and state and local partners seized 171 additional firearms based on leads developed by the GRIT.

The FY 2011 request allows ATF to permanently annualize Gunrunner Team positions provided through the FY 2009 Recovery Act, which will ensure appropriate continued staffing along the Southwest Border.

**3. I would also like to request that you provide us in writing a more detailed breakdown of the following information:**

- **Total ATF yearly expenditures from FY 2006 to FY 2010, and expected expenditures in FY 2011, for operations related to curbing gun trafficking into Mexico.**

**Answer:** The following information is the Bureau of Alcohol, Tobacco, Firearms and Explosives' yearly expenditures for curbing trafficking into Mexico, specifically, from FY 2006 to FY 2010 and estimated amounts for FY 2010 and FY 2011.

FY 2006: \$10,285,000  
 FY 2007: \$22,514,000  
 FY 2008: \$33,689,000  
 FY 2009: \$74,005,000  
 FY 2010 (estimate): \$88,002,000  
 FY 2011 (estimate): \$97,289,000

- **For FY 2006 to FY 2010, and expected expenditures in FY 2011, the real or estimated percentage of ATF overall resources that are devoted to addressing Mexico gun trafficking related issues.**

**Answer:** Following is a breakdown of the percentages for ATF expenditures devoted to addressing gun trafficking related issues in Mexico as compared to our overall resources:

FY 2006: 1.1%  
 FY 2007: 2.3%  
 FY 2008: 3.4%  
 FY 2009: 7.4%  
 FY 2010 (estimate): 7.9%  
 FY 2011 (estimate): 8.4%

- **Details of the project names, offices, contracts, grants, or other arrangements under which ATF is allocating resources - including both funding and personnel - for its efforts to disrupt gun trafficking into Mexico, and the amount of funding and number of personnel so allocated.**

**Answer:** ATF began Project Gunrunner in its four field divisions bordering Mexico. Personnel dedicated to Gunrunner are stationed throughout these divisions as follows:

- Los Angeles Field Division: Los Angeles, El Centro, Riverside, and San Diego.
- Houston Field Division: Houston, Austin, Beaumont, Brownsville, Corpus Christi, Laredo, McAllen, San Antonio and Waco.
- Phoenix Field Division: Phoenix, Albuquerque, Las Cruces, Roswell, Tucson, and Yuma.
- Dallas Field Division: Dallas, El Paso, Ft. Worth, Lubbock, Tulsa, and Tyler.

During FY 2009, in order to strengthen efforts to combat firearms trafficking along the U.S.-Mexican border, the American Recovery and Reinvestment Act (ARRA) provided \$10 million and 37 positions to ATF for the establishment of dedicated Project Gunrunner teams in Las Cruces, El Centro, and McAllen, and to place ATF personnel at the U.S. consulates in Tijuana and Ciudad Juarez, Mexico. The 37 positions include 21 special agents based in the U.S., four special agents deployed to Mexico, six IOIs, and six support personnel. The FY 2011 President's Budget requests \$11.8 million to annualize these positions provided through the ARRA. Also, in FY 2009, ATF utilized \$5.9 million in Southwest Border funding, including 22 special agent, 16 IOI and 2 support positions, to establish new Gunrunner groups in Houston and Phoenix and increase its regulatory presence in the region.

Additionally, in April 2009, ATF deployed approximately 100 special agents, IOIs and other personnel to its Houston Field Division for 120 days under an intelligence-driven effort known as the Gunrunner Impact Team initiative (GRIT). As discussed previously, this temporary infusion of resources supplemented permanent resources to produce immediate results.

In FY 2010, ATF received \$17.9 million in Southwest Border-related funding and is establishing new Gunrunner groups in Tucson, Arizona and El Paso, Texas, and will increase Southwest Border-related staffing by 34 special agents, 45 IOIs, and 13 support personnel in these and other field offices, as well as in Mexico, at the El Paso Intelligence Center, and at the ATF National Tracing Center.

To strengthen ATF's efforts to combat firearms trafficking along the US-Mexican border, the American Recovery and Reinvestment Act (P.L. 111-5) provided \$10 million to ATF in FY 2009 for the establishment of Project Gunrunner teams in Las Cruces, NM, El Centro, CA, and McAllen, TX, and to support existing staff at the US consulates at Tijuana and Juarez, Mexico. ATF is requesting \$11,815,000 and 37 positions to annualize those resources. The annualization is necessary because the Act did not provide base funding for the salaries of the new special agents assigned to, nor the operation requirements of the three new Project Gunrunner locations. The FY 2011 budget cycle is the first opportunity ATF has had to request annualization of the 37 positions, which include 21 special agents based in the US, four special agents deployed to Mexico, six IOIs, three intelligence research specialists and three investigative assistants. Absent the annualization, ATF will be unable to sustain the three new Gunrunner teams without suffering an \$11.8 million operating deficit.

- **Total resource deployments, including ATF agents, Industry Operations Inspectors and other personnel along the Southwest border and deployed to Mexico, specifically designated to deal with gun trafficking into Mexico.**

**Answer:** Project Gunrunner resources are concentrated in ATF's four field divisions bordering Mexico, as well as in Mexico and at the El Paso Intelligence Center (EPIC).

As of March 2010, ATF has assigned approximately 190 special agents, 145 IOIs and 25 support staff to Project Gunrunner in the four contiguous Southwest Border states. Nine special agents, one intelligence analyst, and 5 Foreign Service Nationals (FSN) is assigned in Mexico, as follows:

- Mexico City: 3 agents, 1 intelligence analyst, 2 administrative FSNs, 2 FSN investigators
- Monterrey: 2 agents, 1 FSN
- Juarez: 2 agents
- Tijuana: 2 agents

Additionally, in April, 2009, ATF deployed approximately 100 special agents, IOIs and other personnel to its Houston Field Division for 120 days under the Gunrunner Impact Team initiative (GRIT). ATF is establishing new Gunrunner groups in Tucson, Arizona and El Paso, Texas, in FY 2010 and will increase Southwest Border-related staffing by 34 special agents, 45 IOIs, and 13 support personnel in these and other field offices, as well as in Mexico, at the El Paso Intelligence Center, and at the ATF National Tracing Center. This includes eight additional agent positions for Mexico: 3 for Mexico City; 2 for Guadalajara; 2 for Hermosillo, and 1 for Merida.

- **Progress in establishing Spanish-language eTrace capacity in Mexico particularly along the Southwest border.**

**Answer:** Spanish eTrace started running in parallel with the earlier version of eTrace in December 2009. The Government of Mexico was given access to Spanish eTrace during this time and has been using the system since then. As of March 2010, Mexico has submitted over 90 trace requests using the Spanish eTrace, all of which have been processed by the National Tracing Center (NTC) staff. It is also being utilized in Guatemala, Costa Rica and El Salvador. By the end of March 2010, ATF will provide access to all Spanish-speaking eTrace users.

- **Any steps that ATF has taken to address the concerns raised by DOD's Inspector General in its September 2009 Interim Review of ATF's Project Gunrunner.**

**Answer:** As to OIG recommendation #1 (unresolved with OIG): ATF assess whether other locations along the southwest border represent a better use of Gunrunner resources intended for Roswell and Las Cruces to ensure maximum impact of Gunrunner resources.

ATF does not agree with the OIG assessment of ATF's justification for opening new offices in Las Cruces and Roswell, Mexico. ATF continues to see evidence that the Las Cruces area is being used as a source of firearms trafficked to Mexico. In addition, opening these offices is consistent with our intelligence-based, proactive strategy. In the past few weeks alone, ATF has opened several new criminal investigations as a result of suspicious firearms purchases in Las Cruces and Deming, New Mexico. In these instances firearms purchased by these suspected traffickers have already been recovered in Mexico. Consequently, ATF remains confident in the decision to open offices in Las Cruces and Roswell.

As to OIG recommendation #2 (resolved with OIG): ATF's Phoenix and Dallas Field Divisions develop deconfliction protocols to manage current and potential jurisdictional overlaps.

ATF has well established procedures for coordinating interdivisional activities that include communications between supervisory personnel whenever personnel from one division plan to conduct investigative or enforcement activity in another division's area of responsibility. ATF is unaware of any significant deconfliction issues that exist between the Phoenix and Dallas Field Divisions.

As to OIG recommendation #3 (resolved with OIG): ATF clearly define the roles and reporting structure of each staff member on the new Gunrunner teams.

ATF has not completed the specific guidelines for IOI and IRS personnel assigned to Gunrunner groups. However, it is ATF's intention that IOI and IRS personnel will perform duties consistent with their position descriptions and in support of the mission of investigating suspected gun trafficking to Mexico and related border violence.

As to OIG recommendation #4 (resolved with OIG): ATF ensure that staffs on the new Gunrunner teams are not regularly diverted from working on firearms trafficking investigations to Mexico or related violent crime.

Personnel assigned to the Gunrunner teams will be used primarily, if not exclusively, to investigate gun trafficking with a nexus to Mexico and related violent crime. The mission of the Gunrunner groups will continue to be clearly communicated to appropriate field division management who are primarily responsible for ensuring that personnel assigned to Gunrunner groups are not regularly diverted from working on matters pertaining to gun trafficking to Mexico. Under current ATF policy, field division management (with oversight from ATF Headquarters) is responsible for ensuring that enforcement groups conduct operations consistent with the established mission and that personnel are working in a productive and efficient manner. We believe that the structure to ensure Gunrunner groups do not deviate from the Gunrunner mission already exists.

As to recommendation #5 (resolved with OIG): ATF ensure sufficient current staff are proficient in Spanish by: a) identifying the positions and job categories of new Gunrunner team members that require Spanish language proficiency, b) prioritizing training for those individuals having a safety-related need for Spanish language skills, and c) establishing measureable goals for providing Spanish language training to Gunrunner team members.

ATF has compiled a list of Gunrunner team members from the four principle Southwest Border field divisions who have requested Spanish language training. Positions and job categories include special agents, IOIs, IRSs, and IAs.

There are currently 127 employees prioritized as needing safety-related Spanish language skills. ATF is offering a blended learning solution of classroom-based and on-line language training licenses to meet this need. ATF purchased 1-year Rosetta Stone language training licenses and began distributing them in December 2009. In addition, the 40-hour law enforcement survival Spanish

language class conducted at the Federal Law Enforcement Training Center (FLETC) will be offered to these employees.

ATF personnel will participate in four FLETC language courses in FY 2010 and two or three courses annually thereafter. The goal is to offer all personnel assigned to Gunrunner teams the opportunity to complete Spanish language training. During FY 2010, at least 75 percent of Gunrunner personnel requiring Spanish language training will be provided the opportunity to attend classroom-based Spanish language training at FLETC. Lastly, during FY 2010 all Gunrunner team members requiring Spanish language training will be provided the opportunity to obtain a 1-year Rosetta Stone online training license.

As to recommendation #6 (resolved with OIG): ATF include in future vacancy announcements for Gunrunner team members that Spanish language proficiency is desirable.

ATF has made the recruitment, testing, interviewing, and hiring of Spanish speaking special agent applicants a priority. The Bureau intends to hire a sufficient number of Spanish speaking personnel to fill a 2010 basic academy training class. ATF is currently conducting targeted recruitment for Spanish speaking applicants at various colleges and universities along the southwest border. ATF will consider future Spanish language vacancy announcements as necessary.

As one example of progress, ATF intends to post a vacancy announcement for the position of investigative analyst in Las Cruces, New Mexico. The vacancy announcement will specifically state that Spanish-language proficiency is desirable.

As to recommendation #7 (resolved with OIG): ATF develop more Recovery Act program measures to reflect firearms trafficking specific data for criminal cases and defendants referred for prosecution as a result of Project Gunrunner.

ATF captures and evaluates many data points in its internal assessment of Project Gunrunner that have not been made public and which, while provided to the OIG during the initial Gunrunner assessment, were not included in the OIG report. These include the numbers of firearms trafficking cases referred for prosecution, number of defendants recommended for prosecution, referrals to Mexican (recently enhanced) and U.S. law enforcement agencies, gun dealer inspections resulting in criminal referrals, firearms seized, arrests, and potential firearms trafficking suspects identified.

ATF believes that the fundamental expectations of Congress (and the public) when funding new hires and establishing new criminal enforcement offices is that it will conduct criminal investigations and recommend defendants for prosecution in order to reduce illegal firearms trafficking and violent crime. ATF believes that reporting results against these fundamental expectations is the best course of action given the limitations imposed upon us.

The recommendations that ATF track the number of firearms submitted for tracing that lead to trafficking investigations, the number of firearms prevented from being trafficked, and collaboration with other agencies resulting in exchange of information and reduction of firearms trafficking, are not achievable given the limitations of ATF's information systems. ATF's firearms tracing-related information systems are in the very first stages of a two or more year modernization effort that may afford the ability to assess these measures upon completion of the project.

**Representative Mike Honda**  
**Questions for the Record**

- 1. When ATF traces a gun, does it routinely ask a federal firearms licensee (FFL) if the gun was originally sold at a gun show? If so, when did your agency start this practice? If not, why not?**

**Answer:** As part of the tracing process, ATF does ask federal firearms licensees (FFLs) if the firearm being traced had been sold off premises and, if so, at what location the transaction took place. This information is required to be kept by the FFL under the Gun Control Act (GCA). The National Tracing Center (NTC) sets an indicator within the trace request record in the Firearms Tracing System and records the address in a notes field. Although the information is not retrievable by address, all trace requests where the firearm was sold off premises can be ascertained via the indicator. The NTC modified their trace process to include this in June 2008. Further modification to make the address query-able will be incorporated into future upgrades of the tracing system.

- 2. Does ATF support closing the gun show loophole on a national basis?**

**Answer:** The Department of Justice is leading a comprehensive intra-departmental effort of reviewing all Federal firearms policies in order to determine the best strategy for combating firearms violence.

- 3. Has the agency taken steps to require background checks at gun shows?**

**Answer:** There are generally two types of firearms sellers who operate at gun shows: Federally licensed firearms dealers and non-licensed private sellers. By law, licensed dealers are required to conduct a background check on anyone who acquires a firearm from them, and maintain transaction records. ATF routinely conducts compliance inspections to ensure that licensed dealers are fulfilling their obligation to conduct background checks and maintain their required records. With respect to private sellers, there is no federal requirement for them to conduct a background check on a prospective purchaser of one of their firearms. Absent a change in federal law, ATF cannot compel private sellers to conduct background checks.

- 4. What else is the agency doing to curb illegal sales at gun shows?**

**Answer:** 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 from licensed and unlicensed dealers. 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 field divisions develop proactive strategies to assess the impact of illegal firearms trafficking to criminals, terrorists, gangs, illegal aliens and juveniles that can occur at gun shows and flea markets within their areas of responsibility. As with all investigations, ATF bases its decisions to conduct investigative operations at gun shows on significant law enforcement intelligence and information from various 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.

As part of ATF's firearms trafficking strategy, ATF investigates private sellers who are 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. Through ATF's coordinated investigative and outreach activity, ATF seeks to deter private sellers who engage in the business of buying and selling firearms without a license.

ATF IOIs complement ATF's criminal enforcement endeavors at gun shows by proactively educating attendees and preventing 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 what participants can legally do at gun shows, which varies for Federal firearms licensees (FFL) from within the state where the gun show is held, for FFLs from another state, and for private individuals.

**5. Has the ATF beefed up its own undercover investigations to identify problematic gun shows and problematic dealers at those shows since January 2009? If not, what sort of resources do you need to do so?**

Answer: In June 2009, ATF implemented a national firearms trafficking enforcement strategy that placed renewed emphasis on firearms trafficking enforcement. This strategy uses the assets, capabilities and legal authorities unique to ATF to more efficiently and effectively identify, investigate, disrupt and refer for prosecution those firearms traffickers responsible for arming violent criminals both within and outside the borders of the US.

Focused enforcement—through criminal investigations and proactive inspections of firearm licensees with a nexus to criminal activity—is the key to our strategy. Identifying and disrupting the sources and methods by which violent criminals and prohibited persons acquire illegally trafficked firearms will reduce violent crime. Intelligence data is analyzed to determine the scope (e.g. international, national/interstate, regional/intrastate), and the sources and methods used (e.g. unlicensed dealers, straw purchasers, thefts from gun dealers, residential burglaries, gun shows, internet sales, unwitting or corrupt dealers, illegal imports/exports) to facilitate illicit firearms trafficking.

Our increased focus on firearms trafficking enforcement should not be viewed as new tactics, but rather as a strategy to more effectively balance our efforts against armed violent offenders and the firearms traffickers who arm them.

When there is reasonable cause to believe a violation of the Federal firearms laws has occurred, industry operations investigators utilize the inspection process to establish a link to illicit firearms activity to secondary markets (e.g. gun shows, flea markets). ATF special agents conduct criminal investigations, which may include undercover investigations of gun dealers and unlicensed sellers of firearms at gun shows, and prohibited persons who, directly or through the use of straw purchasers, illegally acquire or attempt to acquire firearms from gun dealers or unlicensed persons selling firearms at gun shows.

ATF policies include specific guidelines regarding the appropriate conduct of investigations, including those targeting gun dealers and unlicensed individuals selling firearms at gun shows. Undercover investigative techniques are utilized by ATF agents when appropriate. Policies allow for undercover investigations only when an identified target is suspected of violating laws.

ATF currently uses all available information and intelligence to identify those persons responsible for conducting illegal transactions at gun shows.

**6. Is ATF reviewing the Mayors Against Illegal Guns' Blueprint for Federal Action on Illegal Guns?**

**Answer:** ATF is working with the Department to conduct a review of how we can best use existing authorities to fight gun crime and illegal gun trafficking. That review is ongoing. As we continue to review the Department's firearms enforcement policies, practices, and priorities, we will consider input from a variety of sources, including the report from Mayors Against Illegal Guns.

**7. Has ATF implemented any of the 40 recommendations? If so, which ones? Does it have any plans to do so? If so, which recommendations?**

**Answer:** ATF is working with the Department to review how we can best use existing authorities to fight gun crime and illegal gun trafficking. That review is ongoing. As we continue to review the Department's firearms enforcement policies, practices, and priorities, we will consider input from a variety of sources, including the report from Mayors Against Illegal Guns.

**Ranking Member Frank R. Wolf**

Questions for the Record

**Project Gunrunner**

- 1. You began Project Gunrunner by deploying base resources, and Congress then provided increases in the Stimulus bill and in the FY10 bill. How many Gunrunner teams are now deployed, and where are they located?**

**Answer:** ATF will have seven funded Gunrunner teams established in FY 2010. ATF established 5 dedicated Gunrunner teams in FY 2009, funded by its base appropriation and the ARRA. These teams are located in Houston and McAllen Texas; Las Cruces/Roswell, New Mexico; El Centro, California; and Phoenix Arizona. The FY 2010 appropriation provided funding for ATF to establish new Gunrunner teams in Tucson, Arizona and El Paso Texas. Additionally, since the establishment of Gunrunner in 2006, ATF has had existing special agents, IOIs, and support personnel assigned to each of the cities below dedicated to the initiative:

- Los Angeles Field Division: Los Angeles, El Centro, Riverside, and San Diego.
- Houston Field Division: Houston, Austin, Beaumont, Brownsville, Corpus Christi, Laredo, McAllen, San Antonio and Waco.
- Phoenix Field Division: Phoenix, Albuquerque, Las Cruces, Roswell, Tucson, and Yuma.
- Dallas Field Division: Dallas, El Paso, Ft. Worth, Lubbock, Tulsa, and Tyler.

- 2. Have you begun to see evidence of their impact on denying firearms to the Mexican drug trafficking organizations? Have there been measurable increases in guns seized and decreases in gun violence in the border region?**

**Answer:** Through the concerted efforts of federal, state and local law enforcement agencies, the violence on the U.S. side of the Southwest Border has remained relatively low; however, that is not the case on the Mexican side of the border and law enforcement must continue to target the drug trafficking organizations (DTOs) and deny their access to U.S.-sourced firearms by aggressively investigating firearms traffickers through Project Gunrunner.

ATF has steadily increased the number of firearms seizures relating to Project Gunrunner. During the four years preceding the initiation of Project Gunrunner (FY 2002-2005), ATF's four Southwest Border Field Divisions seized 18,267 firearms, as compared to the seizure of 31,157 firearms in those same

Southwest Border Field Divisions during Project Gunrunner (FY 2006-2009). This represents an increase of more than 70 percent.

Specifically, in FY 2009, ATF seized over 2,500 firearms and 265,000 rounds of ammunition destined for the Southwest Border and investigated 179 Southwest Border firearms trafficking cases nationwide. In those cases, ATF obtained evidence that 4,964 firearms were trafficked to Mexico.

Further, in 2009, Mexico submitted 53,329 firearms for tracing, which were recovered over a period of years.

In the first quarter of fiscal year 2010, ATF referred 42 cases and 113 defendants for prosecution under Project Gunrunner. ATF also obtained evidence that 323 firearms were trafficked to Mexico and seized a total of 280 firearms and 243,841 rounds of ammunition.

- 3. You are asking for an increase of \$11.8m for FY11. Will this result in an increase in the number of Gunrunner teams? What is the annual amount required to deploy one Gunrunner team?**

**Answer:** The \$11.8 million request in the FY 2011 budget will annualize the costs associated with 37 positions (25 Agents, 6 Industry Operations Investigators (IOIs) 3 Investigative Assistants (IAs) and 3 Intelligence Research Specialists (IRSs)) and 3 offices (Las Cruces, NM, El Centro, CA, and McAllen, TX) originally provided to ATF in FY 2009 through the American Reinvestment and Recovery Act (ARRA). Since the ARRA funds were appropriated after the FY 2010 budget was submitted to Congress, the FY 2011 budget request is the first opportunity ATF has had to request the permanent annualization of these positions and funds. This request, if granted, will provide permanent funding in ATF's base budget for the aforementioned positions and offices and is therefore shown as a program increase. These funds will not result in an increased number of Gunrunner Teams.

A single Gunrunner Team, staffed with one supervisor, ten agents, two IOIs, two IAs, and one IRS fully outfitted, trained, and housed in an equipped office has a first year estimated cost of \$3.9 million.

- 4. Your budget states that of the firearms recovered in Mexico and then traced through ATF, over 90 percent originate from sources in the U.S. Is this a representative sample of all Mexican crime guns, or are the ones traced through ATF ones that are more likely to have a U.S. origin? Are there any reliable statistics about the sourcing of Mexican crime guns overall?**

**Answer:** Ninety percent of the crime guns recovered in Mexico and traced by ATF originated from sources in the United States. It should be noted that not all crime guns recovered in Mexico are submitted to ATF for tracing. As such, ATF has no way of estimating overall crime gun statistics for Mexico. Moreover, we do not know what criteria Mexico uses to select crime guns to trace.

It is important to note that if a firearm trace report indicates that a gun originally came from the U.S., it does not necessarily mean that the gun was illegally trafficked directly from the U.S. into Mexico. For instance, a licensed U.S. exporter could legally sell a firearm to a purchaser in a third country; that firearm might subsequently be illegally trafficked from the third country into Mexico, be used in a crime and then traced by ATF.

Regardless of the percentage of guns that are trafficked from the U.S. into Mexico, our mission is to stop the diversion of firearms from lawful commerce to illicit activities, and that requires us to combat the flow of U.S.-sourced weapons to Mexican drug cartels.

**5. As of today, how many agents and industry investigators have you deployed to the region as part of this initiative, and how much are you spending this year to do that?**

**Answer:** As of March 2010, ATF has permanently assigned approximately 190 special agents, 145 Industry Operations Investigators (IOIs) and 25 support staff to Project Gunrunner in the four Southwest Border states. In 2009, ATF temporarily deployed 100 personnel, investigative equipment, and other resources to its Houston Field Division for 120 days as part of our Gunrunner Impact Team (GRIT) initiative. Efforts are underway to deploy the additional \$17.9 million in resources appropriated to ATF in FY 2010.

**6. How many licensed US gun dealers are there in the Southwest Border region? With Project Gunrunner have you been able to increase the frequency of inspecting those dealers? By how much?**

**Answer:** There are currently approximately 7,300 licensed gun dealers and pawnbrokers located in the Southwest Border region, which includes the geographic areas of responsibility of ATF's Los Angeles, Phoenix, Houston and Dallas Field Divisions, excluding Oklahoma.

In FY 2008, ATF conducted 2,007 compliance inspections of gun dealers in the Southwest Border region. In 2009, this number increased by 45 percent to 2,920, a significant increase in the number of compliance inspections conducted. At this time, the increase in Industry Operations Investigators (IOIs) along the Southwest Border due to Project Gunrunner is allowing ATF to select more gun dealers for inspection based upon certain risk determinations, to ensure that gun

dealers are subject to appropriate compliance inspections. Among the criteria used are National Instant Criminal Background Check System (NICS) denial ratios, firearms traces, multiple sales reports and other indicators of risk.

In FY 2010, ATF will hire 45 additional IOIs to support Project Gunrunner. Additional IOIs will enable ATF to inspect dealers more frequently, within the statutory provisions that limit ATF's right of entry to once in a 12-month period for purposes of a compliance inspection. ATF's goal for inspecting licensed dealers is a frequency of once every 3 years for the majority of those operating in the Southwest Border region. It is too early to analyze the change in the frequency of compliance inspections in this region over a meaningful period of time.

**7. The Gunrunner initiative also includes the deployment of ATF agents to U.S. Consulates in Mexican Border cities. How many positions have you established in Mexico, in what cities, and what work are those agents performing related to the Gunrunner mission?**

**Answer:** There are nine special agents, one intelligence analyst, and five Foreign Service nationals (Mexican civilians employed by ATF) in the Mexico Country Office. This includes the following distribution across Mexico:

- Mexico City: 3 agents, 1 intelligence analyst, 2 administrative Foreign Service Nationals (FSN), 2 FSN investigators
- Monterrey: 2 agents, 1 FSN
- Juarez: 2 agents
- Tijuana: 2 agents

In FY 2010, the following additional positions are planned in Mexico: 3 agents in Mexico City; agents in Guadalajara; 2 agents in Hermosillo; and 1 agent in Merida

The activities of the ATF personnel related to Project Gunrunner include coordinating firearms and explosives trafficking investigations by facilitating intelligence and investigations between domestic ATF agents and Mexican law enforcement to identify and disrupt sources of these weapons. Activities performed in support of this mission include providing direction and oversight to assist Mexico in implementing a comprehensive firearms tracing program utilizing ATF's Spanish eTrace. ATF agents also provide technical assistance during inspections of firearms seizures and during responses to explosives recoveries and bombings to assist Mexico in post blast investigations and evidence collection. ATF agents also provide training to Mexican counterparts in areas such as firearms interdiction, to include firearms and explosives identification, tracing, firearms trafficking investigations and post blast investigations.

**8. Is the eTrace weapons tracing system currently available at all the U.S. Consulates in Mexico?**

**Answer:** Yes, the eTrace system is available at all nine U.S. Consulates in Mexico. These are Monterrey, Hermosillo, Guadalajara, Tijuana, Ciudad Juárez, Nogales, Matamoros, Nuevo Laredo and Mérida. For those U.S. Consulates that are not staffed by ATF personnel, we have trained State Department personnel to use eTrace.

**9. Part of the Gunrunner plan discussed last year involved the deployment of a Spanish language version of eTrace. What is the status of that effort? Are there any funds in your FY11 request or from other sources to pursue this further?**

**Answer:** Spanish eTrace started running in parallel with the earlier version of eTrace in December 2009. The Government of Mexico was given access to Spanish eTrace during this time and has been using the system since then. As of March 2010, Mexico has submitted over 90 trace requests using Spanish eTrace, all of which have been processed by the National Tracing Center (NTC) staff. It is also being utilized in Guatemala, Costa Rica and El Salvador. By the end of March 2010, ATF will provide access to all Spanish-speaking eTrace users. The Department is not requesting any additional funding in the FY 2011 budget.

**10. How would you characterize the cooperation you are getting from your Mexican counterparts, and their efforts to take meaningful action against the cartels?**

**Answer:** ATF has successful cooperative agreements in place with our Mexican counterparts and works with them collaboratively every day.

**11. We heard last year that the increased efforts by the Mexican police and armed forces had the effect of pushing some of the trafficking activity further south to some of the Central American countries which may not be as prepared to deal with the law enforcement challenges? Have you seen this with firearms as well? And does Project Gunrunner also involve Central American partners? If so, how?**

**Answer:** With the increased law enforcement presence on the U.S.-Mexico border, cartels have sought alternate firearms-explosives trafficking routes using Mexico's southern border. Central American countries generally have fewer controls and resources than Mexico; therefore criminals have exploited these weaknesses by establishing alternative trafficking routes throughout Central America for firearms and explosives. Guatemala in particular has been identified as a major source of firearms and explosives for drug trafficking organizations on



Mexico's southern border. Project Gunrunner does not involve any Central American partners.

**12. The FY11 request does not provide for additional staff resources for Project Gunrunner. If you had additional resources to devote the effort against illegal arms trafficking to Mexico, what would you do with them? Fund additional teams? Where is the greatest unmet need?**

**Answer:** Additional resources would be used to fund a number of different programs that impact arms trafficking to Mexico. Funds would support additional teams placed in strategic locations throughout the country. Additional funds would also provide additional support staff, including analysts at the Violent Crime Analysis Branch, the United States Bomb Data Center, and the Firearms Tracing Center.

Once thought to be merely a regional problem that focused law enforcement on border interdiction efforts and criminal investigations solely in the four Border States, sources of firearms and explosives to Mexico are now found in nearly all 50 States. Sales are increasingly made farther away from the border (in states including Florida, Georgia, Nevada, Oklahoma, Washington and Illinois) where firearms cost less and often where the drug cartels have established U.S.-based drug distribution networks. Consequently, our goal is to cut off the flow of firearms to the cartels regardless of their geographic source, deny them a critical tool, and impede their ability to operate in the U.S. and Mexico. The strategy is to attack all elements of the supply chain from source point to acquisition by the cartel rather than focusing primarily on the US-Mexico border.

Using firearms trace data to identify specific source areas, ATF would establish additional gunrunner teams solely devoted to investigating trafficking from those targeted source areas which affect the Southwest border.

To improve the identification of firearms traffickers, straw purchasers, and non-compliant Federal firearms licensees (FFLs), and hence reduce the threat and incidence of firearms trafficking, ATF proposes to implement a national program that would permit the inspection of all active FFLs in the top 15 source States of trafficked firearms on a 3-year cycle (once per license period) and those FFLs in the remaining 35 States on a 5-year cycle. Repeated and increased inspection of FFLs dramatically reduces the number of violations found on return inspections, the number of firearms missing and unaccountable from inventories, and the number of prohibited firearm sales. The current workforce of approximately 600 non-supervisory Industry Operations Investigators (IOIs) has responsibility to inspect the approximately 113,000 FFLs and 12,000 explosives licensees and permittees. Additional IOI resources will ensure that all business firearms licensees are inspected at a frequency that will detect diversion by straw buyers, traffickers, and corrupt licensees while serving as an incentive for voluntary compliance by the overall licensee population.

- 13. The OIG looked at Project Gunrunner and had some criticisms. Can you tell the Committee how the ATF is responding to each? First, the placement of the teams. The OIG said that some of the locations did not correspond to gun trafficking corridors. Why did you decide to place teams in Las Cruces and Roswell?**

**Answer:** ATF continues to see evidence that the Las Cruces area is being used as a source of firearms trafficked to Mexico. In addition, opening these offices is consistent with our intelligence-based, proactive strategy. Recently, ATF has opened several new criminal investigations as a result of suspicious firearms purchases in Las Cruces and Deming, New Mexico. In these instances, firearms purchased by these suspected traffickers have already been recovered in Mexico. Consequently, ATF remains confident in the decision to open offices in Las Cruces and Roswell.

- 14. Second, they found that you didn't have enough personnel with Spanish language proficiency. What are you doing to fix that?**

**Answer:** In 2006, ATF began a foreign language training program using Washington, DC, area training providers for overseas employees prior to their deployment. Spanish language training was provided by Berlitz and the U.S. Department of State. ATF has also completed pilots of two online training programs and two classroom-based courses. In 2008, ATF implemented a blended learning solution for Spanish language training that combines a Rosetta Stone Spanish Online training license and attendance at a 40-hour Law Enforcement Survival Spanish Course conducted by the Department of Homeland Security at the Federal Law Enforcement Training Center in Artesia, New Mexico. Rosetta Stone is an online, self-paced, language-training tool that delivers technology-based solutions for learning Spanish and provides ongoing measureable results. A classroom-based 10-day Spanish Immersion Law Enforcement Training Course, conducted by the Public Agency Training Council in Indianapolis, Indiana, was also funded for 45 Southwest Border-based employees.

In FY 2009, ATF developed a list of personnel assigned to the Southwest Border divisions who required one or both of the training solutions mentioned above. The total requiring the classroom-based training was 130 individuals and the process to fund and schedule the Law Enforcement Survival Spanish Course in FY 2009 and FY 2010 was completed. ATF also established measureable goals for providing Spanish language training to Project Gunrunner team members. The FY 2010 goals of five 40-hour courses (training a possible total of 90 individuals) and purchasing 250 Rosetta Stone Spanish licenses with activation through December 30, 2010, have been met this fiscal year. To date, there have been 78 ATF employees who have successfully completed this course.

In early January 2010, 135 Rosetta Stone training licenses were activated to special agents, IOIs and intelligence research specialists assigned to Southwest Border Field Divisions as part of the blended training solution of classroom-based and online Spanish training. In addition to these licenses, ATF is currently distributing 100 licenses to its Special Operations Division, International Affairs Office, Southwest Border Working Group and remaining field divisions nationwide. Additionally, on a case by case and duty/program responsibility basis, employees throughout the United States may receive a Rosetta Stone license and a slot to attend the 40-hour course, after consideration is given to the first priority Southwest border-based employees.

ATF has also addressed its need for increased Spanish proficiency through its recruitment and hiring efforts. From October 2008 through December 2008, ATF advertised a special agent vacancy announcement with Spanish proficiency identified as a preferred qualification, which yielded approximately 700 qualified applicants. The subsequent entrance examination under this announcement was offered in every field division with applicants, as well as Honolulu and Puerto Rico, in a total of 26 locations. ATF is conducting targeted recruitment efforts in states along the Southwest Border. In September 2009, these efforts included recruitment at the University of Texas – El Paso, New Mexico State University – Las Cruces, and El Paso Community College. In 2009, ATF recruiters participated in career fairs at approximately 10 colleges and universities identified as Hispanic Serving Institutions by the Hispanic Association of Colleges and Universities (HACU), an effort that has continued in 2010.

**15. Finally, they were critical of your performance measures. What are you measuring to determine whether Gunrunner is having an impact on firearms trafficking in the Border Region?**

Answer: ATF captures and evaluates many data points in its internal assessment of Project Gunrunner that have not been made public and which, while provided to the OIG during the initial Gunrunner assessment, were not included in the OIG report. These include the numbers of firearms trafficking cases referred for prosecution, number of defendants recommended for prosecution, referrals to Mexican (recently enhanced) and U.S. law enforcement agencies, gun dealer inspections resulting in criminal referrals, firearms seized, arrests, and potential firearms trafficking suspects identified.

ATF believes that the fundamental expectations of Congress (and the public) when funding new hires and establishing new criminal enforcement offices is that it will conduct criminal investigations and recommend defendants for prosecution in order to reduce illegal firearms trafficking and violent crime. ATF believes that reporting results against these fundamental expectations is the best course of action.

The recommendations that ATF track the number of firearms submitted for tracing that lead to trafficking investigations, the number of firearms prevented from being trafficked, and collaboration with other agencies resulting in exchange of information and reduction of firearms trafficking are not achievable given the limitations of ATF's information systems. ATF's firearms tracing-related information systems are in the very first stages of a two or more year modernization effort that may afford the ability to assess these measures upon completion of the project.

#### **Gangs – Violent Crime Impact Teams (VCIT)**

##### **16. Your budget refers to 31 existing VCIT teams. How do you select the locations, and how much in ATF resources goes into each team?**

**Answer:** Through the Violent Crime Impact Team (VCIT) program, ATF directs its resources to specific areas that are experiencing a level of violent crime higher than the national average, particularly in firearm-related homicides.

To nominate a site to become a VCIT location, ATF follows requirements and procedures established by the Department of Justice (DOJ) Attorney General's Anti-Gang Coordination Committee (AGCC). This includes conducting a thorough gang threat assessment that is required for all DOJ agencies to establish gang or violent crime task forces. ATF then further analyzes elements including available data on homicides, homicides by firearm, violent crime, and violent crime by firearm statistics and trends for the initial targeted area. Throughout the selection process, ATF collaborates with and obtains the concurrence of affected partners, including federal, state and local law enforcement agencies, including the affected United States Attorney's Office. It is the United States Attorney, in conjunction with the ATF special agent in charge, who coordinates the process of obtaining necessary concurrences for the new VCIT. ATF then presents its VCIT proposal to the AGCC Task Force Review Subcommittee for review and concurrence. At this stage, ATF and its DOJ law enforcement partners resolve any conflicts or concerns. The proposal is then forwarded through the AGCC Chair to the Deputy Attorney General for final approval.

The last expansion of the VCIT program occurred on March 20, 2008, when the Deputy Attorney General approved ATF's proposal to establish its 31<sup>st</sup> VCIT in Memphis, Tennessee.

The average cost to run a VCIT in FY09 was \$1.2 million. Prior to the FY 2010 congressional action, ATF had received only one appropriation for VCIT in the amount of \$20,000,000 and 75 positions (FY 2006). Although the number of VCITs has grown from 15 to 31 over the intervening period, ATF had received no

additional funding to support the VCIT initiative until FY 2010. In FY 2009, ATF expended 155 FTE and \$34.7 million in support of the VCIT initiative. In FY 2010, ATF will apply the \$10 million provided to the existing level of effort (for details, please see our response to Question 18 which provides a spend plan for the \$10 million).

**17. The Committee increased your FY10 appropriation by \$10 million above the request, specifically to expand existing teams and add new teams to high priority areas. Please provide a spending plan quantifying and describing how you intend to spend both base resources for VCIT, and the additional resources provided above the request?**

**Answer:**

<b>FY 2010 VCIT Spend Plan</b>		
<b>Object Class</b>	<b>Description</b>	<b>Total (\$000)</b>
11.1 and 12.1	Personnel compensation and benefits	5,561
21.0	Mission-related travel	584
25.2	Commercial services and contracts	510
25.2	Investigative Services	450
25.2	Purchase of evidence and information	1,634
26.0	Vehicle supplies and fuel	1,261
<b>Total</b>		<b>\$10,000</b>

Personnel compensation and benefits—Pay, benefits and overtime costs associated with ATF special agents and investigative assistants assigned to existing VCITs.

Mission Travel—Travel costs associated with criminal investigations involving criminal groups and gangs assigned to respective VCITs. Travel includes costs associated with on-going investigations, with specific emphasis on cases involving violent criminal groups and gangs with a multi-jurisdictional nexus.

Other Commercial Services—Costs associated with support services such as office equipment repair, copier services, vehicle repair and other government contracts.

Investigative Services—Costs for on-going investigations of violent criminal groups and gangs through evidentiary support such as pen registers, toll charges, Title III, transcriptions/translation services, tracking devices and the victim/witness program.

Purchase of Evidence/Information—Procurement and collection of evidence and information used in investigations, support to confidential informants and support to undercover operations.

Vehicle Supplies—Supplies and fuel for government vehicles to support VCIT investigations of violent criminal groups and gangs in existing VCIT locations.

**18. How many additional agents and how many new teams will be funded with the extra money appropriated in FY10? Does the FY11 request include the funding necessary to continue these efforts beyond the end of the year?**

**Answer:** Prior to the FY 2010 congressional action, ATF had received only one appropriation for VCIT in the amount of \$20 million and 75 positions, which was provided in FY 2006. Although the number of VCITs has grown from 15 to 31 over the intervening period, ATF had received no additional funding to support the VCIT initiative until FY 2010. In FY 2009, ATF expended 155 FTE and \$34.7 million in support of the VCIT initiative. In FY 2010, ATF will apply the \$10 million provided to the existing level of effort.

**19. Our report language also directed you to coordinate with the FBI which also received increased appropriations for anti-gang activities. How are the ATF and the FBI dividing responsibilities, and working together to maximize results against violent gangs?**

**Answer:** Each of the Department's law enforcement agencies provides unique expertise and capabilities when leading a violent crime task force. This diversity allows a community that is crafting its individual violent crime strategy to select the task force that best matches its particular violent crime problem. ATF Violent Crime Impact Teams (VCITs) concentrate their efforts within a small target area and remove the most violent firearms offenders from communities. Working with federal prosecutors, as well as state and local partners, ATF identifies and investigates these offenders and recommends them for prosecution. FBI-led Safe Streets Task Forces (SSTFs) focus on the longer-term strategy of dismantling organized gangs by addressing them as criminal enterprises. Combining short term, street level enforcement activity with such sophisticated techniques as consensual monitoring, financial analysis, and Title III wire intercepts, SSTFs aim to root out and prosecute the entire gang, from the street level thugs and dealers up through the crew leaders and ultimately the gang's command structure.

Any proposal for a new violent crime task force goes through a process at the Department to ensure there is a need for federal involvement, there is no overlap with existing task forces, and to ensure coordination with other law enforcement

efforts in the area. First, the applicant must prepare a written application addressing the existence of other task forces and/or ongoing anti-gang efforts in the area, the discreet and unique issues the proposed task force will address, and how the new task force will coordinate/deconflict with other existing law enforcement efforts in the district. Then, the applicant must ask the local US Attorney, and the heads of the other federal, state, and local law enforcement offices located in the district to sign the application, indicating concurrence with the creation of the new task force. The application then goes before the Task Force Review Subcommittee (TFRS) of the Attorney General's Anti-Gang Coordinating Committee (AGCC), for a headquarters-level review. Finally, the Deputy Attorney General must personally sign the application authorizing the establishment of the new task force.

ATF and FBI both participate in information and case coordination centers that allow them to share sensitive investigative information with one another in a secure environment, allowing them to not only deconflict ongoing operations regionally and nationally, but also work cooperatively to build stronger cases targeting violent offenders, drug rings, and gangs. ATF and FBI both have special agents assigned to the Organized Crime Drug Enforcement Task Force (OCDETF) Fusion Center, the Drug Enforcement Administration's Special Operations Division, the National Gang Targeting Enforcement and Coordination Center (GangTECC) and the National Gang Intelligence Center.

Finally, both ATF and FBI are members of the Attorney General's Anti-Gang Coordinating Committee which allow them to coordinate their anti-gang efforts with one another, as well as the rest of the members, at a policy level.

**20. The GAO reported last summer cited problems with how agencies were measuring the results of their gang enforcement efforts. Some were measuring investigations while some were tracking convictions. Also agencies defined "gangs" differently. What changes has DOJ and ATF made in response to the report to improve the ability to track progress made over time on anti-gang efforts?**

**Answer:** To address this concern, in early 2010, the Attorney General's Anti-Gang Coordinating Committee convened a working group to develop a Department-wide gang definition to allow agencies to consistently measure performance in the anti-gang activities across the Department. No final decisions have yet been made on an appropriate definition and its scope of application.

**21. Does ATF continue to have staff assigned to the National Gang Intelligence Center and the National Gang Targeting, Enforcement and Coordination Center (GangTECC)? How many?**

**Answer:** Four ATF special agents, including one serving as the Deputy Director, are supporting GangTECC. ATF also has two analysts assigned to the NGIC.

**22. The trend is to go after these gangs by treating the entire organization as a criminal enterprise under RICO. What unique skills and tools does ATF bring to such investigations?**

**Answer:** As the only federal agency that focuses exclusively on violent crime and that regulates commerce in firearms and explosives, ATF has unique statutory authority over the commodities that make gangs a threat to public safety and, as a result, extensive experience in working gang investigations. ATF also has a proven ability to partner with state and local law enforcement agencies in a task force environment, providing unique firearms, explosives, arson and undercover expertise. In addition, ATF has unique technical abilities and resources, such as the capability to analyze “touch DNA” (DNA in skin cells left by a person merely touching an object), as well as the National Integrated Ballistics Information Network (NIBIN), which matches spent ammunition found at crime scenes to other crimes.

ATF’s core jurisdiction—enforcing laws that prohibit the criminal misuse of firearms and explosives, as well as arson-- has placed ATF at the center of gang investigations, including those of well-known street gangs like the Crips and Bloods, organized criminal Asian gangs, violent white supremacists, outlaw motorcycle organizations, violent Hispanic gangs like Mara Salvatrucha (MS-13), and non-traditional neighborhood-based gangs.

Over the past several years, ATF has led several noted RICO cases against America’s most notorious gangs, including RICO prosecutions of MS-13 in Nashville, Tennessee, Hyattsville, Maryland, and Northern Virginia. The Maryland case resulted in the indictment of 50 defendants, including RICO charges against two gang members in El Salvador. In another investigation in Los Angeles, ATF worked with High Intensity Drug Trafficking Area (HIDTA) and the Los Angeles County Sheriff’s Department to investigate, indict and arrest 102 defendants charged in four separate indictments, with charges ranging from RICO to firearms and narcotics trafficking. The ATF VCIT in Baltimore, Maryland, working with the Baltimore Police Department, recently completed an investigation of the Pasadena Denver Lane (PDL) Bloods, a Bloods set with ties



to the PDL in California. Ultimately 40 were arrested, including two defendants in California. Twenty three persons were charged under RICO.

ATF's extensive experience with the undercover penetration of criminal organizations is often a key to our ability to secure the evidence needed to indict for RICO. ATF undercover personnel infiltrated an MS-13 clique in Washington, D.C. for a year, recommending 27 individuals for federal prosecution, one of whom was later prosecuted in Virginia on homicide charges for the killing of a government witness against the gang. ATF undercover penetration of the Mongols in California also played a key role in the indictment of 87 defendants for RICO.

ATF's expertise in firearms trafficking is also key to the success of our complex gang investigations. Comprehensive tracing of crime guns and the strategic analysis of crime gun traces enables ATF to prioritize those firearms trafficking cases involving the systematic diversion of firearms to criminal gangs. ATF's joint investigation with the Harrison/Lewis Violent Crime and Drug Task Force into the D Block Crips is a perfect example. The D-Block Crips originate from the Crawford Village Housing Project in McKeesport, Pennsylvania, a suburb of Pittsburgh. McKeesport is located approximately 100 miles north of Clarksburg, West Virginia. In the Spring of 2007, D-Block Crips members started traveling to the Clarksburg area because of the ease of selling drugs there (i.e. little competition, high profit, low violence, low fear of gang retaliation). The benefit was dual profits from acquiring firearms in West Virginia to sell in Pennsylvania and drugs in Pennsylvania to sell in West Virginia. The investigation culminated in September 2008, when a Federal Grand Jury in Clarksburg returned a 65-count indictment charging 26 defendants with conspiracy to distribute "crack" cocaine, seven counts of maintaining drug-involved premises, and three conspiracies to violate Federal firearms laws. These charges included nine substantive firearms charges, and 45 substantive charges of distribution of "crack" cocaine, of which 14 occurred in protected locations (i.e. schools and playgrounds). This investigation originated with the attempted "straw purchase" of two handguns by a female resident of West Virginia for two D-Block Crips gang members in 2007. The investigation culminated with the coordinated arrest of 23 defendants on September 10, 2008. The prosecution continued throughout 2009 with a 100 percent conviction rate and severe prison sentences.

Another example of ATF's unique expertise and jurisdiction is the ATF investigation into Boulevard Sales and Service, a federally-licensed firearms dealer and gun store in Compton, California, to whom law enforcement agencies traced at least 892 firearms linked to crimes during a 5-year period. Of these traced guns, at least 29 were connected to murder investigations. This

investigation had far-reaching impact against crime in Los Angeles. Boulevard was known throughout the gang community as a place where criminals could easily acquire firearms. Information from law enforcement sources and informants, trace data, and the results of this investigation show the store sold firearms to the criminal element without regard for the law or the safety of the community. Two store employees later pled guilty to federal firearms violations for their roles in selling firearms to prohibited persons.

**23. How would you assess the current situation regarding violent gangs and the ability of law enforcement, at all levels, to successfully disrupt, prosecute and dismantle them?**

**Answer:** The most comprehensive assessment of violent gangs is the 2009 National Gang Threat Assessment, prepared by the National Gang Intelligence Center in collaboration with and based upon data collected and analyzed by the National Drug Intelligence Center. That report conservatively estimates gang membership in the United States at more than one million, with local, unaffiliated, neighborhood-based street gangs accounting for the largest number of gangs nation-wide. During the 5-year period ending in 2007, 94.3 percent of gang-related homicides reportedly involved the use of a firearm. Law enforcement agencies report that gang members are increasingly using firearms in conjunction with their criminal activities.

Simply stated, gangs represent a threat to public safety and are responsible for a significant portion of the crime in many urban communities and in an increasing number of suburban communities. To a citizen who lives in fear, the worst gang in America is one in their neighborhood – the one trying to recruit their child at school, the one selling drugs on their block, the one whose stray bullet ended the life of their neighbor's child.

As previously stated, ATF's core jurisdiction--enforcing laws that prohibit the criminal misuse of firearms and explosives, as well as arson--has placed ATF at the center of gang investigations. As the only federal agency that focuses exclusively on violent crime and that regulates commerce in firearms and explosives, ATF has unique statutory authority over the "tools of the trade" that make gangs a threat to public safety. In the past 5 years (FY 2005 to FY 2009), ATF has recommended 17,874 gang-related defendants for prosecution for charges ranging from possession of a firearm by a convicted felon to RICO.

Firearms' trafficking is often the method by which gangs arm themselves. By using "straw purchasers," who are individuals not prohibited from legally purchasing weapons, gang members acquire firearms from federally licensed dealers. In 2009 alone, ATF recommended 3,287 defendants for prosecution pursuant to firearms trafficking investigations.

ATF's response to the gang threat is multi-faceted. For almost 20 years, ATF has participated in outreach programs to discourage children from joining gangs or

engaging in criminal activities. In 1991, Congress appropriated funds to ATF to initiate a school-based gang prevention program. The Phoenix Police Department (PPD), in response to ATF's needs, designed and piloted a school-based gang prevention program. This program was designed to reduce gang activity and educate school-aged children to resist the pressure to join a gang. The culmination of this effort was the creation of the gang prevention program known as Gang Resistance Education and Training (G.R.E.A.T.).

This pilot program introduced middle school students within the Phoenix metropolitan area to the developed curriculum in January 1992. The success of the pilot program was overwhelming. This joint venture between ATF and the PPD is an outstanding example of what can be accomplished when a federal agency and a local police department combine resources and skills in a cooperative effort to benefit the public. The G.R.E.A.T. program has been presented to approximately six million students, 12,000 officers and 2,400 law enforcement agencies since its inception.

- 24. The Justice Department OIG published a report in November that is critical of both the National Gang Intelligence Center and GangTECC, finding that both are not fully meeting the roles for which they were created. As a lead DOJ agency on gangs, what can be done to improve interagency cooperation and coordination on gang investigation and prosecutions?**

**Answer:** The report highlights obstacles that have limited the overall effectiveness of GangTECC and the NGIC, and makes recommendations that are currently being addressed by Department of Justice leadership, including within the Criminal Division and the Office of the Deputy Attorney General. The Department is working to evaluate structural changes to enhance cooperation and coordination at NGIC and GangTECC, and within DOJ's violent crime program overall.

#### **Coordination with FBI on Explosives Investigations**

- 25. The OIG found that there is inadequate coordination, and sometimes open conflict between the ATF and FBI when it comes to explosives investigations. The OIG said that a critical first step was for DOJ to issue a new directive to clearly define lead investigative authority and require coordination. Has a new directive been issued? If so, please provide it for the record? If not, what efforts have been made so far to clarify responsibilities?**

**Answer:** The Department of Justice recognizes the critical importance of a well-coordinated and effective response to explosives incidents. The Department, including ATF, is dedicated to keeping our nation safe from those who seek to illegally use explosives to do us harm. We also recognize that it is equally important to adequately train our personnel and to ensure effective information

sharing with all appropriate entities within the government and our state, local and tribal law enforcement partners.

The Department has created working groups led by the Office of the Deputy Attorney General and consisting of subject matter experts and leadership from both bureaus, to evaluate OIG's recommendations, to address the issues identified pertaining to jurisdiction, information sharing, training, and laboratories, and to make proposals to permanently resolve these issues. The Acting Deputy Attorney General recently met with the senior leadership of ATF and FBI to discuss their positions on the explosives jurisdiction issue and both agencies have been providing additional information about their investigative resources and expertise. The Acting Deputy Attorney General will consider all of this information in making a recommendation to the Attorney General about how to resolve this issue.

#### **Ballistics Information**

**26. What amounts are included in the FY10 operating budget and the FY11 request for the National Integrated Ballistic Information Network (NIBIN), and within those totals, how much is allocated for upgrading and replacing equipment?**

**Answer:** The overall funding associated with the NIBIN Program for FY 2010 is \$25,704,169. Of this amount, \$3,791,848 is from technology upgrade funding included in the FY 2009 Supplemental Appropriations Act. Some of these funds will be executed in support of equipment and some will be used to support contractor requirements.

The projected FY 2011 funding for the NIBIN Program is \$22,306,537. These funds are to support base operational requirements and not equipment upgrades or or replacement.

In FY 2010 and FY 2011 the operating budget for NIBIN has remained at the current services level.

**27. What is the strategic plan for refreshing the NIBIN equipment?**

**Answer:** NIBIN will utilize some of the funds received in the FY 2009 supplemental to refresh the equipment of NIBIN partners in the Southwest Border region and to contract for technical assistance to operate the systems. Future requested funds will be utilized to assist ATF's NIBIN partners that are actively entering ballistic data along the Southwest border corridor by continuing to upgrade their obsolete equipment and providing onsite technical assistance and training. ATF will continue to monitor its partners to ensure the ATF-provided

equipment and associated costs are used appropriately. In the long term, the strategic plan would include systematic funding to refresh sites on a seven-year replacement schedule.

**28. The President's strategy for reducing Southwest Border violence calls for sharing ballistic information between US and Mexican law enforcement. What protocols are in place to ensuring the sharing of this information?**

**Answer:** ATF began this process in FY 2009 by completing agreements with the vendor for a strategic three-phase approach:

- The process of replacing our aging correlation servers for NIBIN;
- A major software upgrade so the ATF system is compatible with Mexico and Canada; and
- Deployment of an International Correlation Server (ICS) that allows ATF and foreign countries to search their ballistic databases.

A final piece in the information sharing process is an ATF-drafted agreement between the U.S. and Mexico. The U.S.-Mexico IBIS (Integrated Ballistics Information System) Sharing Agreement is under review by Mexico. Mexican officials are also in the process of securing an international server with State Department funding. This project is tentatively scheduled for completion in April 2011. The manufacturer of ATF's ICS unit is currently working on building the system.

**29. What is ATF doing in the area of sharing ballistics data with other international law enforcement?**

**Answer:** ATF is focusing on exchanging ballistic information with our border nations. At the end of FY 2009, ATF purchased an International Correlation Server (ICS) which is being developed and will need to be tested prior to use. The ICS will also have the capability to bring on board other law enforcement agencies within the hemisphere who wish to participate in the exchange of ballistic information. The U.S. and Canada have an IBIS Sharing Agreement and exchange ballistic information through tape transfer exchange when necessary. Once our ICS is deployed and operational and Canada procures and deploys their ICS, ATF anticipates that we will be able to share information with Canada in an automated environment.

Once the systems for sharing with Canada and Mexico are up and running properly, ATF will look into the possibility of sharing data with other international law enforcement agencies.

**30. Currently, what percentage of all crime guns seized by Federal law enforcement is processed through NIBIN?**

**Answer:** Several federal agencies, including the FBI, DEA and US Marshals Service make use of NIBIN, but ATF does not know how the total number of firearms these agencies seize or the percentage of their seized firearms submitted to a NIBIN lab for testing. ATF continues to promote the use of NIBIN among other federal law enforcement agencies and provides assistance in obtaining case specific or routine use of NIBIN, as well as procedural guidance on handling evidentiary firearms and the use of NIBIN.

Some firearms seized by law enforcement, including federal agencies, would not be submitted for NIBIN testing. Examples include firearms that have never been sold at retail or otherwise entered commerce, and firearms deemed unsafe to test-fire, such as firearms in disrepair or certain semi-automatic firearms crudely or unreliably altered to function as machineguns.

ATF is addressing these and other NIBIN protocol in directives expected to be completed in June 2010.

**31. What percentage of all crime guns seized by the ATF is processed through NIBIN?**

**Answer:** ATF field offices submit seized firearms to NIBIN labs managed and staffed by either ATF forensic personnel or state and local law enforcement agencies.

Some firearms seized by ATF would not be submitted for NIBIN testing. Examples include firearms that have never been sold at retail or otherwise entered commerce, and firearms deemed unsafe to test-fire, such as firearms in disrepair or certain semi-automatic firearms crudely or unreliably altered to function as machineguns.

ATF's investigative case and evidence management systems currently do not contain detailed accounting of NIBIN use relative to individual evidentiary firearms. ATF used NIBIN analysis in 9,148 investigations between FY 2001 and FY 2010 year-to-date (these investigations could include more than one firearm).

ATF is addressing these and other NIBIN protocol in directives expected to be completed in June 2010.

**32. Does ATF or any other Federal Law Enforcement agency have a protocol or procedure requiring such processing? If not, why not?**

**Answer:** ATF, as well as the Departments of Justice and Treasury, requires NIBIN submissions. In 2001, both the Department of Justice and the Department of Treasury issued memoranda directing their law enforcement components to enter ballistic information into NIBIN.

ATF does not currently have a formal written process, nor does it know if any other federal law enforcement agencies have formal written processes. ATF is, however, working to finalize a formal directive.

**33. Please identify any additional resource requirements or other obstacles that would follow from instituting a requirement that all crime guns seized by Federal law enforcement be processed through NIBIN.**

**Answer:** In the past, the ATF has not had sufficient staff to process the volume of firearms that would result from this requirement. Additionally, some of the NIBIN submissions require entry by the nearest state and local partner—many of these partners have been affected by the economy and do not often have the manpower to process their own workload, let alone that of the federal law enforcement community.

ATF has begun the process of bringing on board additional resources to support this important effort. Under ATF's strategic plan, our laboratories will take on a larger management and technical role in the areas of quality assurance interaction, training, and refining technical protocols with input from NIBIN Partners.

**34. How many states are there which do not have a NIBIN system, and why?**

**Answer:** There are currently nine states and one U.S. territory that do not have a NIBIN system. The nine states are: Alaska, Idaho, Kentucky, Maine, North Dakota, South Dakota, Utah, Vermont, West Virginia, and Guam.

Several of these states had the technology at one time but it was removed because of insufficient use. The ATF Laboratory is taking a proactive role in providing assistance to those sites by remotely entering data to those geographical areas affected by loss of ballistic imaging equipment.

Representative Robert B. Aderholt  
Questions for the Record

1. Regarding your conviction rates during FY2009, I am curious, what were the conviction rates for the prior ten years? What was the average sentence received during those years?

**Answer:** ATF tracks convictions linked to the fiscal year in which the case was recommended for prosecution. This approach links the input, a recommendation for prosecution, with the outcome and a subsequent conviction. This method is employed because a recommendation for prosecution and a conviction frequently do not occur in the same fiscal year. Using this approach, ATF's conviction rates and associated average sentence per defendant for the past 10 years follow:

[The information follows.]



CASES AND DEFENDANTS CONVICTED "TIED BACK" TO FISCAL YEAR THE CASE WAS RECOMMENDED FOR PROSECUTION

Data	Referral FY												Grand Total
	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	
Cases With Convictions	3,787	5,146	6,365	8,008	8,389	8,285	7,357	6,791	5,878	3,559	266	63,831	
Cases With Sentencing	3,763	5,106	6,303	7,912	8,310	8,207	7,205	6,483	5,284	2,576	172	61,321	
Defendants Convicted	4,867	6,682	8,319	10,477	10,982	11,562	10,628	9,989	8,811	5,305	401	88,023	
Defendants Sentenced to Prison	3,890	5,288	6,678	8,618	9,352	9,912	8,851	8,104	6,650	2,987	176	70,606	
Total Prison Months Sentenced	422,326	4,724,778	1,985,848	1,105,201	1,245,513	1,507,871	1,424,460	1,299,300	1,092,206	463,814	25,603	15,276,920	
Avg. Prison Sentence (in Months)	108.57	893.49	294.38	128.24	133.18	152.13	159.14	160.33	164.24	155.28	145.47	216.37	
Defendants Sentenced to Probation	2,735	3,807	5,000	6,219	6,124	4,186	2,608	2,067	1,621	782	46	35,195	
Total Probation Months Sentenced	180,029	2,208,194	637,831	359,996	334,107	184,093	90,034	182,223	69,337	30,136	1,928	4,277,908	
Avg. Probation Sentence (in Months)	65.82	580.04	127.57	57.89	54.56	43.98	34.52	88.16	42.77	38.54	41.91	121.55	
Life Sentence Received	12	11	21	26	50	65	70	79	58	30	7	429	
Death Sentence Received	3	4	4	7	4	4	6	9	10	9	5	65	

Note: The data in the above table is "tied back" to the fiscal year in which ATF recommended the case for prosecution. Thus, a case recommended for prosecution in FY 2007 that subsequently results in a conviction in FY 2009 is shown in this table as a 2007 conviction.

**2. Regarding partnerships with other law enforcement agencies, I would like for you to go into more detail regarding partnerships and shared goals with other federal agencies, such as ICE. What types of results have these partnerships had?**

**Answer:** ATF coordinates its efforts with the Department of Homeland Security and other federal, state, local, and tribal law enforcement agencies to ensure efficient use of resources and avoid duplication of effort. ATF and U.S. Immigration and Customs Enforcement (ICE) updated a memorandum of understanding in June 2009 to clearly establish how the two agencies will work together on investigations of international firearms trafficking and possession of firearms by illegal aliens. ATF and ICE routinely conduct joint investigations. Moreover, ATF has supported ICE by placing some of our agents on ICE's Border Security Task force (BEST) teams and ICE has reciprocated by placing some of their agents on our Gunrunner Teams.

Between FY 2005 and FY 2009, ATF recorded an ICE investigative participant in just under 2,000 criminal investigations. These investigations led to the recommendation of 1,391 cases involving 3,222 defendants for criminal prosecution. As of September 30, 2009, 77 percent of these cases had been accepted for prosecution, and 1,506 of those defendants had been sentenced to an average of 144 months incarceration. Of the cases recommended for prosecution, 277 cases alleged gang-related criminal conduct by 1,199 defendants. In the total number of cases recommended for prosecution, 323 were international firearms trafficking cases involving an estimated 16,110 firearms being trafficked. In the course of those investigations, 1,792 firearms were taken into evidence. Also, 298 cases were domestic firearms trafficking investigations involving an estimated 5,950 firearms being trafficked. In the course of those investigations, 1,209 firearms were taken into custody.

Additionally, ATF has increased its presence at the El Paso Intelligence Center (EPIC), which is the central repository and clearinghouse for all weapons-related intelligence collected and developed by federal, state and local law enforcement entities involved in narcotics interdiction and investigation along the U.S. border. ATF's increased staffing levels at EPIC allow ATF to expand intelligence activities with law enforcement partners stationed there, including the Drug Enforcement Administration, the Federal Bureau of Investigation, ICE, Customs and Border Protection, and the Texas and Arizona Departments of Public Safety. ATF also works closely with these agencies' task forces that operate along the Southwest Border, sharing intelligence and conducting joint investigations.

Further, ATF participates in the Organized Crime Drug Enforcement Task Force (OCDETF) Fusion Center, a multi-agency intelligence center that provides operational intelligence in drug investigations. Through the Fusion Center, ATF shares information with other federal law enforcement agencies involved in drug

enforcement and helps to build large-scale operations targeting these violent drug and firearm trafficking organizations. ATF also participates in OCEDEF Strike Forces.

Finally, ATF has a strong collaborative relationship with Mexican law enforcement and other U.S. government agencies within Mexico. Over the last 15 years, ATF has had special agents permanently assigned to the U.S. embassy in Mexico, as well as other Mexican cities with high levels of trafficking. Currently, ATF has four offices in Mexico, to include new offices in Tijuana and Ciudad Juarez. Additional plans for 2010 include establishing and staffing new offices in Hermosillo, Guadalajara and Merida, and adding additional staff to the consulate office in Mexico City.

**3. You mention that your forensic laboratories completed applications for 3,553 cases. Where are these laboratories located and how do their locations provide an advantage or disadvantage evidence for turnaround time?**

**Answer:** ATF's laboratories are geographically located in the Washington D.C. Metro area, Atlanta, GA, and Walnut Creek, CA, to provide almost immediate expertise to support field investigations. This dispersion is an advantage that provides for continuity of operations in the event of an emergency. If one laboratory is not operational, personnel and evidence can be directed to another ATF laboratory. The locations provide the following advantages for evidence turnaround time:

- Provides immediate service to critical areas of the country where evidence can be delivered quickly to one of the locations providing a quicker turn-around time.
- Quick response time for crime scene responses. If the crime lab has a crime scene responsibility it is clearly aided by proximity to the crime. This includes ATF's Rapid Response Laboratory responsibility.
- Workload can be distributed to other labs in the system if a major event ties up resources in one area.
- National Integrated Ballistic Information Network (NIBIN) Service regions are tied to laboratory service areas.
- Laboratory service areas are aligned with National Response Team Service regions.
- Distribution of technical knowledge is spread across the country and not in one location.
- Decreased cost for employees flying to teach, testify in court, go to crime scenes and support for various other ATF efforts.
- Decreased cost for shipping of evidence to and from the laboratories.

Most state laboratory systems follow this model for the same reasons. There are no disadvantages for evidence turnaround time.

4. You mention that in FY2009 ATF provided training for over 2,475 domestic law enforcement officers, agents, and prosecutors and that ATF provided training for over 4,000 members of the international law enforcement community. Could you please go into more detail on this especially regarding the international law enforcement community?

**Answer:** The figure referenced for training provided to domestic law enforcement officers referred specifically to ATF's Project Safe Neighborhoods (PSN) program. Through this program, ATF provides training to state and local partners on gangs, firearms trafficking, and firearms enforcement strategies. ATF provided 15 two-day and 9 one-day training sessions to domestic law enforcement throughout the nation, including sessions held in Boise, Charlottesville, Des Moines, New Orleans, Phoenix and San Diego, among others.

ATF's international training efforts are closely aligned with the various International Law Enforcement Academies (ILEAs) around the globe. ATF contributes blocks of instruction on our core firearms, explosives and arson mission areas to the existing curriculum, and through this process disseminates our expertise to our international law enforcement partners. In addition to the ILEAs, ATF has also focused significant efforts on the training of law enforcement personnel in Mexico and Central America. Courses included DNA recovery from post-blast evidence, small arms trafficking, basic explosives and improvised explosives device (IED) recognition, and undercover operations. Training sessions were held on five continents, including countries such as Columbia, El Salvador, Guatemala, Hong Kong, Mexico, Romania, and South Africa.

A detailed list of the domestic PSN courses provided in FY 2009 is attached for reference. A detailed list of international training courses, locations, dates, and students is also attached for reference.

**[The information follows:]**

FY 2009 International Law Enforcement Training

Course	Location	Date	Participant Countries	# per Country
LEMDP 10	ILEA San Salvador	October 8 -10, 2008	El Salvador	7
			Peru	9
			Brazil	9
			Uruguay	9
			Paraguay	7
DNA Recovery from Post Blast Evidence	Bogota, Colombia	October 8-10, 2008	Colombia	1022
Small Arms Trafficking (Back-to-Back)	ILEA Bangkok	October 27 - 31, 2008	Thailand	32
		November 3 - 7, 2008	Thailand	32
LEED 29	ILEA Gaborone	November 4 - 6, 2008	Angola South Africa Swaziland Mozambique Lesotho Botswana	10 3 5 9 4 6

IPBI 0901	Chisinau, Moldova	November 10 - 21, 2008	Moldova	32
Basic F/A & Expl. ID	Reynosa, Mexico	November 24 - 25, 2008	Mexico	29
Session 68	ILEA Budapest	December 1 - 2, 2008	Moldova Ukraine Hungary	22 11 1
Small Arms Trafficking	Mexico City, Mexico	December 8 - 12, 2008	Mexico	35
IPBI 0902	ILEA Bangkok	January 12 - 23, 2009	Thailand, China, Laos, Timor, Vietnam, Cambodia, Hong Kong etc. (12 nations total)	25
Explosives/Firearms/ Munitions Tracing	Bogota, Colombia	January 30, 2009	Colombia Chile	30 1
Session 69	ILEA Budapest	February 17 - 18, 2009	Croatia Hungary Macedonia Romania	16 2 16 16

LEED 30	ILEA Gaborone	February 17 - 19, 2009	Botswana Ghana Nigeria Sierra Leone	8 10 12 10
Firearms ID & Tracing	Bogota, Colombia	February 20, 2009	Colombia	31
Explosives/IED Recognition & Bomb Search Techniques	Bogota, Colombia	February 23, 2009	Colombia	310
LEMMP 11	ILEA San Salvador	March 4 - 6, 2009	El Salvador Guatemala Dominican Republic	14 9 6
IPBI 0903	ILEA Bangkok	March 23 - April 3, 2009	Thailand, China, Laos, Timor, Vietnam, Cambodia, Hong Kong etc. (12 nations total)	23
IPBI 0904	ILEA San Salvador	March 23 - April 3, 2009	Panama Guatemala Honduras El Salvador	8 10 9 6
Firearms & Ammunition Identification Lecture	Toronto, Canada	March 24, 2009	Canada	32
SCIC 26	ILEA Bangkok	March 25 - 26, 2009	Thailand China Hong Kong	64 (not broken out by country)

			Vietnam Cambodia Brunei Singapore Phillippines	1
Basic Firearms ID and Tracing	Bogota, Colombia	April 16, 2009	Colombia	33
Dfuze & Dfuze Mobil	Bogota, Colombia	April 20-22, 2009	Colombia	14
Firearms ID & tracing, commerical explosives/ grenades ID & tracing	Mexico City	4/21/2009 4/22/2009 4/23/2009 4/24/2009	Mexico - SSP Mexico - PGR/SIEDO Mexico - PGR/SIEDO Mexico - SEDENA	85 31 41 32
Session 70	ILEA Budapest	April 28 - 29, 2009	Albania Ukraine Hungary	15 14 15
Explosives Incident Mgmt.	Pristina, Kosovo	April 28 - 29, 2009	Kosovo	40
Basic Firearms ID and Tracing	Bogota, Colombia	May 1, 2009	Colombia	31
IPBI 0905	Rabat, Morocco	May 4 - 15, 2009	Morocco	35
Police Defensive Tactics	Tbilisi, Georgia	May 11 - 22, 2009	Georgia	12



LEED 31	ILEA Gaborone	May 19 - 21, 2009	Botswana Lesotho Namibia Swaziland	10 8 12 8
LEMMP 12	ILEA San Salvador	May 20 - 22, 2009	Panama El Salvador Honduras Nicaragua Costa Rica	6 5 7 8 7
Basic Explosives/IED Recognition & Bomb Searches	Bogota, Colombia	May 21, 2009	Colombia	15
IPBI 0906	Lima, Peru ILEA San Sal/LA	May 25 - June 5, 2009	Peru Bolivia Brazil Colombia	8 9 9 9
Anti-Gang Conference (3rd Forensics Conf.)	ILEA San Salvador	June 5 - 12, 2009	El Salvador Guatemala Honduras Mexico Panama Belize	17 8 8 6 2 4
Fire/Arson 0901	Tbilisi, Georgia	June 8 - 19, 2009	Georgia Armenia	12 12

Small Arms Trafficking	ILEA San Salvador	June 22 - 26, 2009	Panama Belize Costa Rica Honduras El Salvador	7 8 7 8 5
Session 71	ILEA Budapest	July 7 - 8, 2009	Kazakhstan Armenia Tajikistan Hungary	13 17 16 1
IPBI 0907	Sarajevo, Bosnia	July 20 - July 31, 2009	Bosnia	32
LEMMP 13	ILEA San Salvador	July 22 - 24, 2009	Guyana Colombia El Salvador Suriname Ecuador	7 8 7 5 8
Interviewing & Interrogation Techniques	San Luis Potosi, Mexico	August 3 - 21, 2009	Mexico (SSP)	1000
Small Arms Trafficking	ILEA Latin America Lima, Peru	August 10 - 14, 2009	Argentina Brazil Paraguay Peru	10 10 10 5
Small Arms Trafficking	ILEA Gaborone	August 17 - 21, 2009	Botswana Burundi Congo Djibouti	33

			Gabon Rwanda Senegal	
Basic Firearms/Explosives Identification and Tracing	Brasilia, Brazil	August 21-22, 2009	Brazil Uruguay Argentina Paraguay Peru Bolivia Venezuela French Guinea Suriname Guyana	40 2 2 2 1 1 1 1 1 1
Small Arms Trafficking	Mazatlan, Sinaloa Mexico	August 24 - 28, 2009	Mexico	43
LEED 32	ILEA Gaborone	August 25 - 27, 2009	Kenya Malawi Rwanda Tanzania Botswana	10 6 12 12 2
IPBI 0908	ILEA Budapest	Aug 31 - Sep 11, 2009	Hungary Croatia Slovenia	8 12 7
Fire/Arson 0902	ILEA Budapest	September 14 - 25, 2009	Hungary	28

Undercover Training	Bogota, Colombia	September 14 - 25, 2009	Colombia	40
IPBI 0909	Quito, Ecuador	September 21 - 25, 2009	Ecuador	21
Small Arms Trafficking	Chihuahua, Chihuahua Mexico	September 21 - 25, 2009	Mexico	46
Session 72	ILEA Budapest	September 29 - 30, 2009	Serbia Montenegro Bosnia Hungary	16 16 16 2

Totals

4117

THURSDAY, MARCH 18, 2010.

## BUREAU OF PRISONS FY2011 BUDGET OVERVIEW

### WITNESS

HARLEY G. LAPPIN, DIRECTOR, BUREAU OF PRISONS

### OPENING REMARKS

Mr. MOLLOHAN. Good morning. We are pleased to welcome Mr. Harley G. Lappin, the Director of the Federal Bureau of Prisons, who will be testifying today about the fiscal year 2011 budget request for the Federal Prison System.

Director Lappin, welcome, first of all.

Mr. LAPPIN. It is good to be here.

Mr. MOLLOHAN. We appreciate your being here and appreciate your service and that of your fine organization.

We talked quite a bit during our hearing last year about BOP's reentry programming and how that is related to recidivism and the growing federal prison population. And we will certainly be asking questions again today about your Second Chance Act and reentry activities and plans for the coming year.

It has become very clear, however, that the Bureau of Prisons' ability to implement effective reentry programs has been hindered in recent years by a critical shortfall in the number of on-board correctional workers and by the inadequate capacity of the aging federal prison infrastructure. And these problems have in turn been the result of inadequate budget requests for the Bureau of Prisons.

Over the last three years, the Subcommittee has provided significant additional resources above the proposed budget request to allow BOP to meet its basic operational requirements and begin addressing its staffing shortfall.

For fiscal year 2008, we provided supplemental funding and approved a reprogramming when it became clear that BOP would otherwise run out of funding before the end of that fiscal year.

For fiscal year 2009, the Subcommittee provided \$160 million above the budget request. For fiscal year 2010, we provided \$106 million above the request.

BOP's proposed budget for fiscal year 2011 appears to be an improvement over prior years, although I will be asking you about how realistic it really is.

I am pleased to say that the Bureau of Prisons has made some important progress on the staffing front since our hearing last March, although there is still a lot more work apparently to be done.

And there are still significant challenges ahead when it comes to acquiring or constructing new prison facilities and keeping up with the growing backlog of modernization and repair projects for BOP's aging facilities.

We will be asking you this morning about these and other important challenges you face, including how you are addressing violence in the prisons, particularly assaults directed at prison staff, but also assaults by prisoner upon prisoner.

Mr. Lappin, in a moment, I will ask you to briefly summarize your statement. Your written testimony, of course, will be made a part of the record.

First, I am pleased to turn to our Ranking Member, Mr. Wolf, for any opening comments that he may like to make.

Mr. Wolf.

Mr. WOLF. Thank you, Mr. Chairman.

And I want to welcome Mr. Lappin. Thank you and your people for the work you do. And with that, I look forward to hearing your testimony.

Mr. MOLLOHAN. Okay. Thank you.

Mr. Lappin.

#### OPENING STATEMENT

Mr. LAPPIN. Chairman Mollohan, Congressman Wolf, it is a pleasure to be back, and I certainly appreciate all of your support.

And let me begin by thanking you for your strong support of Bureau of Prisons. I am particularly grateful, as you just mentioned, for the assistance with the additional funding included in the 2010 Consolidation Appropriations Act that allowed the Bureau of Prisons to continue basic operations and allowed us to increase on-board staffing. And I will talk a little bit more in detail about that in a moment.

I assure you we will continue to exercise sound fiscal judgment and contain costs while maintaining the highest level of service that we possibly can.

During fiscal year 2009, we achieved a net increase of 775 employees from the beginning of the fiscal year. And through February of this year, we have added a net increase of 325 additional staff to the total staff on board.

We anticipate by the end of this fiscal year, we will add about 925 staff to the base, and that number is inclusive of the new activations.

The continued professionalism and dedication of our staff has been critical to the Bureau's ability to operate safe and secure facilities, managing more inmates than our prisons were designed to house, and preparing inmates to transition back into their communities.

Continuing increases in the inmate population pose substantial ongoing challenges for our agency, particularly at the medium- and high-security levels.

In 2009, a net growth of 7,091 new inmates was realized and net growth with 7,000 inmates per year is projected for 2010 and 2011.

The continued increases challenge us in providing safe and secure institutions for staff, inmates, and surrounding communities.

The President's 2011 budget request for the BOP is \$6.534 billion for the Salaries and Expense budget. That is nearly \$450 million more than the 2010 enacted level.

For the Buildings and Facilities budget, the request of \$269.7 million is nearly \$171 million more than the 2010 level.

Our highest priorities continue to be: ensuring the safety of staff, inmates, and surrounding communities; increasing on-board staffing at BOP correctional institutions; adding bed space; reducing the use of double and triple bunking, thus leading to lower violence and crowding in prisons; increasing the Federal Prison Industries work program, and other inmate reentry programs such as drug treatment and education, through an inmate skills development strategy that is consistent with the Second Chance Act and; finally, maintaining the existing institutions in an adequate state of repair to ensure safety.

Resources are requested in the New Construction decision unit to acquire and modify the Thomson, Illinois Correctional Center, expanding high-security federal prison capacity, currently at 52 percent overcrowding. The Thomson facility would provide up to 1,600 new high-security cells.

The number of Supermax or ADX beds available at Florence has not increased since the ADX Florence was activated in 1994, when the total inmate population was 95,000 inmates.

Thus, in addition to housing general population and high-security inmates at Thomson, we will also use this to house a number of administrative max-type inmates and other inmates who have proven difficult to manage, and inmates who are designated for special management units.

Conditions of confinement of special management inmates are more restrictive than general population inmates and the Thomson facility provides the physical structures and security to appropriately house special management unit inmates at that location.

Therefore, we are grateful for the Thomson opportunity but remain concerned as the inmate population far outpaces the bed space added.

In the M&R Program, we continue to address our highest priority needs and work towards improving environmental and energy performance, within the constrained funding levels that exist in the M&R Program.

As you know, it is imperative that we reduce crowding and to do so, one or more of the following must occur:

One, reducing the length of time that some inmates spend in prison is an option.

Two, expand inmate housing at existing facilities where it is conducive to do so. Add a housing unit if, in fact, it is not going to be overly expensive to expand the support areas, an assessment that we would have done.

Contract with private prisons for additional bed space for low-security criminal aliens. That is number three.

Four, significantly increase the number of inmates in community corrections, including home confinement.

And, number five, acquire and/or construct and staff additional prisons.

Thus, there are major safety issues as the population grows by thousands each year, but the capacity does not. In fact, there are no fully funded new construction projects to add any beds beyond 2013.

And four or five thousand inmates will be absorbed each of those years into existing overcrowded and overutilized infrastructure.

Chairman Mollohan, Congressman Wolf, again, we appreciate your ongoing support. This concludes my formal statement.

I am encouraged that the 2011 President's request moves us a step further towards adequate staffing and bed space requirements to manage the increasing inmate population.

I look forward to the questions you may have of me on any of these issues.

[The information follows:]





# Department of Justice

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STATEMENT

OF

HARLEY G. LAPPIN  
DIRECTOR  
FEDERAL BUREAU OF PRISONS

BEFORE THE

SUBCOMMITTEE ON COMMERCE, JUSTICE, SCIENCE  
AND RELATED AGENCIES

COMMITTEE ON APPROPRIATIONS  
U.S. HOUSE OF REPRESENTATIVES

CONCERNING

FEDERAL BUREAU OF PRISONS FY 2011 BUDGET

PRESENTED ON

MARCH 18, 2010

Statement of  
Harley G. Lappin, Director  
Federal Bureau of Prisons  
Before the Subcommittee on Commerce, Justice, Science  
and Related Agencies  
Committee on Appropriations  
U.S. House of Representatives  
on  
Federal Bureau of Prisons FY 2011 Budget Request  
March 18, 2010

Good morning Chairman Mollohan, Ranking Member Wolf, and Members of the Subcommittee. Let me begin, by thanking you, Chairman Mollohan, Congressman Wolf, and Members of the Subcommittee, for your support of the Bureau of Prisons (BOP). I am particularly grateful for your assistance with the additional operating funds included in the FY 2010 Consolidated Appropriations Act that allowed the BOP to continue our basic operations, programs, and services, and increase on-board staffing.

The FY 2010 budget provides the BOP with nearly \$6.1 billion in operating funds for current institutions and to begin the activation process for the Federal Correctional Institution (FCI) McDowell, West Virginia, and FCI Mendota, California. I assure you, we will continue to exercise sound judgment in executing the budget you have provided, in keeping with our role as stewards of the public's trust and taxpayer funds. We will continue to contain costs, while maintaining a high service level.

During FY 2009, we achieved a net increase of 775 staff across the agency, and through February of FY 2010, we realized a net increase of 325 staff, for a total staffing increase of 1,100 during the past 17 months. The FY 2010 operating plan should allow us to increase the total number of staff on-board this year by about 925, including staffing for new institution activations. The continued professionalism and dedication of our staff has been critical to the Bureau's ability to continue to operate safe and secure facilities, managing many more inmates than our prisons were designed to house, and preparing inmates to transition back into their communities.

The Congress, in FY 2009, directed the Government Accountability Office (GAO) to report on BOP's methods for cost estimation, including the pricing of utilities and inmate medical care costs. As you know, the GAO released report GAO-10-94 in November of 2009 and concluded that BOP's methods for cost estimation largely reflect **best practices** outlined in GAO's *Cost Estimating and Assessment Guide*. GAO stated BOP followed a well-defined process for developing mostly comprehensive, well documented, accurate, and credible cost estimates. Further, GAO found that BOP's methods for projecting inmate population changes have been accurate on average, to within one percent of the actual inmate population growth from fiscal year 1999 to August 2009.

The mission of the BOP is to protect society by confining offenders in the controlled environments of prisons and community-based facilities that are safe, humane, cost-efficient, and appropriately secure, and to provide inmates with a range of work and other self-improvement programs that will help them adopt a crime-free lifestyle upon their return to the community. As our mission indicates, the post-release success of offenders is as important to public safety as inmates' secure incarceration.

The two parts of our mission are closely related -- prisons must be secure, orderly, and safe for our staff to be able to supervise work details, provide training, conduct classes, and carry out treatment sessions. Inmates who are productively occupied in appropriate correctional programs are less likely to engage in misconduct and violent or disruptive behavior.

#### **The Federal Inmate Population**

Continuing increases in the inmate population pose substantial ongoing challenges for our agency. In FY 2009, a net growth of 7,091 new inmates was realized, and net growth of 7,000 inmates per year is projected for FY 2010 and FY 2011. We believe the inmate population will continue to increase for the foreseeable future, and so will the BOP's challenges to provide for safe inmate incarceration and care and for the safety of BOP staff and surrounding communities.

The BOP is responsible for the incarceration of nearly 210,000 inmates. Approximately 82 percent of the inmate population are confined in Bureau-operated institutions, while 18 percent are under contract care, primarily in privately

operated prisons. Most of these inmates in BOP facilities (52 percent) are serving sentences for drug trafficking offenses. The remainder of the population includes inmates convicted of weapons offenses (15 percent), immigration law violations (11 percent), violent offenses (8 percent), fraud (5 percent), property crimes (4 percent), sex offenses (4 percent), and other miscellaneous offenses (1 percent). The average sentence length for inmates in BOP custody is 9.9 years. Approximately 7 percent of inmates in the BOP are women. Approximately 26 percent of the entire prison population are non-U.S. citizens.

Our agency has no control over the number of inmates who come into Federal custody, the length of their sentences, or the skill deficits they bring with them. We do have control, however, over the programs in which inmates can participate while they are incarcerated; and we can thereby affect how inmates leave our custody and return to the community. Almost all Federal inmates will be released back to the community at some point. Most need job skills, vocational training, education, counseling, and other assistance (such as drug abuse treatment, anger management, and parenting skills) if they are to successfully reenter society. Each year, approximately 45,000 Federal inmates return to our communities, a number that will continue to increase as the inmate population grows.

It is particularly challenging to manage the federal prisoner population at higher security levels. The combined inmate population confined in medium and high security facilities represents 39 percent of the entire inmate population. It is important to note that at the medium security level, about 67 percent of the inmates are drug offenders or weapon offenders, approximately 75 percent have a history of violence, 40 percent have been sanctioned for violating prison rules, and half of the inmates in this population have sentences in excess of 8 years. At the high security level, more than 70 percent of the inmates are drug offenders, weapons offenders, or robbers, another 10 percent have been convicted of murder, aggravated assault, or kidnaping, and half of the inmates in this population have sentences in excess of 10 years.

The challenges have never been greater. The BOP is managing severely overcrowded institutions with more gang affiliated inmates, who are prone to violence, committing more serious assaults against staff. Nearly 70 percent of high security inmates have been sanctioned for violating prison

rules, and more than 90 percent have a history of violence. One out of every 4 inmates at high security institutions (U.S. Penitentiaries) are gang affiliated. There is a much higher incidence of serious assaults by inmates on staff at medium and high security institutions. In both calendar years 2008 and 2009, approximately 90 percent of serious assaults against staff occurred at medium and high security institutions. In both years the USPs experienced 56 percent and mediums 34 percent of such serious assaults.

**FY 2011 Budget request**

The President's FY 2011 Budget request for the BOP is \$6.534 billion for the Salaries and Expenses (S&E) Budget, nearly \$450 million more than the FY 2010 enacted level. For the Buildings and Facilities (B&F) Budget, the request, \$269.7 million, is nearly \$171 million more than the FY 2010 enacted level.

The BOP's highest priorities continue to be:

- Ensuring the safety of federal inmates, staff, and surrounding communities;
- Increasing on-board staffing at BOP correctional institutions;
- Adding bedspace, thereby reducing the use of double and triple bunking, leading to lower violence in prisons;
- Increasing the Federal Prison Industries work program and other inmate reentry programs such as drug treatment and education through an inmate skills development strategy, inevitably reducing recidivism; and
- Maintaining existing institutions in an adequate state of repair.

**Buildings and Facilities Program Increases**

The B&F budget is composed of two decision units: 1) The New Construction decision unit includes funding to expand existing facilities and acquire or construct new facilities; and 2) The Modernization and Repair (M&R) decision unit includes funding to maintain existing facilities in an adequate state of repair to provide a safe and secure environment to continue operations, thereby protecting taxpayer capital investments.

For FY 2011, in the New Construction decision unit, resources are requested to acquire and modify the Thomson Correctional Center in Illinois to expand high security federal

prison capacity. The Thomson facility will be activated as a U.S. Penitentiary (USP) and will provide up to 1,600 new high security cells to help address crowding at high security facilities, currently at 52 percent over rated capacity. As of February 2010, 95 percent of high security inmates were double bunked.

The number of supermax beds available in BOP has not increased since ADX, Florence was activated in 1994, when the total inmate population was approximately 95,000. Thus, in addition to housing general population high security inmates, USP Thomson will also be used by the BOP to house a number of supermax inmates and other inmates who have proven to be difficult to manage and inmates who are designated for Special Management Units (SMUs). Conditions of confinement for SMU inmates are more restrictive than for general population inmates. The Thomson facility will provide the physical structures and security to appropriately house inmates who are designated for SMU placement.

Designations to a SMU may be considered when an inmate whose interaction/behavior requires greater management to ensure the safety, security, or orderly operation of Bureau facilities, or protection of the public, because the inmate meets any of the following criteria: Participated in disruptive geographical group/gang related activity; Had a leadership role in disruptive geographical group/gang related activity; Has serious and/or disruptive disciplinary infractions; Committed any serious offense, after being classified as a member of a Disruptive Group; Participated in, organized, or facilitated any group misconduct that adversely affected the orderly operation of a correctional facility; and Otherwise participated in or was associated with activity such that greater management of the inmate's interaction with other persons is necessary to ensure the safety, security, or orderly operation of Bureau facilities, or protection of the public.

In the M&R program, the BOP continues its progress of improving environmental and energy performance. The BOP is aggressively pursuing the Energy Saving Performance Contract (ESPC) finance mechanism permitted by Executive Order 13423 and Energy Policy Act. Twenty-one ESPCs have been initiated over the last two years and the BOP has moved forward with seventeen of them. As part of these projects, the BOP is implementing green initiatives such as solar power, wind turbines, biomass

boilers, lighting upgrades, water conservation retrofits, heating and cooling equipment replacement, and many other energy saving measures.

In addition to ESPCs, the BOP is also pursuing numerous energy conservation and greening projects via traditional methods. As an example, the BOP is working with Lycoming County, Pennsylvania, in an effort to utilize methane gas from a landfill to provide electricity and hot water to the Federal Correctional Complex in Allenwood, Pennsylvania. In an effort to conserve energy system-wide, the BOP implemented an Energy Conservation Initiative in 2006, as well as implemented additional water conservation initiatives in 2009 to reduce water consumption throughout the system. The BOP also has a very ambitious recycling program. As an example, the Safety Department at the Federal Correctional Complex in Lompoc, California, operates a multi-faceted recycling and environmental program, their recycling efforts keep tons of recyclables, such as wood, cardboard, ferrous metals, non-ferrous metals, tires, batteries, anti-freeze, engine oil, cooking oil, wood pallets, plastics, light bulbs, computers and papers from entering the waste stream. Finally, the BOP has five institutions that have various size bio-diesel operations. At these facilities, waste kitchen grease is converted into bio-diesel, and is used in vehicles and lawn equipment.

The BOP continues trying to manage the most serious life safety, security, and repair projects within constrained funding levels.

#### **Salaries and Expenses Program Increases**

The FY 2011 S&E program increases build on FY 2010 initiatives. This request supports an increase in staffing levels at existing federal prisons. Half year funding is requested to fill 1,200 vacant correctional worker positions to safely manage the growing inmate population at existing BOP institutions. Operating the crowded Federal Prison System, with a growing inmate population, without commensurate personnel increases has placed severe demands on existing staff.

Funding is requested to begin the activation process of two new prisons, FCI Berlin, New Hampshire (1,280 beds) medium security facility and the United States Penitentiary (USP) Thomson, Illinois (acquired USP up to 1,600 cells). Resources are requested to address: increases in food costs; adjustments

in existing contract beds cost; and increases associated with the projected inmate population growth in BOP facilities. Resources are also requested to expand reentry programs. Additionally, we plan to significantly increase the number of inmates in community corrections, including home confinement. Finally, the requested increases will allow more programming associated with the Second Chance Act of 2007.

**Institution Crowding**

BOP confined approximately 172,400 inmates in facilities with a total rated capacity of 125,778 beds at the end of FY 2009. Systemwide, the BOP was operating at 37 percent over its rated capacity. Crowding is of special concern at higher security facilities including penitentiaries (operating at 52 percent over capacity) and medium-security institutions (operating at 46 percent over capacity). These facilities confine a disproportionate number of inmates who are prone to violence. The BOP has managed severe crowding by double bunking throughout the system -- 95 percent of all high-security cells and 100 percent of all medium-security cells are double-bunked. In addition, approximately 11 percent of all medium-security cells are triple-bunked or inmates are being housed in space that was not designed for inmate housing.

Preparing inmates for reentry into the community, including incorporating the changes made by the Second Chance Act into our programs, is a high priority for the BOP. We are limited however, in our ability to attend to this priority due to the high level of crowding and constrained level of staffing in our institutions. The combination of elevated crowding and constrained staffing has limited our ability to provide all inmates with the necessary range of programs that provide the job skills and life skills necessary to prepare them fully for a successful reentry into the community.

Crowding also affects inmates' access to important services (such as medical care and food services), an institution's infrastructure (the physical plant and security systems), and inmates' basic necessities (access to toilets, showers, telephones, and recreation equipment). Correctional administrators agree that crowded prisons result in greater tension, frustration, and anger among the inmate population, which leads to conflicts and violence.



In the past, we have been able to take a variety of steps to mitigate some of the effects of crowding in our facilities. For example, we have improved the architectural design of our newer facilities and have taken advantage of improved technologies in security measures such as perimeter security systems, surveillance cameras, and equipment to monitor communications. These technologies support BOP employees' ability to provide inmates the supervision they need in order to maintain security and safety in our institutions. We have also enhanced population management and inmate supervision strategies in areas such as classification and designation, intelligence gathering, gang management, use of preemptive lockdowns, and controlled movement. We have, however, reached a threshold with regard to our efforts, and are facing serious problems with inmate crowding.

In 2005, the BOP performed a rigorous analysis of the effects of crowding and staffing on inmate rates of violence. Data was used from all low-security, medium-security, and high-security BOP facilities for male inmates for the period July 1996 through December 2004. We accounted for a variety of factors known to influence the rate of violence and, in this way, were able to isolate and review the impact that crowding and the inmate-to-staff ratio had on serious assaults. This study found that both the inmate-to-staff ratio and the rate of crowding at an institution (the number of inmates relative to the institution's rated capacity) are important factors that affect the rate of serious inmate assaults.

The analysis revealed that a one percentage point increase in a facility's inmate population over its rated capacity corresponds with an increase in the prison's annual serious assault rate by 4.09 per 5,000 inmates; and an increase of one inmate in an institution's inmate-to-custody-staff ratio increases the prison's annual serious assault rate by approximately 4.5 per 5,000 inmates. The results demonstrate through sound empirical research that there is a direct relationship between resources (bed space and staffing) and institution safety.

The BOP employs many management interventions to prevent and suppress inmate violence. These interventions are resource-intensive and include: paying overtime to increase the number of custody staff available to perform security duties, utilizing staff from program areas (detracting from inmate programs and

other vital institution functions), locking down an institution after a serious incident and performing intensive interviews to identify perpetrators and causal factors, performing comprehensive searches to eliminate weapons and other dangerous contraband, and designating and housing inmates in Special Management Units (SMU).

In sum, in order to reduce crowding, one or more of the following must occur: (1) reduce the length of time inmates spend in prison; (2) expand inmate housing at existing facilities; (3) contract with private prisons for additional bedspace for low-security criminal aliens; (4) significantly increase the number of inmates, in community corrections, including home confinement; and (5) acquire and/or construct and staff additional institutions.

#### **Substance Abuse Treatment**

The BOP is mandated by statute (the Violent Crime Control and Law Enforcement Act of 1994) to provide drug abuse treatment to inmates. Our substance abuse treatment program includes drug education, non-residential drug abuse treatment, residential drug abuse treatment, and community transition treatment.

Drug abuse education is available in all BOP facilities. Drug abuse education provides inmates with information on the relationship between drugs and crime and the impact of drug use on the individual, his or her family, and the community. Drug abuse education is designed to motivate appropriate offenders to participate in nonresidential or residential drug abuse treatment, as needed.

Non-residential drug abuse treatment is also available in every BOP institution. Specific offenders whom we target for non-residential treatment services include:

- inmates with a relatively minor or low-level substance abuse impairment;
- inmates with a more serious drug use disorder whose sentence does not allow sufficient time to complete the residential drug abuse treatment program;
- inmates with longer sentences who are in need of and are awaiting placement in the residential drug abuse treatment program;
- inmates identified with a drug use history who did not participate in residential drug abuse treatment and are preparing for community transition; and

- inmates who completed the unit-based component of the residential drug abuse treatment program and are required to continue treatment until placement in a residential reentry center, where they will receive transitional drug abuse treatment.

Non-residential drug abuse treatment is based on the cognitive behavioral therapy model and focuses on criminal and drug-using risk factors such as antisocial and pro-criminal attitudes, values, beliefs, and behaviors and replacing them with pro-social alternatives.

Under our statutory mandate, the BOP is required to provide residential drug abuse treatment to all inmates who volunteer and are eligible for the program. In FY 2009, the BOP provided residential drug abuse treatment to 100 percent of the federal inmate population eligible for treatment. In FY 2007 and FY 2008 the BOP was not able to provide residential drug treatment to 100 percent of eligible inmates prior to their release from the BOP's custody due to funding constraints. The increase in the treatment rate to 100 percent in FY 2009 is due in part to Congressional funding which allowed an in-house expansion of drug programming and more than 3,000 early releases resulting from changes in the U.S. Sentencing Commission sentencing guidelines that retroactively shortened sentences of inmates convicted of crack cocaine offenses.

To estimate the demand and determine the number of beds required for the residential drug abuse treatment program each year, we analyzed a portion of the data collected as part of a study of the prevalence of mental health conditions in the inmate population. These data characterize samples of inmates from admissions cohorts during fiscal years 2002 and 2003. We reviewed over 2,500 presentence investigation reports to ascertain the frequency of inmates with a drug use disorder (based on either a reference to a medical diagnosis of a drug use disorder or an inmate's self report of drug use that met the criteria for a drug use disorder). The findings extrapolated from these data indicate that approximately 40 percent of inmates entering BOP custody during these years met the criteria for a substance use disorder.

The foundation for residential drug abuse treatment is the cognitive behavior therapy treatment model, which targets offenders' major criminal and drug-using risk factors. The

program is geared toward reducing anti-social peer associations; promoting positive relationships; increasing self-control, self-management, and problem solving skills; ending drug use; and replacing lying and aggression with pro-social alternatives.

Participants in the residential drug abuse treatment program live together in a unit reserved for drug abuse treatment in order to minimize any negative effects of interaction with the general inmate population. The residential drug abuse treatment program is a minimum of 500 hours over a course of 9 to 12 months. Residential drug abuse treatment is provided toward the end of the sentence in order to maximize its positive impact on soon-to-be-released inmates. The residential drug abuse treatment program is available in 61 BOP institutions and one contract facility.

Drug abuse treatment in the BOP includes a community transition treatment component to help ensure a seamless transition from the institution to the community. The BOP provides a treatment summary to the residential reentry center where the inmate will reside, to the community-based treatment provider who will treat the inmate, and to the U.S. Probation Office before the inmate's arrival at the residential reentry center. Participants in community transition drug abuse treatment typically continue treatment during their period of supervised release after they leave BOP custody.

#### **Inmate Reentry**

Federal prisons offers a variety of inmate programs, including work, education, vocational training, substance abuse treatment, observance of faith and religion, psychological services and counseling, release preparation, and other programs that impart essential life skills. We also provide other structured activities designed to teach inmates productive ways to use their time.

Rigorous research has found that inmates who participate in Federal Prison Industries (FPI) are 24 percent less likely to recidivate; inmates who participate in vocational or occupational training are 33 percent less likely to recidivate; inmates who participate in education programs are 16 percent less likely to recidivate; and inmates who complete the residential drug abuse treatment program are 16 percent less likely to recidivate and 15 percent less likely to relapse to drug use within 3 years after release.

In 2001, the Washington State Institute for Public Policy evaluated the costs and benefits of a variety of correctional, skills-building programs. The study examined program costs; the benefit of reducing recidivism by lowering costs for arrest, conviction, incarceration, and supervision; and the benefit by avoiding crime victimization.

The study was based on validated evaluations of crime prevention programs, including the BOP's assessment of our industrial work and vocational training programs (the Post Release Employment Project study) and our evaluation of the Residential Drug Abuse Treatment program (the TRIAD study). The "benefit" is the dollar value of criminal justice system and victim costs avoided by reducing recidivism and the "cost" is the funding required to operate the correctional program. The benefit-to-cost ratio of residential drug abuse treatment is as much as \$2.69 for each dollar invested in the program; for adult basic education, the benefit is as much as \$5.65; for correctional industries, the benefit is as much as \$6.23; and for vocational training, the benefit is as much as \$7.13. The study clearly indicates these inmate programs result in significant cost savings through reduced recidivism, and their expansion is important to public safety.

#### **Inmate Work Programs**

Prison work programs teach inmates occupational skills and instill in offenders sound and lasting work habits and a work ethic. All sentenced inmates in Federal correctional institutions are required to work (with the exception of those who for security, educational, or medical reasons are unable to do so). Most inmates are assigned to an institution job such as food service worker, orderly, painter, warehouse worker, or groundskeeper.

Additionally, approximately 18,500 inmates work in FPI. FPI is one of the BOP's most important correctional programs because it has been proven to substantially reduce recidivism. FPI provides inmates the opportunity to gain marketable work skills and a general work ethic -- both of which can lead to viable, sustained employment upon release. It also keeps inmates productively occupied; inmates who participate in FPI are substantially less likely to engage in misconduct.

At present, FPI reaches only 11 percent of the BOP work

eligible inmate population; this is a significant decrease from previous years. This decrease is attributable to various provisions in Department of Defense authorization bills and appropriations bills that have weakened FPI's standing in the Federal procurement process.

The requirement to be self-sustaining, the legislative changes and the present economic situation have combined to place significant pressure on FPI to reduce costs. As you may be aware, last year we made the extreme difficult decision to close or downsize a number of our factories and operations and take several cost containment measures. Had we not taken these actions, our financial situation today would be significantly worse. I am pleased to report that almost all of the staff affected by last year's restructuring have been placed, and I am confident we will resolve the remaining staff placement issues in the very near future. While all of these efforts are making a positive impact, we are continuing to explore other cost containment measures. Additionally, we are also evaluating whether further factory closures may be necessary to reduce the losses projected in the revised forecast.

In order to increase inmate opportunities to work in FPI, new authorities are required to expand product and service lines. Absent any expansion of FPI, the BOP will need additional resources to create inmate work and training programs to prepare inmates for a successful reentry into the community.

**Education, Vocational Training, and Occupational Training**

The BOP offers a variety of programs for inmates to enhance their education and to acquire skills to help them obtain employment after release. Institutions offer literacy classes, English as a Second Language, adult continuing education, parenting classes, recreation activities, wellness education, and library services.

With few exceptions, inmates who do not have a high school diploma or a General Educational Development (GED) certificate must participate in the literacy program for a minimum of 240 hours or until they obtain the GED. The English as a Second Language program enables inmates with limited proficiency in English to improve their English language skills. We also facilitate vocational training and occupationally-oriented higher education programs. A number of institutions offer inmates the opportunity to enroll in and pay for more

traditional college courses that could lead to a bachelor's degree.

Occupational and vocational training programs are based on the needs of the specific institution's inmate population, general labor market conditions, and institution labor force needs. On-the-job training is afforded to inmates through formal apprenticeship programs, institution job assignments, and work in the FPI program.

**Specific Pro-Social Values Programs**

Based on the proven success of the residential substance abuse treatment program, we have implemented a number of other programs to address the needs of other segments of the inmate population (including younger offenders and high-security inmates). These programs focus on inmates' emotional and behavioral responses to difficult situations and emphasize life skills and the development of pro-social values, respect for self and others, responsibility for personal actions, and tolerance. Many of these programs have already been found to significantly reduce inmates' involvement in institution misconduct. The positive relationship between institution conduct and post-release success makes us hopeful about the ability of these programs to reduce recidivism. Some of these programs are: BRAVE (Bureau Rehabilitation and Value Enhancement); and The Challenge Program.

**Life Connections**

The Life Connections Program is a residential multi-faith-based program that provides the opportunity for inmates to deepen their spiritual life and assist in their ability to successfully reintegrate following release from prison.

Life Connections programs are currently operating at FCI Petersburg, USP Leavenworth, FCI Milan, USP Terre Haute, and Federal Medical Center Carswell. Our Office of Research and Evaluation has completed several preliminary analyses of the program and found a reduction in serious institution misconduct among program participants. The Office of Research will next assess the effect of the program on recidivism, once a sufficient number of graduates have been released for at least 3 years.

Inmates not eligible for the residential Life Connection Program are offered a modified version (Threshold) program.

This is a non-residential spiritual/values based program taught by chaplains and volunteers over a six to nine month time period. This program is designed to strengthen inmate community re-entry and reduce recidivism.

**Inmate Skills Development Initiative**

The Inmate Skills Development initiative refers to the BOP's targeted efforts to unify our inmate programs and services into a comprehensive reentry strategy. The three principles of the Inmate Skills Development initiative are: (1) inmate participation in programs must be linked to the development of relevant inmate reentry skills; (2) inmates should acquire or improve a skill identified through a comprehensive assessment, rather than simply completing a program; and (3) resources are allocated to target inmates with a high risk for reentry failure. The initiative includes a comprehensive assessment of inmates' strengths and deficiencies in nine core areas. This critical information is updated throughout an inmate's incarceration and is provided to probation officers as inmates get close to their release from prison so as to assist in the community reentry plan. As part of this initiative, program managers have been collaborating and developing partnerships with a number of governmental and private sector agencies to assist with inmate reentry.

**Specific Release Preparation Efforts**

In addition to the wide array of inmate programs described above, the BOP provides a Release Preparation Program in which inmates become involved toward the end of their sentence. The program includes classes in resume writing, job seeking, and job retention skills. The program also includes presentations by officials from community-based organizations that help ex-inmates find employment and training opportunities after release from prison.

Release preparation includes a number of inmate transition services provided at our institutions, such as mock job fairs where inmates learn job interview techniques and community recruiters learn of the skills available among inmates. At mock job fairs, qualified inmates are afforded the opportunity to apply for jobs with companies that have job openings. Our facilities also help inmates prepare release portfolios, including a resume, education and training certificates, diplomas, education transcripts, and other significant documents needed for a successful job interview.



We have established employment resource centers at most Federal prisons to assist inmates with creating release folders to use in job searches; soliciting job leads from companies that have participated in mock job fairs; identifying other potential job openings; and identifying points of contact for information on employment references, job training, and educational programs.

We use residential reentry centers (RRCs) -- also known as community corrections centers or halfway houses -- to place inmates in the community prior to their release from custody in order to help them adjust to life in the community and find suitable post-release employment. These centers provide a structured, supervised environment and support in job placement, counseling, and other services. Some inmates are placed in home confinement for a brief period at the end of their stay at the RRC: they are at home under strict schedules, telephonic monitoring, and electronic monitoring. Research has shown that inmates who release through halfway houses are less likely to recidivate than those who release directly to the street.

**The Second Chance Act**

The Second Chance Act of 2007 required several changes to BOP policies and practices. The BOP is committed to providing opportunities for offenders to prepare for a successful reentry to the community. We have made significant progress toward meeting the mandates of the Second Chance Act, which is particularly noteworthy given the funding challenges we have faced.

**Closing**

Chairman Mollohan, this concludes my formal statement. Again, I thank you, and Mr. Wolf, and the Subcommittee for your support of our agency. In 2009, we added a net of 775 staff and plan to add an additional 925 staff in 2010. As I have indicated in my testimony, the BOP faces many challenges as the inmate population continues to grow. For the past five years, the BOP has stretched resources, streamlined operations, and constrained costs to operate as efficiently and effectively as possible.

The FY 2011 President's Request moves a step further toward adequate staffing and bed space requirements to meet the increasing inmate population. We will also be better able to

expand inmate programs that have been demonstrated to reduce recidivism as expressed through our mission and bolstered by the theme and the specifics of the Second Chance Act. We can provide more inmates with the opportunity to avail themselves of beneficial correctional programs by reducing our crowding and adequately staffing our facilities as funding permits.

I look forward to working with you Mr. Chairman and members of the Subcommittee and would be happy to answer any questions.

## INMATE POPULATION INCREASES

Mr. MOLLOHAN. First of all, I would just like to see if I heard you right with some of your testimony, some of the facts here.

In 2009, you took in 7,091 new inmates, is that—

Mr. LAPPIN. Our last year's increase was 7,091 inmates to the base.

Mr. MOLLOHAN. Seven thousand ninety-one—

Mr. LAPPIN. Seven thousand ninety-one to the base.

Mr. MOLLOHAN [continuing]. Inmates to the base?

Mr. LAPPIN. We released—

Mr. MOLLOHAN. Is that a net increase?

Mr. LAPPIN. Net increase, yes a net increase.

Mr. MOLLOHAN. A net increase of 7,000, so you took in a lot more than that.

Mr. LAPPIN. Let me explain. We actually released a little over 60,000 inmates, but we admitted a little over 67,000 inmates. Of the 60,000 inmates released, around 20 thousand, maybe a little less, were deported and a little more than 40 thousand were transferred or reentered communities in our country.

Mr. MOLLOHAN. And you are going to have the same experience in 2010?

Mr. LAPPIN. We believe we will add another 7,000 to the base this year, yes, and in 2011.

Mr. MOLLOHAN. And in 2011? So that is 14,000 added to the base during the next two years?

Mr. LAPPIN. And just a little background, one of our two drivers right now is immigration. We actually received about fifteen, sixteen hundred more inmates last year than we expected.

We have seen a 45-percent increase in immigration the last two years. That is 8,000 inmates with immigration convictions. Their sentences are slightly shorter in nature, so we do not have them as long, but it is still 8,000 inmates.

The other area is a small uptick in drugs and firearms. But even a small increase for, say, fifteen hundred to two thousand inmates has substantial impact because their average sentence is 80 months.

So if you add 1,500 inmates in drugs or firearms, they are staying with you for 80 months. That is one prison full for 80 months.

Mr. MOLLOHAN. Well, what does the trend line look like past 2011?

Mr. LAPPIN. What we do is monitor indictments. We are continuing to see a dramatic increase in indictments in immigration. Again, we are seeing a slight increase of 1,500 to 1,700 indictments increase in drugs and firearms.

Mr. MOLLOHAN. So you extrapolate out of that a certain increase?

Mr. LAPPIN. A certain percentage of those will end up being convicted—

Mr. MOLLOHAN. Okay. So what—

Mr. LAPPIN [continuing]. Based on historical—

Mr. MOLLOHAN. Yeah. What is the bottom line?

Mr. LAPPIN. We are going to see an increase in both drugs and firearms and immigration—

Mr. MOLLOHAN. Into the foreseeable future?

Mr. LAPPIN [continuing]. For the first—in the next couple of years, yes.

Mr. MOLLOHAN. But I am asking for a number associated with—

Mr. LAPPIN. I will have to get you the number rather than me guessing. I will give you what our projections are.

[The information follows:]

FUTURE POPULATION PROJECTIONS FOR FY 2011, FY 2012, AND FY 2013

The BOP's inmate population is projected to increase by a net 7,000 inmates per year for FY 2010 and FY 2011. For FY 2012 and 2013, the inmate population is projected to grow by an additional 4,500 inmates per year. The distribution of current population offenses are as follows: Drugs 52 percent; Weapon offenses 15 percent; Immigration Law violations 11 percent; violent offenses 8 percent; Fraud 5 percent; Property Crimes 4 percent; Sex offenses 4 percent; and other miscellaneous offenses 1 percent. BOP does not project offenses by category for future years; however, the BOP does not anticipate significant changes in the inmate population distribution by offense category for FY 2010 through FY 2013.

Mr. MOLLOHAN [continuing]. Your trend line projection past 2011. You gave it to 2011.

Mr. LAPPIN. Yeah. I think we go out three years, so we can give it to you up to three years. So it will be 2011, 2012, and 2013 when our projections—

Mr. MOLLOHAN. But just here for this testimony and not holding you to the number—

Mr. LAPPIN. Sure.

Mr. MOLLOHAN [continuing]. Does the trend line look the same as what you have described for 2009, 2010, and 2011?

Mr. LAPPIN. Yes.

Mr. MOLLOHAN. Out to—

Mr. LAPPIN. What we do in the out years, though, this is just our conservative approach—

Mr. MOLLOHAN. Yeah.

Mr. LAPPIN [continuing]. It is more difficult to predict beyond three years, so what we typically do in the out years is reduce that projected increase from the prior three years—

Mr. MOLLOHAN. You say conservative. Does that mean you are conservative to make sure you hit the number and if you are a little above, that is conservative, or are you conservative on the low side?

Mr. LAPPIN. We are conservative on the low side, so—

Mr. MOLLOHAN. Why would you be conservative on the low side?

Mr. LAPPIN. In lieu of us asking for and building more beds than what we might need. We realize—

Mr. MOLLOHAN. That seems like a slim prospect—

Mr. LAPPIN. That is true. And it has been.

Mr. MOLLOHAN [continuing]. Given this kind of—

Mr. LAPPIN. And it may be that we need to step back, although I have to say the GAO report, that study that was done just recently was very complimentary of our population projections, only a one-percent difference in what we projected and what we actually received.

Mr. MOLLOHAN. Yeah.

Mr. LAPPIN. So we have adhered to that.

Mr. MOLLOHAN. Okay. But—

Mr. LAPPIN. For example, we have got 7,000 in 2011, 4,500 in 2012, 4,500, I am sorry, 4,500 in 2013. So in the out years, 2013, 2014, we projected about 4,500.

As we get closer, we would adjust those up or down based on the indictment information we are receiving because that is a better predictor the closer you get to the three-year window. So right now our projections are 7,000 in 2011, 4,500 in 2012, and 4,500 in 2013.

Mr. MOLLOHAN. And thereafter about 4,500?

Mr. LAPPIN. Thereafter.

Mr. MOLLOHAN. But that is really just a placeholder almost?

Mr. LAPPIN. That is a placeholder. As you get closer, you begin to see the indictments coming in.

Mr. MOLLOHAN. Yeah.

Mr. LAPPIN. Then you can make an adjustment—

Mr. MOLLOHAN. Yeah.

Mr. LAPPIN [continuing]. Up or down based on the number of indictments.

Mr. MOLLOHAN. I see. So—

Mr. LAPPIN. Does that make sense?

Mr. MOLLOHAN. Yes, it makes sense. Of course it does. It is your testimony.

Mr. LAPPIN. Thank you.

#### CROWDING

Mr. MOLLOHAN. Well, I mean, I want to get into these questions, but, you know, anybody's reaction to that would be how in the world, where in the world are you going to put these people.

Mr. LAPPIN. Well—

Mr. MOLLOHAN. I mean, Thomson uses 1,600 beds and, you know, a prison here and a prison there, and you are going around the country buying a lot of prisons.

Mr. LAPPIN. You want me to respond to that?

Mr. MOLLOHAN. Sure.

Mr. LAPPIN. Okay. Obviously we have got four prisons being built. McDowell and Mendota are being activated. And, in essence, in our opinion, they are filled.

Mr. MOLLOHAN. Okay.

Mr. LAPPIN. So next up obviously is Berlin and if we were to acquire Thomson. Now, Thomson has 1,600 cells. We would double bunk some of that. So if we had the entire prison, we are going to get more inmates in there—

Mr. MOLLOHAN. I see.

Mr. LAPPIN [continuing]. Than we do in our normally constructed prisons. So it is a little larger.

Mr. MOLLOHAN. Yeah. So you might get 3,200?

Mr. LAPPIN. I am not going to go that high, but we could be in the 2,200, 2,300 range.

Mr. MOLLOHAN. That still is far short of the net increase you are going to—

Mr. LAPPIN. And then beyond that, we have Yazoo City, Hazelton, and Aliceville. So that is everything that we are building. And without a doubt, each of the years those come on line, it is not going to be enough beds to accommodate the number of inmates coming in—

Mr. MOLLOHAN. Yeah.

Mr. LAPPIN [continuing]. If we hit the 7,000, 7,000, 4,500. So we already started identifying and informing wardens where we are going to add more beds at existing locations.

Mr. MOLLOHAN. Which means more crowding?

Mr. LAPPIN. More triple bunking. I mean, that is where we are at. There are very few single celled, single bunked rooms. They are reserved for only those inmates that we cannot house someone else with.

Mr. MOLLOHAN. Okay.

Mr. LAPPIN. So we are going to increase triple bunking is what is going to happen.

Mr. MOLLOHAN. Okay. We will get into that in more detail a little bit later.

Mr. LAPPIN. Okay.

#### GAO REVIEW OF BOP'S BUDGETING

Mr. MOLLOHAN. Let me talk to you about budget formulation process. The explanation statement accompanying the fiscal year 2009 bill directed the Government Accountability Office to review BOP's budgeting methods, including the accuracy of its estimates for utility and medical care costs and the accuracy of its estimates in the growth of the inmate population.

GAO provided that report to the Committee late last summer and made it publicly available last November.

I note first that GAO found the Bureau of Prisons' basic budgeting processes to be sound, which is not quite the same thing as saying that the budget requests submitted to Congress have been sound or adequate. We understand that there is a give and take process that you go through with the Department and with the OMB and that BOP has frequently come out on the short end of that.

The Government Accountability Office's major recommendation was that you carry out an uncertainty analysis for each budget request you submit to the Department and to OMB. Such analysis would quantify the risk that would be incurred by cutting the budget request below the amount requested by BOP's budget formulation process. And by risk here, I mean the risk that actual operating expenses would exceed the budget request.

How has BOP responded to the GAO recommendation?

Mr. LAPPIN. Well, we are very pleased with their evaluation of our budget preparation process and the cost estimation. They were very complimentary. We appreciate that. And I applaud my staff who do a great job at that every year.

Without a doubt, you are correct. There is ongoing debate between the Department and OMB about what the right number is. We appreciate the recommendations to conduct uncertainty analysis.

We are in the process of working with a company who is helping us do that, so it is a statistical analysis that provides a variety of scenarios as to the likelihood—

Mr. MOLLOHAN. So you are developing a capability to be—

Mr. LAPPIN. We are doing that.

Mr. MOLLOHAN [continuing]. Responsive to that—

Mr. LAPPIN. Yes.

Mr. MOLLOHAN [continuing]. Recommendation?

Mr. LAPPIN. Yes, we are.

Mr. MOLLOHAN. So what is the status of that?

Mr. LAPPIN. We are talking with a company. We are going to hire a company who has experience doing this. So it is a matter of us getting them on board and a contract and then working with our research staff to develop an approach to doing this. But I am hopeful in the next year we will be——

Mr. MOLLOHAN. Will you be able to apply that analysis to the 2011 request post——

Mr. LAPPIN. Probably 2012.

Mr. MOLLOHAN [continuing]. Post request?

Mr. LAPPIN. We could certainly go back and look at it——

Mr. MOLLOHAN. Yeah.

Mr. LAPPIN [continuing]. And see how it compares.

Mr. MOLLOHAN. That would certainly be interesting.

Mr. LAPPIN. Yeah, it would be. But I think the actual use of it is more likely 2012.

Mr. MOLLOHAN. For your budgeting process?

Mr. LAPPIN. Yes.

Mr. MOLLOHAN. Will you do that and will you make the results of that available——

Mr. LAPPIN. Yes.

Mr. MOLLOHAN [continuing]. To the Committee? You answered yes before I asked the question, see, so then I cannot commit you, I cannot hold you to answering the questions. Would you make it available to the Committee?

Mr. LAPPIN. The results of our analysis?

Mr. MOLLOHAN. Yes.

Mr. LAPPIN. Yes.

Mr. MOLLOHAN. As applied to the 2011 request?

Mr. LAPPIN. Right.

#### FY 2011 BUDGET

Mr. MOLLOHAN. Is the Administration's fiscal year 2011 budget proposal for BOP less than BOP's estimate for its operating needs?

Mr. LAPPIN. I think it——

Mr. MOLLOHAN. In other words, where are the——

Mr. LAPPIN [continuing]. S&E.

Mr. MOLLOHAN. Where are the holes?

Mr. LAPPIN. I think without a doubt, construction and M&R funding is hard to come by. And so I am not sure that we received what we asked for in M&R and New Construction.

But the S&E side, we are satisfied with. And we can meet our basic needs and hire more staff if we receive what has been proposed in the 2011 President's budget.

Mr. MOLLOHAN. Okay. But now let me just make sure I asked that question so you understood. Is the Administration's fiscal year 2011 budget proposal for the Bureau of Prisons less than the Bureau of Prisons' estimate for its operating needs?

Mr. LAPPIN. I do not believe it is. I do not believe it is less.

Mr. MOLLOHAN. Okay. If the answer is different, you will submit it for the record?

Mr. LAPPIN. Yes.

Mr. MOLLOHAN. And if there are holes in the budget request—

Mr. LAPPIN. The two areas that we are—

Mr. MOLLOHAN [continuing]. Where are they and how big are they?

Mr. LAPPIN. Yeah. I mean, obviously based on my opening statement, we are requesting additional funding to build or acquire additional bed space. We have been asking for additional funding for maintenance and repair. And so those are the two areas that concern us the most, the ability to acquire more beds and the ability to repair our existing infrastructure, so those are the two areas that continue to be of concern.

Mr. MOLLOHAN. The GAO report also recommended that the Bureau of Prisons do a better job of documenting the information that supports its budget estimates.

Have you—

Mr. LAPPIN. Yes.

Mr. MOLLOHAN [continuing]. Instituted any new policies in response to that recommendation?

Mr. LAPPIN. Yes. We are working on some ways of better documenting what our calculations are based on, trying to make the whole process more transparent so that more information is understood as to how we go about coming up with the amount of money we are requesting. So we agree with that recommendation as well and we are putting in place some processes to accomplish it.

#### STAFFING

Mr. MOLLOHAN. Okay. Let us discuss staffing levels here for just a moment. During our hearing last year, you estimated that the Bureau of Prisons needed at least an additional 3,000 correctional workers to meet its staffing needs.

At the time, you were not sure if you would be able to achieve any net staffing increase in fiscal year 2009. So I was pleased to see your testimony indicate that BOP actually hired 755—

Mr. LAPPIN. Uh-huh.

Mr. MOLLOHAN [continuing]. 775 new staff by the end of the last fiscal year. In the fiscal year 2010 Appropriations Act, we provided \$106.4 million above the budget request, including \$98.2 million to allow you to annualize the cost of those new workers for fiscal year 2009, and to make significant progress in hiring additional correctional workers in the current year.

What is the total number of on-board staff you anticipate reaching by the end of the fiscal year?

Mr. LAPPIN. We anticipate increasing—

Mr. MOLLOHAN. Where is that chart?

Mr. LAPPIN [continuing]. Between 900 and 1,000 this fiscal year, so around 925 this fiscal year added to the base and some activations. So we added 775 last year to the base. We are going to add nine, nine-fifty this year to the base and activations. And if we get the President's request, we will add around 2,000 next year.

But let me help separate those numbers. Our goal was adding 3,000 to the base excluding new activations. We believe if we get the President's request that by the end of next fiscal year at a minimum, we will have filled 2,600 of the 3,000 positions we intended



to, we wanted to fill to the base excluding the new activations. So we are doing well.

Again, as I said last year, I am not sure that the 3,000 ultimately will be enough. Obviously that need grows. If crowding continues to increase, we will have to reassess. But as far as what we committed to, adding 3,000 to the base, we are going to be at a minimum, we believe, at about 2,600 filled by the end of 2011.

Mr. MOLLOHAN. Twenty-six hundred?

Mr. LAPPIN. Twenty-six hundred of those 3,000. We may get closer to that 3,000, but right now we believe we are going to get pretty close around 2,600 of the 3,000 that we wanted to fill. That excludes the activations.

So, if you add those activations in there, you are going to be up probably close to 4,000 because you have got Thomson, Berlin, and then there were some inmate coordinator positions and a few other things.

Mr. MOLLOHAN. The 3,000 you are talking about is to be added to the base—

Mr. LAPPIN. The base.

Mr. MOLLOHAN [continuing]. Not including activations?

Mr. LAPPIN. Correct.

Mr. MOLLOHAN. What percentage would that bring you up to if you actually hit that?

Mr. LAPPIN. Between 91 and 92 percent of authorized positions. So in 2008, we were at 86 percent. And we if are able to accomplish this by the end of 2011, we should be between 91 and 92 percent.

Mr. MOLLOHAN. What percent of your authorized level would you like to be at, a hundred? No. Realistically what would it be—

Mr. LAPPIN. Realistically.

Mr. MOLLOHAN [continuing]. 97, 98?

Mr. LAPPIN. We were performing quite well when we were filling 95 percent to 96. I mean, you realize we will never get to a hundred because there is just too much turnover, people retiring.

Mr. MOLLOHAN. Yeah. And that is why I backed off of a hundred.

Mr. LAPPIN. So years ago, when we were at 95, 96 percent, we were functioning quite well. We knew this was a big request to get that amount. That is why we suggested we do this incrementally and we picked the 3,000 target. That is what we are working towards.

When we finish that, we will step back and reassess assaults on staff and inmates, waiting lists for drug treatment, GED—those indicators we look at to see are we accomplishing the work we want to accomplish.

Mr. MOLLOHAN. That is where you come up with your authorized numbers, going through that drill?

Mr. LAPPIN. Well, if the 3,000 has had the—

Mr. MOLLOHAN. You will make an assessment?

Mr. LAPPIN. We will make an assessment.

Mr. MOLLOHAN. Okay.

Mr. LAPPIN. And if, in fact, we have not reduced those waiting lists, if we have not reduced—

Mr. MOLLOHAN. Then you will go back to—

Mr. LAPPIN [continuing]. Then we will go back, then we will come back and we will make another run of some additional—

Mr. MOLLOHAN. And that would impact your authorized level, right? I mean, you come up with your—

Mr. LAPPIN. Yes.

Mr. MOLLOHAN [continuing]. Authorized level?

Mr. LAPPIN. Correct. What we would request would impact our authorized—

Mr. MOLLOHAN. Yeah. You would readjust what we need—

Mr. LAPPIN. Correct. That is correct.

Mr. MOLLOHAN [continuing]. And what you need by your own judgment becomes your authorized level, so we are measuring against—

Mr. LAPPIN. Correct.

Mr. MOLLOHAN [continuing]. What you, in essence, say you need?

Mr. LAPPIN. Correct.

Mr. MOLLOHAN. Has OMB provided input on that exercise?

Mr. LAPPIN. Well, obviously they have a lot of input into—

Mr. MOLLOHAN. No. My question is, do they provide input on your exercise of coming up with the number that you need? We know they impact your—

Mr. LAPPIN. We come up with our number.

Mr. MOLLOHAN. You come up with your authorized number?

Mr. LAPPIN. We come up with our number in our budget development process.

Mr. MOLLOHAN. All right. You come up with it. Are they part of the process of your coming up with it, OMB?

Mr. LAPPIN. There is some budget direction given every year.

Mr. MOLLOHAN. No, no.

Mr. LAPPIN. Before we begin to develop a budget—

Mr. MOLLOHAN. When you come up with your authorized number, which is the number you want, does OMB push back on the number, because that is a base upon which you work? That is your justification for your budget request. And I am just asking, do they push back or do they allow you to come up with your authorized number and then just let you fund it at 91 percent or 92 percent or whatever?

Mr. LAPPIN. Every year, there is some direction given at the beginning of the budget process by OMB.

Mr. MOLLOHAN. With regard to your authorized number?

Mr. LAPPIN. Correct.

Mr. MOLLOHAN. Well, that is interesting. Those are two different processes, I would think. I think it would be fair for you to come up with what you need. You are the professionals. I mean, they are great, smart people. And then if they say we just do not have enough money, so you are going to have to operate at 92 percent of your authorized level, that is one thing. But for them to impact your authorized level as you compute it based upon your need—and tell me how I am wrong here.

Mr. LAPPIN. There is obviously—

Mr. MOLLOHAN. No, no. There is push and I just want to know if they impact the process of your coming up with your authorized number of employees?

Mr. LAPPIN. Yes.

Mr. MOLLOHAN. They do? And so they push back and say, no, you do not need that number of employees, is that—

Mr. LAPPIN. I am not sure exactly what type of—

Mr. MOLLOHAN [continuing]. The push back you get?

Mr. LAPPIN. Push back occurs—

Mr. MOLLOHAN. Okay.

Mr. LAPPIN [continuing]. Or if there is that much. You know, it may be we are in agreement based on our—

Mr. MOLLOHAN. Well, it may be and it may not be. But I just want to understand. So they impact it at two levels, number one, your authorized level, which we look at that and we say—we assume here in good faith, oh, gee, your authorized level.

I mean, if I did not know a little bit more about it, I would think the authorized level was in the authorizing bill. But you come up with that based upon your need. And so if they are impacting that number, then that impacts your percentage.

And so we look at 92 percent and say, gee, you are operating at 92 percent and, you know, you need to get to 95. But if they push down on your authorizing level, then it has less meaning. Anyway, okay.

When discounting staff positions at newly activating prisons, is the number of authorized correctional worker positions at your existing institutions going down, going up, or staying level?

Mr. LAPPIN. Could you say that again?

Mr. MOLLOHAN. Yes, sir. When discounting staff positions at newly activated prisons, taking that out, and I guess looking at your base—

Mr. LAPPIN. Yeah.

Mr. MOLLOHAN [continuing]. Is the number of authorized correctional worker positions at your existing institutions going down, going up, or staying level?

Mr. LAPPIN. The number of staff at those locations is increasing. There is no change in positions. There are X number of positions that are authorized at a location.

The issue is how many of those can you afford to fund and fill. That number is increasing. It increased last year. It will increase this year. It will increase next year if we get the President's requested budget. So those 3,000 positions are being filled and funded in existing facilities.

So their base, the number of employees they have on board is increasing to the tune of 3,000, if we fill those 3,000, to the tune of 3,000 new employees to the base. So we are adding correctional staff. That has been our focus up to this point.

Now we are looking at other support areas that were negatively impacted in years past, drug treatment, education. My sense is that if we are successful in filling those 3,000 positions that virtually all departments at an institution will reap some benefit, that is more staff than they had before, with the exception, we are going to be very conservative in filling administrative support areas, like financial management. They may get some depending on their situation.

But our primary focus is on positions that have direct contact with inmates. That number is increasing. It did last year. It will this year and it will next year if we get the President's request.

Mr. MOLLOHAN. In the process of determining authorized positions based on your need, when you look at that institution by in-

stitution, these considerations you are now talking about determine what your institution develops for the need and for the authorized level; is that correct?

Mr. LAPPIN. What we have done is every location has developed a staffing plan, here is where we would like to be based on our concerns over areas that are not performing as well, where we just need more resources.

Mr. MOLLOHAN. At that institution?

Mr. LAPPIN. At that location. And so when the money is distributed— I will be honest with you, in the last year or so, our direction to the wardens has been we want you to fill correctional officer positions because we could see that we were, rather what was happening, because we did not have enough correctional officers, is that we were taking staff out of other departments to work in correctional services.

So say here I am a drug treatment specialist or a nurse. We would take those people out and make them work in correctional services. We do not want to do that.

Mr. MOLLOHAN. Yeah. But my—

Mr. LAPPIN. So we focused on correctional officers.

Mr. MOLLOHAN [continuing]. My question has to do with developing the authorized level, developing the need level. And so on an institution by institution basis when you say how many people do you need here—

Mr. LAPPIN. Yes.

Mr. MOLLOHAN [continuing]. They do an assessment of that, you know, a particular number of authorized correctional officers at a particular institution? You determine at an institution how many correctional officers you need?

Mr. LAPPIN. That is done locally.

Mr. MOLLOHAN. It is done locally. And then that is passed up and you add that all up? It is a sum of those estimates—

Mr. LAPPIN. Well, it is not really.

Mr. MOLLOHAN. For your—

Mr. LAPPIN. They get some feedback. So we give them feedback asking them why do you think you need this many or why aren't you asking for more. And we can do that, in part because we have so many institutions today that are almost virtually exactly alike in design—

Mr. MOLLOHAN. Yeah.

Mr. LAPPIN [continuing]. And types of—

Mr. MOLLOHAN. Older institutions will be a different number, but the same number—

Mr. LAPPIN. That is correct. But a lot of these newer places are very similar in design with very similar inmates. So when you get this request from one that wants 50 more people than another—

Mr. MOLLOHAN. Right.

Mr. LAPPIN [continuing]. And they are alike, we go back and say, well, how come they can do it with 50 less, so—

Mr. MOLLOHAN. How frequently do you go through that exercise for correctional officers?

Mr. LAPPIN. Well, here recently for correctional officers, we have done it much more frequently than we did in the past. So we have

been doing it probably annually in the recent past for correctional officers.

Mr. MOLLOHAN. Like in the last two, three years——

Mr. LAPPIN. Yes.

Mr. MOLLOHAN [continuing]. You have gone through that assessment coming up with a current authorized——

Mr. LAPPIN. Correct.

Mr. MOLLOHAN [continuing]. Number? Okay. What is the process for determining the authorized number of correctional workers associated with inmate programs such as drug abuse treatment or vocational training?

Mr. LAPPIN. Drug abuse is probably the simplest of all the program areas because we have got a ratio of treatment specialists to participants of about one per twenty-five. So that is much simpler to determine. The other ones——

Mr. MOLLOHAN. An optimal ratio?

Mr. LAPPIN. That is correct, of one to twenty-five.

Mr. MOLLOHAN. That is what you would like to have?

Mr. LAPPIN. That is what we would like to have.

Mr. MOLLOHAN. So——

Mr. LAPPIN. Actually, that is what we adhere to. Very seldom do we slip. We might slip by a couple, three.

Mr. MOLLOHAN. Well, why do you have waiting lists in that program then?

Mr. LAPPIN. Because we just have not been able to hire enough of them. We did not have enough funding in drug treatment to hire more of them.

Mr. MOLLOHAN. To get to that one to twenty-five ratio?

Mr. LAPPIN. And that is why there is a waiting list.

Mr. MOLLOHAN. But your authorized number is based upon a one to twenty-five ratio in that program?

Mr. LAPPIN. And that is why you have got a waiting list because we will not increase that ratio to absorb those extra inmates.

Mr. MOLLOHAN. Okay.

Mr. LAPPIN. Okay. So we are going to adhere to the one to twenty-five, in that range, not exactly, but pretty close, and that is why you have got a waiting list, because you have got X number of treatment specialists and more participants than you have to adhere to that one to twenty-five.

Mr. MOLLOHAN. For us that like simple ways of understanding this, that is a great one. And we will remember that we can ask you the ratio on——

Mr. LAPPIN. Drug treatment. That is an easy one.

Mr. MOLLOHAN [continuing]. Drug treatment programs. It has got to be one to twenty-five and if you are not meeting it, it is not adequate?

Mr. LAPPIN. Well, now, the other program area is a little more difficult, education and vocational training, because we provide that function in a combination of ways. At some locations, it is Bureau employees and at others, it is contract. And at some, it is a combination of both depending on what is available in the community. So it is a little harder to assess.

Mr. MOLLOHAN. I have gone too long. I am going to pick up on that.

Mr. LAPPIN. Okay.

Mr. MOLLOHAN. Mr. Wolf.

Mr. WOLF. Thank you, Mr. Chairman.

And I think the Bureau of Prisons is fortunate to have Mr. Mollohan.

#### U.S. BUDGET AND STATE AND LOCAL

With regard to funding, I think your testimony, there were so many questions, I was just sitting here, you are going to get to a point now, though, that not criticism of this Administration or the last, but of both in some respects.

The nation is fundamentally broke. We are broke. If we could not print money, we would be in Bankruptcy Court. And if you look at the numbers in 2020, about a trillion dollars goes out every year for interest on the debt. And we are borrowing from China and Saudi Arabia. Saudi Arabia funded the process that led to the Afghan issue.

We are borrowing money so we can build Thomson or we are borrowing money from the—I mean, so we are reaching a point and, of course, there is not the lobby, if you will, or the support for prisoners that there is for, you know, something else. I think we are coming to a point, and you probably will not be there, but we are coming to a point where it is really going to be just very bad in the country.

I want to ask the questions, though, that I have, but if you compare this where you are in the federal level, is it the same problems at the state and local level?

#### STATE AND LOCAL PRISON POPULATIONS

Mr. LAPPIN. Well, they are having their own difficulties. But I do not know if you saw it yesterday or today, the Pew report is coming out.

Mr. WOLF. I did not see it.

Mr. LAPPIN. And it will be a good report to look at. It is the first time in 38 years that the population of state corrections agency has declined.

Mr. WOLF. And that is because like in Michigan, they are facing a situation they just let them go. California is fundamentally broke, so they are just physically letting them go.

Mr. LAPPIN. Well, there are a variety of things that are occurring. But you are right. They have—

Mr. WOLF. They have the same problem, but they are treating it differently. You are not going to let a guy go. But in Michigan, and I am not being critical—

Mr. LAPPIN. Right.

Mr. WOLF [continuing]. We have had before the Committee or the Chairman had some very good testimony of what they are doing. But their solution to the problem is opening the door and having fewer people in.

Mr. LAPPIN. They have diversion programs, increasing good time, more reliance on parole, so on and so forth.

Mr. WOLF. So we are now unfortunately number one in the world of percentage per capita of prisoners in the United States. Versus these other countries, we are number one.

Mr. LAPPIN. Yes.

Mr. WOLF. That is not very good.

Mr. LAPPIN. No, it is not. I agree. It is a tragedy.

FEDERAL PRISON INDUSTRIES

Mr. WOLF. And also because of the lack of support you had from the Democratic party and the Republican party, members of both sides, you literally have no prison industries program left for all practical purpose. It was ready to go. It was almost going to be like a historical time.

But 15 years ago, how many people did you have in the prisons working in the prison industries—both numbers and percentage-wise and what do you have today and what do you expect it to be next year?

Mr. LAPPIN. Well—

Mr. WOLF. Show me how—

Mr. LAPPIN [continuing]. Congressman Wolf, I am not going to concede yet that we have lost prison industries.

Mr. WOLF. No. But I strongly support it. I think the Chairman does, but this Congress does not. And the Chamber of Commerce does not and you go on and on and on and on. But tell me how many are in the program and where is it going?

Mr. LAPPIN. Eleven percent.

Mr. WOLF. And what was it 15 years ago?

Mr. LAPPIN. Probably close to 25 percent.

Mr. WOLF. Twenty-five percent?

Mr. LAPPIN. Close to 25 percent.

Mr. WOLF. Then doesn't that impact on recidivism?

Mr. LAPPIN. It does. Yes, it does. There are fewer inmates learning work skills that they lack and then returning to our communities. They continue to struggle too, when they find a job, keeping that job. Because they do not get up on time, they do not understand how to develop a relationship with their boss, and work through conflict.

So without a doubt, the fewer inmates that participate in work programs, we are going to see an increase, we believe, in recidivism because of their inability to either acquire or keep a job once they have it.

So, it is tragic that this is occurring. But we have more support than some may think. I think there are a lot of people in the Congress out there who see the other side. I know that there has been a lot of—

Mr. WOLF. If they do not vote with you—

Mr. LAPPIN. Well, I think some—

Mr. WOLF [continuing]. Do they send you a little message that we really agree with you, but we are not going to do anything about it? Is that—

Mr. LAPPIN. Well, we had a hearing a year or so ago, Congressman, the House Judiciary had a hearing on prison industries.

Mr. WOLF. Okay. Bobby Scott.

Mr. LAPPIN. Bobby Scott.

Mr. WOLF. Bobby Scott supports it.

Mr. LAPPIN. But there were Democrats and Republicans at that hearing.

Mr. WOLF. But nothing has happened. I—

Mr. LAPPIN. You are correct.

Mr. WOLF. I have had a bill in for years which the previous Administration opposed, this Administration opposes it, and the Congress to have a program whereby we would get products, and I am not going to take the time, where they are no longer made in the United States, almost a repatriation of the industry, television sets, if you will, and manufacturing. Lorton was ready to do something and people on both sides of the aisle opposed it, the unions opposed it, everyone opposed it. But this would not have been competition with any American industry.

Mr. LAPPIN. We understand.

Mr. WOLF. It would have been to create new industry and then the truck drivers dropping off the wire would have been American employees and a person who—I mean, but we could not get that passed.

Mr. LAPPIN. We are working on it. We continue to work on it. And the Administration is working with us on that. So, I do not want you to feel as though there is no hope here. This Administration, as did the prior Administration supported it. Obviously they did not think it was the time to move forward, but we continue to advocate for legislation that would help us do some of the things you had suggested.

Mr. WOLF. Do you expect it to pass in this Congress?

Mr. LAPPIN. I have no idea.

Mr. WOLF. Probably not.

#### COUNTERTERRORISM

Let me ask you. Congress identified 14.2 million in fiscal year 2010 for your counterterrorism unit. This office coordinates procedures and information related to the growing terrorist prisoner population. This has been funded out of the supplemental bills in the past.

Is the staff unit operating at full strength this year and does your fiscal year 2011 request continue full funding?

Mr. LAPPIN. The unit is in operation.

Mr. WOLF. How many people?

Mr. LAPPIN. I will have to get exactly how many people are there, but it is staffed and it is funded to be staffed in 2011. My guess is we have actually put more resources in there than the 14 million provided because we know how important this issue is. So, we have gone even beyond the staffing of this unit. We have created communication management units.

[This information follows:]

#### NUMBER OF EMPLOYEES IN BOP'S COUNTERTERRORISM UNIT

The BOP Counterterrorism unit currently has 24 staff members.

As you recall, you were angry at us because inmates were inappropriately communicating with people in other countries. We have put in procedures and processes to stop that, minimize the likelihood that would occur, and we have more staff on the Joint Terrorism Task Forces.

On a day-to-day basis, we are monitoring mail, phones, and visits of inmates who fall into this category where we are concerned



about what they are going to say to someone outside of the Agency, outside of the Bureau of Prisons, that might be detrimental to the safety of the United States.

So, we have more translation services. We have more staff monitoring what they are doing day in and day out. And we, I believe, have been quite successful at limiting the ability of those people to act out in that manner.

Now, the Department has helped us with the Special Administrative Measures that are imposed on people, as well as the units that we have created to properly manage and control their communications. So, it is up and running and it is staffed, and we will continue to staff it.

#### PRISON RADICALIZATION

Mr. WOLF. A significant concern with terrorist inmates is the potential for radicalizing other inmates. Have you seen any evidence of this in the federal prisons and what measures do you have at your disposal to prevent this from happening?

And as an afterthought, though, I saw Senate Foreign Relations Committee report saying that there are a number of people who have been radicalized in American prisons who have left and gone to Yemen. And I do not know. It did not say.

But what are you seeing and what is the status of that?

Mr. LAPPIN. Number one, we are not seeing that happen on a wide scale. But without a doubt, every single day, there is a risk that could happen between the interaction of two inmates.

So, what we have done is we have classified these inmates and identified those who are, one, a greater risk for advocating for that type of behavior, that they would be out to radicalizing, or those that are susceptible to being radicalized to some degree. We are managing them and controlling them in more restrictive housing, in the communication management units, or if need be at ADX Florence.

So, through the classification process, we control communications. If there is someone in our general population that is acting out in this manner, we immediately move—we identify them. We counsel them. We stop that behavior or we will move them to one of these more restrictive units.

So, our staff know how important this issue is. If they identify an inmate radicalizing, to be quite honest with you, there is a lot of different types of radicalization, but on different topics, not just terrorism, but radicalizing inmates to participate in gang-oriented behavior, we want to discourage that as well.

So, we do our best to pull those leaders out and manage them in more controlled environments. That is being accomplished at ADX Florence, at SMUs, as well as our communication management units, more restrictive, controlled conditions, more oversight of their mail, phone, and visits so that we can better control that behavior.

#### GANGS

Mr. WOLF. You have indicated that one out of every four inmates in high-security institutions are gang affiliated.

Number one, is this an increase in previous experience? What do you think is driving this increasing gang affiliation and what are the implications of a prolific gang affiliation for managing your high-security institutions? How serious is it?

Mr. LAPPIN. This is a serious problem. We are seeing an increase in the number of inmates with gang associations or that want to be part of gangs. The increase is in part because of the type of people that are being indicted and prosecuted and sent to federal prison, more serious drug offenders, more firearms offenses, more cases that identify and prosecute and convict people who have those associations. That is one.

Number two, the influx of non-U.S. citizens, especially from Mexico, so the percentage of Mexican gangs—I mean, this whole issue you see occurring in Mexico, well, some of those people are in the United States illegally. They get convicted in Federal Court and they end up in our prisons.

So, we have seen an increase in the number of inmates with ties to Mexican gangs and organizations who, of course, do not get along very well with Mexican American gangs, let alone the white gangs and black gangs. So, we have had to put many more resources into identifying and managing the gangs. And we do that by trying to distribute them more equitably across our institutions. This is a growing concern which is complicated by more crowding and more of these inmates in larger groups in individual institutions.

Mr. WOLF. How is the problem comparable in the state prisons?

Mr. LAPPIN. Similar problems, especially along the borders and the larger systems, you know, California, Texas. Those large systems as well are incarcerating more gang-related offenders.

Mr. WOLF. So is the prison population generally today compared to, say, 1965 or 1975 more violent?

Mr. LAPPIN. Ours is, yes.

We have seen a 50-percent increase in the number of offenders who have violent backgrounds in our custody, a 50-percent increase. That drives more gang-oriented offenders. So those things are driving the increase in these gangs and gang members and the associations that they establish in prison.

#### NON-RETURNABLE CRIMINAL ALIENS

Mr. WOLF. Whatever happened, and this is not gang, but you just triggered a thought, there were a number of prisoners that were in federal prisons because the country that they came from would not take them back. Cuba—

Mr. LAPPIN. Correct.

Mr. WOLF [continuing]. Does not take back. Vietnam does not take back. How many of those today prisoners are people who are in prison today because the country of origin will not take them back? What countries are the prominent countries who will not take back?

Mr. LAPPIN. I do not have that number. We can get it for you. My guess is the number is smaller than it once was.

[The information follows:]

## NON-RETURNABLE CRIMINAL ALIENS HOUSED BY BOP

The Bureau of Immigration and Customs Enforcement (ICE) typically removes detainees upon expiration of their sentence and does not leave them with BOP. The exception to this is that there are a total of six Mariel Cuban detainees remaining who have been housed in the BOP many years, and they are reviewed annually by ICE for releasability. These are the only "long-term" detainees housed by BOP for ICE, as a result of the long-term detention issue addressed by the Supreme Court in 2005, which effectively eliminated long-term detention.

Mr. WOLF. Give me a couple you do know.

Mr. LAPPIN. Well, obviously we cannot get people back to Cuba. There are some east Asian countries. But I will provide you the list.

Mr. WOLF. Plus—

Mr. LAPPIN. Plus the number of people we have in our custody.

Mr. WOLF. What happens if you have a violent criminal from Cuba or from Vietnam and the prison sentence was 15 years, the 15 years is up, it is the beginning of the 16th year, what happens to them?

Mr. LAPPIN. Well, technically they have finished their federal sentence, but they have a detainer from BICE precluding them from being released in our country. And one of two things happen. We either transfer them to Bureau of Immigration and Customs Enforcement and they house them and deport them or—I do not know what happens to them once they leave us. Or they ask us to house them, and we house them until they get turned over to the Bureau of Immigration and Customs Enforcement.

Mr. WOLF. And can you tell us how many?

Mr. LAPPIN. We will get the number of how many of those that we have. I can tell you we have got 55,000 non-U.S. citizens in our custody. How many of them fall into this category of not being deportable is what I do not know and we will find that number.

Mr. WOLF. Somehow the Administration, and, again, the previous Administration did this, but there has to be some candid conversation with some of these countries. Some of these countries we help in many different ways. We gave MFN to Vietnam. They are persecuting the Catholic Church, persecuting Buddhists and our Ambassador never speaks up for that, yet they will not take some of these people back.

I think there is almost a disconnect there. If they are not going to take the people back and they are going to put the burden on us, there ought to be some repercussions with regard to the country.

Mr. LAPPIN. I do not disagree with you, but you are really asking a question that I would not have the answer for. We would have to go to the Bureau of Immigration and Customs Enforcement who has really a larger role in that responsibility of getting them returned.

We basically hold detainees for them. We turn detainees over to them once they have room for them and they say we want them back.

## PRISON RAPE ELIMINATION ACT (PREA)

Mr. WOLF. Okay. As you know, this Subcommittee has led the effort, and it was Senator Kennedy's bill and Bobby Scott's bill and my bill, for the elimination of prison rape.

On Tuesday, I spoke to the Attorney General about my belief that the Department must act quickly to implement the standards recommended by the Commission.

I know the Bureau of Prisons was not excited about our bill. I know a lot of state people are not excited about our bill. The Bureau of Prisons and corrections are responsible for assisting state and local systems on prevention, investigation, and punishment.

Can you describe some of the training and services you are providing and does your request for fiscal year 2011 include additional funding to carry out these responsibilities to make sure, and I have talked to the people who have been in federal prisons, who have been raped, and so what training do you do and how much funding do you have for that allocation?

Mr. LAPPIN. Well, let me begin by saying that reducing assault on inmates of any kind is a high priority for all of us. And when I say all of us, I am going to qualify that.

I meet annually with the other Directors of Corrections and they all, virtually all of them agree that reducing assault of any type, sexual, physical, verbal, is a high priority for all of us.

So, I do not necessarily agree with your opinion that we do not agree with the Act that was passed.

Mr. WOLF. I talked to people who have been in prison and I have also talked to some of the associations that deal with this issue and they tell me there have been cases where prison staff have threatened people to put them into a certain prison with a certain person almost as a form of intimidation.

Secondly, I have talked to prisoners who have told me that they went through this terrible thing and there were staff members and others that knew what was going on and never really raised it.

And we have also talked with people, several women who went through this in the Federal Bureau of Prisons.

You have prisoners who have been assaulted by some of your federal people, correct?

Mr. LAPPIN. Without a doubt, we have. And without a doubt, it does occur and it should not occur and we want it to end.

And given that, we agree with legislation to assist us in precluding that from occurring. And we have been working with the Commission, the PREA Commission. We are now working with the Attorney General in his responsibilities.

To be honest with you, I applaud the approach the Attorney General is taking to a thoughtful assessment of what should be done because at the end of the day, what we want to have happen is we want regulations passed that actually can be implemented. Those that people not only can afford to implement, but they make sense to implement. So, I am confident that ultimately that will happen.

Mr. WOLF. Most of the Commission members who know a lot about this do not agree with you.

Mr. LAPPIN. Well, I am sorry to hear that. There are many of the recommendations they have made, however, Congressman, that we do agree with.

Mr. WOLF. But the Attorney General is dragging his heels on this and the Attorney General could say if there are different recommendations, some are so you agree and everybody else agrees,

implement them now. There are some that, you know, you could almost phase this in.

But to put it off for another year, maybe even a year and a half, we have talked to people that are involved in this, they think it may be 2012.

Have you ever read this, No Escape?

Mr. LAPPIN. No, I have not.

Mr. WOLF. I will give you a copy.

Mr. LAPPIN. Thank you, and let me tell you what we are doing. That was the last part of your—what are we doing to limit the opportunity for this to occur in our prisons.

I will send you a copy of our program statement that outlines what staff's responsibility is and what inmates' responsibility is, applicable to an allegation of sexual assault. And it will lay out for you exactly what occurs.

[The information follows:]

**BOP's Program Statement on Sexually Abusive Behavior Prevention & Intervention Programs**

Please see the attached BOP Policy Number P5324.06, Sexually Abusive Behavior Prevention and Intervention Programs. The program statement is publically accessible on the internet: <http://www.bop.gov/DataSource/execute/dsPolicyLoc>

**Attachments**

Name	Description
BOP-Insert-50A_Attachment_Doc-5324 06.pdf	

We train our employees every single year on that specific program statement. We train inmates. We go over the program statement with the inmates. So they know what their obligation is.

We have increased training for our investigative staff, for our leadership staff, so that when they become aware of an allegation, that they know what to do and how to go about doing it.

When an allegation is made, oftentimes it is a crime and we treat it as a crime.

Mr. WOLF. Are allegations up or down?

Mr. LAPPIN. Allegations coming from anywhere, from outside?

Mr. WOLF. Are the numbers, the overall numbers up or down?

Mr. LAPPIN. Well, our numbers are relatively low. And to be honest with you, look at the research that the Office of Justice Programs has done. Their research, which I think is exceptional research, reflects that the numbers are not very high to begin with.

Mr. WOLF. They are low, but are they up or down?

Mr. LAPPIN. Our numbers are probably about where they have been. You know, it is a very low number. We will get the numbers over the last four or five years.

For example, last year, we had three sustained misconducts of inmate on inmate sexual, inappropriate sexual misconduct. And that is broad—that is everything from verbal abuse to actually a physical assault. So, we had three sustained.

We will get you the numbers for the last few years, but the numbers are low. We do not see that increasing in the Bureau of Prisons. I cannot say that is true elsewhere.

[The information follows:]

**Number of Allegations of Sexual Assaults in Prison – Last 4-5 years**

**Data Provided to the Bureau of Justice Statistics Pursuant to the  
National Survey of Administrative Records in Adult Correctional Facilities**

**Reported Allegations of Inmate-On-Inmate Sexual Acts**

Year	Allegations	Substantiated	Unsubstantiated	Unfounded	Investigation Ongoing
2004	17	0	NR	NR	NR
2005	25	5	NR	NR	NR
2006	7	0	0	7	0
2007	19	0	19*	0*	0
2008	74	1	51	21	1

**Reported Allegations of Inmate-On-Inmate Abusive Sexual Contacts**

Year	Allegations	Substantiated	Unsubstantiated	Unfounded	Investigation Ongoing
2004	66	36	NR	NR	NR
2005	40	30	NR	NR	NR
2006	11	1	0	9	1
2007	9	0	9*	0*	0
2008	30	2	22	6	0

**Reported Allegations of Staff Sexual Misconduct with Inmates**

Year	Allegations	Substantiated	Unsubstantiated	Unfounded	Investigation Ongoing	Administrative Disposition
2004	201	11	96	11	77	6
2005	203	6	80	5	107	5
2006	133	4	50	0	79	0
2007	182	8	118	2	54	0
2008	160	9	84	0	67	0

NR - Not reported.

\* For CY '07, the data for inmate-on-inmate sexual acts and abusive sexual contacts was collapsed across the categories of "unsubstantiated" and "unfounded."



Mr. WOLF. What about at the state level?

Mr. LAPPIN. We will have to rely on OJP's research and we can provide a copy of that to see what is happening there.

In many states, I think they are similar to us. You are going to see this happening on occasion. The number is typically low. Some variation in increase and decrease, but overall, the numbers have been low with the exception, as you probably read, in juvenile facilities where there was more of an increase in that evaluation.

[The information follows:]

**OJP's Research on Sexual Assaults at the State Level**

Research on sexual assaults at the state level is included in Special Report: *The Sexual Victimization in State and Federal Prisons Reported by Inmates*, which was prepared by the Bureau of Justice Statistics. The report is publically accessible on the internet: <http://bjs.ojp.usdoj.gov/content/pub/pdf/svsfpri07.pdf>

**Attachments**

Name	Description
BOP Insert 51B_Attachment A.pdf	

Mr. WOLF. You are aware the report came out?

Mr. LAPPIN. It did. But, again, this has been—

Mr. WOLF. Why do you think there was an increase there?

Mr. LAPPIN. I am not familiar enough with the situation.

Mr. WOLF. The Attorney General ought to read that too.

Mr. LAPPIN. We are on a working committee. We look at all those documents and work with the Attorney General's staff on what is available.

Mr. WOLF. Well do you agree that the longer it takes to implement this the greater the opportunity and the greater chance this will continue?

Mr. LAPPIN. I can say that many states have already done some of the things we have done. So, I think just the passage of the law has resulted in more attention.

And let me mention, I am going to pat the National Institute of Corrections on the back. They have done great work developing training programs, CDs, videos, materials that have been sent out to all the states, all the jails, to provide them a process by which they can better educate staff and inmates about PREA.

Mr. WOLF. Okay, last question. Do you believe that once the regulations come out it will have the impact in decreasing the number of prison rapes?

Mr. LAPPIN. We are certainly hopeful.

Mr. WOLF. Okay. So if we are hopeful the earlier they come out the better.

Mr. LAPPIN. We are hopeful, absolutely.

#### FEDERAL PRISON INDUSTRIES (FPI)

Mr. WOLF. Your testimony indicates that on the 11 percent of your work eligible inmate population is able to participate. How does that compare? And you answered that with regard to the previous. Do you compare it to the 25 percent or is that your high point?

Mr. LAPPIN. My guess is if you go back further when the Bureau of Prisons was much smaller it was probably even larger, probably 35 percent, but the Bureau of Prisons at the time may have only had 26,000 inmates.

Mr. WOLF. At that time did everyone that wanted to work could work?

Mr. LAPPIN. I can't say whether or not they had waiting lists or not, I don't know.

Mr. WOLF. As a result of this you have had to close factories and lay off staff the last year. Is that accurate?

Mr. LAPPIN. That is correct.

Mr. WOLF. How many factories closed last year?

Mr. LAPPIN. We closed upwards of eight factories, we eliminated 105 positions, staff positions, and about 1400 inmate jobs.

Mr. WOLF. And will there be further closures this year based on the budget?

Mr. LAPPIN. It is not really based on the budget, it is non-appropriated.

Mr. WOLF. Well it is based on the law.

Mr. LAPPIN. It is actually based on our loss of money in prison industries. I think there is a possibility we are going to see more closures or more downsizing.

#### RE-ENTRY PROGRAMS

Mr. WOLF. Let me ask you this other question before I go back. The reentry and faith based. The fiscal year 2010 bill included a major investment in prison reentry programs. I know we also included a language in the fiscal year 2010 bill directing you to get an independent panel to make recommendations for options for the development of prison reentry programs, including the options related to the role of faith based community programs.

Can you bring us up to date on your actions so far to carry out this language and share with us some of your ideas on how this might be able to help and contribute to the development of a more effective reentry program? And the language as you know called for a report within 120 days.

Mr. LAPPIN. We have convened the panel, they met last Monday. The panel of experts included Dr. Ed LaTessa out of the University of Cincinnati, Dr. Roger Jarjoura out of Indiana University and Purdue University, and Steve McFarland, now with World Vision, previously with Prison Fellowship, Nancy Merritt out of National Institute of Justice was invited, but was unable to attend.

They met for the day. They met with all of our reentry quote "inmate skills development, second chance related staff," both prison industries and drug treatment, our core staff who are involved in the inmate skills development process to look at what we were doing, the direction that we were going. They provided a number of recommendations, and we will be drafting a report that identifies their recommendations and how we are going to address those recommendations on our process.

I am happy to say that with the funding we have gotten the last year we are much further along than I anticipated in the requirements applicable to Second Chance Act, in the implementation of the inmate skill development program that was advocated for in that Act. So, more inmates are getting into that process.

Let me just tell you where we are at now. We are now inventorying all of the programs in the Bureau of Prisons to identify where we have holes. Where do we have institutions that lack programs that address skill needs, and what is it we need to do to fill those holes? So, that is a huge initiative at 115 locations, but that is where we are at in the process. But I am encouraged by the progress that is being made by direct involvement in this program not only with the staff who oversee it, but actually applying it to the inmates that they have responsibility for managing.

Mr. WOLF. And do you think faith based is an important part of that?

Mr. LAPPIN. Sure, it is. It is a part of it. Absolutely.

Mr. WOLF. Would it make sense to you if you could actually find a panel not over to the right nor the left just, you know, a panel made up of people like Mark Earley and people like that to really take an in-depth look at the prison system? Kind of a blue ribbon panel. I always am careful about offering this because then you are going to get some guy that wants to do this, you are going to get

some that go so far off. But I mean, are there five people or ten? Would it make sense to give the whole prison system kind of a look at, a blue ribbon panel that started out not with any preconceived notions, but just would really go with truth and integrity and to really look at it?

Mr. LAPPIN. For the same reason you hesitate, I hesitate as well, and am a bit reluctant to say this is what we need to do. We have a lot of oversight out there, as you well know, and you are right, I am not sure that you can really identify folks who would approach it as you would like them and we would like them to approach it. So, I am hesitant to say yes, this is the right thing to do.

Mr. WOLF. The last question. Who do you think is the most knowledgeable person in the country that doesn't have a political agenda, that he or she is not going to be——

Mr. LAPPIN. Influenced.

Mr. WOLF. Yeah.

Mr. LAPPIN. Let me give it some thought. I will come up with a name or two and reach out to you.

Mr. WOLF. Thank you very much.

Mr. LAPPIN. You are quite welcome.

Mr. MOLLOHAN. Mr. Fattah.

Mr. FATTAH. Thank you, Mr. Chairman. Let me thank you for your long service. You have been in this position since 2003?

Mr. LAPPIN. Yes, sir.

#### INMATE PER CAPITA

Mr. FATTAH. So you are not a political appointee of any kind, you are just serving the public's need to administer the prison system.

I got a few questions. You got over 200,000 inmates. The cost per inmate across the system is?

Mr. LAPPIN. Cost per day per inmate?

Mr. FATTAH. Per inmate on annual basis.

Mr. LAPPIN. On annual basis. It is around 25 thousand. Actually it is, with everything, I am talking about every single penny, \$27,000 a year. That is including administrative staff, staff in the field, all the training programs, \$27,000 per year.

#### NON-U.S. CITIZENS

Mr. FATTAH. Okay. Now and you said 53,000 are not American citizens?

Mr. LAPPIN. Well 54,899 non-U.S. citizens.

#### LIFE SENTENCES

Mr. FATTAH. Okay. Now can you tell the Committee what percentage of across the board, obviously probably the American citizens, but you know, as best as you can tell in terms of the population, how many of them are lifers? How many of them are going to be with you for the duration, absent some of the judicial intervention?

Mr. LAPPIN. A small percentage. Most inmates are going to ultimately be released.

Mr. FATTAH. Right.

Mr. LAPPIN. I don't have that with me.

Mr. FATTAH. Okay.

Mr. LAPPIN. But a small percentage are in our prisons for the rest of their life. Now some of them do it on the installment plan.

Mr. FATTAH. Right. They may make multiple——

Mr. LAPPIN. That's correct. But when you look at the entire 210,000 it's a small percentage.

Mr. FATTAH. But would you guess it is one percent or is it——

Mr. LAPPIN. I don't really want to guess. It is something we can get for you. Two or three percent.

[The information follows:]

PERCENTAGE OF INMATE POPULATION IDENTIFIED AS "LIFERS"

There are a total of 6,058 inmates (about 3 percent) in BOP custody with life sentences.

Mr. FATTAH. Yeah, two or three percent. So even though you run these prisons and the society is safe, you know, and people are put away, the real secret here is that the vast majority of them are going to come back to our communities.

Mr. LAPPIN. You are absolutely correct.

FUTURE PRISON CHANGES

Mr. FATTAH. Now, I know your responsibility is to incarcerate them and you do have a number of programs to try to improve their life circumstances, you know, so that when they return or re-enter communities that they may not be involved in further anti-social or illegal activity, and you know, we have passed the Second Chance Act which I was involved with and cosponsored, and I know there are a number of efforts there.

What I am interested in is given the fact that you have been doing this for a while and that the country has been doing it for a much longer while, in fact we incarcerate more people in our country per capita than any other country in the world, where are we headed down the road?

I mean, in terms of kind of enlightened—I know we have been doing a lot of research and evidence based analysis. So if you were sitting here in front of this Committee ten years from now is the system that we have essentially going to be the system that we have now or are we learning things that are going to change the way our country deals with people who commit crimes and who need to be punished or that society needs to be protected from on a temporary basis? Are we going to do anything differently and the research and all of the experience we have had informing any great changes in our prison system?

Mr. LAPPIN. I hope there are changes. I will be honest with you, I don't think we are doing a good enough job. One, we think, we believe a major part of our responsibility is preparing that offender for release.

Mr. FATTAH. Right.

Mr. LAPPIN. Not just providing a safe environment for them to live in and for our staff to work in, and to protect the public, a major part of our responsibility is to try to improve the skills and abilities of that inmate in making that transition to the community.

Mr. FATTAH. Uh-huh.

Mr. LAPPIN. I think that there has got to be some strategies to reevaluate whether this individual needs to be in prison. Is that the most appropriate way to address what they did? I am hopeful that we will continue to see a debate on alternative methods to correcting their behavior for some people.

I believe we have got some people in prison that could be handled differently than going to prison. However, there are many, many people in our prisons who belong in prison because they have hurt people.

Mr. FATTAH. Uh-huh.

Mr. LAPPIN. Once, twice, two or three times. They victimize people, and they obviously need to have time out to protect the public in an effort to change that culture, that attitude, that approach. Without a doubt we are more successful with some in prison than others.

Right off the bat, speaking as a former warden within a few weeks of an inmate being in a prison you know if you have got a willing participant or an unwilling participant. That is the key to determining how successful we are going to be—his participation. I don't see that changing.

Here's our biggest concern. My biggest concern is the day they walk out of prison. A society that is resistant and discriminates against people who have been incarcerated. Just plain and simple.

Mr. FATTAH. Uh-huh.

Mr. LAPPIN. It is a shame, I can understand why that occurs. I don't know how we overcome that. And it goes right down to our ability—as simple as this—we believe that transition from prison to community—that a community-based transition is important whether it is home confinement or halfway houses.

In this past year you can't imagine the number of locations we have tried to place halfway houses. It's absolutely not working. So, what does that mean for that offender? That means on one day we are going to give him \$50 and a set of clothes, put him on a bus, and we are going to drop him off on the street corner. Very, very unwise. Unsafe. In lieu of us transferring him to a halfway house that is in the community, but has supervision of that person, and overseeing some of that during the transition. It is in part because of this resistance in our society to accept these people back. Literally people calling me saying, "we don't want them back Director, don't send them here." These are Governors, these are Congressmen and Senators, these are other community leaders. That has got to change.

Mr. FATTAH. So if we incarcerate more people per capita than any other country and we have a couple hundred thousand in your system, and 97 plus percent of them are going to be released to, you know, Pennsylvania, which I represent, or West Virginia, or California, they are all at some point going to reenter society, and some you are going to have some success with, some you are not going to have a lot of success with, and we basically as best as I can tell, I mean there have been some tweaks here and there, but basically our prison system is pretty much the way it has been.

Mr. LAPPIN. With some changes.

Mr. FATAH. Right. You know the question is, you know, as the country looks forward, you know, like how we might rethink what we are doing.

So part of it is maybe diverting some people from the system whose crimes, even though they are crimes, could be addressed in a different way. So we are probably talking non-violent, you know, crimes.

Mr. LAPPIN. Some type of intervention, right?

Mr. FATAH. Some kind of intervention. And you have some very dangerous people that we need to be protected from and you need to keep, right?

#### CLASSIFICATION/SEGREGATING GROUPS OF INMATES

So I want to ask a couple of other questions on this note. You know, there has been some controversy in some of the state prisons about maybe segregating groups of people who don't know how to get along with one to another, and you have referenced some of the ethnic or racial groupings in the prisons, but I am going to ask you a different question, but it is along the same line.

Is there any utility in trying to separate out or segregate some who are going to be with you for the duration or those who are the most violent from those? And I co-sponsored the bill that Ranking Member Wolf was talking about, but I am not just talking about that issue, but just kind of separating the kind of groupings of these inmates in ways in which we don't have youthful, non-violent, going to be released back home soon, incarcerated with people who are lifetime criminals who are very violent.

Because one of the things we have seen in the studies is that the more youthful an offender goes in the longer they stay and their crimes become more and more violent over time. That is that they are kind of almost going away to college, expect they are learning all the wrong things, and then you say kind of go in under the installment plan. And the problem is not only are they on an installment plan, the community gets victimized more and more and more as they kind of go up this escalator of criminal activity.

Mr. LAPPIN. Two comments on your previous discussion. So you have these facts—over 600,000 inmates a year are released into our communities, state and federal, 600,000 people every year being released from state prisons and federal prisons going back into your communities. I think it is a huge issue and one that we have got to address more adequately than we have.

Our success rate, we are seeing a 40 percent recidivism rate in the federal system. So, six out of ten we are seeing success with, we are not seeing them come back to prison.

You are right, it is better than we are seeing in the states, and I am not being critical of the states, there are some very challenging issues out there, but we are seeing success with about six out of ten not coming back to prison.

Your question about the day-to-day management and this concern over the young folks with the more violent people. Years and years ago credible correction systems created classification systems. That was a key addition to successful prison operations, to begin to predict those types of behavior based on their history, based on their violence and their background, if any, based on a number of



factors. Before they even come to prison, we have an idea of what type of prisons they should be housed in. Minimum, low, medium, or high security with different conditions of confinement at each level, driven by the behavior, the characteristics of that individual inmate. So, that helps us separate those who prey on other inmates from those who tend to be preyed upon. It is not perfect, because it is a paper process.

The key is the administration of that by our staff. And as they look at that inmate and look at what the classification suggests, is it in fact consistent with what we actually observe and see? And that is where the day-to-day work of our staff in the institution begins—observing behavior, seeing compliance or non-compliance, addressing inappropriate behavior. Through a valid discipline program, you begin to separate those who prey on other inmates and who are violent to the point that they can't be housed with others.

That is why you have got the ADX Florence, that is why we need space at Thomson, because that group of inmates, here in the recent past has grown without a doubt.

In our population of 210,000 at one time the 500 beds at Florence handled those inmates, and that is no longer the case today. There is a larger group of these more violent people who cannot be out in that general population of a facility with you being successful in running it safely and securely.

What are we going to do? We are going to remove them and we are going to manage them in those more controlled, more structured environment. So, that is kind of the extreme.

Mr. FATTAH. Let me just ask you one last question.

Mr. LAPPIN. But let me answer one issue. Your issue of—is there people that can't get along. Let me tell you what our expectation is. If you are following the rules and you are able to follow the rules to a point that you can stay in a general population. We do not want to segregate people by race or gang. We expect you, we set the expectation you are going to get along with these people. Because they are going to return to our community. What's our expectation in the community? That you are going to learn to get along with others, understanding the differences among cultures and ages and beliefs, you are going to get along with those people. So, we believe it is our responsibility to teach them; to get them to understand this is part of life.

Without a doubt we have got this group that resists, and that is this group you see going to ADX Florence and the special management units, because they don't get it. They don't care, they are mean nasty people, and we need to manage them that way.

#### VETERANS

Mr. FATTAH. Veterans. What percentage of the inmates are U.S. veterans?

Mr. LAPPIN. I wish I could tell you that. I am going to be able to give you an estimate. I don't have it here.

[The information follows:]

## ESTIMATE OF THE PERCENT OF BOP INMATES THAT ARE U.S. VETERANS

The Bureau of Justice Statistics has reported in past studies that an estimated 10 percent of the federal incarcerated population is veterans (please see <http://bjs.ojp.usdoj.gov/content/pub/press/vsfp04pr.cfm>).

This information would have been noted in the inmate's individual Central File. However, the BOP is currently implementing a comprehensive system to track inmate skills and reentry needs and once fully implemented this system will also contain veteran status.

Mr. FATTAH. Okay.

Mr. LAPPIN. Once we get inmate skills completely implemented we are going to be able to tell you how many veterans. I can tell you this, it is a tragic number, it is a high number unfortunately, and it is unfortunate. And just so you know, we have been working with the Parole Commission and the Department of Defense and the Veterans' Association, looking at some places that started these veteran courts, to try to intervene before the vets get back in our communities and get involved in the criminal justice system. No different than the mental health courts. I think there is some real potential there.

But it is a tragedy that these people have served our country, and now we end up with them incarcerated, and we have not reached out quicker. And so I am encouraged that the VA and the Department of Defense also see this as a concern and we are working with them on some of those issues.

Mr. FATTAH. If you could keep the Committee informed.

Mr. LAPPIN. Sure.

Mr. FATTAH. I have a lot of interest. I know the Chairman and the Ranking Member would also have interest in that.

## INCARCERATED WOMEN

And the last point, last question. Woman, female. There has been a major increase at the state level. In fact, I mean a huge growing number of women incarcerated. Is that the case at the federal level?

Mr. LAPPIN. It was for a brief period of time, and I am just looking here for my number. I think we are about 14 percent. I'm sorry, 13,663, or 6.5 percent of the inmates are female. We had a spike here a year or two ago, but that leveled off. So, we have not seen a substantial change over the last few years as far as incarcerated women.

## PRISON POPULATION INCREASES

Mr. FATTAH. And I'm sorry, Mr. Chairman, one other quick question. The state prison numbers have dropped last year, yours went up.

Mr. LAPPIN. Yes.

Mr. FATTAH. You don't decide who gets incarcerated or not. But I assume in part it is because we have like in Philadelphia, and Ranking Member Wolf was chairman when he helped with this, we got a lot of federal involvement in some of your drug problems and there were a lot of federal prosecutions for gun crimes and so on. Is that just because there is more action at the federal level trying to intervene on some of these issues?

Mr. LAPPIN. Significantly more. You have got a combination of things going on. And this just didn't happen this last year. What's happened over the last 30 years is we federalized more crimes that had traditionally been state crimes—drugs, firearms, sex offenders.

Mr. FATTAH. Well speaking for Philadelphia, we were happy with the help.

Mr. LAPPIN. Well there are a lot of states very happy with it.

Mr. FATTAH. Ranking member who was chairman at the time got the DEA, the FBI, all of the agencies to sit down and come in and provide some help.

Mr. LAPPIN. Your point is right on target. All these task forces out there that as long as they had a federal component—

Mr. FATTAH. We want more of them.

Mr. LAPPIN. That's correct. So what's that going to mean?

Mr. FATTAH. That doesn't help you though.

Mr. LAPPIN. It doesn't help us. That means our BOP populations are going to continue to grow because of the federalization of crimes, as well as task forces and other initiatives at the local level, that drive more people into federal court rather than state court.

Mr. FATTAH. Thank you, Mr. Chairman.

#### FEDERAL PRISON INDUSTRIES (FPI)

Mr. MOLLOHAN. Thank you. A couple of follow up questions, Mr. Lappin.

Mr. Wolf was asking several questions about Federal Prison Industries, and your response was that you have closed eight factories, eliminating 1,400 inmate jobs.

Under the law is that absolutely necessary? Is there not another strategy to prevent closing these facilities? And if you are closing those facilities and there is no option to maintain them for prison industries activities, are you converting them for vocational training activities, and have you requested funding to support alternative activities as you close down a prison industries facility?

Mr. LAPPIN. As you realize, this is a rather recent event. I mean for years we didn't close factories, we created factories. So let us put it into perspective.

Actually, if you look at this last ten years, there were four or five years that prison industries was doing extremely well. During the war, because over half of our products and services were war driven, and so we were more profitable, we could open factories, sometimes even though we didn't need the factories. So, why did we open it? Because at the end of the day our real product is putting inmates to work.

So what's happened? One, we are beginning to feel more directly the effects of legislation that has been passed that has watered down the FPI mandatory source. It is evident—especially in furniture, textiles, and electronics.

Number two, just a general downturn in the economy. People just aren't ordering and buying as much stuff, not only from us, but from private companies as well.

And thirdly, a downturn in the war effort because we relied so heavily on the Department of Defense.

So, those three issues have driven the loss of profits last year and this year in prison industries. Fortunately in those prior three years we did well, and we have got some money in the bank that we are now using in lieu of going out of business. So we are relying on savings that we generated in those prior years to continue the operations.

Mr. MOLLOHAN. What do you mean "going out of business?" What does that mean?

Mr. LAPPIN. Well, I mean technically we must make a profit in prison industries. There are no appropriated funds, they must be self-supporting.

Mr. MOLLOHAN. Yeah.

Mr. LAPPIN. And so we are using those savings to allow FPI to continue to be operational, but we must become more profitable, because we don't know how long this downturn is going to last. So, we are making decisions to try to stop the bleeding, just like any other private company would, in hopes that eventually a number of things could happen.

One, maybe we will get legislation that would give us more authorities. You are right, it is probably a long shot, but there is always a possibility.

Two, maybe we will get to see more of our customers buying more materials and services, we will see more business and the tide will begin to turn.

So, we are trying to bridge ourselves to when that upturn begins.

Federal Prison Industries is managed by a board, a Presidentially elected board, so they have input, they give us direction. We just met yesterday. These are businessmen and women who get greatly concerned when they walk in and we tell them we are going to lose \$27 million this year. That is what we project we are going to lose, \$27 million this year. And so obviously they are reacting to that. What can we do to reduce the loss, keep as many inmates employed as we can? They are working with us, but it is just a business that has to be run like a business, even though our product is a bit unique in that the real product is keeping inmates employed.

Mr. MOLLOHAN. When was the legislation that creates this framework passed?

Mr. LAPPIN. The original?

Mr. MOLLOHAN. The one that is operative today?

Mr. LAPPIN. 1934.

Mr. MOLLOHAN. So you were operating under the same rules as the original legislation passed in 1934?

Mr. LAPPIN. The original legislation was passed in 1934. Since then, especially in the last decade, provisions have been put into law that have affected how those statutes are interpreted. And what we will do, we will send you a list of those provisions and how they changed the original law.

[The information follows:]

**List of Provisions Weakening FPI Mandatory Source**Insert for House Hearing Transcript – FPI Legislation

The original legislation establishing the FPI program was passed in 1934. Since then, especially in the last decade, provisions have been put into law that has affected how those statutes are interpreted. These provisions include:

- P.L. 100-690, Section 7093. In 1988, for the first time, Congress approved a significant change to FPI's statute. In addition to granting FPI the authority to borrow funds from Congress, it also created the guidelines process, which the Board of Directors follows prior to authorizing a new product, or a significant expansion of existing products.
- P.L 107-107, Section 811. In 2001, Congress passed Section 811 of the National Defense Authorization Act for Fiscal Year 2002. Section 811 required all Department of Defense agencies to conduct market research to determine whether FPI's product was comparable in terms of price, quality and time of delivery, prior to attempting to solicit or purchase any product available in FPI's catalogue. If FPI's product is comparable, then the mandatory source provisions apply and the contracting officer is required to purchase from FPI. If the FPI product is not comparable, then the product may be purchased through the use of competitive procedures. The agency is required to consider a timely offer from FPI in such a competition. This provision was passed as part of P.L. 107-107, and codified at 10 U.S.C. § 2410n.
- P.L. 107-314, Section 819. In 2002, Congress passed Section 819 of the Bob Stump National Defense Authorization Act for Fiscal Year 2003. Section 819 further amended Title 10 U.S.C. § 2410n. This provision made several notable additions. First, it clearly indicated that the agency contracting officer was the sole authority for determining whether FPI's product was comparable, and eliminated any review or appeal of this determination. Second, Section 819 included two provisions which had been introduced in several other bills. First, it restricted agencies from requiring that contractors utilize FPI as a subcontractor. Second, it restricted inmate access to personal, sensitive or classified information. Section 819 passed as part of P.L. 107-314, and was codified as part of 10 U.S.C. § 2410n.
- P.L. 108-199, Section 637 of Division F. Section 637 of the Treasury, Transportation and Independent Agencies Appropriations Act for Fiscal Year 2004 was passed as part of the Consolidated Spending Bill for FY 2004 (Division F). This provision extended the two tiered procurement process of Section 811/819 to civilian agencies only for Fiscal Year 2004.

- P.L. 108-447, Section 637 of Division H. This provision of the Treasury, Transportation and Independent Agencies Appropriations Act for Fiscal Year 2005 extended section 637 to FY 2005 and each fiscal year thereafter. It was passed as part of the Consolidated Spending Bill for FY 2005 (Division H)
- P.L. 110-181, Section 827. This provision, which was passed as part of the National Defense Authorization Act for FY 2008, further Amended 10 U.S.C. § 2410n. Specifically, Section 827 requires the Department of Defense to employ competitive procurement procedures when procuring products (the bill does not apply to services) from FPI if FPI has a significant share of the market. A significant share of the market is defined by the law as more than five percent of the Department of Defense market.

Mr. MOLLOHAN. I am going to get into this a bit more as time goes on here following up this hearing, but if this trend line is defined and dictated by a statutory requirement and it is obviously discernible, what strategy are you pursuing to supplement the kind of experience that the inmates are having and the training they are receiving in place of prison industries?

Mr. LAPPIN. Yes, very good point. What we have done is where we have closed factories we are working directly with the wardens there to figure out what can we not only do with that space, but what resources do we need to replace that factory with additional programs? Whether it is VT, you know, a drug treatment program, you know whatever it is we need.

Mr. MOLLOHAN. Well this is skill training.

Mr. LAPPIN. That's correct.

Mr. MOLLOHAN. This is employment training.

Mr. LAPPIN. You are absolutely correct.

Mr. MOLLOHAN. So if you replace it with drug treatment space, you know, that needs to be out some place else and hopefully it is already happening at some place else in your prison.

Mr. LAPPIN. It is very difficult for us to recreate a work skill program like prison industries.

Mr. MOLLOHAN. Why?

Mr. LAPPIN. There are only so many jobs you have in prison.

Mr. MOLLOHAN. No, it is not jobs, I am talking about vocational training. When young people go through vocational training in high school they don't have a job, they get trained on how to do it.

Mr. LAPPIN. I understand that.

Mr. MOLLOHAN. So I guess what I am getting at, is your budget requesting money to supplement the training experience that prisoners would get in prison industries as the prison industries activity atrophies?

Mr. LAPPIN. I will make sure I am clear.

Mr. MOLLOHAN. Is your budget requesting additional funding for vocational training?

Mr. LAPPIN. If you replace what we have lost in prison industries to something like that—

Mr. MOLLOHAN. No, no, to replace the training. Let me be clear, and I am sorry not to be clear.

If I am working in Glenville prison learning how to redo these big trucks that come from the Army and that job goes down, I can still learn to do that if I am participating in a vocational training program, the difference being, I suppose, the funding source.

Mr. LAPPIN. I see one clarification.

Mr. MOLLOHAN. Okay.

Mr. LAPPIN. We see the provision of vocational training as providing knowledge about how to do something.

Mr. LAPPIN. What it doesn't do that prison industries does do is teach them work responsibilities.

Mr. MOLLOHAN. Great. Well let us increase the prison industries program.

Mr. LAPPIN. I wish we could.

Mr. MOLLOHAN. And we can't.

Mr. LAPPIN. That's right.

Mr. MOLLOHAN. That is the next best thing.

Mr. LAPPIN. Yes, we are looking at what funding we need. I am not sure it is in the 2011 budget.

Mr. MOLLOHAN. Does that mean it is not?

Mr. LAPPIN. We are being assessed.

Mr. MOLLOHAN. Does that mean it is not?

Mr. LAPPIN. That means it is not, I just was told. It will be in our future requests, because we are doing the assessment now.

Mr. MOLLOHAN. Yeah.

Mr. LAPPIN. But we are just ramping down those factories.

Mr. MOLLOHAN. You are saying they closed eight out of how many?

Mr. LAPPIN. We have—

Mr. MOLLOHAN. Fourteen hundred inmate jobs?

Mr. LAPPIN. No, we have—I am going to tell you how many factories we have.

Mr. MOLLOHAN. Eight sounds like a lot to me.

Mr. LAPPIN. We have about 100 factories.

Mr. MOLLOHAN. And how many closed last year?

Mr. LAPPIN. Eight.

Mr. MOLLOHAN. How many closed the year before that?

Mr. LAPPIN. None.

Mr. MOLLOHAN. None.

Mr. LAPPIN. Yes.

Mr. MOLLOHAN. Oh, so this—

Mr. LAPPIN. So last year was the first year we closed factories. There could be another round of closures.

Mr. MOLLOHAN. Well let us work together to see if there is a strategy to be developed, work with Mr. Wolf, and you know, the minority and the majority, to see if there are some strategies we can pursue legislatively to reverse this trend. If that trend doesn't reverse and you don't train these folks, what do people do when they get out? Your statement to him was that people are shunned when they get out. Well if they had a skill they might overcome that, but if they don't have a skill they will not overcome that.

Mr. LAPPIN. And we are very supportive of that.

Mr. MOLLOHAN. I know.

Mr. LAPPIN. Just realize we are still not going to address the work skills issue that many of them lack, because you just don't get that in a vocational course. You learn the skill, but you don't really address the issue of your responsibility of being a good worker.

Mr. MOLLOHAN. Well maybe you fashion it after that model just like you were trying to do it.

Mr. LAPPIN. We will do the best we can.

Mr. MOLLOHAN. Yeah.

Mr. LAPPIN. What we have found is that it is not quite as useful as the prison industries program in that regard. But we will work with you to identify what resources we need to back fill for some of these ideas.

#### BUDGET GAPS

Mr. MOLLOHAN. I am sure, and we look forward to working with you.



I have a few questions on staffing that I will submit for the record, but I think we have plowed that ground. But in order to carry out your hiring plan for fiscal year 2011, Congress would need to provide an additional \$44.1 million above the budget request. Do you agree with that statement?

Mr. LAPPIN. I am not familiar with that.

Mr. MOLLOHAN. In other words, when I was asking you about where the holes were, that was the answer I was fishing for.

Mr. LAPPIN. In essence to establish what part, the hiring process?

Mr. MOLLOHAN. This addition funding—

Mr. LAPPIN. Yes.

Mr. MOLLOHAN [continuing]. Is required because OMB did not allow the Bureau of Prisons to request funding to finish the activations of FCI McDowell and FCI Mendota.

Mr. LAPPIN. You know, I know what it is we are addressing now. If you go back to the 2010 budget—

Mr. MOLLOHAN. It is OMB. Who are these people?

Mr. LAPPIN. You got a line item in there for the activation of McDowell and Mendota.

Mr. MOLLOHAN. Right.

Mr. LAPPIN. And I think we got \$22 million at one and \$36 million at the other. That is for the first year of activation. It remains silent in 2011 as to the final second year of these activations. So, it is not specifically identified. We are going to have to finish those activations, and so, one would assume that we are going to take it out of our base.

Mr. MOLLOHAN. That is what we call a hole. So are there any holes in your budget?

Mr. LAPPIN. Well we are going to have to identify the funding to finish the activations for McDowell and Mendota.

#### MODERNIZATION AND REPAIR (M&R)

Mr. MOLLOHAN. Okay. Facilities modernization and repair. During last year's hearing we talked about the Bureau of Prisons facility modernization and repair needs and about the Federal Facilities Council guidelines, which suggests that the annual M&R cost for a facility should be in the range of two to four percent of the aggregated current replacement value of the facility. Even two percent of the value of BOP's facilities would be several hundred million dollars annually, and the Department has not proposed M&R budgets approaching anything near that amount in recent history. In fact, the M&R proposal for fiscal year 2011 is only \$74.2 million, roughly equal to the 2010 funding level of 73 million.

What's the impact of BOP's growing backlog of M&R projects on the basic operation of facilities? And we go over this every year. I mean you would think at this point they are falling down.

Mr. LAPPIN. They are not falling down because I have great folks out there that do a lot of good Band-Aid work, and the reality is this is obviously an area of concern. We have got 115 prisons that we are maintaining and repairing. You are right, the budget for the last few years has been around 74 million. A two percent replacement value is about 500 million.

So what are we doing? Every single year we prioritize every single request, and those that are the most critical, and by most critical I am saying life safety and security go to the top and those are the ones we fund. And we fund as many of these as we can.

Mr. MOLLOHAN. Well some of them are probably being closed down as new facilities come on board and so that takes the worst facilities out of your inventory.

Mr. LAPPIN. We haven't closed any facilities. We can't afford to close a facility because we would then have more crowding.

Mr. MOLLOHAN. Yeah.

Mr. LAPPIN. So without a doubt, those that aren't being addressed, the buildings are continuing to deteriorate or the issue continues to exist. We just have to prioritize them the next year, identifying those most critical, and we will fund whatever we can fund. And we do that nationally now. We used to do it regionally, so now it is a single group that collects all of the requests and prioritizes them. We then get it out to each region and say here is what we consider the highest priorities. We ultimately agree, and then we distribute what money we have to those highest priorities.

Mr. MOLLOHAN. You just work with it the best you can.

Mr. LAPPIN. Do the best we can to keep them—

Mr. MOLLOHAN. But you are pushing it out there in the future. I mean it is real at some point.

Mr. LAPPIN. It is either pay me now or pay me later, you know, like the old oil change commercial.

Mr. MOLLOHAN. Yeah.

Mr. LAPPIN. That is where we are at. Pay me now or pay me later.

Mr. MOLLOHAN. So some time you are going to have to come up here and say we need a billion dollars, we have to have a billion dollars.

Mr. LAPPIN. I am afraid it is either that or ultimately we will have housing units or buildings that we will have to close, in lieu of occupying, given some safety and sanitation and environment issues.

Mr. MOLLOHAN. You know that would be a very useful prospect to have substantiated and analyzed for the Committee. Would you do that and submit a report?

Mr. LAPPIN. We will do our best. I hate to say that I went to an institution about a year ago, when I went to the housing unit it was raining, and they gave me an umbrella. An umbrella because it was raining into the common area. It didn't have a decent roof, and so obviously it got a new roof after that visit. I came back here and said we have to get the money to fix the roof.

[The information follows:]

#### BOP'S MODERNIZATION & REPAIR NEEDS

On January 15, 2010, the Department provided the Congress a complete summary of the Modernization and Repair (M&R) backlog of the BOP's highest priority unfunded M&R projects. This list included projects such as roof replacement, fire alarm system replacement, installation of additional high-mast lights, and upgrade of electrical systems and generators.

Mr. MOLLOHAN. Where was that?

Mr. LAPPIN. Memphis.

## NEED FOR NEW PRISON BEDS

Mr. MOLLOHAN. Construction and activation of new BOP facilities. The fiscal year 2010 act provided \$52 million to begin the activation of FCI McDowell, in West Virginia and FCI Mendota, in California. When fully activated, these new facilities will add approximately 2,500 beds to your total capacity, but BOP anticipates a gain of 7,000 inmates as you testified before.

The 2011 budget proposes \$28.5 million to begin the activation of FCI Berlin, in New Hampshire, which would add an additional 1,280 new beds, but you anticipate a net gain of 7,000 in 2011.

You know, when you do the math, and in your opening statement it was the thing that came through most impressively, it is clear that the Bureau of Prisons is continuing down an unsustainable path.

What happens here? And does your current request for acquisitions or construction anticipate the numbers that you are providing for the Committee today with regard to the growth of the population?

Mr. LAPPIN. The 2011 budget also, just to make sure it is on the record, requests funding for the activation of Thomson, and so its got Berlin and Thomson.

Mr. MOLLOHAN. It still doesn't add up. I mean we went through those numbers at the beginning of the hearing. So what happens here?

Mr. LAPPIN. And again, my reference that there are a few things we are going to have to address, and so we are working with the Administration to address these four or five suggestions that I made. And I am encouraged, I have to say, by the Attorney General's efforts, he has created a working group in the Department of Justice called the sentencing and corrections working group and they are looking at some of these alternative strategies. Like, should we be looking at increasing good times for inmates?

Mr. MOLLOHAN. Okay, I don't want you to go into them because we don't have time. Let me ask you. That exercise is ongoing?

Mr. LAPPIN. That exercise is ongoing.

Mr. MOLLOHAN. When do you expect it to be mature enough to produce a product that we can look at?

Mr. LAPPIN. I don't know, but I will get back to you.

[The information follows:]

## STATUS OF AG'S SENTENCING AND CORRECTIONS WORKGROUP

The Attorney General created the Sentencing and Corrections Working Group last year to conduct a comprehensive review of federal sentencing and corrections policy, including a review of possible recommendations to the President and Congress for new legislation to improve federal sentencing and corrections policy and practice. The mission of the Working Group has been to help develop sentencing and corrections systems that, in an effective and efficient manner as possible, promote public safety, provide just punishment to offenders, avoid unwarranted sentencing disparities, and reduce recidivism by breaking down barriers for exoffenders to successfully rejoin society. The group has been examining, among other issues: (1) the disparity in federal crack and powder cocaine sentences; (2) prisoner reentry and other programs to reduce recidivism; (3) the Department's policies on charging and sentencing advocacy; (4) the federal sentencing guidelines, (5) mandatory minimum sentencing statutes; (6) the impact of current charging policies, sentencing practices, and resource issues on the Bureau of Prisons; (7) alternatives to incarceration; and (8) the Department's protocols for reviewing capital offenses for the possible application of the death penalty.

The Working Group has been completing aspects of its work on a rolling basis. The Department anticipates announcing some changes of several policies in the near future and to work with Congress later this year on possible legislative changes affecting federal sentencing and corrections policies.

Mr. MOLLOHAN. Okay.

Mr. LAPPIN. But, what are we going to do? We are going to continue to work to add beds through private contracts, and try to get funding to build prisons. You will see another request to purchase prisons. We are looking at existing empty facilities like Thomson. Believe me, there are not very many of them, because most of the inventory that is empty, is old and inefficient and we don't want it. However, there are a few of them out there that may be available that we could purchase, and we would advocate for the purchase of those facilities to help shore up the limited bed space we are acquiring.

Mr. MOLLOHAN. Mr. Wolf.

Mr. WOLF. Thank you, Mr. Chairman.

#### FEDERAL PRISON INDUSTRIES (FPI)

I just have two questions, or one on the prison industries thing. You know, I have an amendment I can offer. It really does go a long way to solve the problem. There were a couple articles in the news yesterday about the repatriation of jobs back to the United States. Call centers. I mean you have the opportunity, there are call centers in Monterey, Mexico could be in Monterey, California. There are call centers that could be—I mean the opportunity is wide open.

And you know, I would challenge the Attorney General and I would challenge you, the previous one did not do it because of the Chamber of Commerce, you know, to really get behind this.

I will offer it here and we will see what the authorizers say. But that would create more jobs. I mean just that one dignity, you can't put a man or woman in jail for a long period of time without giving them work.

Secondly, and I have talked to prisoners who said they would make some money and that would give them some money to come by the canteen to buy whatever they wanted to buy, but also they had an account whereby when they got out they just didn't get—what do you give them now when you get out?

Mr. LAPPIN. Fifty dollars.

Mr. WOLF. Fifty dollars. So they would have had not a lot of money, but maybe \$1,800, something to begin with. And so by the Congress doing what it has done and by the administration previous failing to, you have almost guaranteed the recidivism rate can't get any better. I mean it is almost biblical.

So I will be glad to offer the amendment, and I don't know if the Rules Committee will strike it, but it really almost does solve the problem. Because for instance, there are no television sets made in the United States. If you were to use that as an oversimplification, the person who drops the plastic case by would be an American worker driving a truck. The person who drops the wire by. The person who sells the gas to the truck. They would have created American jobs, and I think there isn't any other way. And to just almost pretend that something is going to happen is kind of, not to quote

Simon and Garfunkel in two straight days, but man hears what he wants to hear and disregards the rest.

There is no way this Congress, particularly now in a declining job market, the perception is that every job is in competition.

So I think you could do it in a way that you are not competing with the furniture guys. I understand that. But when you walk through prisons, federal and state, the men and women are just hanging out, they are just kind of hanging out. You know, you don't even make them walk across like we did in the military to pick up cigarette butts anymore. No one is almost working. And so this would honestly provide dignity, and yet I think create American jobs and not take away one job. And so let us see, maybe we can put it in a bill and see what happens.

Mr. LAPPIN. You are right, inmates in federal prison no longer pick up butts because we don't let them smoke, but I guarantee you they are clean prisons, because we make the inmates work.

But we are more than happy—we would love to come meet with you so that we don't get on different tracks.

Mr. WOLF. I have met with you guys over and over. I mean send the Attorney General over.

Mr. LAPPIN. But I think these are some new developments that you need to be aware of before we move forward too quickly. It won't take long. Let us first give you an update, an update on what we are working on, and how you might be able to fold that into something that would be helpful.

But we realize though, Congressman, we have got to rely less on furniture, textiles, and electronics. We have got to compete, we have got to rely less on that mandatory source to get the critics to understand we do not want to take jobs away from American citizen businesses. We don't want to do that—or at least limit it as much as we can. We agree with you, there are some things that we can do.

#### PRISON INDUSTRIES ENHANCEMENT

PIE authority. We want to work with those businesses. We would like to have that influence. We don't have PIE authority. That is an option that we would like to pursue, and that way we are helping American business not replacing them.

So, we would love just to give you a short briefing on where we are at, with some of those things. But we really want to work with you on this, because it is critically important. And I know I am optimistic, that the glass is half full.

Mr. WOLF. It is only a quarter, right?

Mr. LAPPIN. It is half full. I believe we can make something happen, if we think otherwise it won't happen, and we are going to keep going.

Mr. WOLF. Okay. Sure, we will be glad to do that. But I asked the Department of Commerce to put together some information of the 25 largest international companies that are doing business aboard, and maybe when we get that information we can share that with you.

Mr. LAPPIN. We operate right now eight or ten call centers. We would love to take you to one. It is a wonderful assignment that not only keeps these—I mean, some of them run 24 hours a day,

so inmates are learning to work shift work. Before they go into that assignment, they have to go to English class and eliminate their slang. They have to go to geography class so they know, you know, when somebody says I want the phone number in X city they can go right to it, because we compete with the private contractors in these countries. So, it is a great opportunity. We would like to see more of that. But on the other hand, they are automating a lot of that work too. You know, when you call in and you get some automated message, so that is replacing some of the traditional call service programs, but we have got eight to ten of those factories. They are great.

#### SEXUAL ABUSE OF INMATES

Mr. WOLF. Okay. A September 2009 OIG report is critical of your oversight of the programs to prevent sexual abuse of inmates by staff. And the Committee prepared language in the fiscal year 2010 bill urging you to act as soon as possible on the OIG's recommendations. Can you tell us what his recommendations were and whether they have been implemented?

Mr. LAPPIN. I can't recall the specific recommendations. We can follow up with you on our response back to the IG on those issues. I assure you what we have done is increased training and enhanced investigative skills, and we try to hire people that won't act out that way. I mean that is the most frustrating thing.

I know you all realize that this is a very, very small percentage of our entire work force who we find acts this way, and it is unfortunate, it is shameful, and we want to do everything to prevent that.

So, will in writing come back and share with you what the recommendations were, what our response has been, and what we have done to comply with those recommendations.

[The information follows:]

#### BOP'S RESPONSE TO OIG'S 2009 REPORT ON PREVENTING SEXUAL ABUSE

Please see the following link for the information, and see Appendix V and Appendix VI: <http://www.justice.gov/oig/reports/plus/e0904.pdf>.

#### THOMSON FACILITY

Mr. WOLF. Okay. I have a number of questions on the Thomson facility.

With the transfer of Guantanamo detainees to the United States, which certainly has a lot of controversy, if that never had come to fruition in your view, does it still make sense, and is it financially prudent to purchase this facility, Thomson?

Mr. LAPPIN. Yes, it does. And we understand the controversy, we are not a part of that, and to say we support the Administration's effort to solve both these problems. To increase prison space, and if in fact you, the Congress, changes the law for detainees to come into this country and it is decided they should be housed at Thomson, we are more than willing to work with the Department of Defense. But this request is only addressing the purchase and the operation of Thomson as a federal prison. It doesn't change that authority of where detainees will be housed.

Mr. WOLF. Does DoD plan on putting any money in assuming—and I think as of now if this comes up in the Congress that Congress will vote it down, but that is any sense—but it should go forward. Does the DoD plan on participating in it? Are they putting money into it?

Mr. LAPPIN. The purchase?

Mr. WOLF. Yes.

Mr. LAPPIN. No, none. This is going to be at first an all Bureau of Prisons facility, 100 percent. And again, this request only addresses the purchase of that facility and operation of it. So, at some point in the future, if it becomes legal to bring them into this country and we went into this agreement with the Department of Defense, we would permit them to use a small portion of that facility to house the detainees, but only after they have the legal authority. And, they would pay for any additional infrastructure necessary to facilitate that operation.

We would not be involved with the management of those folks, other than the support—food service, laundry, perimeter security, those types of things.

#### GUANTANAMO BAY

Mr. WOLF. Have you or your people been down to Guantanamo Bay and looked at it, and what is your just sense? And the record states you are not taking a position one way or the other, I put that out there. But what kind of place is it? People that I have talked to tell me it is a pretty impressive operation, and I have never been there so I don't know. But what is your—

Mr. LAPPIN. I have been there, and there is some new construction there, and also, there is some old construction there. So it is a mixture of different types of facilities. But you know, the Department of Defense does a great job.

Mr. WOLF. Yeah.

Mr. LAPPIN. And in fact, if we were to work together at Thomson, we would look forward to that. But again, that is really I think a separate issue not applicable to this request.

Mr. WOLF. Oh, I understand. So it is not a torture chamber, it is not a horrible place, it is—

Mr. LAPPIN. No.

Mr. WOLF. I think the Guantanamo name has sort of taken on. But for people that have been down there, the media people that I have talked to they tell me it is a very well run operation. And why do the guards in Guantanamo—and I think I know the answer, but I want you to tell me—wear that cover on their name so that the people in Guantanamo, the prisoners can't see their name?

Mr. LAPPIN. I don't know, you would have to ask the Department of Defense.

Mr. WOLF. What do you suspect it is?

Mr. LAPPIN. I really don't know.

Mr. WOLF. You do know.

Mr. LAPPIN. I don't know.

Mr. WOLF. Could you guess?

Mr. LAPPIN. Don't want to guess.

Mr. WOLF. I know that I am the one that said it. I have been told because they certainly don't want to see any ramifications with

regard to them as they come back, and I think that is a whole concern with regard to moving people. Because wasn't Officer Pepe stabbed by one of the—

Mr. LAPPIN. By a convicted international terrorist, yes, in MCC New York.

Mr. WOLF. And I think there has also been some concern to prisoners who are known and their families will be subject to, and so that when they come back up from Guantanamo they don't want that connection whereby there could be some danger.

Mr. LAPPIN. I mean, in our institutions, as you well know, we house over 200 international terrorists. Those terrorists know the names of our employees, but not unlike any other inmates they are all risky. You could be assaulted by any of them. And we have not seen behavior beyond what is typical of one's background and characteristics. Some of them are assaultive, some of them are not. So, obviously because we have them in ADX Florence, we have some in communication management units, we have some in general population facilities, even in low security institutions, and they have been successfully managed in a variety of different levels of security and oversight.

Mr. WOLF. Any way, thank you, Mr. Chairman, through Mr. Lappin.

#### INMATE ASSAULTS ON STAFF

Mr. MOLLOHAN. Well that is a segue, and I suppose a good segue into my next line of questioning with regard to inmate assaults on staff. The first thing we want to do is make sure that staff are protected as much as possible, and I know you totally agree with that as they perform these very dangerous jobs.

Looking at the statistics of serious assaults and less serious assaults from 2007 through 2009 and then those that have been reported to date, this is an interesting trend line and it appears to all be up as a matter of fact. And I am wondering if you are familiar with those statistics?

Mr. LAPPIN. I am, and maybe you and I have different statistics.

Mr. MOLLOHAN. Well, I have, for 2007, a total of 1,306 assaults, for 2008, a total of 1,601 assaults, and for 2009 a total of 1,891 assaults. That is all an up trend. Now the serious assaults from 2007 to 2008 went from 65 to 98. That is my information.

Mr. LAPPIN. I don't have that.

Mr. MOLLOHAN. And from 2008 to 2009, they went to 104. Do you have different statistics?

Mr. LAPPIN. I am going to tell you what I have.

Mr. MOLLOHAN. Okay, well thank you.

Mr. LAPPIN. In 2007 we had 79 serious assaults on staff.

Mr. MOLLOHAN. In 2007 you had what?

Mr. LAPPIN. Seventy-nine on staff.

Mr. MOLLOHAN. These are different numbers than I have. I just wanted to know that.

Mr. LAPPIN. We had 91 in 2008, and we had 81 in 2009.

Mr. MOLLOHAN. Serious assaults—

Mr. LAPPIN. Serious assaults on staff.

Mr. MOLLOHAN [continuing]. Inmate assaults on staff at the Bureau of Prisons.



Mr. LAPPIN. That's correct.

Mr. MOLLOHAN. Well where did we get these numbers?

Mr. LAPPIN. Now let us back up. We have separated them into two categories. Minor assaults, less serious assaults.

Mr. MOLLOHAN. Well, I have less serious assaults.

Mr. LAPPIN. We have 1,284 in 2007, 1,547 in 2008, and 1,631 in 2009. And there is a—

Mr. MOLLOHAN. What was 2008?

Mr. LAPPIN. I'm sorry, 1,547. And 1,631 in 2009.

So, what we have seen is actually—and I realize that looking at the whole number is not an accurate reflection of what's going on, because obviously there are more inmates each year. That is why we do this by rate rather than by whole numbers, because you are adding 20,000 inmates over the course of those three years.

So, what the trend of serious assaults on staff is actually a downward trend on the rates of assaults on staff, because we had 81 in 2009, but we had more inmates.

Mr. MOLLOHAN. Well that makes sense, those just aren't the numbers I had.

Mr. LAPPIN. Correct. So, here is what we are seeing. We are seeing a slight reduction from 2008 in serious assaults on staff. We have seen an up tick in less serious assaults at high security institutions on staff. That concerns us. But also the serious assaults concern us. We don't want any. But my sense is the downward trend is related.

#### SPECIAL MANAGEMENT UNITS (SMUS)

I am not going to go out and say this definitively yet, but we activated the SMUs in 2008, end of 2008, and we now have almost 1,300 inmates who we have identified and moved to these more restrictive facilities. As a consequence, we are beginning to see not only fewer assaults, we are seeing fewer homicides, we are seeing lock downs that last much less, a shorter period of time. There is about the same number of lock downs lasting for a couple three days because the incidents are not nearly as serious or nearly as impactful. And so I am encouraged by that, I am not there yet, I don't think we are there yet. We still have inmates out in our penitentiaries who belong in SMUs or some more restrictive environment that we currently have beds for.

Mr. MOLLOHAN. Is the SMU a fairly recent strategy?

Mr. LAPPIN. It is. It is somewhat consistent with the ADX Florence approach, it is just that we didn't think that those people needed to be in a program that takes so long to get through before getting back out on the compound.

If you are in the control unit at Florence it is like a five or six year process. We believed that we could correct the behavior of some of these inmates in less time.

So it has some similar conditions, some, not entirely, but the inmates are much more controlled, much more restricted, they don't get as many opportunities for programs and visiting and other things, but if they behave they can be out in two years or less. Actually, 18 months to two years. Some will get it, some will not. So, some are going to be retreats and go back through the program again, or we will send them to Florence.

But we need more of these beds, that is why I am urgently requesting funds for Thomson so that we can increase the number of beds, move more of these inmates who are acting like this into those SMU beds.

Mr. MOLLOHAN. Thomson would be a special management unit?

Mr. LAPPIN. Yes.

Mr. MOLLOHAN. The whole prison?

Mr. LAPPIN. Not the whole prison, the majority of that prison. A part of that prison we are going to make ADX type bed space. Those are for folks that are even more serious, that don't get it in the SMU program, we've got to put them over there for even longer periods of time. So a portion of that would be ADX space.

What we are having to do right now is take general population space off line. So we have taken an entire penitentiary at Lewisburg that was general population, and converted it to SMU space. We cannot continue to afford to do that. We need new space, and more appropriate space. Thomson was built more for this mission than some of our other facilities.

And again, this is such a small shift. I can be back here next year and the rate of assaults may have gone up a little bit or the whole number has gone up a little bit. I question the rate is going to go up a lot.

INMATE ASSAULTS ON STAFF

Mr. MOLLOHAN. I don't want to interrupt you because you are answering most of the questions that I want answered, and that is very efficient. But with the less serious assaults the numbers I have for 2010—what are your numbers for your less serious assaults for 2010?

Mr. LAPPIN. They have gone up in 2009. I don't have the 2010 number with me, but they have gone up. The minor assaults on staff have increased each of those three years from 1,284 in 2007 to 1,545 in 2008 to 1,631 in 2009. Now, I can't say the rate has changed that much, again, because we have added inmates each of those years.

Mr. MOLLOHAN. No, I understand. Could you do an analysis that we have—

Mr. LAPPIN. We will do it.

Mr. MOLLOHAN. Statistics come from all different directions, this isn't a comment on anybody who supplied this information, but just could we reconcile these different numbers?

Mr. LAPPIN. Absolutely.

[The information follows:]

ASSAULTS IN BOP & PRIVATE SECURE FACILITIES

Fiscal year	Serious as- saults on staff	Less serious assaults on staff	Serious assaults on inmates	Less serious assaults on inmates
2005 .....	132	1,404	413	1,966
2006 .....	117	1,334	482	2,241
2007 .....	68	1,242	397	2,566
2008 .....	99	1,505	466	2,616
2009 .....	105	1,789	517	2,657
2010* .....	20	687	135	1,082

FY 2010 Data through March 27, 2010.

Mr. MOLLOHAN. And then the trend line, the rate increase that you would have to factor in the number.

Mr. LAPPIN. We can do that.

Mr. MOLLOHAN. And in what circumstances.

We want to support your special management unit program to the extent it is your strategy and it is being successful. I hope that it does make your correctional officers anticipate an improvement in the situation that they are concerned about. It is a very serious matter for the Committee and we want to support a resolution of it as quickly as possible, and it sounds like the strategies you are employing have promise of being successful.

Mr. LAPPIN. Well it is a very important concern of ours as well for all of our staff, and we want them to be safe at work, and we are going to do everything we can do to reduce that number.

Mr. MOLLOHAN. I have a number of questions on the Second Chance Act that I really want to get to. I am glad to have gotten to the security issues on the record.

We are going to submit a number of questions for the record now. I just want to hear you talk about this.

#### ANTI-CRAVING MEDICATION

We don't know how using anti-craving medication in the context of a prison environment works or doesn't work, and that is why we have asked the experts to look at that.

During last year's hearing, I asked you whether the Bureau of Prisons was using any anti-craving medication as a part of its drug treatment programs and you responded that the use of such medication was something you would consider based in part on the Bureau of Prisons review of research in this area.

The fiscal year 2010 explanatory statement encouraged BOP to conduct a pilot initiative on the use of anti-craving medications as part of the RDAP program and through the period of an inmate's period of supervised release. The statement further encouraged BOP to coordinate with the National Institute on Drug Abuse, which is currently supporting research on the effectiveness of anti-craving medication on probationers and parolees.

So just to capture for the record the status on that from you, has the BOP initiated a pilot study on the use of anti-craving medication?

Mr. LAPPIN. We have not initiated the pilot yet, but we intend to. We have looked at the drugs that are available, we are working with the National Institute on Drug Abuse, some folks out there who have expertise in this. We are narrowing the types of drugs that we would—or identifying the types of drugs that we would use, and we are working on the pilot.

So, we intend to move in that direction. I am hopeful that we are going to get it implemented this year, the pilot, so that we can try this as part of our drug treatment protocol, because we want to do anything we can to help these individuals resist drug and alcohol use, and certainly this research reflects that there is potential this could be helpful.

So, we are working on it, we haven't implemented the pilot yet, but we hope to do so in the not too distant future.

Mr. MOLLOHAN. It will be interesting to see how it plays out. It is a tool in the tool box, so whether it works under these circumstances will be very interesting to see.

Mr. LAPPIN. We agree.

Mr. MOLLOHAN. Director Lappin, thank you for your testimony here today and thank you for your good service. It is a tough job. Oh my gosh, you are pulled in so many different directions and your resources are scarce at best, and so we want to be sensitive to that and to the limits of the budget possibilities. We want to be responsive to you because we do think you are trying very hard and being successful, and you have a tremendous dedicated staff from the correctional officers, administration, and correctional workers, and anybody else that those categories didn't cover who work for the Bureau of Prisons.

So thank you very much for your testimony here today.

Mr. LAPPIN. I appreciate that. I couldn't agree with you more. We have got a great group of 36,000 employees that serve this country extremely well each and every day and we appreciate your support and the support of Congressman Wolf and the rest of the members. Thank you, sir.

Mr. MOLLOHAN. Okay, thank you.

**Chairman Alan Mollohan**  
Questions for the Record

- 1. What total number of on-board correctional workers does BOP anticipate reaching by the end of fiscal year (FY) 2010? What percentage of BOP's total authorized correctional worker positions would this represent?**

**Answer:** BOP's targeted onboard staffing level for the end of FY 2010 is 35,630 Full time positions. This represents 88.46% of the Congressional Authorized Positions and includes activations and Headquarters, Regional Offices and Training Centers (TCs).

Base Staffing: 33,190 (89.1% of authorized positions filled)  
Activations: 350 (55.9% of authorized positions filled)  
HQ, Regions, TC's: 2,090 (87.0% of authorized positions filled)

- 2. What total number of on-board correctional officers does BOP anticipate reaching by the end of FY 2010? What percentage of BOP's total authorized correctional officer positions would this represent?**

**Answer:** BOP achieved a net staffing increase of 745 (excludes 30 other than full-time) in FY 2009 and 224 thus far in FY 2010 (through February, 2010) for a total net staffing increase of 969, of which 558 (57.6 percent) were Correctional Services Staff.

- 3. What percentage of correctional workers hired since the beginning of FY 2009 are correctional officers versus other correctional workers?**

**Answer:** BOP achieved a net staffing increase of 745 (excludes 30 other than full-time) in FY 2009 and 224 thus far in FY 2010 (through February 26, 2010) for a total net staffing increase of 969, of which 558 (57.6%) were Correctional Services Staff.

Of the net increase in full-time staff (969 staff), more than 72 percent are correctional officers (701 officers), nearly 21 percent are correctional workers (199 workers) and approximately 7 percent support the institutions in either headquarters, region officers or training centers (69 other).

- 4. What percentage of the overall staffing increase, both to-date since the beginning of FY 2009 and planned for FY 2010 and FY2011, are for administrative positions at the facility level, the headquarters level, and the regional office level? How many positions does this represent?**

**Answer:** All staff working in BOP institutions are correctional workers first, and all have responsibilities for managing inmates, responding to emergencies, and maintaining institution security. About 3.9 percent (155 of the 3,949 positions) of

the actual and planned net staffing increases for FY 2009 through FY 2011 are related to positions at headquarters, training centers and regional offices. The majority of these positions are related to the Consolidated Services Centers/Operations that are under the management and supervision of the Central Office (Headquarters) but perform institution work. The Consolidated Services are:

Consolidated Employee Services Center (Human Resources),  
Designations and Sentence Computation Center,  
Field Acquisitions Office (Consolidated Contracting), and  
Counter Terrorism Unit.

These Consolidated Centers were established in FY 2006, as part of BOP's Management & Streamlining Initiatives (due to severe projected funding shortfalls/fiscal restraints) to streamline operations, reduce costs, and improve efficiencies. These actions involved permanent changes to BOP operations, and the transferring of positions from institution, regional and central offices.

- 5. From the beginning of FY 2005 through the end of FY 2009, and excluding any prisons that began activation during this period, did the number of authorized correctional worker positions at BOP institutions decline, increase, or stay level? What are the reasons for any changes?**

**Answer:** BOP "base" Congressionally Authorized position levels were decreased by a total of 2,866 from FY 2005 through FY 2008. There were no changes in authorized positions for correctional worker positions at BOP institutions in FY 2009.

The reductions were as follows:

FY 2006

- 133 positions related to the closure four (4) stand-alone minimum security prison camps.

\*Note: \$12 Million associated reduction to base

FY 2007

-1,833 positions related to Streamlining and Management Reengineering.

\*Note: No associated base funding was reduced; the streamlining consolidated specific functions/operations, improved efficiencies, and lessened the impact of operating under severe funding constraints.

FY 2008

- 900 positions related to a DOJ "Hollow" Position Reduction Initiative.

\*Note: No associated funding was reduced.

Approximately 2,443 base positions were reduced during the Streamlining & Management Reengineering initiatives over a period of 3 years beginning in

Fiscal Year 2006, of which a total of 610 positions were utilized to establish Consolidated Centers (Employee Services/HR, Designations & Sentence Computation Center, Field Acquisitions Office, Relocation Services, and the Counter Terrorism Unit) for a net reduction of 1,833 (1,771 at Institutions and 62 at Regional and Central Offices).

The 900 position reduction related to the DOJ Hollow Position exercise did not result in any funding reductions. These were positions that BOP could not afford to fill and had not been filled for a number of years (FTE lapses) due to funding constraints.

**6. What is the process for determining the authorized number of correctional officers at a particular institution and how frequently does BOP reassess the appropriate number of authorized correctional officers at each institution?**

**Answer:** Authorized position levels for BOP facilities are approved by the BOP Resource Management Subcommittee. Following the response is a detailed explanation of the processes involved with regard to the allocation of positions to institutions.

In addition, locally and regionally conducted reviews of authorized staffing are completed annually during the development of the Annual Workforce Utilization and Staffing Plan (which is required by BOP Policy) and reviewed quarterly. Regional offices provide oversight of authorized position levels and onboard staffing in response to crowding levels, special situations/circumstances, and security issues that arise, etc. As Regional staff identifies required changes in authorized staffing levels, they either realign positions within their region or submit a request for an increase of authorized positions for consideration to the Resource Management Subcommittee in the Central Office.

Additionally, the Executive Staff conducts quarterly reviews of each specific security level (institutions that fall under that security level) to include a review of authorized positions and on-board staffing levels. Finally, adjustments are made to authorized position levels when new programs are added, during programming changes (such as changes in security level programming), expansions, and as other needs/changes become identified.

[Please see the following.]

Resource Allocation Subcommittee Processes

- All BOP position allocations (new) for staffing BOP Facilities are approved by the BOP's Resource Allocation Subcommittee (also referred to as the RAC). The Resource Allocation Subcommittee is comprised of seven (7) of members of the Executive Staff (four Assistant Directors and three Regional Directors) and is Co-Chaired by the Assistant Director for Administration and the Assistant Director for Human Resource Management.
- The Resource Management Subcommittee meets in person or via Video Conference during or just prior to the Quarterly scheduled Executive Staff meetings. Additionally, special meetings are also held if necessary to address any immediate staffing related issues involving position allocations.
- A RAC Control Sheet is utilized by Regions/Institutions to submit requests for positions in support of their proposed staffing plan (**see Attachment #1**). This sheet continues to be modified as necessary by Administration Division and Human Resource Management Staff to incorporate changes made due to consolidations, program changes, etc. that effect core staffing requirements for various programs at institutions. The RAC Control sheet contains a number of "specific" questions regarding the facility, and each individual department/program area to assist in determining required number of positions (staffing level) necessary for operation. In particular, for Correctional Services the number posts is utilized (i.e., 7-day post, 5-day post, 2-day post) to determine the number of Correctional Services staff needed to ensure adequate post coverage 365 days a year.
- The completed RAC Control Sheet is then reviewed by Administration Division and Human Resource Management Division staff (Chief, Budget Execution, Workforce Planning Administrator, Executive Assistants, etc.) at the Central Office level before it is actually presented to the Resource Management Subcommittee. These staff conduct any necessary follow-up needed based on the submission( i.e., obtain clarification when needed, ask questions about specific positions, etc.).



Notes and recommendations are then provided to the Assistant Director Administration and the Assistant Director Human Resource Management for consideration during the official meeting to discuss and approve the request. Some items included in the "notes" are the number of positions included in the budget, planned capacity and anticipated crowding (number of inmates to be housed at the facility), what the staff-to-inmate ratio will be based on the number of positions requested, anticipated staffing levels based on funding, and projected average daily inmate population levels, if the requested staffing by department is in line with recent Management Initiatives (HR Consolidation, Financial Management Organizational Structure, ISM established staffing patterns, if the level of staffing in Medical is appropriate for the designated Care Level, etc.).

Additionally, in more recent years (due to funding related issues) the Resource Management Subcommittee has made a much more concerted effort to have equity in the number of approved positions (total) for "like" facilities (same security level, design layout, capacity, etc). References to prior approved allocations are often done to ensure that the "total" number of positions approved for one facility is not more or less than what was approved previously for a comparable facility (barring any special circumstances such as one facility having an RDAP, SOMP, Life Connections, Brave/Challenge, etc where the other "like" facility does not accounting for the difference). Additionally, BOP has implemented a reengineering which resulted in the consolidation of functions (reduction of positions primarily in the administrative areas as well as some other programs ) due to funding shortfalls.

- The Resource Management Subcommittee then meets to review and discuss the request and makes an official recommendation to the Director on the number of positions that should be allocated to the facility.
- Following the meeting, official minutes are prepared for the Director's signature approving the recommendations. Upon receipt of the signed minutes, the Budget Execution Branch then prepares and processes the position allocation to the region for the particular facility involved. The region then provides the positions to the institution accordingly.

RAC REQUEST CONTROL SHEET

**Attachment 1**

Please attach a brief description and justification for the request.

Submitted for RAC Meeting to be held on: \_\_\_\_\_  
 (Date of Executive Staff meeting)

Submitted by: \_\_\_\_\_ Date: \_\_\_\_\_ Region: \_\_\_\_\_  
 \_\_\_\_\_ Executive Staff Member

Requesting Institution/Region/Division: \_\_\_\_\_

Contact Person: \_\_\_\_\_ Phone Number: \_\_\_\_\_

Current Allocation: \_\_\_\_\_ Date of Last Request: \_\_\_\_\_

Source of Requesting Authority:

- \_\_\_\_\_ New Institution On Site      \_\_\_\_\_ Staffing Guidelines
- \_\_\_\_\_ Activation Manual
- \_\_\_\_\_ Mission Change                  \_\_\_\_\_ Facility Expansion
- \_\_\_\_\_ Other (please specify): \_\_\_\_\_

Is the request the result of an increase/decrease in inmates? \_\_\_ Yes \_\_\_ No  
 If yes, what is the new inmate population: \_\_\_\_\_

Is the request in accordance with staffing guidelines? \_\_\_ Yes \_\_\_ No  
 If no, what percentage is the request over/under: \_\_\_\_\_

Have you ensured that specific positions have been identified on the Resource Allocation Request Form (e.g., 3 Case Managers, 3 Correctional Counselors, instead of 6 Unit Management)? Yes \_\_\_\_\_ N/A \_\_\_\_\_

Request made for:

Number of Positions	D/U	Department	Proposed Series/Grade	Title

**FOR INSTITUTIONS ONLY:** The following information is required for a staffing guideline analysis to be completed.

Institution name, security level &amp; code: \_\_\_\_\_

Date institution was built: \_\_\_\_\_

**Population:**

Main: \_\_\_\_\_ . Satellite Camp: \_\_\_\_\_ . Holdover/Jail Unit \_\_\_\_\_ . Female \_\_\_\_\_ . WITSEC \_\_\_\_\_ . ICC \_\_\_\_\_

(Based on projected designated population) (Should be included in the main and/or camp numbers)

Projected inmate to staff ratio: \_\_\_\_\_

**FOOD SERVICE (D/U A):**

1. Major medical diet program and/or approved third serving line? (Y/N) \_\_\_\_\_
2. Is there a Satellite Camp Food prep area? \_\_\_\_\_
3. Satellite Food serving line (Except MCC) \_\_\_\_\_
4. Non-centralized warehouse with a separate Food Service Area? (Y/N) \_\_\_\_\_
5. Satellite lines at the main institution (lines that cannot be monitored by one person? \_\_\_\_\_

**HEALTH SERVICE (D/U B):**

1. Two or more satellite or special functions (e.g. major bus/airlift operation, WITSEC unit)? (Y/N) \_\_\_\_\_
2. Institutions with female population 150 or more? (Y/N) \_\_\_\_\_

**UNIT MANAGEMENT (D/U F):**

Number of housing units: \_\_\_\_\_

**EDUCATION & VT (D/U G):**

New facilities and pilot sites with new program initiatives? (Y/N) \_\_\_\_\_

**RECREATION SERVICES (D/U H):**

1. Satellite program? (Y/N) \_\_\_\_\_
2. Non-centralized recreation areas? (Y/N) \_\_\_\_\_

**RELIGIOUS SERVICES (D/U J):**

Two or more satellite programs? (Y/N) \_\_\_\_\_

**DRUG ABUSE PROGRAM SERVICES (D/U F17):**

1. Drug Abuse Program (treatment specialists only)? (Y/N) \_\_\_\_\_
2. Residential Drug Abuse Program (psychologist and treatment specialists)? (Y/N) \_\_\_\_\_

**Note: All treatment programs in Decision Unit F17 receive staff based on 1:24 staff to inmate ratio, i.e., one treatment specialist for every 24 inmates. The average staffing pattern is one DAP psychologist and four DAP treatment specialists.**

**PSYCHOLOGY SERVICES (D/U K):**

High Security Institutions:

1. Code Program (psychologist and treatment specialists)? \_\_\_\_\_
2. Impulsive Aggressive Program (psychologist and treatment specialists)? \_\_\_\_\_

Medium Security Institutions:

1. Brave Program (psychologist and treatment specialists)? \_\_\_\_\_
2. Skills Program (psychologist and treatment specialists)? \_\_\_\_\_
3. Sex Offender Treatment Program (psychologist and treatment specialists)? \_\_\_\_\_
4. Habilitation Program (psychologist and treatment specialists)? \_\_\_\_\_
5. Specialized Mental Health Unit (psychologist and treatment specialists)? \_\_\_\_\_

Female Programs:

1. Lift Program (psychologist and treatment specialists)? \_\_\_\_\_
2. New Pathways Program (psychologist and treatment specialists)? \_\_\_\_\_

Medical Referral Centers:

Axis II Program (psychologist and treatment specialists)? \_\_\_\_\_

Non-Residential Drug Treatment (psychologists in institutions without a Residential Treatment Program)? \_\_\_\_\_

(All treatment programs in Decision Unit K receive staff based on 1:24 staff to inmate ratio, i.e., one treatment specialist for every 24 inmates. The average staffing pattern is one psychologist and four psychology treatment specialists.)

**EXECUTIVE OFFICE (D/U M):**

1. Satellite camp? (Y/N) \_\_\_\_\_
2. DHO (approved by Regional Director) (Y/N) \_\_\_\_\_
3. Attorney or paralegal as approved by General Counsel? (Y/N) \_\_\_\_\_

**EMPLOYEE DEVELOPMENT (D/U N):**

Annual total employee turnover exceeds 80 or the number of designated positions exceed 250? (Y/N) \_\_\_\_\_

**HUMAN RESOURCES (D/U M):**

1. Enter number of designated positions: \_\_\_\_\_
2. The annual total employee turnover exceeds 80? (Y/N) \_\_\_\_\_

**INMATE SYSTEMS MANAGEMENT (D/U F):**

1. Enter number of annual inmate turnovers (admissions + releases): \_\_\_\_\_
2. Bus/air hub or holdover operations? (Y/N) \_\_\_\_\_
3. Authorized 16 hours coverage? (Y/N) \_\_\_\_\_

**FINANCIAL MANAGEMENT (D/U M & D/U C Warehouse & Laundry only):**

1. Service to a remote satellite camp? (Y/N) \_\_\_\_\_
2. A camp or remote commissary operation? (Y/N) \_\_\_\_\_
3. Enter number of additional accounting center: \_\_\_\_\_
4. Both inside and outside warehouses or centralized warehouse? (Y/N) \_\_\_\_\_
5. Contract laundry operations? (Y/N) \_\_\_\_\_

**FACILITIES MANAGEMENT (D/U P):**

1. Garage operations? (Y/N) \_\_\_\_\_
2. Landscape operations? (Y/N) \_\_\_\_\_
3. Powerhouse/Sewer and/or Water Treatment operations? (Y/N) \_\_\_\_\_
4. Satellite programs (e.g. WITSEC, FDC) 1 maximum? (Y/N) \_\_\_\_\_
5. For staff housing (10 or more houses)? (Y/N) \_\_\_\_\_
6. Enter number of sq ft of total space (including Unicorn, staff housing, camp, etc.): \_\_\_\_\_
7. For major bus/airlift operation? (Y/N) \_\_\_\_\_
8. Age of institution (A: 10-25 years; B: 26-50 years; C: over 50 years): \_\_\_\_\_

**SHARED SERVICES:**

1. What services/responsibilities will be shared by other institutions:  
\_\_\_\_\_
2. Change to position allocation: \_\_\_\_\_

**COMMUNITY PROGRAM (D/U R - Regional Offices Only):**

1. Community Corrections Office? (Y/N) \_\_\_\_\_
2. Correctional Management Center? (Y/N) \_\_\_\_\_
3. Office that process more than an average of 100 designations per month (long & short term)? (Y/N) \_\_\_\_\_
4. Offices that maintain an average offender case load in excess of 100 (all types of facilities)? (Y/N) \_\_\_\_\_
5. Offices that have responsibility for more than 25 contract locations (all types)? (Y/N) \_\_\_\_\_

**Additional Information:**

Are there any services (food service, laundry, medical, etc.) which are to be contracted ? (Y/N) \_\_\_\_\_  
If so, please list: \_\_\_\_\_

Any other information which may affect staffing patterns:  
\_\_\_\_\_

Is the institution a "mirror image" of any currently existing institution (Y/N) \_\_\_\_\_  
Name of institution: \_\_\_\_\_

Contact person: \_\_\_\_\_  
(Name, title, and telephone number)

**CORRECTIONAL SERVICES (D/U E)**

Example: Typical SL 3/medium institution with a satellite camp

7 Day Posts	Morning	Early	Day	Late	Evening	Total
Operations Supervisor						
Activities Supervisor						
Administrative Supervisor (SL 5-6 Day)						
Control Center						
Control Center #2 (MCC)						
Front Corridor/Compound						
Rear Corridor/Compound						
Rear Corridor #2 (SL 3 - 6)						
Special Housing Unit #1						
Special Housing Unit #2						
Special Housing Unit #3 (SL 3 - 6)						
Special Housing Unit #4 (SL 5 - 6)						
Special Housing Unit #5 (SL 5 - 6)						
Special Housing Unit Property (SL 5 - 6)						
Special Housing Unit Records (SL 5 - 6)						
Front Entrance/Receptionist						
Yard #1 & 2 (SL 5 EARLY AND LATE)						
Escort #1 & 2 (SL 2 DAY, SL 3 -5)						
Telephone Monitoring						
Housing Units*						
Housing Unit Officer #2 (SL 3 -6 LATE)						
Perimeter Patrol (SL 2, MCC = 1)						
Perimeter Patrol (SL 3 - 6 = 2)						
Number of Towers						
Bus Operations						
Federal Detention Center WITSEC						
MCC Visiting						
Major Medical Admin. Supervisor (1 DAY POST)						
Major Medical Outside Hospital Coverage (3 POSTS)						

5 Day Posts	Morning	Early	Day	Late	Evening	Total
Captain						
Secretary						
T&A Clerk (for more than 150 Custody staff)						
Security Officer						
Security Officer #2 (SL 5 - 6 = 1 DAY)						
Investigative Supervisor						
Investigative Supervisor #2 (SL 3 - 6, MCC)						
Special Housing Unit Supervisor (SL 2 - 6)						
SIS Technician (SL 3 - 6, MCC)						
Rear Gate						
Rear Gate #2 (SL 5- 6 = 1 DAY)						
Tool Room (MCC = 0)						
Satellite Camp/Special Function						
Lieutenant (1 maximum)						
Visiting Room #1						
Visiting Room #2						
Visiting Room #3 (SL 3 - 5)						
Satellite Camp Visiting						
Shakedown # 1 & 2 (SL 5 - 6 DAY)						
Metal Detector (SL 3 - 6)						
Major Medical Hospital Outpatient Area (1 POST)						
Major Medical Inside Escort (2 POSTS)						
Major Medical Outside Escort (2 POSTS per absolute)						

**7. What is the process for determining the authorized number of correctional workers associated with inmate programs, such as drug abuse treatment or vocational training, and how often does BOP reassess the appropriate authorized number for these positions at each institution?**

**Answer:** As referenced above in the response to question 6, authorized position levels for BOP facilities are approved by the BOP Resource Management Subcommittee in the Central Office.

Correctional Programs Division staff in the Central Office conducts annual reviews of staffing for inmate programs, in addition to locally and regionally conducted reviews of authorized staffing levels completed annually during the development of the Annual Workforce Utilization and Staffing Plan (which is required by BOP Policy) and quarterly reviews of this plan. For example, the BOP is mandated to provide Residential Drug Abuse Program (RDAP) for all inmates who need and volunteer for treatment. Staff reviews the RDAP participation rates, waiting list, and anticipated increases in population for upcoming fiscal years to determine if the BOP is able to meet the requirements of the law. Positions are requested accordingly.

Likewise, the staffing complement of psychologists in the institutions is reviewed annually. This review looks at each institution's current staffing, projected inmate population, and individual institution's mission and security level, to determine if the staffing level is sufficient for the prevention, intervention, management and treatment of the BOP's population in need of mental health intervention.

The Executive Staff Resource Allocation Subcommittee makes decisions on requested staffing changes.

**8. What role does the Department of Justice and the Office of Management and Budget play in determining the number of authorized correctional worker positions at BOP institutions?**

**Answer:** During the budget preparation cycle, DOJ and OMB funding decisions based on Administration priorities directly impact the number of authorized correctional worker positions requested for new prison activations and other program increases, and therefore impact the total BOP authorized position level. Further, BOP internally reviews and adjusts authorized position levels across BOP sites as described in the responses to questions 6 and 7 above.

9. **Did direction or input from DOJ or OMB result in a decreased number of authorized correctional workers in the staffing plan for any BOP institution in FY 2008, FY 2009, FY 2010, or FY 2011? If so, what was the reduction to the total authorized number of correctional workers that resulted for each year?**

**Answer:** Administration priorities impact funding increases and the overall number of authorized positions requested in the President's Budget. However, within that total OMB and DOJ do not direct staffing levels at individual BOP institutions. The authorized number of positions was not reduced in FY 2009, FY 2010 or FY 2011.

The Department made a commitment to Congress that DOJ components would purge unfunded or "hollow" positions from authorized levels. Therefore, the FY 2008 President's Budget included a reduction of 900 authorized positions.

10. **Please provide the most recent total estimate of the cost of all pending Modernization and Repair projects reported by the prisons to the regional offices based on actual assessments at each facility.**

**Answer:** About one-third of the Bureau of Prisons (BOP) 115 institutions are over 50 years old, and more than half are over 20 years old. Each facility has numerous buildings as well as inmate living quarters. Many of these buildings require extensive work to maintain an adequate state of repair to assure a safe work environment for staff and inmates, and additionally protect the taxpayer's investment, while meeting BOP and American Correctional Association (ACA) standards.

BOP prison facilities are subjected to much heavier than normal use given the record levels of crowding causing extensive wear and tear and premature deterioration. This is especially apparent in our older facilities that have infrastructures designed for a smaller, single-celled, inmate population. Finally, BOP prison facilities are used 24 hours a day, seven days a week, with no down time or relief, causing systems and infrastructure to weaken and fail.

The Modernization and Repair (M&R) program is essential to provide resources supporting rehabilitation and renovation or replacement projects. It is critical to ensure that structures, utility systems and other plant facilities are kept in a reasonable state of repair. Complex heating and air conditioning systems, high pressure steam power plants, emergency electrical power systems, fire protection and life safety systems along with security equipment all require regular maintenance and repair. Failure to adequately maintain structures and utility systems erodes capital investment and multiplies the costs in future years for accomplishing the required maintenance and repair. Most important, failure to maintain structures can cause direct and/or indirect security problems.

Each fiscal year, BOP institution staff performs detailed annual inspections of their physical plants, and regardless of project cost, provide a project list to their regional office for items in need of repair/modernization. The six regional offices individually consolidate major M&R project request lists (projects over \$300,000) from their institutions and forward the priority lists to the Central Office. Those projects less than \$300,000 are reviewed for possible funding from the regional office level.

Once the M&R funding level is determined each fiscal year, the highest priority projects that are most ready for contract action are considered for funding. Security and safety projects are identified first for funding, with other infrastructure needs following. The BOP then allocates funds, based on the priority list, for as many projects as practical. The regional offices perform the same ritual within their office to determine projects to receive regional funding.

The Federal Facilities Council of the United States recommends budgets at a minimum of 2 to 4% of the "Capital Replacement Value" of constructed facilities per year. Using the conservative 2% figure, this is equivalent to approximately \$500 million of activity each year for our Federal Prisons. Compared to the \$25.2B of replacement value for BOP property, the 2% replacement value is a relatively small investment to maintain and extend the useful life of this property. Finally, the environment of M&R challenges is dynamic and ever-changing in accordance with new legislation, Executive Orders, and weather related events such as blizzards, hurricanes, floods, etc.

The BOP's estimated needs, by region, in May 2009 totaled approximately \$1.1B. The needs are composed of unfunded M&R projects required to meet Executive Orders regarding energy/water, and projects to rectify deficiencies discovered during annual inspections. Based on estimates developed by Regional and Central Office program staff in May 2009, the following estimated needs by region and state are summarized as follows:

**MID-ATLANTIC REGIONAL OFFICE (MARO)  
ESTIMATED M&R NEEDS BY STATE**

STATE	AMOUNT
Kentucky	\$55,224,801.30
Maryland	\$5,437,804.00
North Carolina	\$13,030,412.00
Tennessee	\$8,262,004.00
Virginia	\$15,273,895.50
West Virginia	\$34,958,089.50
Total	\$132,187,006.30



The major challenges facing the Mid-Atlantic Region involve the age and security level of the institutions. There are four institutions over 50 years old. Having physical plants that old exponentially increases the M&R funding required just to keep them running. The older facilities also have environmental issues such as asbestos, lead, etc. There are four United States Penitentiaries (USP) in the region and USPs sustain damage by inmates at a much higher rate than lower security levels. There is also the inability to spend time performing maintenance on equipment due to the high rate of lockdowns and subsequent custodial hours spent by foremen during lockdowns.

The main needs for this region are fire alarm upgrades, roof replacements, asbestos abatements, sprinkler system installations, HVAC system replacements and upgrades, sewage system upgrades, road resurfacing, water storage tank repairs, and hot water loop replacements.

**NORTHEAST REGIONAL OFFICE (NERO)  
ESTIMATED M&R NEEDS BY STATE**

STATE	AMOUNT
Connecticut	\$19,666,104.00
Massachusetts	\$9,743,995.00
New Jersey	\$58,325,108.00
New York	\$65,630,395.50
Ohio	\$5,607,804.00
Pennsylvania	\$95,884,605.25
Total	\$254,858,011.75

The major challenges facing the Northeast Region involve the harsh winters and aging buildings and infrastructure. The snow and extreme cold cause damage to roofing, roads and fencing. Many of the systems in these institutions are outdated due to the age, and replacement parts are hard to find, if they can even be found.

The main needs for this region include the resurfacing of roads, replacement of roofs and replacement/updating of electronic systems.

**NORTH CENTRAL REGIONAL OFFICE (NCRO)  
ESTIMATED M&R NEEDS BY STATE**

STATE	AMOUNT
Colorado	\$50,660,577.00
Illinois	\$23,108,205.00
Indiana	\$23,197,787.50
Kansas	\$103,495,783.50
Michigan	\$17,854,604.00
Minnesota	\$37,638,106.00

Missouri	\$17,329,804.00
South Dakota	\$2,794,104.00
Wisconsin	\$26,777,804.00
Total	\$302,856,775.00

The major challenges facing the North Central Region involve aging infrastructures, security levels and extreme weather. The majority of correctional facilities in the North Central Region are older than 50 years, and many of these facilities are more than 75 years old. In addition, most of these are eligible for consideration in the National Register of Historic Places. The infrastructure systems and building envelopes at these facilities are well beyond their useful life expectancy, and most are functioning on repaired or replacement systems that have no regard for energy efficiency. This region also houses some of the most high risk inmates which increase the need for improved security systems. Further, the extreme weather wreaks havoc on the structures.

The main needs in this region are roof replacements, window replacements, masonry repair and restoration, fire alarm replacement, heating and ventilation system repairs and replacement, sewer and storm water system repairs, utility tunnel repairs and replacement, Programmable Logic Controller upgrades, Energy Management System upgrades and asbestos abatement.

**SOUTH CENTRAL REGIONAL OFFICE (SCRO)  
ESTIMATED M&R NEEDS BY STATE**

STATE	AMOUNT
Arkansas	\$4,863,608.00
Louisiana	\$13,806,412.00
Oklahoma	\$15,266,788.00
Texas	\$96,630,559.50
Total	\$130,567,367.50

The major challenges facing the South Central Region involve the aging infrastructure, weather and overcrowding. The aging of the institutions creates an environment of antiquated mechanical and electrical systems that require constant repair and attention. The overcrowding puts extra strain on the already over used and prematurely aged systems. The weather extremes (tornadoes, hail, wind, rain, dryness, humidity, ice) create problems with soil and stress on our buildings.

The main needs in this region are the repair and replacement of roofs and roads along with mechanical (boilers and chillers) and electrical (generators and switchgears) systems.

**SOUTHEAST REGIONAL OFFICE (SERO)**

## ESTIMATED M&amp;R NEEDS BY STATE

STATE	AMOUNT
Alabama	\$39,253,129.00
Florida	\$51,260,611.00
Georgia	\$31,839,206.00
Mississippi	\$8,868,518.00
Puerto Rico	\$8,628,304.00
South Carolina	\$20,985,117.75
Total	\$160,834,885.75

The major challenges facing the Southeast Region relate to the historic overcrowding levels of our prisons, which over-utilizes our equipment and systems causing premature and exponential aging. HVAC equipment, boilers, faucets, toilets, etc. are used far more than that for which they were built. Our equipment replacement schedule, based on industry standards, is unrealistic due to the funding restrictions and size of our population. The heat and humidity, and storms also exacerbate the deterioration of our buildings.

The main needs in this region are replacing HVAC and fire alarm systems, the sealing of exterior buildings and mold issues.

WESTERN REGIONAL OFFICE (WRO)  
ESTIMATED M&R NEEDS BY STATE

STATE	AMOUNT
Arizona	\$16,795,986.00
California	\$95,030,756.70
Hawaii	\$2,763,393.00
Oregon	\$2,851,498.00
Washington	\$3,221,012.00
Total	\$120,662,645.70

The major challenges facing the Western Region involve the age, security level and varied weather experienced across the region. The overcrowding is causing premature aging of the equipment and systems. There are several high rises in this region which pose specific issues related to maintenance of this type of structure along with the elevators and operating a Food Service off the ground floor and in a multi-level building. The weather factors are extreme from desert conditions to extreme cold.

The main needs in this region concern replacing wastewater systems, grounding installation, repair and replacement of security/electronic systems and road repairs.

**11. In order to maintain the current schedule of construction for new BOP facilities, how much additional funding would BOP need to propose in the FY 2012 budget? How much would BOP need to propose in the FY 2013 budget?**

**Answer:** The Status of Construction exhibit lists current projects, both fully and partially funded. The exhibit outlines the project funds available and estimated costs. The BOP requires more than \$2 billion to complete construction of the seven partially funded projects (FCI Midwestern/Leavenworth, KS; USP South Central/Forrest City, AR; USP Western/ El Reno, OK; USP Bennettsville, SC; USP Letcher County, KY; FCI North Central Region; and FCI Florida), which are congressionally approved. The reported cost estimates do not allow for unanticipated cost escalations, uncertainty as to the actual sites to be developed, and uncertainty as to when construction funds may become available.

O. Status of Construction

Federal Prison System  
Status of Construction  
(Dollars in Thousands)

FY 2011 Congressional Budget Submission	Status of Funds	*Activation Funding Date	Total Cost Estimate	Oblig. to Date 12/31/09	Const. award Date	Total Funding by Fiscal Year	
						Total	Cost Estimate
New Facilities (Rated Capacity): FCI McDowell, WV with Camp (1,280)	Design portion of design-build contract awarded 5/26/06. Contract for early site work awarded 8/27/06. Contract for remaining construction awarded 2/23/07. The Construction responsibility for the camp was completed. Installation of electrical, plumbing and electrical work continues. Conduit for electronic security and communications systems and perimeter security fencing are proceeding.	2010	\$251,077	\$248,493	5/26/2006	2001	\$5,430
						2002	91,047
						2003	3,000
						2004	46,000
						2005	95,400
						2006	6,600
						2008	3,000
						2009	1,000
						2009	3,900
						2009	1,700
	3,000						
	281,077						
California/FCI Mendota with camp (1,280)	Initial portion of Design - Build contract was awarded 6/28/04 and construction for build construction was awarded 12/13/04. This work for housing units, water tower and central utility plant is complete. After two Congressional recessions, the BOP required additional funds which were received in 2/2007. The contract for construction of Phase 2 buildings was awarded on 9/23/07. Possession of completed Phase 2 buildings was effective 10/30/09. Through a modification of the current contract, construction of the Federal Prison Camp (FPC) and UNICOR Factory was awarded on 9/23/09. Excavation for FPC and UNICOR Factory foundations, and utility work are ongoing.	2010	264,231	257,469	9/28/2004	2001	11,930
						2002	142,000
						2004	67,744
						2005	3,000
						2006	1,900
						2006	4,000
						2007	115,000
						2008	2,000
						2008	5,050
						2008	3,000
2008	7,400						
2009	1,500						
	20,000						
	264,231						
FCI Berlin, NH with Camp (1,280)	The design-build contract was awarded on 5/20/07. Notice to Proceed for design was issued on 5/16/07. Notice to Proceed on early site-work was issued on 9/16/07. Construction is approximately 85% complete. Interior mechanical, plumbing and electrical work continues. Conduit rough-ins for communication, electric and security systems continue throughout the facility. All roofing is now complete.	2011	276,000	267,427	5/27/2007	2002	5,000
						2003	20,000
						2004	154,500
						2007	60,000
						2008	3,000
						2008	4,000
						2009	3,000
	270,500						

\*The "Activation Funding Date" reflects the change to "operations" funding from construction expenses. Operational expenses are cumulative and reflect past and future months of ramped up activity (staffing, equipment purchase and install, etc.) until the facility is ready to house inmates.

Exhibit O - Status of Construction

06/14/10

**Federal Prison System  
Status of Construction  
(Dollars in Thousands)**

New Facilities (Rated Complete):	Total Funding by Fiscal Year		Total Cost Estimate	Orig. Est. Date	Const. Award Date	*Activation Funding Data
	2010	2008-2009				
Acquire Existing Institution for USP	\$105,000		\$105,000	\$0	N/A	2012
Secure Female FCI with camp, Alameda, AL (1,792)	15,000	15,000	222,000	207,377	7/31/2008	2012
	40,000	40,000				
	155,000	155,000				
	2,340	2,340				
	212,340	212,340				
USP Yazoo Crk, MS with Camp (1,218)	3,000	3,000	215,250	180,713	4/1/2008	2013
	12,500	12,500				
	60,750	60,750				
	205,000	205,000				
	(26,000)	(26,000)				
	(48,000)	(48,000)				
	215,250	215,250				
FCI Hazelton, WV with Camp (1,280)	5,000	5,000	218,255	187,848	4/1/2007	2013
	(3,000)	(3,000)				
	3,000	3,000				
	(2,500)	(2,500)				
	66,755	66,755				
	223,000	223,000				
	(3,000)	(3,000)				
	(65,000)	(65,000)				
	218,255	218,255				

EY 2011 Commercial Budget Submission.

Status of Projects

Considering potential sites.

Design-build contract awarded on 7/31/08. Notice to Proceed was issued on 9/18/08. Design is underway and the Contractor is continuing work with site utilities and site work. Building pads inside the secure perimeter fence are complete. Final design review is complete. Precast panels are being erected at the General Housing Units. Construction continues on all Precast Concrete cells. The construction is approximately 27% complete.

Construction Completion - September 2011

The Finding of No Significant Impact (FONSI) was signed on 8/21/2008.

The design-build contract was awarded on 9/12/2009 and design work is underway.

The Water Quality Certification was issued on 11/4/09.

Construction Completion, Summer or Fall 2012

The FONSI was signed May 6, 2008. Required "wetlands" permits have been obtained.

The design-build contract was awarded on 9/11/2009 and design work has begun.

Construction Completion, Summer or Fall 2012

\* The "Activation Funding Data" reflects the change in "operations" funding from construction expenses. Operational expenses are cumulative and reflect past and future months of ramped up activity (staffing, equipment purchase and install, etc.) until the facility is ready to house inmates.

Federal Prison System  
Status of Construction  
(Dollars in Thousands)

New Facilities (Rated Capacity)	Total Funding by Fiscal Year		Preliminary ** Cost Estimate	Oblig. to Date 12/31/09	Const. Award Date	Status of Projects	*Activation Funding Date
	2001	2002-2005					
FCI Midwestern/Laurenworth, KS with Camp (1,408)	2001	\$5,431 (3,000)	\$308,800 ** to 363,200	\$350	N/A	Procurement planning is underway for the Environmental Impact Statement (EIS) preparation.	2015
	2004	(1,000)					
	2009	12,000					
		13,431					
USP South Central/Forrest City, AR with Camp (1,216)	2001	5,000 (3,000)	304,300 ** to 358,000	635	N/A	The environment contractor is gathering site plan data for the Environmental Assessment. The Environmental Assessment is expected to be published for public review/comment in early 2010.	2015
	2004	(1,000)					
	2005	2,000					
		4,000				Considering potential sites.	2015
USP El Reno, OK (Haskell) with camp (1,216)	2001	6,000 (3,000)	302,600 ** to 356,000	3,429	N/A		
	2004	(1,000)					
	2005	2,000					
		4,000				Considering potential sites at or near Bartlesville.	2016
USP Bartlesville, OK with Camp (1,068)	2002	5,000 (2,000)	264,200 ** to 315,500	0	N/A		
	2004	(2,000)					
	2005	(2,500)					
		500				Preparing Procurement documents to conduct additional environmental studies.	2016
USP Letcher County, KY with camp (1,216)	2008	5,000	308,200 ** to 458,000	63	N/A		
	2002	5,000 (2,000)	318,500 ** to 375,900	21	N/A	Considering potential sites.	2016
	2005	(2,500)					
		500				Considering potential sites.	2016
FCI Florida with camp (1,408)	2002	5,000 (2,500)	285,000 ** to 347,000	0	N/A		
	2008	(2,000)					
	2008	(2,000)					
		500				Considering potential sites.	2016

\*\*The "Activation Funding Date" reflects the change to "operational" funding from construction expenses. Operational expenses are cumulative and reflect past and future months of ramped up activity (staffing, equipment purchase and install, etc.) until the facility is ready to house inmates.

\*\*Preliminary cost estimates are updated based on the following factors: When full construction funds are anticipated to become available; Geographic location; Historical and projected cost escalation/inflation; and Allowances for uncertainty as to actual sites to be developed.

**12. How many low security criminal aliens are currently housed in BOP facilities, as opposed to private facilities or State and local facilities?**

**Answer:** There are approximately 10,300 male low security criminal aliens housed in BOP operated institutions as of March 24, 2010. As of the same date, there were 23,114 male low security criminal aliens housed in privately managed facilities (private, state and local).

**13. Does BOP anticipate moving additional low security criminal aliens out of BOP facilities and into private facilities during the next five fiscal years? If so, how many?**

**Answer:** The BOP did not receive funding in FY 2010 to add additional low security private contract beds, and the FY 2011 President's Request does not include funding for this either. In FY 2010, the BOP intends to provide Congress with a report on the BOP's long-term strategy for minimizing the cost of incarcerating low security criminal aliens.

**14. Does BOP anticipate using privately contracted prisons in the future to house inmates other than low security criminal aliens?**

**Answer:** BOP does not anticipate using privately contracted prisons in the future to house inmates other than male low security criminal aliens. Currently, the number of male criminal aliens classified as low security and housed in BOP operated institutions is approximately 10,300. The BOP will contract out these inmates if funding is made available. The long-term strategy for U.S. Citizen inmates, the majority of whom will be returning to our communities, is to house them in BOP operated institutions which provide programs that focus on inmate skills development and reentry. These programs include residential programs such as Drug Treatment and other behavioral programs and a greater level of



education and vocational programming than is provided at privately managed facilities which house criminal aliens.

- 15. Please provide the definition of “serious assault” and “less serious assault,” and provide the most recent data, by institution, on the incidence of inmate-on-inmate assault and inmate-on-staff assault in each category over the last five fiscal years and to-date for FY 2010.**

**Answer:** The definitions are as follows:

Serious Assault - Assaulting any person (includes sexual assault) or an armed assault on the institution's secure perimeter (a charge for assaulting any person at this level is to be used only when serious physical injury has been attempted or carried out by an inmate)

Less Serious Assault - Assaulting any person (charged with this act only when less serious physical injury or contact has been attempted or carried out by an inmate).

[Please see the following spreadsheet for assault information by institution (BOP and Secure Private Facilities).]

Serious and Less Serious Assaults  
by Institution and Fiscal Year

Fiscal Year=FY2005

Obs	Institution	Serious Assaults on Staff	Less Serious Assaults on Staff	Serious Assaults on Inmates	Less Serious Assaults on Inmates
1	BOP ALL INSTITUTIONS	132	1404	413	1966
2	ALDERSON FPC	0	0	0	6
3	ALLENWOOD FPC	0	0	0	0
4	ALLENWOOD LOW FCI	0	7	2	18
5	ALLENWOOD MED FCI	2	24	9	40
6	ALLENWOOD USP	2	7	7	21
7	ASHLAND FCI	0	0	0	5
8	ASHLAND FCI CAMP UNIT (M)	0	0	0	2
9	ATLANTA USP	7	20	21	38
10	ATLANTA USP CAMP UNIT (M)	0	0	3	2
11	ATWATER USP	0	25	9	37
12	ATWATER USP CAMP UNIT (M)	0	0	0	0
13	BASTROP FCI	0	3	3	17
14	BASTROP FCI CAMP UNIT (M)	0	0	0	0
15	BEAUMONT LOW FCI	1	1	2	8
16	BEAUMONT LOW FCI CAMP DRUG UNIT (M)	0	0	0	0
17	BEAUMONT LOW FCI CAMP UNIT (M)	0	0	0	0
18	BEAUMONT MED FCI	0	5	6	26
19	BEAUMONT USP	37	55	20	57
20	BECKLEY FCI	1	12	1	10
21	BECKLEY FCI CAMP DRUG UNIT (M)	0	0	0	0
22	BECKLEY FCI CAMP UNIT (M)	0	2	0	1
23	BENNETTSVILLE FCI	0	1	0	2
24	BENNETTSVILLE FCI CAMP UNIT (M)	0	0	0	1
25	BIG SANDY USP	0	26	5	25
26	BIG SANDY USP CAMP UNIT (M)	0	0	0	1
27	BIG SPRING CI	5	35	0	20
28	BIG SPRING FCI	0	6	0	12
29	BIG SPRING FCI CAMP UNIT (M)	0	0	0	1
30	BROOKLYN MDC	1	32	0	40
31	BRYAN FPC	0	1	0	4
32	BUTNER FMC	1	34	3	28
33	BUTNER LOW FCI	0	6	5	5
34	BUTNER MED I FCI	1	2	0	9
35	BUTNER MED I FCI CAMP UNIT (M)	0	0	1	0
36	CALIFORNIA CITY CI	2	52	0	7
37	CANAAN USP	0	5	0	6
38	CANAAN USP CAMP UNIT (M)	0	0	0	0
39	CARSWELL FMC	0	25	0	26
40	CARSWELL FMC CAMP UNIT (F)	0	1	0	4
41	CHICAGO MCC	0	5	0	13
42	CIBOLA COUNTY CI	3	6	0	9

43	COLEMAN I USP	2	53	20	44
44	COLEMAN II USP	0	3	0	1
45	COLEMAN LOW FCI	0	0	0	7
46	COLEMAN MED FCI	4	16	1	11
47	COLEMAN MED FCI CAMP UNIT (F)	0	0	0	2
48	CUMBERLAND FCI	1	9	1	11
49	CUMBERLAND FCI CAMP DRUG UNIT (M)	0	1	0	0
50	CUMBERLAND FCI CAMP UNIT (M)	0	1	0	2
51	DALBY CI	1	7	0	4
52	DANBURY FCI	0	12	1	18
53	DANBURY FCI CAMP UNIT (F)	0	0	0	0
54	DEVENS FMC	1	12	0	25
55	DEVENS FMC CAMP UNIT (M)	0	0	0	0
56	DUBLIN FCI	0	0	0	4
57	DUBLIN FCI CAMP DRUG UNIT (F)	0	0	0	0
58	DUBLIN FCI CAMP UNIT (F)	0	0	0	1
59	DULUTH FPC	0	1	0	1
60	EDEN CI	0	9	0	7
61	EDGEFIELD FCI	2	23	4	15
62	EDGEFIELD FCI CAMP DRUG UNIT (M)	0	0	0	1
63	EDGEFIELD FCI CAMP UNIT (M)	0	0	0	0
64	EGLIN FPC	0	0	0	0
65	EL RENO FCI	2	9	3	15
66	EL RENO FCI CAMP UNIT (M)	0	0	0	0
67	ELKTON FCI	1	3	0	3
68	ELOY DC	0	1	0	3
69	ENGLEWOOD FCI	1	14	0	18
70	ENGLEWOOD FCI CAMP UNIT (M)	0	0	0	1
71	ESTILL FCI	0	18	0	14
72	ESTILL FCI CAMP UNIT (M)	0	0	0	1
73	FAIRTON FCI	0	5	2	11
74	FAIRTON FCI CAMP UNIT (M)	0	0	0	0
75	FLORENCE ADMAX USP	7	35	0	2
76	FLORENCE FCI	1	9	12	28
77	FLORENCE FCI CAMP DRUG UNIT (M)	0	0	0	1
78	FLORENCE FCI CAMP UNIT (M)	0	0	0	0
79	FLORENCE HIGH USP	4	18	32	62
80	FORREST CITY FCI	0	5	0	8
81	FORREST CITY FCI CAMP UNIT (M)	0	0	0	1
82	FORREST CITY MED FCI	1	7	1	9
83	FORT DIX FCI	0	5	0	26
84	FORT DIX FCI CAMP UNIT (M)	0	0	0	2
85	FORT WORTH FCI	0	3	0	14
86	GILMER FCI	2	12	3	8
87	GILMER FCI CAMP UNIT (M)	0	0	0	0
88	GREENVILLE FCI	0	11	4	24
89	GREENVILLE FCI CAMP DRUG UNIT (F)	0	0	0	0
90	GREENVILLE FCI CAMP UNIT (F)	0	0	0	0
91	GUAYNABO MDC	0	27	1	20
92	HAZELTON USP	0	2	0	1
93	HAZELTON USP CAMP UNIT (M)	0	0	0	2
94	HERLONG FCI	0	0	0	0

95	HONOLULU FDC	0	1	0	13
96	HOUSTON FDC	0	4	1	17
97	JESUP FCI	0	6	3	25
98	JESUP FCI CAMP UNIT (M)	0	0	0	0
99	LA TUNA FCI	0	1	2	12
100	LA TUNA FCI CAMP UNIT (M)	0	0	0	1
101	LEAVENWORTH USP	3	37	9	74
102	LEAVENWORTH USP CAMP DRUG UNIT (M)	0	0	0	0
103	LEAVENWORTH USP CAMP UNIT (M)	0	1	0	0
104	LEE USP	2	47	17	37
105	LEE USP CAMP UNIT (M)	0	0	0	0
106	LEWISBURG USP	1	20	3	38
107	LEWISBURG USP CAMP DRUG UNIT (M)	0	0	0	0
108	LEWISBURG USP CAMP UNIT (M)	1	0	0	2
109	LEWISBURG USP ICC UNIT (M)	0	0	0	0
110	LEXINGTON FMC	0	3	4	1
111	LEXINGTON FMC CAMP UNIT (F)	0	0	0	0
112	LOMPOC FCI	0	7	0	5
113	LOMPOC FCI ICC UNIT (M)	0	0	0	2
114	LOMPOC USP	0	23	4	20
115	LOMPOC USP CAMP UNIT (M)	0	0	1	0
116	LORETTO FCI	0	3	0	28
117	LORETTO FCI CAMP UNIT (M)	0	1	0	1
118	LOS ANGELES MDC	0	10	1	8
119	MANCHESTER FCI	1	11	4	11
120	MANCHESTER FCI CAMP UNIT (M)	0	0	0	1
121	MARIANNA FCI	0	0	0	10
122	MARIANNA FCI CAMP UNIT (F)	0	0	0	0
123	MARION USP	6	46	15	26
124	MARION USP CAMP UNIT (M)	0	1	0	3
125	MCCREARY USP	0	13	5	8
126	MCCREARY USP CAMP UNIT (M)	0	0	0	0
127	MCKEAN FCI	0	5	7	17
128	MCKEAN FCI CAMP DRUG UNIT (M)	0	0	0	2
129	MCKEAN FCI CAMP UNIT (M)	0	0	0	0
130	MCRAE CI	2	26	0	18
131	MEMPHIS FCI	0	10	3	12
132	MEMPHIS FCI CAMP UNIT (M)	0	0	0	0
133	MIAMI FCI	0	2	3	7
134	MIAMI FCI CAMP DRUG UNIT (M)	0	0	0	2
135	MIAMI FCI CAMP UNIT (M)	0	1	0	3
136	MIAMI FDC	1	4	0	12
137	MILAN FCI	0	5	0	13
138	MONTGOMERY FPC	0	0	0	2
139	MORGANTOWN FCI	0	0	1	7
140	NE OHIO CORR CTR CI	0	0	0	0
141	NELLIS FPC	0	0	0	0
142	NEW YORK MCC	0	8	1	13
143	OAKDALE FCI	1	7	0	16
144	OAKDALE FDC	0	6	2	12
145	OAKDALE FDC CAMP UNIT (M)	0	0	0	0
146	OKLAHOMA CITY FTC	0	8	0	11
147	OTISVILLE FCI	0	7	6	29

148	OTISVILLE FCI CAMP UNIT (M)	1	1	0	0
149	OXFORD FCI	1	6	3	9
150	OXFORD FCI CAMP UNIT (M)	0	0	0	1
151	PEKIN FCI	0	5	10	11
152	PEKIN FCI CAMP UNIT (F)	0	0	0	1
153	PENSACOLA FPC	0	0	0	2
154	PETERSBURG FCI	0	0	0	3
155	PETERSBURG FCI CAMP UNIT (M)	0	1	0	1
156	PETERSBURG MED FCI	0	13	0	16
157	PHILADELPHIA FDC	3	18	2	16
158	PHOENIX FCI	0	9	4	15
159	PHOENIX FCI CAMP DRUG UNIT (F)	0	0	0	0
160	PHOENIX FCI CAMP UNIT (F)	0	0	0	1
161	POLLOCK USP	1	34	30	36
162	POLLOCK USP CAMP UNIT (M)	0	0	0	0
163	RAY BROOK FCI	0	8	4	29
164	RIVERS CI	1	8	1	14
165	ROCHESTER FMC	0	22	1	19
166	SAFFORD FCI	0	1	7	1
167	SAN DIEGO MCC	0	30	3	24
168	SANDSTONE FCI	1	2	2	2
169	SCHUYLKILL FCI	2	13	5	18
170	SCHUYLKILL FCI CAMP UNIT (M)	0	0	0	4
171	SEAGOVILLE FCI	1	3	0	9
172	SEAGOVILLE FCI CAMP UNIT (M)	0	0	0	0
173	SEATAC FDC	0	8	0	31
174	SEYMOUR JOHNSN FPC	0	0	0	1
175	SHERIDAN FCI	1	11	4	16
176	SHERIDAN FCI CAMP DRUG UNIT (M)	0	0	0	0
177	SHERIDAN FCI CAMP UNIT (M)	0	0	0	0
178	SPRINGFIELD USMCFP	2	31	11	9
179	TAFT CI	0	2	3	10
180	TAFT CI CAMP UNIT (M)	0	0	0	9
181	TALLADEGA FCI	0	4	0	5
182	TALLADEGA FCI CAMP DRUG UNIT (M)	0	0	0	0
183	TALLADEGA FCI CAMP UNIT (M)	0	0	0	0
184	TALLAHASSEE FCI	0	6	0	14
185	TERMINAL ISLAND FCI	0	3	0	1
186	TERRE HAUTE FCI	2	12	9	19
187	TERRE HAUTE FCI CAMP UNIT (M)	1	0	0	3
188	TERRE HAUTE USP	0	9	11	9
189	TEXARKANA FCI	0	1	2	4
190	TEXARKANA FCI CAMP DRUG UNIT (M)	0	1	0	0
191	TEXARKANA FCI CAMP UNIT (M)	0	0	0	0
192	THREE RIVERS FCI	1	4	2	23
193	THREE RIVERS FCI CAMP UNIT (M)	0	0	0	0
194	TUCSON FCI	0	6	8	18
195	VICTORVILLE MED I FCI	0	11	0	31
196	VICTORVILLE MED I FCI CAMP UNIT (F)	0	0	0	0
197	VICTORVILLE MED II FCI	0	19	0	15
198	VICTORVILLE MED II FCI CAMP UNIT (F)	0	0	0	2

199	VICTORVILLE USP	3	43	14	40
200	WASECA FCI	0	1	0	8
201	WILLIAMSBURG FCI	0	1	1	4
202	WILLIAMSBURG FCI CAMP UNIT (M)	0	0	1	0
203	YANKTON FPC	0	1	0	5
204	YAZOO CITY FCI	0	3	1	8
205	YAZOO CITY FCI CAMP UNIT (M)	0	0	0	1
206	YAZOO CITY MED FCI	0	0	0	0

Fiscal Year=FY2006

Obs	Institution	Serious Assaults on Staff	Less Serious Assaults on Staff	Serious Assaults on Inmates	Less Serious Assaults on Inmates
207	<b>BOP ALL INSTITUTIONS</b>	<b>117</b>	<b>1334</b>	<b>482</b>	<b>2241</b>
208	ALDERSON FPC	0	0	0	3
209	ALLENWOOD LOW FCI	0	1	0	6
210	ALLENWOOD MED FCI	1	16	9	32
211	ALLENWOOD USP	3	9	6	20
212	ASHLAND FCI	0	0	0	6
213	ASHLAND FCI CAMP UNIT (M)	0	0	0	1
214	ATLANTA USP	3	8	12	22
215	ATLANTA USP CAMP UNIT (M)	0	0	0	2
216	ATWATER USP	8	39	9	39
217	ATWATER USP CAMP UNIT (M)	0	0	0	0
218	BASTROP FCI	0	0	2	15
219	BASTROP FCI CAMP UNIT (M)	0	0	0	0
220	BEAUMONT LOW FCI	1	2	0	1
221	BEAUMONT LOW FCI CAMP DRUG UNIT (M)	0	0	0	0
222	BEAUMONT LOW FCI CAMP UNIT (M)	0	0	0	1
223	BEAUMONT MED FCI	0	1	2	19
224	BEAUMONT USP	17	42	32	62
225	BEAUMONT USP CAMP UNIT (M)	0	0	0	0
226	BECKLEY FCI	0	9	3	21
227	BECKLEY FCI CAMP DRUG UNIT (M)	0	0	0	0
228	BECKLEY FCI CAMP UNIT (M)	0	2	0	3
229	BENNETTSVILLE FCI	0	15	3	26
230	BENNETTSVILLE FCI CAMP UNIT (M)	0	0	0	0
231	BIG SANDY USP	0	71	15	60
232	BIG SANDY USP CAMP UNIT (M)	0	0	0	0
233	BIG SPRING CI	1	39	0	24
234	BIG SPRING FCI	0	1	0	15
235	BIG SPRING FCI CAMP UNIT (M)	0	0	0	1
236	BROOKLYN MDC	0	11	1	45
237	BRYAN FPC	0	1	0	2
238	BUTNER FMC	0	18	2	19
239	BUTNER LOW FCI	0	5	1	7
240	BUTNER MED I FCI	0	3	2	11
241	BUTNER MED I FCI CAMP UNIT (M)	0	0	0	0
242	BUTNER MED II FCI	0	0	0	0
243	CALIFORNIA CITY CI	1	19	5	24
244	CANAAN USP	1	11	1	16
245	CANAAN USP CAMP UNIT (M)	0	0	0	2
246	CARSWELL FMC	0	4	1	29
247	CARSWELL FMC CAMP UNIT (F)	0	0	0	1
248	CHICAGO MCC	0	5	1	15
249	CIBOLA COUNTY CI	0	4	0	8

250	COLEMAN I USP	1	58	18	60
251	COLEMAN II USP	0	17	3	3
252	COLEMAN LOW FCI	0	5	1	4
253	COLEMAN MED FCI	0	7	1	12
254	COLEMAN MED FCI CAMP UNIT (F)	0	0	0	2
255	CUMBERLAND FCI	0	5	1	11
256	CUMBERLAND FCI CAMP DRUG UNIT (M)	0	0	0	0
257	CUMBERLAND FCI CAMP UNIT (M)	0	0	0	0
258	DALBY CI	0	12	0	10
259	DANBURY FCI	1	3	0	31
260	DANBURY FCI CAMP UNIT (F)	0	0	0	0
261	DEVENS FMC	0	14	0	19
262	DEVENS FMC CAMP UNIT (M)	0	0	0	2
263	DUBLIN FCI	0	4	0	12
264	DUBLIN FCI CAMP DRUG UNIT (F)	0	0	0	0
265	DUBLIN FCI CAMP UNIT (F)	0	0	0	2
266	DULUTH FPC	0	1	0	1
267	EDEN CI	0	3	0	5
268	EDGEFIELD FCI	0	20	0	37
269	EDGEFIELD FCI CAMP DRUG UNIT (M)	0	0	0	1
270	EDGEFIELD FCI CAMP UNIT (M)	0	0	0	2
271	EGLIN FPC	0	0	0	0
272	EL RENO FCI	1	13	9	17
273	EL RENO FCI CAMP UNIT (M)	0	1	0	0
274	ELKTON FCI	0	6	0	8
275	ELOY DC	0	0	0	0
276	ENGLEWOOD FCI	0	3	0	22
277	ENGLEWOOD FCI CAMP UNIT (M)	0	0	0	0
278	ESTILL FCI	0	14	0	16
279	ESTILL FCI CAMP UNIT (M)	0	0	0	0
280	FAIRTON FCI	0	15	2	13
281	FAIRTON FCI CAMP UNIT (M)	0	0	0	0
282	FLORENCE ADMAX USP	5	22	0	2
283	FLORENCE ADMAX USP CAMP DRUG UNIT (M)	0	0	0	0
284	FLORENCE ADMAX USP CAMP UNIT (M)	0	0	0	2
285	FLORENCE FCI	0	4	28	34
286	FLORENCE FCI CAMP DRUG UNIT (M)	0	0	0	0
287	FLORENCE FCI CAMP UNIT (M)	0	0	0	0
288	FLORENCE HIGH USP	9	26	24	59
289	FORREST CITY FCI	0	4	6	6
290	FORREST CITY FCI CAMP UNIT (M)	0	0	0	1
291	FORREST CITY MED FCI	3	15	13	29
292	FORT DIX FCI	0	9	1	15
293	FORT DIX FCI CAMP UNIT (M)	0	0	0	2
294	FORT WORTH FCI	0	3	0	17
295	GILMER FCI	1	17	3	15
296	GILMER FCI CAMP UNIT (M)	0	1	0	0
297	GREENVILLE FCI	0	3	0	16
298	GREENVILLE FCI CAMP DRUG UNIT (F)	0	0	0	0
299	GREENVILLE FCI CAMP UNIT (F)	0	1	0	3
300	GUAYNABO MDC	0	6	0	13
301	HAZELTON USP	5	18	23	31
302	HAZELTON USP CAMP UNIT (M)	0	1	0	0



303	HERLONG FCI	0	1	0	3
304	HERLONG FCI CAMP UNIT (M)	0	0	0	0
305	HONOLULU FDC	0	0	0	16
306	HOUSTON FDC	1	5	0	19
307	JESUP FCI	0	2	4	24
308	JESUP FCI CAMP UNIT (M)	0	0	0	0
309	LA TUNA FCI	1	0	11	12
310	LA TUNA FCI CAMP UNIT (M)	0	0	0	1
311	LEAVENWORTH USP	0	10	3	46
312	LEAVENWORTH USP CAMP DRUG UNIT (M)	0	0	0	0
313	LEAVENWORTH USP CAMP UNIT (M)	0	1	0	1
314	LEE USP	7	50	22	47
315	LEE USP CAMP UNIT (M)	0	0	0	0
316	LEWISBURG USP	1	13	13	43
317	LEWISBURG USP CAMP DRUG UNIT (M)	0	0	0	0
318	LEWISBURG USP CAMP UNIT (M)	0	1	0	0
319	LXINGTON FMC	0	5	0	5
320	LXINGTON FMC CAMP UNIT (F)	0	1	0	1
321	LOMPOC FCI	1	0	2	3
322	LOMPOC FCI ICC UNIT (M)	0	0	0	0
323	LOMPOC USP	1	21	3	42
324	LOMPOC USP CAMP UNIT (M)	0	1	0	1
325	LORETTO FCI	0	1	0	4
326	LORETTO FCI CAMP UNIT (M)	0	1	0	0
327	LOS ANGELES MDC	0	7	0	6
328	MANCHESTER FCI	0	11	1	17
329	MANCHESTER FCI CAMP UNIT (M)	0	0	0	0
330	MARIANNA FCI	0	7	2	20
331	MARIANNA FCI CAMP UNIT (F)	0	0	0	0
332	MARION USP	7	35	14	16
333	MARION USP CAMP UNIT (M)	0	2	0	7
334	MCCREARY USP	0	35	2	15
335	MCCREARY USP CAMP UNIT (M)	0	0	1	1
336	MCKEAN FCI	2	8	4	16
337	MCKEAN FCI CAMP DRUG UNIT (M)	0	0	0	0
338	MCKEAN FCI CAMP UNIT (M)	0	0	1	0
339	MCRAE CI	12	26	0	7
340	MEMPHIS FCI	1	11	3	9
341	MEMPHIS FCI CAMP UNIT (M)	0	0	0	0
342	MIAMI FCI	0	4	1	3
343	MIAMI FCI CAMP DRUG UNIT (M)	0	0	0	0
344	MIAMI FCI CAMP UNIT (M)	0	0	0	1
345	MIAMI FDC	0	4	0	9
346	MILAN FCI	0	7	0	11
347	MONTGOMERY FPC	0	0	0	2
348	MORGANTOWN FCI	0	2	0	3
349	MOSHANNON VALLEY CI	0	0	0	5
350	NE OHIO CORR CTR CI	0	5	5	8
351	NELLIS FPC	0	1	0	1
352	NEW YORK MCC	0	10	1	12

353	OAKDALE FCI	0	10	1	10
354	OAKDALE FDC	0	3	1	12
355	OAKDALE FDC CAMP UNIT (M)	0	0	0	0
356	OKLAHOMA CITY FTC	0	13	0	15
357	OTISVILLE FCI	0	7	4	30
358	OTISVILLE FCI CAMP UNIT (M)	0	0	0	0
359	OXFORD FCI	1	7	6	7
360	OXFORD FCI CAMP UNIT (M)	0	0	0	1
361	PEKIN FCI	0	3	2	18
362	PEKIN FCI CAMP UNIT (F)	0	0	0	0
363	PENSACOLA FPC	0	1	0	0
364	PETERSBURG FCI	0	1	0	10
365	PETERSBURG FCI CAMP UNIT (M)	0	0	0	0
366	PETERSBURG MED FCI	0	11	3	7
367	PHILADELPHIA FDC	0	8	5	21
368	PHOENIX FCI	1	1	5	17
369	PHOENIX FCI CAMP DRUG UNIT (F)	0	0	0	0
370	PHOENIX FCI CAMP UNIT (F)	0	0	0	3
371	POLLOCK USP	6	40	30	61
372	POLLOCK USP CAMP UNIT (M)	0	0	0	0
373	RAY BROOK FCI	0	6	4	23
374	REEVES CI	0	0	0	0
375	RIVERS CI	0	7	2	9
376	ROCHESTER FMC	0	14	0	10
377	SAFFORD FCI	0	0	4	6
378	SAN DIEGO MCC	0	5	4	46
379	SANDSTONE FCI	0	3	2	5
380	SCHUYLKILL FCI	1	11	5	16
381	SCHUYLKILL FCI CAMP UNIT (M)	0	1	0	1
382	SEAGOVILLE FCI	0	2	1	11
383	SEAGOVILLE FCI CAMP UNIT (M)	0	0	0	0
384	SEATAC FDC	0	10	0	27
385	SEYMOUR JOHNSN FPC	0	0	0	0
386	SHERIDAN FCI	1	10	3	14
387	SHERIDAN FCI CAMP DRUG UNIT (M)	0	0	0	0
388	SHERIDAN FCI CAMP UNIT (M)	0	0	0	2
389	SPRINGFIELD USMCFP	4	49	2	24
390	TAFT CI	0	0	4	4
391	TAFT CI CAMP UNIT (M)	0	0	0	0
392	TALLADEGA FCI	0	2	1	7
393	TALLADEGA FCI CAMP DRUG UNIT (M)	0	0	0	0
394	TALLADEGA FCI CAMP UNIT (M)	0	0	0	0
395	TALLAHASSEE FCI	0	6	2	20
396	TERMINAL ISLAND FCI	0	1	0	10
397	TERRE HAUTE FCI	0	8	1	22
398	TERRE HAUTE FCI CAMP UNIT (M)	0	1	0	1
399	TERRE HAUTE USP	0	42	23	56
400	TEXARKANA FCI	0	2	6	10
401	TEXARKANA FCI CAMP DRUG UNIT (M)	0	1	0	1
402	TEXARKANA FCI CAMP UNIT (M)	0	0	0	2
403	THREE RIVERS FCI	0	4	1	19
404	THREE RIVERS FCI CAMP UNIT (M)	0	0	0	0
405	TUCSON FCI	4	6	0	13

406	TUCSON USP CAMP UNIT (M)	0	0	0	0
407	VICTORVILLE MED I FCI	0	2	3	26
408	VICTORVILLE MED II FCI	0	28	0	21
409	VICTORVILLE MED II FCI CAMP UNIT (F)	0	0	0	2
410	VICTORVILLE USP	3	40	15	39
411	WASECA FCI	0	1	0	12
412	WILLIAMSBURG FCI	0	3	1	16
413	WILLIAMSBURG FCI CAMP UNIT (M)	0	0	0	0
414	YANKTON FPC	0	1	0	0
415	YAZOO CITY FCI	0	1	0	8
416	YAZOO CITY FCI CAMP UNIT (M)	0	0	0	0
417	YAZOO CITY MED FCI	0	7	8	16

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Obs	Institution	Serious Assaults on Staff	Less Serious Assaults on Staff	Serious Assaults on Inmates	Less Serious Assaults on Inmates
418	<b>BOP ALL INSTITUTIONS</b>	<b>68</b>	<b>1242</b>	<b>397</b>	<b>2566</b>
419	ALDERSON FPC	0	1	1	3
420	ALLENWOOD LOW FCI	0	5	1	13
421	ALLENWOOD MED FCI	0	3	2	20
422	ALLENWOOD USP	1	12	21	31
423	ASHLAND FCI	0	1	0	3
424	ASHLAND FCI CAMP UNIT (M)	0	0	0	0
425	ATLANTA USP	0	12	15	42
426	ATLANTA USP CAMP UNIT (M)	0	0	0	1
427	ATWATER USP	6	34	12	59
428	ATWATER USP CAMP UNIT (M)	0	0	0	0
429	BASTROP FCI	0	0	0	14
430	BASTROP FCI CAMP UNIT (M)	0	0	0	0
431	BEAUMONT LOW FCI	0	6	3	7
432	BEAUMONT MED FCI	2	7	0	28
433	BEAUMONT USP	9	58	40	123
434	BEAUMONT USP CAMP UNIT (M)	0	0	0	0
435	BECKLEY FCI	0	3	3	23
436	BECKLEY FCI CAMP UNIT (M)	0	0	0	1
437	BENNETTSVILLE FCI	0	9	2	37
438	BENNETTSVILLE FCI CAMP UNIT (M)	0	2	0	0
439	BIG SANDY USP	5	26	15	37
440	BIG SANDY USP CAMP UNIT (M)	0	0	0	0
441	BIG SPRING CI	0	9	2	17
442	BIG SPRING FCI	0	4	0	19
443	BIG SPRING FCI CAMP UNIT (M)	0	0	0	0
444	BROOKLYN MDC	0	31	1	56
445	BRYAN FPC	0	0	0	3
446	BUTNER FMC	0	21	0	27
447	BUTNER LOW FCI	0	9	0	10
448	BUTNER MED I FCI	0	1	1	10
449	BUTNER MED I FCI CAMP UNIT (M)	0	1	0	2
450	BUTNER MED II FCI	0	4	3	22
451	CALIFORNIA CITY CI	0	23	4	8
452	CANAAN USP	0	8	2	14
453	CANAAN USP CAMP UNIT (M)	0	0	0	1
454	CARSWELL FMC	1	18	0	27
455	CARSWELL FMC CAMP UNIT (F)	0	0	0	2
456	CHICAGO MCC	0	7	0	17
457	CIBOLA COUNTY CI	0	3	0	8
458	COLEMAN I USP	2	58	23	26
459	COLEMAN II USP	4	65	10	58

460	COLEMAN LOW FCI	0	10	0	11
461	COLEMAN MED FCI	0	6	3	11
462	COLEMAN MED FCI CAMP UNIT (F)	0	0	0	1
463	CUMBERLAND FCI	0	11	0	17
464	CUMBERLAND FCI CAMP UNIT (M)	0	0	0	1
465	DALBY CI	0	4	0	1
466	DANBURY FCI	0	2	0	14
467	DANBURY FCI CAMP UNIT (F)	0	0	0	1
468	DEVENS FMC	0	10	0	15
469	DEVENS FMC CAMP UNIT (M)	0	0	0	0
470	DUBLIN FCI	0	2	0	28
471	DUBLIN FCI CAMP UNIT (F)	0	0	0	1
472	DULUTH FPC	0	1	0	2
473	EDEEN CI	0	3	0	2
474	EDGEFIELD FCI	0	16	1	35
475	EDGEFIELD FCI CAMP UNIT (M)	0	1	0	0
476	EL RENO FCI	0	4	1	14
477	EL RENO FCI CAMP UNIT (M)	0	2	0	0
478	ELKTON FCI	0	3	1	10
479	ENGLEWOOD FCI	0	7	2	35
480	ENGLEWOOD FCI CAMP UNIT (M)	0	0	0	0
481	ESTILL FCI	0	7	1	7
482	ESTILL FCI CAMP UNIT (M)	0	0	0	0
483	FAIRTON FCI	0	5	2	19
484	FAIRTON FCI CAMP UNIT (M)	0	0	0	0
485	FLORENCE ADMAX USP	5	39	0	1
486	FLORENCE ADMAX USP CAMP UNIT (M)	0	1	0	1
487	FLORENCE FCI	2	8	3	46
488	FLORENCE HIGH USP	3	46	9	113
489	FORREST CITY FCI	0	2	2	6
490	FORREST CITY FCI CAMP UNIT (M)	0	0	0	0
491	FORREST CITY MED FCI	0	5	13	34
492	FORT DIX FCI	0	12	1	6
493	FORT DIX FCI CAMP UNIT (M)	0	1	0	2
494	FORT WORTH FCI	0	2	2	22
495	GILMER FCI	1	16	1	6
496	GILMER FCI CAMP UNIT (M)	0	0	0	0
497	GREENVILLE FCI	0	1	0	19
498	GREENVILLE FCI CAMP UNIT (F)	0	0	0	0
499	GUAYNABO MDC	0	3	0	8
500	HAZELTON USP	3	35	16	39
501	HAZELTON USP CAMP UNIT (M)	0	0	0	1
502	HERLONG FCI	0	5	1	11
503	HERLONG FCI CAMP UNIT (M)	0	0	0	0
504	HONOLULU FDC	0	2	0	19
505	HOUSTON FDC	0	1	0	29
506	JESUP FCI	0	2	0	11
507	JESUP FCI CAMP UNIT (M)	0	0	0	1
508	LA TUNA FCI	0	0	0	12
509	LA TUNA FCI CAMP UNIT (M)	0	0	0	0
510	LEAVENWORTH USP	0	6	1	41
511	LEAVENWORTH USP CAMP UNIT (M)	0	0	0	2
512	LEE USP	3	37	18	74

513	LEE USP CAMP UNIT (M)	0	0	0	0
514	LEWISBURG USP	2	15	13	58
515	LEWISBURG USP CAMP UNIT (M)	0	1	0	0
516	LEXINGTON FMC	0	3	0	11
517	LEXINGTON FMC CAMP UNIT (F)	0	0	0	1
518	LOMPOC FCI	0	0	2	11
519	LOMPOC USP	0	4	2	32
520	LOMPOC USP CAMP UNIT (M)	0	1	0	0
521	LORETTO FCI	0	3	3	0
522	LORETTO FCI CAMP UNIT (M)	0	0	0	0
523	LOS ANGELES MDC	0	5	0	8
524	MANCHESTER FCI	0	4	0	12
525	MANCHESTER FCI CAMP UNIT (M)	0	1	0	1
526	MARIANNA FCI	0	3	1	10
527	MARIANNA FCI CAMP UNIT (F)	0	0	0	0
528	MARION USP	0	2	0	21
529	MARION USP CAMP UNIT (M)	0	0	0	0
530	MCCREARY USP	1	23	1	20
531	MCCREARY USP CAMP UNIT (M)	0	0	0	1
532	MCKEAN FCI	1	1	8	19
533	MCKEAN FCI CAMP UNIT (M)	0	0	1	1
534	MCRAE CI	0	4	1	7
535	MEMPHIS FCI	0	3	7	15
536	MEMPHIS FCI CAMP UNIT (M)	0	0	0	0
537	MIAMI FCI	0	1	0	4
538	MIAMI FCI CAMP UNIT (M)	0	0	0	1
539	MIAMI FDC	0	5	0	8
540	MILAN FCI	0	5	0	10
541	MONTGOMERY FPC	0	0	0	1
542	MORGANTOWN FCI	0	4	0	0
543	MOSHANNON VALLEY CI	0	9	1	3
544	NE OHIO CORR CTR CI	1	3	1	9
545	NEW YORK MCC	0	6	1	4
546	OAKDALE FCI	0	7	0	7
547	OAKDALE FDC	0	1	0	13
548	OAKDALE FDC CAMP UNIT (M)	0	0	0	1
549	OKLAHOMA CITY FTC	0	9	3	16
550	OTISVILLE FCI	0	3	6	9
551	OTISVILLE FCI CAMP UNIT (M)	0	0	0	0
552	OXFORD FCI	0	2	1	7
553	OXFORD FCI CAMP UNIT (M)	0	0	0	0
554	PEKIN FCI	0	3	0	12
555	PEKIN FCI CAMP UNIT (F)	0	0	0	3
556	PENSACOLA FPC	0	1	0	0
557	PETERSBURG FCI	0	0	0	7
558	PETERSBURG FCI CAMP UNIT (M)	0	0	0	0
559	PETERSBURG MED FCI	0	9	2	25
560	PHILADELPHIA FDC	0	17	0	8
561	PHOENIX FCI	1	2	0	21
562	PHOENIX FCI CAMP UNIT (F)	0	0	0	2
563	PINE PRAIRIE CI	0	0	0	0
564	POLLOCK USP	1	23	21	112
565	POLLOCK USP CAMP UNIT (M)	0	1	0	1

566	RAY BROOK FCI	0	12	0	28
567	REEVES CI	2	11	0	1
568	REEVES DC	0	5	0	0
569	RIVERS CI	0	4	0	4
570	ROCHESTER FMC	0	16	0	10
571	SAFFORD FCI	0	1	0	10
572	SAN DIEGO MCC	0	6	0	22
573	SANDSTONE FCI	0	1	0	4
574	SCHUYLKILL FCI	1	15	7	13
575	SCHUYLKILL FCI CAMP UNIT (M)	0	0	0	2
576	SEAGOVILLE FCI	0	5	1	10
577	SEAGOVILLE FCI CAMP UNIT (M)	0	0	0	0
578	SEATAC FDC	0	7	1	38
579	SHERIDAN FCI	0	6	0	13
580	SHERIDAN FCI CAMP UNIT (M)	0	0	0	2
581	SPRINGFIELD USMCFP	2	30	4	16
582	TAFT CI	0	3	0	10
583	TAFT CI CAMP UNIT (M)	0	0	0	0
584	TALLADEGA FCI	0	6	2	12
585	TALLADEGA FCI CAMP UNIT (M)	0	1	0	1
586	TALLAHASSEE FCI	0	2	0	12
587	TERMINAL ISLAND FCI	0	0	1	5
588	TERRE HAUTE FCI	2	5	0	41
589	TERRE HAUTE FCI CAMP UNIT (M)	0	4	0	0
590	TERRE HAUTE USP	4	63	18	60
591	TEXARKANA FCI	0	0	1	14
592	TEXARKANA FCI CAMP UNIT (M)	0	0	0	0
593	THREE RIVERS FCI	0	10	3	23
594	THREE RIVERS FCI CAMP UNIT (M)	0	0	0	1
595	TUCSON FCI	2	11	3	7
596	TUCSON USP	0	3	4	5
597	TUCSON USP CAMP UNIT (M)	0	0	0	1
598	VICTORVILLE MED I FCI	0	4	0	37
599	VICTORVILLE MED II FCI	0	13	5	45
600	VICTORVILLE MED II FCI CAMP UNIT (F)	0	0	1	0
601	VICTORVILLE USP	1	32	24	63
602	WASECA FCI	0	0	1	1
603	WILLIAMSBURG FCI	0	12	3	8
604	WILLIAMSBURG FCI CAMP UNIT (M)	0	0	0	0
605	YANKTON FPC	0	2	0	1
606	YAZOO CITY FCI	0	1	0	10
607	YAZOO CITY FCI CAMP UNIT (M)	0	0	0	0
608	YAZOO CITY MED FCI	0	8	4	26

Fiscal Year=FY2008

Obs	Institution	Serious Assaults on Staff	Less Serious Assaults on Staff	Serious Assaults on Inmates	Less Serious Assaults on Inmates
609	<b>BOP ALL INSTITUTIONS</b>	<b>99</b>	<b>1505</b>	<b>466</b>	<b>2616</b>
610	ALDERSON FPC	0	1	0	2
611	ALLENWOOD LOW FCI	0	7	0	6
612	ALLENWOOD MED FCI	0	6	3	30
613	ALLENWOOD USP	1	32	29	35
614	ASHLAND FCI	0	0	1	3
615	ASHLAND FCI CAMP UNIT (M)	0	0	0	1
616	ATLANTA USP	0	7	3	44
617	ATLANTA USP CAMP UNIT (M)	0	1	0	0
618	ATWATER USP	7	52	16	49
619	ATWATER USP CAMP UNIT (M)	0	0	0	0
620	BASTROP FCI	0	1	0	7
621	BASTROP FCI CAMP UNIT (M)	0	0	0	0
622	BEAUMONT LOW FCI	0	6	0	13
623	BEAUMONT MED FCI	0	7	3	46
624	BEAUMONT USP	1	36	12	64
625	BEAUMONT USP CAMP DRUG UNIT (M)	0	0	0	0
626	BEAUMONT USP CAMP UNIT (M)	0	1	0	0
627	BECKLEY FCI	0	14	1	17
628	BECKLEY FCI CAMP DRUG UNIT (M)	0	0	0	0
629	BECKLEY FCI CAMP UNIT (M)	0	0	0	0
630	BENNETTSVILLE FCI	0	13	3	15
631	BENNETTSVILLE FCI CAMP UNIT (M)	0	1	0	0
632	BIG SANDY USP	4	42	15	56
633	BIG SANDY USP CAMP UNIT (M)	0	0	0	0
634	BIG SPRING CI	0	9	1	10
635	BIG SPRING FCI	0	2	1	9
636	BIG SPRING FCI CAMP UNIT (M)	0	0	0	1
637	BROOKLYN MDC	0	45	0	34
638	BRYAN FPC	0	0	0	3
639	BUTNER FMC	0	17	1	18
640	BUTNER LOW FCI	0	4	0	7
641	BUTNER MED I FCI	0	6	0	12
642	BUTNER MED I FCI CAMP UNIT (M)	0	0	0	1
643	BUTNER MED II FCI	0	22	0	22
644	CALIFORNIA CITY CI	0	17	1	16
645	CANAAN USP	1	13	4	7
646	CANAAN USP CAMP UNIT (M)	0	0	0	0
647	CARSWELL FMC	1	4	1	24
648	CARSWELL FMC CAMP UNIT (F)	0	0	0	0
649	CHICAGO MCC	0	0	0	11
650	CIBOLA COUNTY CI	1	1	0	4



651	COLEMAN I USP	5	66	11	43
652	COLEMAN II USP	2	55	13	43
653	COLEMAN LOW FCI	0	20	0	6
654	COLEMAN MED FCI	0	8	2	17
655	COLEMAN MED FCI CAMP UNIT (F)	0	0	0	0
656	CUMBERLAND FCI	0	9	1	20
657	CUMBERLAND FCI CAMP DRUG UNIT (M)	0	1	0	0
658	CUMBERLAND FCI CAMP UNIT (M)	0	2	0	2
659	DALBY CI	0	17	0	2
660	DANBURY FCI	0	3	0	34
661	DANBURY FCI CAMP UNIT (F)	0	0	0	0
662	DEVENS FMC	0	11	0	10
663	DEVENS FMC CAMP UNIT (M)	0	0	0	2
664	DUBLIN FCI	0	3	0	14
665	DUBLIN FCI CAMP DRUG UNIT (F)	0	0	0	0
666	DUBLIN FCI CAMP UNIT (F)	0	0	0	1
667	DULUTH FPC	0	0	0	3
668	EDEN CI	0	2	0	5
669	EDGEFIELD FCI	0	7	1	19
670	EDGEFIELD FCI CAMP DRUG UNIT (M)	0	0	0	0
671	EDGEFIELD FCI CAMP UNIT (M)	0	1	1	1
672	EL RENO FCI	0	9	3	29
673	EL RENO FCI CAMP UNIT (M)	0	0	1	2
674	ELKTON FCI	0	2	0	8
675	ENGLEWOOD FCI	0	32	1	6
676	ENGLEWOOD FCI CAMP DRUG UNIT (M)	0	0	0	0
677	ENGLEWOOD FCI CAMP UNIT (M)	0	0	0	0
678	ESTILL FCI	0	16	8	10
679	ESTILL FCI CAMP UNIT (M)	0	2	0	1
680	FAIRTON FCI	0	10	2	14
681	FAIRTON FCI CAMP UNIT (M)	0	0	0	0
682	FLORENCE ADMAX USP	3	53	2	9
683	FLORENCE ADMAX USP CAMP DRUG UNIT (M)	0	0	0	0
684	FLORENCE ADMAX USP CAMP UNIT (M)	0	0	1	0
685	FLORENCE FCI	7	10	7	12
686	FLORENCE HIGH USP	2	33	6	82
687	FORREST CITY FCI	0	2	0	6
688	FORREST CITY FCI CAMP UNIT (M)	0	0	0	0
689	FORREST CITY MED FCI	0	11	0	34
690	FORT DIX FCI	0	7	5	11
691	FORT DIX FCI CAMP UNIT (M)	0	0	0	1
692	FORT WORTH FCI	0	2	1	16
693	GILMER FCI	0	17	1	9
694	GILMER FCI CAMP UNIT (M)	0	0	0	0
695	GREENVILLE FCI	2	2	0	8
696	GREENVILLE FCI CAMP DRUG UNIT (F)	0	0	0	0
697	GREENVILLE FCI CAMP UNIT (F)	0	0	0	1
698	GUAYNABO MDC	0	7	0	18
699	HAZELTON USP	1	32	37	59
700	HAZELTON USP CAMP UNIT (M)	0	0	0	2
701	HERLONG FCI	0	6	1	12
702	HERLONG FCI CAMP UNIT (M)	0	0	0	0
703	HONOLULU FDC	0	1	0	14

704	HOUSTON FDC	0	15	0	44
705	JESUP FCI	0	1	0	18
706	JESUP FCI CAMP UNIT (M)	0	0	0	0
707	LA TUNA FCI	0	0	0	14
708	LA TUNA FCI CAMP UNIT (M)	0	0	0	0
709	LEAVENWORTH USP	1	2	1	35
710	LEAVENWORTH USP CAMP DRUG UNIT (M)	0	0	0	0
711	LEAVENWORTH USP CAMP UNIT (M)	0	0	0	0
712	LEE USP	8	40	24	140
713	LEE USP CAMP UNIT (M)	0	0	0	0
714	LEWISBURG USP	8	20	36	116
715	LEWISBURG USP CAMP DRUG UNIT (M)	0	0	0	0
716	LEWISBURG USP CAMP UNIT (M)	0	0	0	2
717	LXINGTON FMC	0	3	0	12
718	LXINGTON FMC CAMP UNIT (F)	0	1	0	1
719	LOMPOC FCI	0	0	0	6
720	LOMPOC USP	1	19	15	50
721	LOMPOC USP CAMP DRUG UNIT (M)	0	0	0	0
722	LOMPOC USP CAMP UNIT (M)	0	1	0	0
723	LORETTO FCI	0	1	0	5
724	LORETTO FCI CAMP UNIT (M)	0	0	0	0
725	LOS ANGELES MDC	0	2	1	16
726	MANCHESTER FCI	0	2	1	14
727	MANCHESTER FCI CAMP UNIT (M)	0	0	0	0
728	MARIANNA FCI	0	7	0	11
729	MARIANNA FCI CAMP UNIT (F)	0	0	0	1
730	MARION USP	0	9	2	17
731	MARION USP CAMP UNIT (M)	0	1	0	3
732	MCCREARY USP	0	31	1	39
733	MCCREARY USP CAMP UNIT (M)	0	1	0	0
734	MCKEAN FCI	0	1	3	14
735	MCKEAN FCI CAMP DRUG UNIT (M)	0	0	0	0
736	MCKEAN FCI CAMP UNIT (M)	0	0	0	0
737	MCRAE CI	0	2	0	10
738	MEMPHIS FCI	0	6	4	12
739	MEMPHIS FCI CAMP UNIT (M)	0	0	0	0
740	MIAMI FCI	0	1	1	4
741	MIAMI FCI CAMP DRUG UNIT (M)	0	0	0	1
742	MIAMI FCI CAMP UNIT (M)	0	0	0	0
743	MIAMI FDC	2	5	2	13
744	MILAN FCI	0	2	0	17
745	MONTGOMERY FPC	0	0	0	1
746	MORGANTOWN FCI	0	0	0	1
747	MOSHANNON VALLEY CI	0	9	6	14
748	NE OHIO CORR CTR CI	1	4	0	2
749	NEW YORK MCC	0	6	3	11
750	OAKDALE FCI	0	5	0	14
751	OAKDALE FDC	1	8	0	5
752	OAKDALE FDC CAMP UNIT (M)	0	0	0	0
753	OKLAHOMA CITY FTC	1	10	2	14
754	OTISVILLE FCI	4	10	5	7
755	OTISVILLE FCI CAMP UNIT (M)	0	0	0	0

756	OXFORD FCI	0	1	0	6
757	OXFORD FCI CAMP UNIT (M)	0	0	0	1
758	PEKIN FCI	0	3	1	23
759	PEKIN FCI CAMP UNIT (F)	0	0	0	1
760	PENSACOLA FPC	0	0	0	0
761	PENSACOLA FPC CAMP DRUG UNIT (M)	0	0	0	0
762	PETERSBURG FCI	0	1	0	6
763	PETERSBURG FCI CAMP UNIT (M)	0	0	0	0
764	PETERSBURG MED FCI	0	13	0	15
765	PHILADELPHIA FDC	0	7	1	6
766	PHOENIX FCI	0	9	5	13
767	PHOENIX FCI CAMP DRUG UNIT (F)	0	0	0	0
768	PHOENIX FCI CAMP UNIT (F)	0	0	0	2
769	PINE PRAIRIE CI	3	8	14	30
770	POLLOCK USP	4	29	14	103
771	POLLOCK USP CAMP UNIT (M)	0	0	0	0
772	RAY BROOK FCI	0	10	1	16
773	REEVES CI	2	32	2	1
774	REEVES DC	1	7	4	3
775	RIVERS CI	0	9	2	8
776	ROCHESTER FMC	0	19	0	10
777	SAFFORD FCI	0	0	0	4
778	SAN DIEGO MCC	0	3	2	23
779	SANDSTONE FCI	0	1	0	6
780	SCHUYLKILL FCI	0	10	9	23
781	SCHUYLKILL FCI CAMP UNIT (M)	0	0	0	0
782	SEAGOVILLE FCI	0	2	1	31
783	SEAGOVILLE FCI CAMP UNIT (M)	0	0	0	1
784	SEATAC FDC	0	7	0	15
785	SHERIDAN FCI	0	10	0	9
786	SHERIDAN FCI CAMP DRUG UNIT (M)	0	0	0	0
787	SHERIDAN FCI CAMP UNIT (M)	0	1	0	1
788	SPRINGFIELD USMCFP	2	34	2	16
789	TAFT CI	0	1	0	8
790	TAFT CI CAMP UNIT (M)	0	1	0	2
791	TALLADEGA FCI	1	4	0	9
792	TALLADEGA FCI CAMP DRUG UNIT (M)	0	0	0	0
793	TALLADEGA FCI CAMP UNIT (M)	0	0	0	3
794	TALLAHASSEE FCI	1	2	0	23
795	TERMINAL ISLAND FCI	0	0	2	1
796	TERRE HAUTE FCI	0	5	2	15
797	TERRE HAUTE FCI CAMP UNIT (M)	0	2	0	0
798	TERRE HAUTE USP	0	72	12	71
799	TEXARKANA FCI	0	2	3	8
800	TEXARKANA FCI CAMP DRUG UNIT (M)	0	0	0	0
801	TEXARKANA FCI CAMP UNIT (M)	0	0	0	1
802	THREE RIVERS FCI	1	2	10	15
803	THREE RIVERS FCI CAMP UNIT (M)	0	0	0	0
804	TUCSON FCI	0	10	5	11
805	TUCSON USP	6	58	16	54
806	TUCSON USP CAMP UNIT (M)	0	0	0	1
807	VICTORVILLE MED I FCI	4	3	3	24

808	VICTORVILLE MED II FCI	3	15	1	34
809	VICTORVILLE MED II FCI CAMP UNIT (F)	0	0	0	1
810	VICTORVILLE USP	6	38	25	66
811	WASECA FCI	0	0	0	8
812	WILLIAMSBURG FCI	0	11	4	19
813	WILLIAMSBURG FCI CAMP UNIT (M)	0	1	0	0
814	YANKTON FPC	0	0	0	5
815	YAZOO CITY FCI	0	4	0	3
816	YAZOO CITY FCI CAMP UNIT (M)	0	0	0	0
817	YAZOO CITY MED FCI	0	7	18	24

Fiscal Year=FY2009

Obs	Institution	Serious Assaults on Staff	Less Serious Assaults on Staff	Serious Assaults on Inmates	Less Serious Assaults on Inmates
818	BOP ALL INSTITUTIONS	105	1789	517	2657
819	ADAMS COUNTY CORR CTR CI	0	0	0	0
820	ALDERSON FPC	0	0	0	2
821	ALLENWOOD LOW FCI	0	4	0	7
822	ALLENWOOD MED FCI	0	10	0	26
823	ALLENWOOD USP	6	12	26	32
824	ASHLAND FCI	0	4	0	4
825	ASHLAND FCI CAMP UNIT (M)	0	0	1	1
826	ATLANTA USP	0	8	2	50
827	ATLANTA USP CAMP UNIT (M)	0	0	0	1
828	ATWATER USP	1	45	16	34
829	ATWATER USP CAMP UNIT (M)	0	0	0	2
830	BASTROP FCI	0	0	26	9
831	BASTROP FCI CAMP UNIT (M)	0	0	0	0
832	BEAUMONT LOW FCI	0	1	3	11
833	BEAUMONT MED FCI	13	3	8	24
834	BEAUMONT USP	1	10	0	15
835	BEAUMONT USP CAMP DRUG UNIT (M)	0	0	0	0
836	BEAUMONT USP CAMP UNIT (M)	0	0	0	1
837	BECKLEY FCI	0	20	9	43
838	BECKLEY FCI CAMP DRUG UNIT (M)	0	0	0	0
839	BECKLEY FCI CAMP UNIT (M)	0	0	0	2
840	BENNETTSVILLE FCI	0	8	7	23
841	BENNETTSVILLE FCI CAMP UNIT (M)	0	1	0	1
842	BIG SANDY USP	7	47	37	59
843	BIG SANDY USP CAMP UNIT (M)	0	0	0	0
844	BIG SPRING CI	0	25	0	25
845	BIG SPRING FCI	0	2	0	9
846	BIG SPRING FCI CAMP UNIT (M)	0	0	0	2
847	BROOKLYN MDC	0	30	2	54
848	BRYAN FPC	0	0	0	4
849	BUTNER FMC	0	20	0	12
850	BUTNER LOW FCI	0	8	0	6
851	BUTNER MED I FCI	0	2	0	7
852	BUTNER MED I FCI CAMP UNIT (M)	0	0	0	0
853	BUTNER MED II FCI	2	15	2	29
854	CALIFORNIA CITY CI	0	15	1	14
855	CANAAN USP	1	31	20	31
856	CANAAN USP CAMP UNIT (M)	0	0	0	1
857	CARSWELL FMC	0	33	0	32
858	CARSWELL FMC CAMP UNIT (F)	0	0	0	2
859	CHICAGO MCC	0	8	0	13

860	CIBOLA COUNTY CI	0	2	0	10
861	COLEMAN I USP	0	45	23	42
862	COLEMAN II USP	1	68	15	29
863	COLEMAN LOW FCI	0	10	0	13
864	COLEMAN MED FCI	0	8	0	11
865	COLEMAN MED FCI CAMP UNIT (F)	0	0	0	1
866	CUMBERLAND FCI	1	10	1	24
867	CUMBERLAND FCI CAMP DRUG UNIT (M)	0	2	0	1
868	CUMBERLAND FCI CAMP UNIT (M)	0	0	0	0
869	DALBY CI	1	17	1	3
870	DANBURY FCI	0	4	0	21
871	DANBURY FCI CAMP UNIT (F)	0	0	0	1
872	DEVENS FMC	0	12	0	8
873	DEVENS FMC CAMP UNIT (M)	0	1	0	0
874	DUBLIN FCI	0	2	0	11
875	DUBLIN FCI CAMP DRUG UNIT (F)	0	0	0	1
876	DUBLIN FCI CAMP UNIT (F)	0	0	0	0
877	DULUTH FPC	0	2	0	0
878	EDEN CI	0	19	0	8
879	EDGEFIELD FCI	0	14	20	47
880	EDGEFIELD FCI CAMP DRUG UNIT (M)	0	0	0	0
881	EDGEFIELD FCI CAMP UNIT (M)	0	0	0	2
882	EL RENO FCI	0	5	1	45
883	EL RENO FCI CAMP UNIT (M)	0	0	0	0
884	ELKTON FCI	0	3	1	12
885	ENGLEWOOD FCI	0	5	0	7
886	ENGLEWOOD FCI CAMP DRUG UNIT (M)	0	0	0	0
887	ENGLEWOOD FCI CAMP UNIT (M)	0	0	0	0
888	ESTILL FCI	0	22	1	5
889	ESTILL FCI CAMP UNIT (M)	0	0	0	1
890	FAIRTON FCI	0	7	0	21
891	FAIRTON FCI CAMP UNIT (M)	0	0	0	0
892	FLORENCE ADMAX USP	0	37	1	3
893	FLORENCE ADMAX USP CAMP DRUG UNIT (M)	0	0	0	2
894	FLORENCE ADMAX USP CAMP UNIT (M)	0	0	0	1
895	FLORENCE FCI	1	7	1	16
896	FLORENCE HIGH USP	0	46	3	54
897	FORREST CITY FCI	0	6	0	7
898	FORREST CITY FCI CAMP UNIT (M)	0	0	0	0
899	FORREST CITY MED FCI	1	9	0	44
900	FORT DIX FCI	1	16	0	13
901	FORT DIX FCI CAMP UNIT (M)	0	1	0	0
902	FORT WORTH FCI	0	1	0	28
903	GILMER FCI	0	10	0	9
904	GILMER FCI CAMP UNIT (M)	0	1	0	1
905	GREENVILLE FCI	0	12	4	13
906	GREENVILLE FCI CAMP DRUG UNIT (F)	0	0	0	0
907	GREENVILLE FCI CAMP UNIT (F)	0	2	0	1
908	GUAYNABO MDC	0	8	5	15
909	HAZELTON USP	4	81	30	78
910	HAZELTON USP CAMP UNIT (M)	0	0	0	0
911	HERLONG FCI	0	22	2	17
912	HERLONG FCI CAMP UNIT (M)	0	0	0	0

913	HONOLULU FDC	0	0	0	10
914	HOUSTON FDC	0	3	2	26
915	JESUP FCI	0	9	0	10
916	JESUP FCI CAMP UNIT (M)	0	0	0	1
917	LA TUNA FCI	0	3	0	5
918	LA TUNA FCI CAMP UNIT (M)	0	0	0	0
919	LEAVENWORTH USP	0	7	3	38
920	LEAVENWORTH USP CAMP DRUG UNIT (M)	0	1	0	0
921	LEAVENWORTH USP CAMP UNIT (M)	0	1	0	0
922	LEE USP	1	33	8	121
923	LEE USP CAMP UNIT (M)	0	0	0	0
924	LEWISBURG USP	10	41	30	74
925	LEWISBURG USP CAMP DRUG UNIT (M)	0	0	0	2
926	LEWISBURG USP CAMP UNIT (M)	0	2	0	1
927	LEXINGTON FMC	0	4	0	8
928	LEXINGTON FMC CAMP UNIT (F)	0	0	0	0
929	LOMPOC FCI	0	0	2	2
930	LOMPOC USP	0	21	3	30
931	LOMPOC USP CAMP DRUG UNIT (M)	0	0	0	0
932	LOMPOC USP CAMP UNIT (M)	0	0	0	1
933	LORETTO FCI	0	5	0	9
934	LORETTO FCI CAMP UNIT (M)	0	0	0	0
935	LOS ANGELES MDC	0	2	1	16
936	MANCHESTER FCI	0	3	0	22
937	MANCHESTER FCI CAMP UNIT (M)	0	0	0	2
938	MARIANNA FCI	0	9	1	14
939	MARIANNA FCI CAMP UNIT (F)	0	1	0	3
940	MARION USP	0	11	2	33
941	MARION USP CAMP UNIT (M)	0	0	0	1
942	MCCREARY USP	2	89	8	63
943	MCCREARY USP CAMP UNIT (M)	0	0	0	0
944	MCKEAN FCI	0	3	23	22
945	MCKEAN FCI CAMP DRUG UNIT (M)	0	0	0	0
946	MCKEAN FCI CAMP UNIT (M)	0	1	0	0
947	MCRAE CI	0	3	0	3
948	MEMPHIS FCI	0	6	1	26
949	MEMPHIS FCI CAMP UNIT (M)	0	0	0	2
950	MIAMI FCI	0	2	2	1
951	MIAMI FCI CAMP DRUG UNIT (M)	0	0	0	0
952	MIAMI FCI CAMP UNIT (M)	0	1	0	0
953	MIAMI FDC	0	6	0	5
954	MILAN FCI	0	3	2	6
955	MONTGOMERY FPC	0	0	0	1
956	MORGANTOWN FCI	0	0	0	4
957	MOSHANNON VALLEY CI	0	3	1	6
958	NE OHIO CORR CTR CI	0	2	4	4
959	NEW YORK MCC	0	11	0	12
960	OAKDALE FCI	0	32	0	21
961	OAKDALE FDC	0	2	0	12
962	OAKDALE FDC CAMP UNIT (M)	0	0	0	0
963	OKLAHOMA CITY FTC	0	16	0	7
964	OTISVILLE FCI	2	6	16	1

965	OTISVILLE FCI CAMP UNIT (M)	0	0	0	2
966	OXFORD FCI	0	6	1	6
967	OXFORD FCI CAMP UNIT (M)	0	0	0	0
968	PEKIN FCI	0	6	4	20
969	PEKIN FCI CAMP UNIT (F)	0	0	0	0
970	PENSACOLA FPC	0	1	0	3
971	PETERSBURG FCI	0	0	0	5
972	PETERSBURG FCI CAMP UNIT (M)	0	0	0	0
973	PETERSBURG MED FCI	0	15	3	20
974	PHILADELPHIA FDC	0	6	0	18
975	PHOENIX FCI	1	5	0	13
976	PHOENIX FCI CAMP DRUG UNIT (F)	0	0	0	0
977	PHOENIX FCI CAMP UNIT (F)	0	0	0	1
978	PINE PRAIRIE CI	1	3	0	0
979	POLLOCK MED FCI	0	0	1	0
980	POLLOCK USP	1	41	24	121
981	POLLOCK USP CAMP UNIT (M)	0	0	0	0
982	RAY BROOK FCI	0	8	1	31
983	REEVES CI	1	17	0	1
984	REEVES DC	0	9	2	9
985	RIVERS CI	0	3	0	10
986	ROCHESTER FMC	0	30	0	12
987	SAFFORD FCI	0	1	1	0
988	SAN DIEGO MCC	0	3	0	32
989	SANDSTONE FCI	0	3	0	5
990	SCHUYLKILL FCI	0	8	4	15
991	SCHUYLKILL FCI CAMP UNIT (M)	0	1	0	0
992	SEAGOVILLE FCI	0	2	1	19
993	SEAGOVILLE FCI CAMP UNIT (M)	0	0	0	1
994	SEATAC FDC	1	1	2	15
995	SHERIDAN FCI	2	6	0	19
996	SHERIDAN FCI CAMP DRUG UNIT (M)	0	0	0	0
997	SHERIDAN FCI CAMP UNIT (M)	0	0	0	0
998	SPRINGFIELD USMCFP	0	31	1	13
999	TAFT CI	1	1	0	3
1000	TAFT CI CAMP UNIT (M)	0	0	0	0
1001	TALLADEGA FCI	3	80	2	14
1002	TALLADEGA FCI CAMP DRUG UNIT (M)	0	0	0	0
1003	TALLADEGA FCI CAMP UNIT (M)	0	0	0	0
1004	TALLAHASSEE FCI	1	3	0	12
1005	TERMINAL ISLAND FCI	0	9	0	2
1006	TERRE HAUTE FCI	0	6	4	9
1007	TERRE HAUTE FCI CAMP UNIT (M)	0	1	0	0
1008	TERRE HAUTE USP	4	54	35	58
1009	TEXARKANA FCI	0	2	0	6
1010	TEXARKANA FCI CAMP DRUG UNIT (M)	0	0	0	0
1011	TEXARKANA FCI CAMP UNIT (M)	0	0	0	0
1012	THREE RIVERS FCI	1	3	0	20
1013	THREE RIVERS FCI CAMP UNIT (M)	0	0	0	0
1014	TUCSON FCI	3	11	0	15
1015	TUCSON USP	3	74	12	50
1016	TUCSON USP CAMP UNIT (M)	0	0	0	0



1017	VICTORVILLE MED I FCI	2	8	3	21
1018	VICTORVILLE MED II FCI	10	26	1	34
1019	VICTORVILLE MED II FCI CAMP UNIT (F)	0	0	0	2
1020	VICTORVILLE USP	13	49	31	91
1021	WASECA FCI	0	0	0	1
1022	WILLIAMSBURG FCI	1	8	4	25
1023	WILLIAMSBURG FCI CAMP UNIT (M)	0	0	0	1
1024	YANKTON FPC	0	0	0	7
1025	YAZOO CITY FCI	0	8	1	7
1026	YAZOO CITY FCI CAMP UNIT (M)	0	0	0	0
1027	YAZOO CITY MED FCI	0	19	1	49

Fiscal Year=FY2010

Obs	Institution	Serious Assaults on Staff	Less Serious Assaults on Staff	Serious Assaults on Inmates	Less Serious Assaults on Inmates
1028	<b>BOP ALL INSTITUTIONS</b>	<b>20</b>	<b>687</b>	<b>135</b>	<b>1082</b>
1029	ADAMS COUNTY CORR CTR CI	0	0	1	0
1030	ALDERSON FPC	0	0	0	2
1031	ALLENWOOD LOW FCI	0	0	0	4
1032	ALLENWOOD MED FCI	0	1	0	10
1033	ALLENWOOD USP	0	3	5	12
1034	ASHLAND FCI	0	2	0	5
1035	ASHLAND FCI CAMP UNIT (M)	0	0	0	0
1036	ATLANTA USP	0	1	0	18
1037	ATLANTA USP CAMP UNIT (M)	0	0	0	0
1038	ATWATER USP	1	18	0	16
1039	ATWATER USP CAMP UNIT (M)	0	0	0	0
1040	BASTROP FCI	0	0	0	5
1041	BASTROP FCI CAMP UNIT (M)	0	0	0	0
1042	BEAUMONT LOW FCI	0	1	0	10
1043	BEAUMONT MED FCI	1	5	0	18
1044	BEAUMONT USP	0	5	0	13
1045	BEAUMONT USP CAMP DRUG UNIT (M)	0	0	0	0
1046	BEAUMONT USP CAMP UNIT (M)	0	0	0	0
1047	BECKLEY FCI	0	6	0	16
1048	BECKLEY FCI CAMP DRUG UNIT (M)	0	0	0	0
1049	BECKLEY FCI CAMP UNIT (M)	0	0	0	3
1050	BENNETTSVILLE FCI	0	9	3	11
1051	BENNETTSVILLE FCI CAMP UNIT (M)	0	0	0	0
1052	BIG SANDY USP	0	34	4	26
1053	BIG SANDY USP CAMP UNIT (M)	0	0	0	1
1054	BIG SPRING CI	0	32	0	6
1055	BIG SPRING FCI	0	3	0	6
1056	BIG SPRING FCI CAMP UNIT (M)	0	0	0	0
1057	BROOKLYN MDC	0	5	2	22
1058	BRYAN FPC	0	0	0	0
1059	BUTNER FMC	0	4	0	4
1060	BUTNER LOW FCI	0	1	1	3
1061	BUTNER MED I FCI	0	0	1	6
1062	BUTNER MED I FCI CAMP UNIT (M)	0	0	0	0
1063	BUTNER MED II FCI	0	5	1	10
1064	CALIFORNIA CITY CI	0	1	0	2
1065	CANAAN USP	1	11	8	8
1066	CANAAN USP CAMP UNIT (M)	0	0	0	0
1067	CARSWELL FMC	0	11	0	11
1068	CARSWELL FMC CAMP UNIT (F)	0	0	0	0
1069	CHICAGO MCC	0	0	0	0

1070	CIBOLA COUNTY CI	0	0	0	5
1071	COLEMAN I USP	1	15	8	26
1072	COLEMAN II USP	0	21	3	28
1073	COLEMAN LOW FCI	0	5	0	9
1074	COLEMAN MED FCI	1	6	1	8
1075	COLEMAN MED FCI CAMP UNIT (F)	0	0	0	0
1076	CUMBERLAND FCI	0	5	0	6
1077	CUMBERLAND FCI CAMP DRUG UNIT (M)	0	3	0	0
1078	CUMBERLAND FCI CAMP UNIT (M)	0	0	0	0
1079	DALBY CI	0	6	0	2
1080	DANBURY FCI	0	10	0	8
1081	DANBURY FCI CAMP UNIT (F)	0	0	0	1
1082	DEVENS FMC	0	1	0	5
1083	DEVENS FMC CAMP UNIT (M)	0	0	0	0
1084	DUBLIN FCI	0	0	0	1
1085	DUBLIN FCI CAMP DRUG UNIT (F)	0	0	0	1
1086	DUBLIN FCI CAMP UNIT (F)	0	0	0	1
1087	DULUTH FPC	0	0	0	1
1088	EDEN CI	0	2	0	1
1089	EDGEFIELD FCI	0	3	0	8
1090	EDGEFIELD FCI CAMP DRUG UNIT (M)	0	0	0	0
1091	EDGEFIELD FCI CAMP UNIT (M)	0	0	0	3
1092	EL RENO FCI	0	1	0	7
1093	EL RENO FCI CAMP UNIT (M)	0	0	0	0
1094	ELKTON FCI	0	0	0	4
1095	ENGLEWOOD FCI	0	0	0	1
1096	ENGLEWOOD FCI CAMP DRUG UNIT (M)	0	0	0	0
1097	ENGLEWOOD FCI CAMP UNIT (M)	0	0	0	0
1098	ESTILL FCI	0	6	15	11
1099	ESTILL FCI CAMP UNIT (M)	0	0	0	0
1100	FAIRTON FCI	0	2	0	6
1101	FAIRTON FCI CAMP UNIT (M)	0	0	0	0
1102	FLORENCE ADMAX USP	0	10	0	4
1103	FLORENCE ADMAX USP CAMP DRUG UNIT (M)	0	0	0	0
1104	FLORENCE ADMAX USP CAMP UNIT (M)	0	0	0	0
1105	FLORENCE FCI	0	6	0	6
1106	FLORENCE HIGH USP	0	29	1	19
1107	FORREST CITY FCI	0	3	0	3
1108	FORREST CITY FCI CAMP UNIT (M)	0	0	0	1
1109	FORREST CITY MED FCI	0	6	0	8
1110	FORT DIX FCI	0	7	0	6
1111	FORT DIX FCI CAMP UNIT (M)	0	0	0	0
1112	FORT WORTH FCI	0	1	0	8
1113	GILMER FCI	0	5	0	11
1114	GILMER FCI CAMP UNIT (M)	0	1	0	4
1115	GREENVILLE FCI	0	1	0	10
1116	GREENVILLE FCI CAMP DRUG UNIT (F)	0	0	0	0
1117	GREENVILLE FCI CAMP UNIT (F)	0	0	0	0
1118	GUAYNABO MDC	0	3	3	2
1119	HAZELTON USP	1	48	19	49
1120	HAZELTON USP CAMP UNIT (M)	0	0	0	0
1121	HERLONG FCI	0	7	0	8

1122	HERLONG FCI CAMP UNIT (M)	0	0	0	0
1123	HONOLULU FDC	0	1	0	8
1124	HOUSTON FDC	0	0	0	6
1125	JESUP FCI	0	4	0	9
1126	JESUP FCI CAMP UNIT (M)	0	0	0	0
1127	LA TUNA FCI	0	1	0	5
1128	LA TUNA FCI CAMP UNIT (M)	0	0	0	0
1129	LEAVENWORTH USP	0	0	4	4
1130	LEAVENWORTH USP CAMP DRUG UNIT (M)	0	0	0	0
1131	LEAVENWORTH USP CAMP UNIT (M)	0	0	0	0
1132	LEE USP	1	11	4	33
1133	LEE USP CAMP UNIT (M)	0	0	0	0
1134	LEWISBURG USP	6	23	2	36
1135	LEWISBURG USP CAMP DRUG UNIT (M)	0	0	0	0
1136	LEWISBURG USP CAMP UNIT (M)	0	0	0	1
1137	LEXINGTON FMC	0	1	0	1
1138	LEXINGTON FMC CAMP UNIT (F)	0	0	0	0
1139	LOMPOC FCI	0	0	0	4
1140	LOMPOC USP	0	3	3	3
1141	LOMPOC USP CAMP DRUG UNIT (M)	0	0	0	0
1142	LOMPOC USP CAMP UNIT (M)	0	0	0	1
1143	LORETTO FCI	0	1	0	1
1144	LORETTO FCI CAMP UNIT (M)	0	0	0	0
1145	LOS ANGELES MDC	0	4	0	5
1146	MANCHESTER FCI	0	3	0	4
1147	MANCHESTER FCI CAMP UNIT (M)	0	0	0	3
1148	MARIANNA FCI	0	4	0	8
1149	MARIANNA FCI CAMP UNIT (F)	0	0	0	0
1150	MARION USP	1	0	0	6
1151	MARION USP CAMP UNIT (M)	0	0	0	0
1152	MCCREARY USP	0	26	17	56
1153	MCCREARY USP CAMP UNIT (M)	0	1	0	0
1154	MCKEAN FCI	0	1	1	15
1155	MCKEAN FCI CAMP DRUG UNIT (M)	0	0	0	0
1156	MCKEAN FCI CAMP UNIT (M)	0	0	0	0
1157	MCRAE CI	0	2	0	0
1158	MEMPHIS FCI	0	3	0	4
1159	MEMPHIS FCI CAMP UNIT (M)	0	0	0	0
1160	MIAMI FCI	0	0	0	5
1161	MIAMI FCI CAMP DRUG UNIT (M)	0	0	0	0
1162	MIAMI FCI CAMP UNIT (M)	0	0	0	0
1163	MIAMI FDC	0	1	0	3
1164	MILAN FCI	0	1	0	1
1165	MONTGOMERY FPC	0	0	0	1
1166	MORGANTOWN FCI	0	1	0	2
1167	MOSHANNON VALLEY CI	0	0	1	3
1168	NE OHIO CORR CTR CI	0	4	0	5
1169	NEW YORK MCC	1	7	0	2
1170	OAKDALE FCI	0	11	0	2
1171	OAKDALE FDC	0	1	0	0
1172	OAKDALE FDC CAMP UNIT (M)	0	0	0	0
1173	OKLAHOMA CITY FTC	0	1	0	3
1174	OTISVILLE FCI	1	1	0	5

1175	OTISVILLE FCI CAMP UNIT (M)	0	0	0	0
1176	OXFORD FCI	0	1	0	3
1177	OXFORD FCI CAMP UNIT (M)	0	0	0	1
1178	PEKIN FCI	0	4	0	10
1179	PEKIN FCI CAMP DRUG UNIT (F)	0	0	0	0
1180	PEKIN FCI CAMP UNIT (F)	0	0	0	0
1181	PENSACOLA FPC	0	0	0	0
1182	PETERSBURG FCI	0	1	0	1
1183	PETERSBURG FCI CAMP UNIT (M)	0	0	0	1
1184	PETERSBURG MED FCI	0	8	1	10
1185	PHILADELPHIA FDC	0	2	0	3
1186	PHOENIX FCI	0	1	4	7
1187	PHOENIX FCI CAMP DRUG UNIT (F)	0	0	0	0
1188	PHOENIX FCI CAMP UNIT (F)	0	0	0	0
1189	POLLOCK MED FCI	0	9	0	5
1190	POLLOCK USP	2	22	9	34
1191	POLLOCK USP CAMP UNIT (M)	0	0	0	0
1192	RAY BROOK FCI	0	0	0	12
1193	REEVES CI	0	8	0	1
1194	REEVES DC	0	8	0	3
1195	RIVERS CI	0	1	0	5
1196	ROCHESTER FMC	0	3	1	11
1197	SAFFORD FCI	0	0	0	0
1198	SAN DIEGO MCC	0	1	1	16
1199	SANDSTONE FCI	0	1	0	2
1200	SCHUYLKILL FCI	0	4	0	5
1201	SCHUYLKILL FCI CAMP UNIT (M)	0	0	0	0
1202	SEAGOVILLE FCI	0	0	0	2
1203	SEAGOVILLE FCI CAMP UNIT (M)	0	0	0	0
1204	SEATAC FDC	0	4	1	6
1205	SHERIDAN FCI	0	3	3	4
1206	SHERIDAN FCI CAMP DRUG UNIT (M)	0	0	0	0
1207	SHERIDAN FCI CAMP UNIT (M)	0	0	0	0
1208	SPRINGFIELD USMCFP	0	11	0	5
1209	TAFT CI	0	0	0	5
1210	TAFT CI CAMP UNIT (M)	0	0	0	0
1211	TALLADEGA FCI	0	30	0	8
1212	TALLADEGA FCI CAMP DRUG UNIT (M)	0	1	0	0
1213	TALLADEGA FCI CAMP UNIT (M)	0	0	0	0
1214	TALLAHASSEE FCI	0	0	0	5
1215	TERMINAL ISLAND FCI	0	4	0	0
1216	TERRE HAUTE FCI	0	3	0	6
1217	TERRE HAUTE FCI CAMP UNIT (M)	0	0	0	0
1218	TERRE HAUTE USP	1	16	4	28
1219	TEXARKANA FCI	0	1	0	0
1220	TEXARKANA FCI CAMP DRUG UNIT (M)	0	0	0	1
1221	TEXARKANA FCI CAMP UNIT (M)	0	0	0	0
1222	THREE RIVERS FCI	0	0	0	6
1223	THREE RIVERS FCI CAMP UNIT (M)	0	0	0	1
1224	TUCSON FCI	0	5	1	3
1225	TUCSON USP	0	0	1	6
1226	TUCSON USP CAMP UNIT (M)	0	0	0	0

1227	VICTORVILLE MED I FCI	0	5	0	7
1228	VICTORVILLE MED II FCI	0	10	0	34
1229	VICTORVILLE MED II FCI CAMP UNIT (F)	0	0	0	1
1230	VICTORVILLE USP	0	23	0	23
1231	WASECA FCI	0	2	0	6
1232	WILLIAMSBURG FCI	0	0	1	1
1233	WILLIAMSBURG FCI CAMP UNIT (M)	0	0	0	0
1234	YANKTON FPC	0	0	0	0
1235	YAZOO CITY FCI	0	0	0	1
1236	YAZOO CITY FCI CAMP UNIT (M)	0	0	0	0
1237	YAZOO CITY MED FCI	1	7	0	18

- 16. The FY 2010 explanatory statement required the Department to submit, as part of the FY 2011 budget request, a detailed description of the coordinated prisoner reentry strategy required by the Second Chance Act, along with the estimated costs of full implementation of that strategy in FY 2011. Does the description of the inmate skills assessment and development process in the budget justification fully describe the coordinated prisoner reentry strategy required by the Second Chance Act? Has BOP developed, or does it plan to develop, a comprehensive reentry strategy document?**

**Answer:** Yes, the Inmate Skills Development initiative describes the coordinated prisoner reentry strategy required by the Second Chance Act.

Section 231(a) establishes a Federal Prisoner Reentry Strategy and requires the BOP to assess inmates' skills, develop reentry plans, determine program assignments, and provide incentives for participation in skills development programs. The BOP has implemented an Inmate Skills Development initiative to unify inmate programs and services into a comprehensive reentry strategy. The process includes an assessment of an inmate's strengths and skill deficits upon admission, the development of an individualized plan to address skill deficits, and the monitoring of skill enhancements throughout incarceration. The three principles of the Inmate Skills Development strategy are: (1) inmate participation in programs must be linked to the development of relevant inmate reentry skills; (2) inmates should acquire or improve a skill identified through the comprehensive assessment, rather than simply completing a program; and (3) resources are allocated to target inmates with a high risk for reentry failure. The initiative includes communication, collaboration, and the development of partnerships with the agencies responsible for post-release supervision and with other government agencies and private sector entities to assist with inmate reentry.

The Bureau's reentry strategy document is entitled: "Enhancing Reentry in the Federal Bureau of Prisons Through a Skills-Based Model - Inmate Skills Development Initiative".

[The following is a copy.]

## **Enhancing Reentry in the Federal Bureau of Prisons Through a Skills-Based Model**

### **Inmate Skills Development Initiative**

The corrections industry's continued growth rate has prompted a closer examination of prison programming and a renewed emphasis for public safety. Research shows that most crimes are committed by offenders who leave prison ill-prepared to live law-abiding lives and return to familiar behavioral patterns that include criminal conduct. In response, correctional systems are shifting their emphasis toward reducing recidivism through targeted programming opportunities to better prepare inmates for reintegration back into the community. The federal prison system is no exception, shifting its principal release preparation efforts from a program or process-centered model to a skills or competency-based model.

### **Offenders in the Federal Bureau of Prisons (Bureau)**

The federal system is now the largest correctional system in the United States, with a population in excess of 207,000 as of July 2009. The system continues to grow at a rate of approximately 2.6 percent per year, and the number of offenders in its custody has increased 43 percent over the last decade. The Bureau releases approximately 45,000 inmates per year back to U.S. communities, so reentry preparation is a large and crucial piece of its mission.



**Current Bureau Reentry Efforts**

The federal prison system offers an extensive array of strategies to both prepare an inmate for release and improve his/her behavior during incarceration. This is evidenced through the provision of extensive educational, prison industry, and substance abuse programming.

These more nationally structured efforts are supplemented by a broad spectrum of institution and community-based programs such as trauma programs, anger management, extensive psychological and religious services, health promotion, victim impact panels, vocational training, mock job fairs, extensive use of community reentry centers, and many others. Many of the programs have gender-specific components.

While the Bureau is shifting the focus for inmate reentry as described below, this should not be viewed as a criticism of current efforts. The current shift is motivated by the goal to reduce those rates even more, especially for high-risk offenders, while at the same time increasing the efficiency and cost effectiveness of these efforts.

The Bureau's long-standing release philosophy has been that release preparation begins the first day of an inmate's incarceration. In keeping with this philosophy, current release preparation efforts are predominantly clinically and programmatically driven. Inmates upon admission receive initial and periodic reviews by their "unit team" – the case manager, counselor, unit manager, and other relevant staff to whom the inmate is

assigned to manage his/her case while incarcerated. The initial review is done locally at the inmate's designated facility. Given the broad geographic dispersion of federal inmates and facilities, the Bureau does not have a central reception and evaluation center as utilized by many state systems.

Using their professional judgment based on an inmate's history, characteristics, and behavior, the unit team makes prescriptive recommendations for the offender regarding prison employment and programming needs, goals, and opportunities. The content of these reviews is defined rather broadly by national policy and training efforts, but is driven by a local process and largely affected by the quality and experience of case management staff. There is a strong emphasis on program participation and completion with few tools to assess skill acquisition or success. Progress reviews are issued periodically for the offender and shared toward the end of the sentence with other relevant agencies with post release supervision responsibilities for the offender; however, the reports are written texts, minimally structured, and do not permit quantitative analysis across offenders.

#### **A New Focus for Reentry**

Though the work being done and continuing to be done by treatment staff in the Bureau is proficient and meets the essential needs of the releasing population, the agency has decided to change the focus of reentry from an emphasis on clinical assessment and program participation to a competency-based model. More specifically, the Bureau

believes that offender reentry can be achieved more successfully and efficiently if these components are implemented:

- identification of the core skills needed for successful offender reentry;
- an objective assessment of those skills and continual measurement of the skills acquisition, rather than simple program completion;
- linkage of programs to specific reentry skills;
- allocation of resources to those inmates with the greatest skill deficiencies and hence, the greatest risk of recidivism;
- information sharing and the building of community collaborations for a holistic approach in transitioning offenders.

Termed the Inmate Skills Development (ISD) initiative, this is not a new program, but a shift in strategic emphasis and a new way of viewing inmate management. It requires the agency to reinvigorate its philosophy and reemphasize the Bureau's mission to prepare inmates for release and the community. These shifts have been and will be clearly and continually communicated with staff.

#### **Identifying the Skills Needed for Reentry**

To identify the critical skills or competencies needed for offender reentry, an agency workgroup investigated the skills employed by successful agencies, institutions, and programs in corrections. They held site visits with community correctional centers, state

departments of corrections, private agencies, and other entities in the criminal justice system to develop preliminary skill models. They performed an extensive literature search and conducted 30 focus groups at male and female federal facilities at varying security levels involving more than 300 staff and inmates. From this effort, nine skills were identified as significant in impacting an offender's successful transition.

*Table 1* lists the nine reentry competencies and the specific skill subsets under each that this methodology produced.

Most will not be surprising to correctional practitioners, but several, especially the importance of leisure time and daily living skills in reentry are often overlooked and were not a large part of the Bureau's past programming and assessment efforts.

#### **Assessing Skills Levels - The Inmate Skills Assessment**

The Bureau has developed and continues to refine an assessment instrument that targets each of the nine skill areas. The Inmate Skills Assessment (ISA) facilitates the entire ISD process and provides a clear operational definition of skills achievement. It was designed in collaboration with other agencies, including the courts and probation, to enhance communication and transportability to those involved with the inmate's community transition. The ISA is a dynamic instrument, automated through a web-based application, utilizing information from a variety of sources including court documents, a structured interview with the inmate, behavioral observations of the

inmate, and supplemental assessment instruments. Supplemental instruments are administered selectively based upon identified needs and include, but not limited to, the Adult Basis Learning Examination (ABLE), Test of Adult Basic Education (TABE), Minnesota Multiphasic Personality Inventory (MMPI), Millon Clinical Multiaxial Inventory (MCMI), Weschler Adult Intelligence Sale (WAIS), Personality Assessment Inventory (PAI), and the Psychopathy Checklist - Revised (PCL - R).

Although designed to be non-gender specific, questions were incorporated into the ISA, based on the workgroup's research, to address areas of predominating concern for female offenders such as history of victimization, child care responsibilities, and co-dependent tendencies.

The ISA is administered at the beginning of the inmate's sentence and provides staff with a comprehensive picture of an inmate's strengths and weaknesses as they relate to his/her release readiness. By beginning the process at the onset of his/her term of incarceration, a skill level baseline can be established, programming opportunities are maximized, and resource allocations are efficiently targeted. The assessment information is continuously updated to document and track incremental progress toward skill attainment.

*Figure 1* shows an excerpt of the assessment instrument.

**Monitoring Skill Development - ISD Plan**

To monitor and guide reentry planning and programming, a comprehensive, individualized ISD Plan is generated for each inmate from information obtained through the ISA instrument and review process identifying specific skill needs. In collaboration with the unit team, the inmate sets goals toward remediating these deficits. Because skill deficiencies are clearly identified and tracked, unit staff can more easily concentrate on those offenders with the greatest needs.

Through automation, progress with respect to skill acquisition can be monitored on an individual basis, as well as collectively, to determine the population's range of needs at the institution level and Bureau-wide. This feature permits resource planning and program development based on a broader spectrum that allows institution staff, as well as outside agencies to track progress, highlight accomplishments, and provide for a consistent, timely dissemination of information to assist the offender in reintegrating back into the community.

Because the instrument and reports are maintained in a database structure, internal and external sharing of information will be greatly enhanced to create a seamless flow of communication to other components involved in an inmate's transition including the court systems, supervision agencies, and community corrections, and extending onto community service providers. The exchange of information with post-incarceration entities is critical to an inmate's success and allows for effective resource planning by all

involved. Additionally, the system allows researchers the capability to analyze national trends and enhance program evaluations.

*Figure 2* shows an excerpt of a sample ISD Plan and Program Review report for an offender. Symbols in the Status section (left-hand column) of the ISD Plan provide a quick reference of the offender's skill status: a check representing skill attainment, a question mark for unknown skill level or incomplete information, and an exclamation point indicating a deficit area needing attention.

#### **Linking Programs to Skills**

A key ongoing process is the linking of existing agency programs to specific skill sets. Historically, new programs have been created due to a variety of reasons – legislature interest or mandates, replication of best practices in other systems, locally derived needs identification, individual staff creativity, and others – but rarely based on an analysis of national reentry skill deficiencies. By linking programs to the ISD process, the Bureau will be able to identify gaps in current programs where skills are inadequately addressed and identify existing programs that are unrelated to reentry skills and ripe for elimination. This will enhance the prescriptive power of the ISA, increase the rate of reentry success, and ensure resources are concentrated on the “right” programs.

**Community Transition and Long Term Support**

Clearly, reentry preparation and success move well beyond the confines of the correctional system. A key component is the linking of corrections to community corrections, services, and long-term support. The sharing of skills information is only one step. A number of collaborative efforts are now under way, the most significant being the National Offender Workforce Development Partnership. This national level collaboration was developed initially by staff representing the Department of Labor, Administrative Office of the U.S. Courts, Office of Probation and Pretrial Services, Federal Bureau of Prisons, National Institute of Corrections, and the Legal Action Center - HIRE Network, to facilitate a transitional approach to apprenticeships and employment strategies for ex-offenders. The partnership continues to grow with other government agencies coming on board. The ultimate goal of the partnership is to enhance reentry success through increased opportunities for career-oriented employment of ex-offenders.

To address this goal at both the local and national level, the agency partners have identified several key components:

- initiating collaboration between agencies impacting employment resources and skill development;
- developing partnerships with industries and employers;
- forecasting what occupations are, and will likely remain, in demand in geographic areas to which offenders are releasing;



- reviewing the Bureau's vocational training and apprenticeship programs to ensure they are consistent with current industry-wide accepted standards and projected workforce development needs;
- developing measurable and demonstrable criteria for the different levels of skills needed for industry occupations;
- conducting skills assessments of the offender population to identify skill needs and better target program resources;
- addressing related barriers to ex-offender employment; and
- sharing information efficiently among all involved and evaluating the effectiveness of these initiatives.

The partners are working together to develop a process for review of the Bureau's apprenticeship, vocational training, and other programs to ensure they are consistent with industry-wide accepted skill sets. This process includes linking apprenticeships to community industries and employers. Additionally, through labor market forecasting, institutional apprenticeships and job training programs will be examined to ensure they meet the forecasted demands for the labor pool. The partners also will conduct a review of potential barriers prohibiting persons with criminal records from realizing employment in these training fields and develop supportive strategies to ensure ex-offenders can obtain needed employment.

Through web-technology, an inmate's ISD Plan will be made accessible at anytime during the term of incarceration to his/her criminal justice components who will be involved in the ex-offender's return to the community. This will allow for a continuous

up-to-date flow of information to assist in providing a continuum of care during the transition back into the community. Additionally, the ISD Plan will identify what documentation and resources have been obtained that assist directly with acquiring potential employment.

The Bureau has developed an application for a resource database that will provide information, nationwide, of the resources that exist for ex-offenders as they return to the community. The database will provide brief descriptions and contact information sorted by category of resource (e.g., employment, education, housing, transportation, and medical assistance) or by state. Together with their partners, the Bureau is identifying appropriate resources and links to be included in this database.

The overriding goal of the National Offender Workforce Development Partnership is to provide a model of collaboration and identify resources that can be tapped into at the local levels to enhance skill development for successful employment to ex-offenders.

### **Conclusion**

The Inmate Skills Development initiative provides a new focus to enhance reentry success and reduce recidivism, particularly for the high-risk offender population in addressing their significant skill deficiencies as revealed in research and focus group findings. This new focus calls for an important paradigm shift: from a reentry process that moves from fairly unstructured case management assessments and success defined as program completions to a highly structured and focused competency-based

model that measures success by skill acquisition and ultimately reentry success. The strategy will soon be integrated completely into the Bureau, including adoption of a strong research and evaluation component. The efficacy of this new paradigm has yet to be proven and will be reported as the data are analyzed, but the agency believes it offers powerful tools and connections for offender transition.

Table 1 - Federal Bureau of Prisons, Inmate Reentry Skills

Re-Entry Skills	Re-Entry Skills as Demonstrated in the Institution and in the Community
<b>Daily Living Skills</b> - Financial Management - Food Management - Personal Hygiene/Sanitation - Transportation - Identification - Housing - RRC Placement - Family Care	Displays independent living skills commensurate with institution or community opportunities to include maintenance of a clean residence, a responsible budget to include a savings account, meal preparation, appropriate personal hygiene and appearance and proper etiquette. Obtains, maintains, and/or contributes financially to a legal residence and any necessary transportation. Obeys institution rules and regulations and local, state and federal laws. Is able to identify and access community resources for basic needs.
<b>Mental Health Skills</b> - Substance Abuse Management - Mental Illness Management - Transitional Plan - Appropriate Sexual Behavior	Maintains sound mental health through avoidance of substance abuse/dependence and other self-destructive behaviors and use of effective coping techniques. Participates in appropriate medication and/or treatment regime as necessary to address any acute or chronic mental health issues.
<b>Wellness Skills</b> - Health Promotion/Disease Prevention - Disease/Illness Management - Transitional Plan - Government Assistance	Maintains physical well-being through health promotion and disease prevention strategies such as a healthy lifestyle and habits, routine medical care, regular exercise, and appropriate diet. Participates in appropriate medication and/or treatment regime as necessary to address any acute or chronic medical conditions.
<b>Interpersonal Skills</b> - Relationships - Family Ties/Support System - Parental Responsibility - Communication	Relates appropriately and effectively with staff, peers, visitors, family, co-workers, neighbors and members of the community by observing basic social conventions and rules. Displays the ability to develop and maintain healthy relationships to include the avoidance of co-dependency. Avoids negative interpersonal influences.
<b>Academic Skills</b> - Intellectual Functioning - Literacy - Language - Computer Skills	Participates and progresses in educational activities commensurate with ability and occupation to serve as foundational skills for other re-entry skills. Reads, writes and utilizes basic arithmetic at a level necessary to function in a correctional environment and in society.
<b>Cognitive Skills</b> - General Behavior - Criminal History - Domestic Violence/Abuse - Criminal Behavior	Engages in accurate self-appraisal by acknowledging and correcting irrational thinking patterns. Is cognizant of the importance of goal setting. Solves problems effectively, maintains self-control and displays pro-social values. Acknowledges and appropriately corrects criminal thinking patterns and behaviors.
<b>Vocational/Career Skills</b> - Employment History - Career Development - Institution Work History - Post-Incarceration Employment	Acquires and maintains employment in order to become self-sufficient and fulfill financial obligations. Engages in purposeful activity, develops abilities useful in the acquisition and maintenance of post-release employment and pursuit of career goals.
<b>Leisure Time Skills</b> - Use of Leisure Time	Engages in meaningful recreational activities and hobbies making positive and effective use of free time and facilitating stress management and favorable peer affiliations.
<b>Character Skills</b> - Personal Character - Personal Responsibility	Maintains a sense of accountability to self and others through attention to the potential impact (short and long term) of actions. Seeks to engage in behaviors which reflect pro-social values thus creating a positive impact in their life and the lives of others. Displays a healthy tolerance for delayed gratification. Displays the capacity for self-reflection and consideration of meaning in life in relation to a particular faith or personal philosophy.

Figure 1 - Excerpt of Inmate Skills Assessment (ISA) Instrument

## INMATE SKILLS DEVELOPMENT ASSESSMENT

Assessment Plan 06-24-2009

Name:   
 Register Number:

### ACADEMIC: INTELLECTUAL FUNCTIONING

Intellectual deficits noted?

- Yes  
 No

What intellectual deficits have been noted? (Check all applicable)

- IQ score 70 or less, as tested or noted in the PSI  
 interview suggests intellectual deficits  
 other, specify:

History of participation in special education classes?

- Yes  
 No

### ACADEMIC: LITERACY

What is the highest academic level attained?

- <8th grade  
 6th-8th grade  
 9th-10th grade  
 >10th grade  
 high school diploma  
 GED  
 some college, with High School Diploma  
 some college, with GED  
 college degree

Was GED obtained through BOP?

- Yes  
 No

What is the highest college degree obtained?

- Associate  
 Bachelor  
 Master  
 Doctorate

What test results are available?

- ABLE  
 TABE

Please enter the ABLE scores

<input type="text"/>	Language
<input type="text"/>	Reading Comprehension
<input type="text"/>	Number Operations
<input type="text"/>	Vocabulary
<input type="text"/>	Problem Solving

Please enter the TABE Test Level

- A  
 D

Please enter the TABE Form Number

- 9

10

Please enter the TABE scores

<input type="text"/>	Language
<input type="text"/>	Reading
<input type="text"/>	Math

### ACADEMIC: LANGUAGE

English language skills:

- fluent in English as primary language  
 fluent in English as a secondary language  
 deaf/mute - fluent in international sign language  
 deaf/mute - limited or no fluency in international sign language  
 limited or no fluency in English

CASAS Results:

<input type="text"/>	Reading
<input type="text"/>	Listening

### ACADEMIC: COMPUTER SKILLS

Keyboarding:

- Yes  
 No

Word processing:

- Yes  
 No

Internet navigation for job searches and community resources:

- Yes  
 No

### VOCATIONAL/CAREER: EMPLOYMENT HISTORY

Unemployed at time of arrest?

- Yes  
 No

Consistent history of employment within the 5 years PRIOR to incarceration? (job changes for promotion or career enhancement and never fired)

- Yes  
 No

No consistent history of employment, please check all applicable:

- sporadic history of employment (frequent, non-promotional job changes)  
 unemployed majority of adult life or no significant periods of employment  
 limited history of employment due to confirmed disability  
 fired from a job(s) within 5 years prior to incarceration  
 other, specify:

Figure 2 - Excerpt of Inmate Skills Development Plan, Program Review

**INMATE SKILLS DEVELOPMENT PLAN** **Program Review: 06-24-2009**


	<b>Name:</b> DOE, JOHN <b>Register Number:</b> XXXXX-XX <b>Security/Custody:</b> LOW/IN <b>Projected Release:</b> 10-10-2015 / GCT REL	<b>Institution:</b> FORT DIX FCI PO BOX 38 FORT DIX, NJ 08840 <b>Telephone:</b> [Phone]			
<b>Next Review Date:</b> 03-31-2008 <b>Next Custody Review Date:</b> 09-19-2009 <b>Age/DOB/Sex:</b> 28 / 01-17-1981 / M <b>CIM Status:</b> N	<b>Driver's License/State:</b> / <b>FBI Number:</b> XXXXXXXX <b>SSN:</b> XXXXXXXXX <b>DCDC Number:</b> <b>INS Number:</b> <b>PDID Number:</b>				
<b>Release Residence:</b> JANE DOE, SPOUSE 320 FIRST STREET N/W WASHINGTON, DC 20534 <b>Telephone:</b> 555-555-5555	<b>Release Employer:</b> JOE'S PLUMBING 123 PIPE LANE WATER FLOW, VA 12345 <b>Contact Telephone:</b> JOE DRAIN, OWNER 555-555-5555				
<b>Primary Emergency Contact:</b> JANE DOE, SPOUSE [Address] 555-555-5555 <b>Telephone:</b>	<b>Secondary Emergency Contact:</b> JOHN SMITH, BROTHER 123 CAIN STREET ABLE, VA 12345 <b>Telephone:</b> 555-555-5555				
<b>Mentor Information:</b>					
<b>Program</b>	<b>Organization</b>	<b>Address</b>	<b>Phone</b>	<b>Contact</b>	<b>Title</b>
Life Conn Threshold	VOLUNTEERS OF AMERICA	123 FREEDOM STREET INDEPENDENCE, VA 12345	555-555-5555	JACK BROWN	SUPERVISING MENTOR
<b>Offenses/Violator Offenses:</b> CONSPIRACY TO MANUFACTURE DISTRIBUTE AND POSSESS WITD METHAMPH /			<b>Sentence/Supervision:</b> 20 Years / 5 Years - 4080		
<b>Sentence Began</b>	<b>Time Served/Jail Credit/Inoperative Time</b>	<b>Days GCT/EGT/SGT</b>	<b>Days FSGT/WSGT/DGCT</b>	<b>Parole Status</b>	
05-04-2009	1 Months 20 Days / 10 Days / -1 Days	54 //	//	<b>Hearing Date:</b> <b>Hearing Type:</b> <b>Last USPC Action:</b>	
<b>Detainers:</b> N			<b>Pending Charges:</b> None known		
<b>Financial Responsibility</b>	<b>Imposed</b>	<b>Balance</b>	<b>Case No./Court of Jurisdiction</b>	<b>Asgn/Schedule Payment</b>	
ASSESSMENT	\$200.00	\$0.00	51516	FINANC RESP-COMPLETED	
CHILD SUPPORT USDC	\$2000.00	\$0.00	15641		
<b>Contract Active:</b> [Y,N]		<b>Comm Dep-6 mos:</b> \$100.00		<b>Cost of Incarceration Fee:</b>	
<b>Contract Date:</b> [Date]		<b>Commissary Balance:</b> \$57.50		Waived based on inability to pay	
<b>Payments</b>					
<b>Commensurate:</b> Y					
<b>Missed:</b> N					
<b>Judicial Recommendations:</b> //					

Figure 2 continued

**INMATE SKILLS DEVELOPMENT PLAN** **PROGRAM REVIEW: 06-24-2009**  
 Name: JOHN, DOE RegNo: XXXXX-XX

**ACADEMIC**

Status	Response Summary
<input checked="" type="checkbox"/>	<b>INTELLECTUAL FUNCTIONING</b> <input checked="" type="checkbox"/> no intellectual deficits <input type="checkbox"/> has NOT attended special education classes
<input type="checkbox"/>	<b>LITERACY</b> <input type="checkbox"/> high school diploma obtained <input checked="" type="checkbox"/> Not all test results passing
<input checked="" type="checkbox"/>	<b>LANGUAGE</b> <input checked="" type="checkbox"/> fluent in English as a secondary language CASAS Scores Reading: 230 Listening: 220
<input type="checkbox"/>	<b>COMPUTER SKILLS</b> <input checked="" type="checkbox"/> possesses keyboarding skills <input checked="" type="checkbox"/> possesses word processing skills <input type="checkbox"/> lacks internet navigation skills
<b>Progress and Goals</b>	
Inmate Doe has a verified high school diploma and passing CASA scores certifying fluency in English as a Second Language. Based on the skill deficits noted, Unit Team recommends TABE testing to verify literacy skill level and enrollment in the Mock Internet Program by December 2009.	

**VOCATIONAL/CAREER**

Status	Response Summary
<input type="checkbox"/>	<b>EMPLOYMENT HISTORY</b> <input type="checkbox"/> unemployed at time of arrest <input type="checkbox"/> no consistent history of employment 5 years prior to incarceration <input type="checkbox"/> fired from a job(s) within 5 years prior to incarceration
<input checked="" type="checkbox"/>	<b>CAREER DEVELOPMENT</b> <input checked="" type="checkbox"/> possesses significant expertise in field <input type="checkbox"/> Construction and Extraction - 47 <hr/> <input type="checkbox"/> realistic career/job goals upon release <input type="checkbox"/> seeking position: Plumber <input checked="" type="checkbox"/> has more than two years work experience in this field <input type="checkbox"/> does not have an education degree related to this field
<input type="checkbox"/>	<b>INSTITUTION WORK HISTORY</b> <input type="checkbox"/> has no consistent institution work history <input type="checkbox"/> due to being incarcerated less than six (6) months
<input type="checkbox"/>	<b>POST INCARCERATION EMPLOYMENT</b> <input checked="" type="checkbox"/> post-incarceration employment secured <hr/> <input type="checkbox"/> release documents obtained to date:

**17. While the strategy outlined in the budget justification describes the inmate skills assessment and development process, it does not appear to clearly articulate specific long term goals, or estimate resource requirements related to those goals. What would be the annual costs of fully implementing a coordinated prisoner reentry strategy and what, specifically, are the long term goals of the strategy?**

**Answer:** National Annual Costs of fully implementing a coordinated prisoner reentry strategy:

Reentry Training Conference \$ 300,000  
Reentry Positions - Field \$12, 495,000  
Field Operations/Equipment \$ 1,600,000  
IT Development/Support \$ 321,500  
National Reentry Affairs Branch \$ 675,000  
Total: \$15,391,500

Note: This is a breakout of existing base resources. Future costs for program evaluation and development are unknown at this time as they are dependent on outcomes of assessment data and current program linkage.

Long-term goals:

Inmates will be assessed to determine reentry skill development needs; Program participation will be targeted to address skill deficit areas; Skill deficits of the inmate population will be reduced; and Recidivism rates will ultimately be reduced.

**18. Does BOP plan to align its performance measures with the Second Chance Act and reentry goals articulated by its coordinated prisoner reentry strategy?**

**Answer:** The BOP will be developing performance measures that address the reentry goals of this strategy.

**19. The Second Chance Act requires BOP to submit an annual report to the House and Senate Judiciary Committees on BOP's progress in meeting recidivism reduction goals. Has BOP submitted any annual reports to-date? When does BOP anticipate submitting the report for the current year?**

**Answer:** The BOP has not yet submitted an annual report. The first report will be prepared at the end of FY 2010 (to capture data on recidivism that occurs in 2010) and submitted in early FY 2011.



**20. Please provide a table detailing the funding proposed for fiscal year 2011 for each major program related to the Second Chance Act and inmate reentry. This structure of this table should mirror the table for these programs provided in BOP's fiscal year 2010 spending plan.**

**Answer:** FY 2011 Funding for Second Chance Act and Inmate Reentry related programs:

Program	Amount
BOP Inmate Skills Development	\$13,778,000
Drug Abuse Treatment	\$93,508,000
Psychology Services and Sex Offender Management	\$61,341,000
Education and Vocational Training	\$140,525,000
Life Connections Programs and Training	\$3,551,000
Residential Reentry Centers	\$294,214,000
Total	\$606,917,000

**21. What is the current average time spent by an inmate in an RRC, and how does that average compare to the annual averages for FY 2008 and FY 2009? What average time spent in an RRC is anticipated by the end of FY 2010 and by the end of FY 2011?**

**Answer:** The current average time spent by an inmate in RRC is 120.7 days (First quarter FY 2010). For FY 2008 the average was 113.5 days and for FY 2009 the average was 122.3 days. For FY 2010 and FY 2011, the BOP estimates average time spent by inmates in an RRC will be about 120 to 122 days.

**22. What would be the specific impacts on current activities of the proposed \$5 million reduction for the National Institute of Corrections?**

**Answer:** The National Institute of Corrections (NIC) provides training and technical assistance to federal, state and local corrections personnel for the purpose of preventing crime and recidivism. NIC also conducts and coordinates research that will inform the corrections field about offenders and assist in the formulation and dissemination of correctional policy.

In FY 2009, NIC spent \$11.0 million to train over 46,200 corrections professionals and advance the field of corrections. Of this amount, the agency spent \$6.3 million on training activities, \$3.1 million on providing technical assistance to support agencies, and \$1.6 million on research. The \$5 million program offset reduces NIC funding by approximately 25 percent. While NIC functions may not carry on in their current form, the Department continues to support state and local law enforcement and corrections programs through several grant, training and technical assistance programs managed by the Office of Justice Programs.

**23. For each level of facility security, what is the current per inmate cost to the Bureau of Prisons of incarcerating an inmate at a Bureau of Prisons facility?**

**Answer:** The FY 2010 per capita costs will be available in December 2010 or January 2011. The BOP prepares the per capita costs after the fiscal year closes and all accounting records are reconciled.

**24. What was the per inmate cost to the Bureau of Prisons of incarcerating an inmate at a Bureau of Prisons facility for each type of facility security level in fiscal year 2008 and in fiscal year 2009?**

**Answer:** Please see the attached per capita costs for FY 2008 and FY 2009.

FEDERAL PRISON SYSTEM  
PER CAPITA COSTS  
FY 2008

CLASSIFICATION LEVEL ALL SECURITY CLASSIFICATION	AVG DAILY POPULATION	OBLIGATIONS	ANNUAL COST	DAILY COST	SUPPORT COSTS	TOTAL DAILY COST
	194,697	4,602,763,528.30	23,651	64.62	436,523,735.66	78.75
Minimum Security	6,362	113,097,608.88	17,619	48.14	12,816,092.27	53.85
Low Security	27,231	571,170,105.60	20,975	57.31	65,311,928.41	63.86
Medium Security	44,602	963,216,415.68	21,598	59.01	110,141,483.09	65.75
High Security	7,036	179,365,209.66	25,040	68.47	20,166,938.03	76.30
Detention Centers	12,741	343,485,438.48	26,960	73.66	30,276,734.70	82.08
Administrative	4,408	114,959,901.50	26,081	71.28	13,145,274.21	79.41
Federal Correctional Complexes	48,402	997,621,053.83	21,489	56.74	114,075,570.82	65.46
Medical Referral Centers	11,100	539,618,339.39	48,524	132.58	61,889,713.13	147.74
Privately Operated Institutions	22,421	487,118,430.60	21,726	59.36		
Contract Community Corrections Ctrs	9,723	232,199,202.63	23,882	65.25		
Contract State and Local Institutions	2,579	65,914,821.73	25,558	69.83		

1-8-09  
DATE

APPROVED: *Harley G. Jupp*  
HARLEY G. JUPP  
DIRECTOR

FEDERAL PRISON SYSTEM  
PER CAPITA COSTS  
FY 2009

CLASSIFICATION LEVEL ALL SECURITY CLASSIFICATION	AVG DAILY POPULATION	OBLIGATIONS	ANNUAL COST	DAILY COST	SUPPORT COSTS	TOTAL DAILY COST
	203,490	5,036,810,256.48	24,751	67.81	508,483,894.82	74.86
Minimum Security	8,340	117,484,184.35	19,531	80.77	14,187,446.47	56.91
Low Security	28,731	617,443,824.21	21,491	59.88	74,609,947.59	65.81
Medium Security	44,939	1,820,058,787.10	22,898	62.19	123,280,856.15	69.51
High Security	10,578	303,123,980.11	28,656	76.51	36,828,598.82	87.75
Detention Centers	12,856	355,941,794.86	27,889	75.86	43,810,943.87	84.79
Administrative	4,330	117,631,860.03	27,171	74.44	14,214,294.87	83.20
Federal Correctional Complexes	48,088	1,104,317,530.15	22,873	62.94	133,442,433.54	70.36
Medical Referral Centers	11,684	572,001,679.59	48,857	134.13	69,118,975.32	149.93
Privately Operated Institutions	22,188	488,294,730.81	22,006	60.28		
Contract Community Corrections Ctrs	10,800	262,437,238.59	24,758	67.83		
Contract State and Local Institutions	3,177	78,065,568.68	24,575	67.33		

APPROVED: *Harley G. Lippin*  
HARLEY G. LIPPIN  
DIRECTOR

12/17/09  
DATE

**25. What is the current per inmate cost to the Bureau of Prisons of incarcerating an inmate at a private correctional facility?**

**Answer:** The FY 2010 per capita costs will be available in December 2010 or January 2011. The BOP prepares the per capita costs after the fiscal year closes and all accounting records are reconciled.

**26. What was the per inmate cost to the Bureau of Prisons of incarcerating an inmate at a private correctional facility in fiscal year 2008 and in fiscal year 2009?**

**Answer:** The average per capita cost to house an inmate in a privately operated institution in FY 2008 was \$59.36 per day, and in FY 2009 the cost was \$60.29 per day.

**27. When considering all cost factors, is the annual cost of incarcerating an inmate at a private correctional facility higher or lower than the annual cost of incarcerating an inmate of the same category in a BOP facility? Describe in detail the reasons for any difference in these annual costs.**

**Answer:** The majority of inmates housed in private prisons are low security male criminal aliens, with the exception of the Rivers Correctional Institution in Winton, NC, which houses primarily District of Columbia low security male offenders. While there are a number of differences between how each private contract facility is run and how they manage their operations, when compared to a BOP low security male facility, the major difference is the programming that is provided to inmates at BOP facilities which is not required in private facilities. U.S. citizen inmates, the majority of whom will be returning to our communities, are housed in BOP operated institutions which provide programs that focus on inmate skills development and reentry.

In FY 2009, the average daily cost to incarcerate a male low security inmate in a BOP facility was \$58.88 not including support costs or \$65.81 including full support costs, compared to \$60.29 in a private contract facility.

**28. How many additional correctional officers would be required to assign two officers to each housing unit at high security BOP institutions during the 2:00 to 10:00 shift?**

**Answer:** The BOP currently maintains two officers per housing unit at high security institutions with the exception of the Administrative Maximum (ADX) in Florence, Colorado, and Special Management Unit operation at USP Lewisburg, Pennsylvania. These exceptions have increased staffing levels due to their specialized missions. An additional 222 correctional officers above current levels would double BOP staffing during the 2:00 pm to 10:00 pm shift at 14 high security institutions.

**29. Is BOP planning to expand the number of correctional officers assigned to high security housing units in FY 2010 and FY 2011? If so, what is the associated end-of-year staffing goal for each fiscal year?**

**Answer:** Our response to this question is referenced in question 28; therefore, in FY 2010, the plan is to add 575 correctional workers to the base, and additional employees for activations. We anticipate that some of the new hires will be at high security facilities. For FY 2011, the President's Budget Request contains half year funding for an additional 1,200 correctional workers at existing institutions, including high security, and additional positions for activations.

**30. Describe BOP's policies and practices related to monitoring communications, including email and telephone calls, between inmates and family members or other non-inmate individuals. What security measures are in place to ensure that email communications do not contain information that could represent a threat to BOP staff, inmates, or other individuals?**

**Answer:** The BOP has a two phase approach to monitor inmate social communications (mail, telephone and electronic messaging). All inmate social communications are subject to random monitoring. Ordinarily, inmates who have a prior history of communications abuse, current offense involving communication, institution adjustment concerns, or intelligence provided by law enforcement are required to have 100 percent of their social communications monitored.

An email request generates a system message informing the recipient the message is coming from a federal prisoner. The recipient has the option to accept or block the inmate's request. Acceptance of the request sends notification to the recipient that consent is granted to have the Bureau monitor the content of the messages exchanged.

**Representative C.A. "Dutch" Ruppberger**  
**Questions for the Record**

**Prison Overcrowding**

Overcrowding in Federal prisons is a serious problem that has the attention of this subcommittee. Estimates are that BOP is operating at roughly 38 percent above its capacity for low-security prisoners. The cramming of prisoners into existing, over-utilized and deteriorating facilities is both a humanitarian issue and safety issue; overcrowding leads to an increase in violent assaults and prison rapes, and it places stress on correctional officers. There are several ways to address overcrowding, some of which are long-term strategies involving changing the way we sentence and rehabilitate prisoners. However, we also need to look at more immediate solutions to address the inadequate number of inmate beds, and we need to provide the budgetary resources for these solutions.

One area where BOP can make immediate progress is in the availability of contract facilities to house prisoners. However, BOP recently canceled a solicitation for low-security facilities to house about 4,000 criminal alien inmates. This is a huge step backward from the goal of reducing overcrowding. BOP should work with Congress to ensure that funding is available for such facilities.

1. **What are the specific steps proposed in the President's budget that would have an immediate impact on alleviating overcrowding in Federal prisons? What would be done to reduce overcrowding beyond what is proposed in the President's budget if BOP received an additional \$50 million, \$100 million, or \$200 million in funding to address overcrowding?**

**Answer:** The steps that are proposed in the President's budget to help accommodate the growing inmate population include:

- 1) Activation of FCI Berlin, NH (1,280 beds) and
- 2) Acquisition, Renovation, and Activation of the Thomson, IL Facility (up to 1,600 cells).

If BOP received an additional \$50 million above the request, BOP could procure approximately 2,000 contract beds for male low security criminal aliens to reduce crowding at this level. If BOP received an additional \$100 million, BOP could procure up to 4,000 contract beds. If BOP received an additional \$200 million, BOP could procure 4,000 contract beds and also pursue acquisition of a state or local facility for BOP's use. Acquiring contract beds is the most expeditious way to add capacity for the low security criminal alien population. The number of male criminal aliens classified as low security and currently housed in BOP operated institutions is approximately 10,300. These inmates could be placed in contract beds if funding is made available.



- 2. The BOP budget justification states: "Continuing to fund the low security contract beds helps to reduce crowding in BOP low security facilities." Please describe in detail how additional funding for low security contract beds would reduce overcrowding.**

**Answer:** BOP prisons are overcrowded, and are operating at 37 percent above rated capacity system-wide. As of April 1, 2010, BOP was responsible for a total of 210,667 inmates. BOP facilities housed 172,263 inmates with a total capacity of 125,868; and an additional 38,404 inmates are in contract facilities. Medium security level crowding is at 47 percent, high security level crowding is at 51 percent, and low security crowding is at 38 percent over rated capacity.

BOP does not have the capacity to house all male low security criminal aliens in BOP operated facilities and needs additional funding to acquire contract beds to manage overcrowding given the population increases thus far and the projected future growth.

The FY 2011 President's Request does not include funding to add additional low security private contract beds, and low security crowding is projected to reach 41 percent over rated capacity at that time. If BOP received an additional \$50 million above the request, BOP could procure about 2,000 contract beds which would reduce low security crowding to 34 percent by the end of FY 2011. With an additional \$100 million for this purpose, BOP could procure about 4,000 contract beds reducing projected low security crowding to 28 percent.

**Ranking Member Frank R. Wolf**

Questions for the Record

**Counterterrorism Unit**

- 1. Congress identified \$14.2 million in the FY10 appropriation for your Counterterrorism Unit. This office coordinates procedures and information related to your growing terrorist prisoner population. This had been funded out of supplemental bills in the past. Is this staff unit operating at full strength this year, and does your FY11 request continue full funding for these functions? What is the requested funding level for FY11?**

**Answer:** Yes, the Counterterrorism Unit is fully operational and funding of \$14.2 million continues in the base.

- 2. One of the responsibilities of this office is monitoring communications for all international and domestic terrorists held in BOP facilities. How many of your inmates are subject to this monitoring, in how many institutions, and what are the staff and other resource requirements for carrying out these measures?**

**Answer:** As of April 6, 2010, there are 236 International Terrorists (IT) and 113 Domestic Terrorists (DT) in BOP custody. The Bureau of Prisons classifies offenders with a "History of, or Nexus to, Terrorism" as "terrorists" to assist in our efforts to ensure the safety of staff and inmates, the security and orderly running of Bureau institutions, and the welfare of the community. The identification of such inmates allows us to provide enhanced monitoring of their communications and activities, thereby improving our efforts to detect, deter and disrupt radicalization. All inmates provided an IT or DT assignment have 100 percent of their social communications monitored. The inmates with a DT group assignment are housed in 58 separate facilities, and inmates who have an IT assignment are housed in 80 separate facilities. Each Bureau facility has an office entitled Special Investigative Supervisor (SIS) responsible for conducting inmate investigations and collecting inmate intelligence. The staff assigned to the SIS Office is responsible for the monitoring of inmate social communications. The Counter Terrorism Unit (CTU) currently has 19 Intelligence Analysts and 1 Supervisory staff. At present, CTU Intelligence Analysts monitor the communications of 136 inmates.

- 3. What are the primary challenges these prisoners present for the management of your institutions? Does the Bureau participate in the National Joint Terrorism task force and other interagency counterterrorism entities? What role does the Bureau play in these interagency efforts?**

**Answer:** The primary challenges these inmates present are to prevent spread of terrorism and extremist ideologies within U.S. prisons. The BOP has effectively managed inmates with ties to terrorism for over a decade. The most dangerous

terrorists are housed under the most restrictive conditions at the Administrative Maximum Security facility in Florence, Colorado. Other inmates with ties to terrorism are confined at the Communications Management Units or in federal prisons around the country, depending on their individual circumstances.

The BOP plays a leadership role in the Correctional Intelligence Initiative (CII), a nationwide project of the National Joint Terrorism Task Force (NJTTF). The BOP has employees assigned to the NJTTF who coordinate the exchange of intelligence related to corrections and manage the CII, a national project to detect, deter, and disrupt radicalization and recruiting of inmates in federal, state, and local correctional agencies.

### **Gangs**

- 4. Your testimony indicates that one out of every four inmates at high security institution is gang-affiliated. Is this an increase from previous experience? Please provide any statistics you have showing trends over time.**

**Answer:** A review of the Security Threat Group (an inmate group, gang, or organization acting in concert to promote violence, escape, drug, or terrorist activity) affiliated inmates housed at high security level institutions for calendar years 2006 thru 2009 revealed the following:

December 2006 - 25.82%,  
December 2007- 28.30%  
December 2008 - 30.90%  
December 2009 - 28.57 %

- 5. What do you think is driving this increase in gang-affiliation and what are the implications of prolific gang affiliation for managing your high security institutions?**

**Answer:** As of August 19, 2009, the Sacramento Intelligence Unit has assumed the duties of validating all Security Threat Group (STG) inmates. This duty had previously been the responsibility of all BOP institutions. The centralized validation process is currently on-going and we will evaluate all gang activity and trends by January 2011. In addition, gangs are routinely conducting criminal activity in all 50 states and U.S. territories. The Department is engaged in many initiatives within the law enforcement community to combat the concentration and proliferating of gangs in urban and rural areas. Therefore, the arrest and conviction of gang members committing federal offenses and entering BOP will continue to remain constant.

Additionally, the following significant issues could develop if prolific gang-affiliation continues:

- Increase in violence, (staff and inmate assaults) as inmates battle for control, and power.
- Increased number of inmates designated to and housed in special housing units (SHUs). This is due to the increase in incidents and other inmates not wanting to be part of the gang. Also STG inmates in bad standing will seek protective custody.
- Medical Care expenses will rise due to incidents.
- STG vs. STG conflicts due to regional or institution incidents.
- Notable changes (prison demographics) in the daily activities of an institution as the more powerful gang attempts to overpower other gangs.
- Race incidents could increase due to battle for power.
- An increased possibility for compromised staff as further proliferation of gangs allows those groups to increase their wealth, influence and ability to offer bribes compared to the average inmate.

**6. Does the Bureau of Prisons participate in the National Gang Intelligence Center, and on Safe Streets Task Forces throughout the country?**

**Answer:** The BOP has one full-time staff member assigned to the National Gang Intelligence Center (NGIC), and one full-time staff member assigned to the Gang Targeting Enforcement Coordination Center (GangTECC). There is also 21 staff assigned at various locations across the country who work on Safe Streets Task Forces.

**Thomson Correctional Facility**

**7. You are seeking additional funding in your Buildings and Facilities account, not to build a new Federal prison, but to acquire an existing State facility, the Thomson Correctional Facility in Illinois. When was the last time you acquired an already-built prison rather than built a new one?**

**Answer:** Throughout the history of the BOP, the agency has acquired former military installations, college campuses, and a seminary. Several of these locations included existing buildings which required extensive renovations and security enhancements in order to provide suitable housing for low and minimum security inmates. Please note the BOP did acquire the U.S. Disciplinary Barracks (DB) in Lompoc, California in 1959 and modified and converted the DB to U.S. Penitentiary Lompoc, now a medium security institution.

**8. When was the Thomson facility built? And what is its current condition?**

**Answer:** Construction of the Thomson Correctional Center was completed in November 2001. The facility has been well maintained, but will require some repair to the existing infrastructure as it has been sitting vacant for nine years. In addition, security enhancements will be included in the renovation to meet the Bureau's standards.

**9. Was it ever operational as a State facility? Why not?**

**Answer:** The secure (high security) Thomson Correctional Center was never operational as a State facility. However, the State has been operating a 200 bed minimum security camp that is adjacent to the secure facility. According to state officials, the State did not have adequate funding to open and operate the high security facility.

**10. How much are you requesting to purchase the facility? Have negotiations already concluded as to what the purchase price would be?**

**Answer:** The President's FY 2011 request for the BOP includes \$170 million for the purchase and renovation of the Thomson Correctional Center. The Bureau is in the process of completing several necessary steps to include an Environmental Assessment, appraisals, survey, and title work. All of these steps must be completed prior to beginning negotiations with the State for the purchase price of the facility.

**11. I understand that the plan represented in the President's budget would involve you sharing the facility with the Department of Defense so that they could house Guantanamo detainees there, and perhaps even conduct military commission trials there. Is the DOD also requesting appropriations to pay a commensurate share of the costs of purchasing the facility? And if not, why not?**

**Answer:** The FY 2011 President's Budget requests \$170 million for the BOP to purchase and renovate the Thomson Correctional Center. The Bureau is in the process of completing several necessary steps, including: an Environmental Assessment, appraisals, survey, and title work. All of these steps must be completed prior to beginning negotiations with the State to purchase the facility. The BOP intends to purchase the facility independent of the decisions for possible use by the Department of Defense; the BOP's funding request applies only to the use by the BOP.

**12. What agencies/officials participated in selecting this facility, and in negotiating with State and local authorities about the terms?**

**Answer:** Actually the BOP was contacted about this facility in 2004, but was not interested since it was offered as a facility for lease (vs. purchase). Representatives from the BOP subsequently visited the site and toured the facility and determined that the institution was suitable to meet the needs of the BOP and provide much needed high security bed space. The negotiations and establishment of purchasing terms will not occur until the BOP completes National Environmental Policy Act (NEPA) compliance, title search and appraisals have been submitted.

- 13. In addition to the purchase price, you are also requesting funding to renovate the facility. How much are you seeking for that, and could you describe the extent of the renovations needed?**

**Answer:** The FY 2011 President's Budget requests \$170 million for the BOP to purchase and modify the Thomson Correctional Center. At this time, the extent of the renovations will be determined by the amount of money that is remaining once a purchase price is established. Some renovations such as security enhancements are necessary to bring the institution into compliance with federal prison standards.

- 14. Is DOD requesting separate appropriations for the modifications and renovations for their envisioned portion of the facility? How much are they asking for?**

**Answer:** The BOP is unaware if funding has been requested for Thomson in the Department of Defense's (DOD) FY 2011 Budget request.

- 15. After the Thomson facility would be purchased and renovated, it would then be activated. Are you seeking additional BOP funding to begin activation in FY11? If so, how much?**

**Answer:** The BOP is requesting \$66.879 million in FY 2011 to begin the activation process of Thomson, IL, facility.

- 16. Does that represent the total activation costs, or would there be additional activation costs for Thomson that you would have to request in FY12?**

**Answer:** There will be additional costs in FY 2012 to complete the activation of the facility. The full activation cost for the Thomson facility (1,600 cells) is estimated at \$122 million.

- 17. 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. Your testimony also raised a special concern about the current crowding rate at high security institutions. What is that crowding rate? What does it mean for staff and inmate safety? And can you help the Committee to understand the impact that would be made on this problem by having the additional bedspace at Thomson or elsewhere?**

**Answer:** There will be additional costs in FY 2012 to complete the activation of the facility. The full activation cost for the Thomson facility (1,600 cells) is estimated at \$122 million.

**18. Given the controversy around the Thomson acquisition, what other solutions are you pursuing to reduce high security crowding?**

**Answer:** The BOP, through its capacity planning process, considers a range of alternatives to address current and projected crowding. Providing for the safe, secure, and humane confinement of persons in the custody of the Federal Prison System is a strategic goal of the Department of Justice, and a supporting outcome goal is to ensure sufficient and cost-effective prison capacity. BOP's strategy to attain this objective includes acquiring needed capacity through a combination of contracts with private providers; increasing use of community corrections; expansion of existing facilities where infrastructure permits; acquisition and renovation of existing structures; and new prison construction. The priority for any new construction and acquisition funding must be focused on medium and high security facilities because these house the most violent offenders and are the most overcrowded.

**Overcrowding/Inmate-to-staff ratios**

**19. Your testimony makes reference to current crowding rates and inmate-to-staff ratios. Congress has given you substantial S&E increases the past two years, and has also funded the construction of several new facilities some of which are being activated now?**

**Answer:** Please see answer to question number 20.

**20. What has been the improvement, if any, of these additional resources on crowding and inmate-to-staff ratios, and how do current statistics compare with the levels you feel are necessary to run a secure and effective corrections system?**

**Answer:** Continuing increases in the inmate population pose substantial ongoing challenges for BOP. In FY 2009, a net growth of 7,091 new inmates was realized, and net growth of 7,000 inmates is projected for FY 2010.

During FY 2009, BOP achieved a net increase of 775 staff across the agency, and through March 13, 2010, BOP realized a net increase of 360 staff, for a total staffing increase of 1,135 during the past 18 months. The FY 2010 operating plan should allow us to increase the total number of staff on-board this year by about 925, including staffing for new institution activations.

Even with the additional resources which Congress provided to BOP, the overall crowding of 36 percent system wide at the end of FY 2008 increased to 37 percent at the end of FY 2009 and is projected to increase to 40 percent by the end of FY 2010. Further, inmate to staff ratio which was 4.86 to 1 at the end of FY 2008 increased to 4.94 to 1 at the end of FY 2009 and is projected to increase to 4.98 to 1 by the end of FY 2010. However, if the funding levels

requested in the FY 2011 President's Budget are enacted, BOP projects the ratio will be reduced to 4.83 in FY 2011.

After the full implementation of FY 2011 funding initiatives (increase staffing, new activations), BOP will be in a better position to evaluate current statistics regarding violence in prisons, lock downs etc. which will give BOP guidance as to how to proceed further.

### **Prison Rape Elimination**

**21. The BOP and the National Institute of Corrections are responsible for assisting State and local systems on prevention, investigation and punishment. Can you describe some of the training and services you are providing, and does your request for FY11 include sufficient funding to carry out these responsibilities?**

**Answer:** Since 1997, the National Institute of Corrections (NIC) has provided training and technical assistance to federal, state and local corrections personnel for the purpose of preventing crime and recidivism. NIC also conducts and coordinates research that will inform the corrections field about offenders and assist in the formulation and dissemination of correctional policy. For example, the NIC has provided assistance to correctional agencies addressing the issue of staff sexual misconduct. The FY 2011 Budget allows NIC to continue responsibilities mandated by section 5 of the Prison Rape Elimination Act (PREA) of 2003. Section 5 charges NIC with providing information and assistance to federal, state, and local authorities regarding the prevention, investigation and punishment of prison rape. This is accomplished through the establishment of a national clearing house and the provision of education, training and technical assistance services. With the implementation of the PREA Initiative, offender on offender sexual abuse and assault became a targeted focus area for NIC. To reflect the applicability of the law, NIC's PREA target audience broadened to include greater numbers of juvenile and community corrections practitioners, plus operators of privately operated facilities.

Building on the previous decade's staff sexual misconduct work, NIC began planning for, and has continuously delivered PREA related services and materials since December 2003. The following summarizes those efforts.

- Training
- Technical Assistance
  - NIC delivers five basic types of technical assistance: information dissemination, training development and delivery, policy review, systemic planning assistance, and assessment and intervention. To



date NIC has delivered over 225 technical assistance events and services.

- Assistance Materials
  - Video Materials: NIC has used a variety of strategies to deliver information about PREA. One of the most used is the development of "stand-alone" video productions. NIC has developed and delivered five video's targeted to specific audiences. Each is accompanied by a facilitator's guide and supporting training materials. NIC has also presented 3 video conferences and a live, 2-hour town hall broadcast focused on PREA.
  - Written Materials: In addition to training curriculum packages, PREA has resulted in numerous products being generated, including: (1) 50 State Survey of Criminal Laws Prohibiting the Sexual Abuse of Individuals in Custody, (2) Breaking the Code of Silence: Correctional Officers Handbook on Identifying and Addressing Sexual Misconduct, and (3) Anti-fraternization Policies in Community Corrections: A Tool to Address Staff Sexual Misconduct in Community Correction Agencies.

The FY 2011 Budget proposes \$5 million reduction to the NIC's budget, which reflects approximately a 25 percent reduction to the NIC budget.

**22. From a BOP standpoint, do you see any obstacles to the prompt implementation of the measures that were recommended by the Commission?**

**Answer:** The BOP has long recognized that sexual abuse in correctional facilities is a serious issue that must be addressed in order to maintain safe and secure institutions, and to avoid the devastating effects of such abuse on offenders placed in our custody. The BOP supports the goals articulated in the Prison Rape Elimination Act (PREA). The Commission proposed several standards applicable to adult prisons and jails, community corrections, lockups, and juvenile facilities. There are standards that are consistent with the BOP's current policies and practices; however, there are standards which would require change to the agency's operations. The Department's PREA working group is looking at the impacts of the proposed standards on the BOP, as well as on the operations of security of state and local correctional systems.

**Federal Prison Industries**

**23. Your testimony indicates that only 11% of your work-eligible inmate population is able to participate in this program. How does that compare with past levels?**

**Answer:** A comparison of the percentage of inmates participating in the Federal Prison Industries correctional program is as follows:

<u>Fiscal Year</u>	<u>Participating in the FPI program</u>
FY 2009	11%
FY 2008	13%
FY 2007	14%
FY 2006	13%
FY 2005	12%
FY 2004	13%
FY 2003	14%
FY 2002	16%
FY 2001	17%
FY 2000	17%
FY 1990	24%
FY 1980	26%

**24. FPI had to close factories and lay off staff last year. How many operations were closed or downsized? And how many staff were affected?**

**Answer:** In FY 2009, closure and realignment efforts were initiated that impacted 19 FPI factories, 8 of which were closed. A total of 105 staff and 1,700 inmate positions were affected.

**25. Your testimony mentions the possibility of further closures this year. When will you be completing this evaluation, and can you assure us that you will report any such plans in advance to the Committee?**

**Answer:** This evaluation is ongoing and will likely take a few months before any additional decisions regarding closures are made. The BOP/FPI will provide notice to the Committee if any actions are taken regarding additional closures.

**26. Your testimony states that there are some remaining staff placement issues with the actions taken last year. What are those issues, how many are affected, and what is the desired solution for placing them?**

**Answer:** There are six FPI employees remaining who still need to be placed. Each of these employees has been offered an alternative position within the BOP, and we are awaiting confirmation of their acceptance.

**Re-entry: Faith-Based and Community Programs**

- 27. The FY10 bill included a major investment in prisoner re-entry programs. The Committee also included language in the FY10 bill directing you to convene an independent panel to make recommendations for options for the development of prisoner re-entry programs, including options related to the role of faith-based and community programs. Could you bring us up to date on your actions so far to carry out this language, and share with us some of your ideas for how this group might be able to contribute to your development of more effective reentry programs?**

**Answer:** A day-long panel of independent reentry experts was convened by the BOP on March 15, 2010. Experts included Dr. Edward Latessa (University of Cincinnati), Dr. Roger Jarjoura (Indiana University/Purdue University-Indianapolis), and Mr. Steve McFarland (World Vision, formerly of Prison Fellowship). A social scientist from the National Institute of Justice was also scheduled to participate, but was unable to attend. Also in attendance were numerous BOP Assistant Directors and Administrators who directly oversee the BOP's national reentry programs. This included representatives from Psychology Services (to include substance abuse and residential treatment), Education and Recreation Services (to include vocational training), Religious Services, Community Correction and Detention Services, Reentry Affairs, and the Office of Research and Evaluation. The independent experts provided detailed presentations outlining current empirical data on reentry, as well as their practical experience with applied programming across a variety of correctional settings and populations. Following the presentations, the independent panel responded to BOP-specific questions regarding design, administration, and evaluation of reentry programming.

Work of the Independent Panel on Reentry has been instrumental in highlighting areas of strength, as well as providing a roadmap for continued improvement. The BOP emphasizes the use of cognitive-behavioral, structured learning models of evidence-based programming in many components of reentry strategy, and will continue to expand that standard to existing and developing programs as the BOP moves forward. In addition, the BOP will continue their practice of empirical evaluation of those evidence-based programs to ensure program fidelity and targeted program outcomes.

The BOP will examine current and future programming to ensure the emphasis on criminogenic need reduction is maximized. In addition, the BOP will examine current and future programming with respect to recidivism risk and treatment dosage (e.g., high recidivism risk inmates require a higher 'dosage' of structured learning programming). This strategy is already in place in many of BOP's cognitive-behavioral programs (i.e., residential and non-residential drug abuse programming, trauma treatment programming, challenge programming for high

security offenders, and sex offender treatment programming). Similarly, the BOP is aware of the research indicating the negative effects of exposing low recidivism risk offenders to programming that could inadvertently increase their recidivism risk, and the BOP is currently applying that knowledge to program models.

The BOP will continue to focus current and future programming on areas beyond mere offending as appropriate (e.g., employability, education, and parenting) to assist with desistance, and will continue to emphasize reentry transitional relationships through the existing mentoring program. To further this goal, the Inmate Skills Development and Religious Services programming will continue to seek and support community partnerships that include faith-based community resources to facilitate mentoring and reentry support.

The reentry panelists have extensive knowledge and experience in the empirical, theoretical, and practical issues surrounding inmate reentry. The BOP is grateful to the panelists for their willingness to present this important work, and to assist the BOP to continue the critical mission of successful inmate reentry to the community.

**28. The language called for a report within 120 days. Do you believe you will be able to meet that timeframe? If not, when do you expect the Committee will see the recommendations of this panel?**

**Answer:** On March 15, 2010, the Bureau of Prisons convened an independent panel to make recommendations for future options for the development of prisoner reentry programs. The Department of Justice transmitted the congressional report on May 4, 2010.

**29. Some of the most promising programs for reintegrating prisoners are ones that are based on the prisoner's religious faith. You have a multi-faith residential program called Life Connections. You provided a report for the record at last year's hearing. Can you remind the Committee how this program works, and bring us up to date with how many have graduated, and update any conclusions you have been able to draw about impacts on recidivism and program success?**

**Answer:** The mission of the Life Connections Program (LCP), which was established in 2002, is to contribute to an inmate's personal transformation and reduce recidivism. The LCP is an 18-month residential multi-faith-based, reentry program designed for inmates at various security levels. The program is open to inmates of all religious faiths and inmates with no religious leanings. Participants address critical areas of their life in the context of their personal faith or value system. The LCP is currently underway at FCI Petersburg, VA; USP Leavenworth, KS; FCI Milan, MI; USP Terre Haute, IN; and FMC Carswell, TX.

As of April 2010, 1,240 inmates have graduated from the LCP. A recidivism study regarding the effectiveness of the LCP is currently underway. A sufficient number of program participants and comparison subjects have not been in the community long enough to compile recidivism data. However, a study conducted by BOP's Office of Research and Evaluation demonstrated that participants in the LCP significantly lowered the probability of engaging in serious forms of institutional misconduct.

**30. I understand that you also have another, shorter-term "Threshold" program for inmates who are closer to release. Could you also update the Committee on how that program is helping prisoner reentry?**

**Answer:** The Threshold Program ("Threshold") is a condensed version of the Bureau of Prisons' Life Connections Program. Threshold is an institution based, six to nine month non-residential program for inmates preparing for reentry. It is designed for inmates not eligible for the Life Connections Program due to sentence length. The program is comprised of three phases: Orientation; Personal Growth and Development; and Relationships. The program is designed to strengthen inmate re-entry into the community and reduce recidivism. Participants in this program explore and evaluate life skill areas from the perspective of their religious traditions or personal value system. Inmates use personal interactive journaling, goal setting and group assignments which assist them with the completion of a reentry plan during the program. Forty-six institutions are offering the Threshold Program in FY 2010 with over 700 participants.

**31. Does your FY11 budget request include funds to continue these faith-based programs? What are the amounts compared with FY10?**

**Answer:** Both the FY 2010 and FY 2011 budgets assume funding in the amount of \$3.551 million for the Faith Based Programs.

**Modernization and Repair**

**32. I understand that you recently provided, in response to Committee questions, estimates of M&R needs by region. Those needs totaled over \$1 billion. In the face of such need, what does an annual budget of \$74 million allow you to do? What are the resulting impacts a) on maintaining a safe and productive environment for staff and inmates; and b) protecting the public's investment in the BOP infrastructure?**

**Answer:** Each fiscal year, BOP institution staff performs detailed annual inspections of their physical plants, and regardless of project cost, provides a project list to their regional office for items in need of repair/modernization. The six regional offices individually consolidate and prioritize major M&R project request lists (typically those over \$300,000) from their institutions and forward the

priority lists to the Central Office. Each regional office receives a small allocation of the available M&R funding to address the most critical minor projects (projects less than \$300,000) at institutions within their region.

Once the M&R funding level is determined each fiscal year, the highest priority major projects that are most ready for contract action are considered for funding. Security and Safety projects are identified first for funding, with other infrastructure needs following. BOP then allocates funds, based on the priority list, for as many projects as practical. The regional offices perform a similar process in allocating funding for minor projects.

Faced with limited funding to meet the increasing needs to repair failing infrastructure, BOP continues to use available M&R funds to the fullest extent possible. An annual budget of \$74 million addresses approximately 20 major projects a year (e.g., Fence, Roofs, HVAC, and Fire Alarms) and replaces some built-in equipment for Food Service, Laundry and Communications. In addition, many projects requiring replacement may instead have to be "patched up" until funding becomes available. BOP does its best with provided resources to protect the public's investment in BOP's infrastructure.

**Representative Robert B. Aderholt**

## Questions for the Record

1. **I understand that the BOP is limiting time to 6 months the amount of time for individuals to spend at a halfway house, even though the authorization in the Second Chance Act is for 12 months. Why is this happening? I understand that BOP officials have stated that it is cheaper to keep an inmate in a minimum security facility than at a halfway house. Is that correct? And if so, what evidence do you have for this? At a halfway house, the individuals are required to work or be looking for work, pay taxes, learn work-related skills, pay child support, etc. and a quarter of everything they earn goes to pay for their own support at the house. This also frees up beds that are needed for new inmates.**

**Answer:** After passage of the Second Chance Act, guidance was issued instructing staff in our institutions to consider all inmates for Residential Reentry Center (RRC) placements of up to 12 months, with the proviso that placements of more than 6 months would require an additional layer of review and approval by a Regional Director.

Since enactment of the Second Chance Act, the average daily population in RRCs and home detention has increased from 9,627 (April 2008) to 10,845 (January 2010). The average length of stay in community-based programs has increased from 114 days (second quarter FY 2008) to more than 120 days in FY 2009.

One impediment to increasing RRC beds is that most communities do not want these facilities. If we already have services in a community, we are usually being allowed to replace them when a contract expires...but not expand them. It has been nearly impossible to establish new services in communities where we do not have a contract with an RRC and need one. The bed space availability for RRCs will continue to be limited and BOP's challenge will be to ensure that we are making the best possible use of what we have.

The goal of BOP's RRC program is to reduce recidivism, and we continue to study the research that has been conducted on RRCs to help guide our policy and practices in this area. In accordance with Second Chance Act, we make individualized determinations about RRC placements and attempt to place those inmates at greatest risk for recidivism in RRCs for longer periods than low-risk inmates.

Yes, it is correct that it costs BOP more to keep an inmate at an RRC than at a minimum- or low-security BOP institution. This is illustrated by the following per capita figures for FY09:

Minimum security: \$56.91

Low security: \$65.81  
RRC: \$67.83

The per capita figure for RRCs reflects the BOP's actual cost. In addition, contractors receive the subsistence payments that inmates in RRCs make (typically 25% of their gross income). It is important to note, however, that our RRC contractors help inmates establish a financial plan. If child support or other court-ordered obligations are required, we often reduce or waive subsistence payments. The per capita figure for RRCs does not take into account taxes or other ways in which inmates' earnings may affect their communities or their families' well-being.

A strict cost comparison between BOP facilities and RRCs does not take into account that BOP contracts with RRCs to provide a very specialized service, i.e., an evidence-based reentry program designed to reduce recidivism. If we use RRCs effectively to lower recidivism, make our communities safer, and reduce the number of new victims, the long-term effect may be well worth the cost.

2. **I understand that the BOP has prohibited mentors from keeping a relationship with their mentee when released from the prison due to a non-fraternization rule, in spite of the Second Chance Act which requires these mentoring relationships be maintained. I also understand that a yet-unpublished proposed rule from your agency indicates that these mentoring relationships can only be maintained by inmates within the Life Connections program. The Second Chance Act, however, states that all released prisoners are to be allowed to maintain these mentoring relationships.**

**Answer:** In accordance with the Second Chance Act, the BOP allows all mentors to maintain a professional relationship with mentees following release from prison. Currently, the BOP uses mentors in the Life Connections Program. The BOP has provided training for Life Connections mentors and BOP staff that included information concerning the ability to provide post-release mentoring services. Providing such post-release mentoring services is also stipulated in BOP policy.

There is no Federal regulation, published or unpublished, that would limit mentoring to just the Life Connections Program. In fact, the BOP is currently working on a proposed policy on volunteer and citizen participation that would add mentors as a category of volunteers who would assist inmates with their reentry needs, among several significant changes. The new policy would include guidance to volunteers who may mentor inmates in programs other than Life Connections and would ensure that these mentors are permitted to provide mentoring services to ex-inmates if the mentor provided such services to the ex-inmate while he or she was incarcerated.



- 3. What percentage of the inmates who are in need of drug and alcohol treatment receive it while in the custody of the BOP? If it is not 100%, is the problem an unwillingness on the part of the inmates, insufficient funds, or something else?**

**Answer:** The BOP is mandated by the Violent Crime Control and Law Enforcement Act of 1994, to provide residential drug abuse treatment to all inmates who volunteer and are eligible for the program, subject to the availability of appropriations.

In FY 2009, the BOP provided residential drug abuse treatment to 100 percent of the federal inmate population eligible for treatment. In FY 2007 and FY 2008 the BOP was not able to provide residential drug treatment to 100 percent of eligible inmates prior to their release from the BOP's custody due to funding constraints. In FY 2008, the BOP provided residential drug abuse treatment to 93 percent of eligible inmates and in FY 2007, the BOP provided residential drug abuse treatment to 80 percent of eligible inmates before their release from custody.

The increase in the treatment rate to 100 percent in FY 2009 was due in part to an in-house expansion of drug treatment programming funded from within the enacted appropriation level, and more than 3,000 early releases that occurred in FY 2008 due to the change in the U.S. Sentencing Commission sentencing guidelines to retroactively reduce sentences of inmates convicted of crack cocaine offenses.

- 4. What can you tell this Subcommittee about the status of reviewing the recommendations offered in the National Prison Rape Elimination Commission's report? Do you expect that the Department will meet the June 23, 2010 deadline for issuing the new standards?**

**Answer:** Implementing national standards to address sexual abuse in correctional settings is a priority for the Department of Justice. In addition to submitting proposed national standards, the National Prison Rape Elimination Commission made several recommendations, which the Department has acted upon promptly. The Attorney General established an advisory committee (or Working Group), as recommended by the Commission, to assist in the promulgation of Prison Rape Eliminate Act (PREA) standards. The PREA Working Group is comprised of representatives from thirteen Department offices, plus the Department of Homeland Security. The Attorney General also designated a Senior Counsel within the Office of the Deputy Attorney General to monitor and coordinate the Department's PREA implementation efforts, as the Commission recommended.

The Department is also acting upon the Commission's other recommendations. The Office on Violence Against Women is overseeing the development of a corollary to the 2004 National Protocol for Sexual Assault Medical Forensic

Examinations that is customized to the conditions of confinement, pursuant to the Commission's recommendation that the Department sponsor the development of a national protocol tailored to correctional settings. In keeping with the Commission's recommendation, the Office of Victims of Crime also intends to modify existing regulations to allow states to use Victims of Crime Act formula funding for treatment and rehabilitation services for incarcerated victims of sexual abuse.

With respect to the Commission's recommended national standards, the PREA Working Group meets regularly and is finishing an in-depth review of each of the Commission's proposed standards. PREA prohibits the Department from promulgating standards that impose "substantial additional costs compared to the costs presently expended by federal, state, or local prison authorities." To better evaluate potential costs, the Office of Justice Programs awarded a contract in September to an independent consulting firm, Booz Allen Hamilton, to assess the costs of each of the recommendations. The Department expects Booz Allen to submit cost estimates in June 2010. To make the best use of the intervening time until this study is completed, the Department issued an Advanced Notice of Proposed Rulemaking (ANPRM) on March 10, 2010 to solicit public comment on the Commission's recommendations and to seek input on specific questions posed by the PREA Working Group.

The timing of the final rule is difficult to estimate given the inherent uncertainty of the regulatory clearance process. After the Working Group analyzes the cost study and reviews the public comments received in response to the ANPRM, it will draft a proposed rule for the Attorney General's approval. The Department will then submit its proposed rule to the Office of Management and Budget (OMB) for clearance. Following such clearance, the Department will publish the proposed rule in the Federal Register. After receiving and reviewing public comments on its proposed rule, the Department will submit to OMB a final rule, which will be published upon OMB clearance.

In sum, although the Department will not be able to meet Congress's one-year deadline, we can assure you that the Department is working expeditiously to promulgate national standards that will prevent, detect, and punish the unacceptable crime of prison rape. Furthermore, the Department is working to ensure that, once implemented, the standards are successful.

**5. What steps would you recommend on the part of state and federal government actions to cause more facilities to adopt the successful rape-prevention programs, noted in the report, which have been implemented at some institutions?**

**Answer:** The Department of Justice has long recognized that sexual abuse in correctional facilities—at federal, state and local levels—is a serious issue that must be addressed in order to maintain safe and secure institutions, and to avoid

the devastating effects of such abuse on offenders placed in custody. The Department supports the goals articulated in the Prison Rape Elimination Act (PREA) and is working expeditiously to promulgate national standards that will prevent, detect, and punish the unacceptable crime of prison rape.

The Commission proposed several standards applicable to adult prisons and jails, community corrections, lockups, and juvenile facilities. The Department also appreciates that many of these standards would require changes in operations. The impacts of the proposed standards on the federal, state and local correctional systems, in terms of operations, security, and resources first need to be assessed before the Department can recommend actions or incentives to encourage more correctional systems to adopt successful rape-prevention programs.



WEDNESDAY, MARCH 18, 2010.

**AMERICAN FEDERATION OF GOVERNMENT  
EMPLOYEES—COUNCIL OF PRISON LOCALS**

**WITNESSES**

**BRYAN LOWRY, PRESIDENT, COUNCIL OF PRISON LOCALS, AFGE, AFL-CIO**

**PHIL GLOVER, NATIONAL LEGISLATIVE COORDINATOR, COUNCIL OF PRISON LOCALS, AFGE, AFL-CIO**

**OPENING STATEMENT—CHAIRMAN MOLLOHAN**

Mr. MOLLOHAN. The hearing will come to order. Well good afternoon. I would like to welcome Mr. Bryan Lowry, the President of AFGE's Council of Prison Locals, and Mr. Phil Glover, the National Legislative Director for the Council of Prison Locals, to our hearing this afternoon on major challenges facing the Federal Bureau of Prisons.

We have asked you to come back again to testify this year because your perspective from the inside of the federal prisons is critical for us to understand as we make funding decisions about the federal prison system.

The Subcommittee has worked hard over the last few years to provide funding increases above the President's budget request to ensure that the Bureau of Prisons would be able to meet its basic operating expenses and would be able to significantly increase its staffing levels. Although the staffing levels are not yet what they need to be, we are committed to keep pushing them higher.

There are many other challenges facing the Bureau of Prisons, including an inmate overcrowding rate that has reached 37 percent, a growing facility maintenance backlog, and an inmate population that by most accounts is becoming more violent and more difficult to manage. We will want to discuss these and other issues with you this afternoon. In a moment, gentlemen, I will ask you each to provide remarks summarizing your joint written statement, which will be made a part of the record. But first I would like to recognize Mr. Wolf for any opening introductory remarks that he would like to make.

Mr. WOLF. I welcome you to the Committee. I have no comments. Thank you, Mr. Chairman.

Mr. MOLLOHAN. Gentlemen.

**OPENING STATEMENT—WITNESSES**

Mr. LOWRY. Chairman Mollohan, Ranking Member Wolf, and members of the Subcommittee. My name is Bryan Lowry. I am the President of the Council of Prison Locals, American Federation of Government Employees. Here with me today is Phil Glover, who is

the Council's Legislative Coordinator for the Council of Prison Locals AFGE. On behalf of the over 38,000 federal correctional workers who work at 115 institutions in the Bureau of Prisons nationwide, we want to thank you for the opportunity that you have given us today to testify on various Bureau of Prisons issues that are critically important to the safety and security of federal correctional workers and the local communities surrounding the federal prisons.

BOP prisons have continued to be increasingly dangerous places to work, primarily because of serious correctional understaffing and prison inmate overcrowding problems. 340 inmate on staff assaults have occurred at various Federal prisons since the brutal murder of correctional officer Jose Rivera on June 20, 2008, by two inmates at the United States Penitentiary in Atwater, California. These aggressive acts by inmates against staff illustrate a common reality facing the staff daily at their workplace. In addition, Bureau of Prison correctional workers have become increasingly demoralized because of the lack of necessary funding for correctional staff positions, staff training, warranted equipment, and programmatic tools that would improve the safety and security of BOP prisons. As well as the adoption by BOP management beginning in 2005 of the Mission Critical Post policy, a cost reduction strategy involving substantial cuts in correctional worker positions. This policy resulted in decreased staff supervision of inmates, including decreasing staff supervision of inmates in housing units, inmate recreation areas, inmate work details, as well as unmanning prison towers.

At the same time, I sincerely hope that you and your staffers know how much we appreciate your active efforts on behalf of our staff during the past few years. I particularly want to thank you for all the work that this Committee has done to help us increase the budgets and the salary and expense account for the Bureau of Prisons.

I am willing to answer any questions you may have after that. Thank you.

[The information follows:]

**American Federation of Government Employees,  
AFL-CIO  
80 F Street, NW  
Washington, D.C. 20001**

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**STATEMENT OF**

**BRYAN LOWRY, PRESIDENT**

**AND**

**PHIL GLOVER, LEGISLATIVE COORDINATOR**

**OF THE**

**COUNCIL OF PRISON LOCALS**

**AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES**

**AFL-CIO**

**BEFORE THE**

**SUBCOMMITTEE ON COMMERCE, JUSTICE, and SCIENCE**

**HOUSE COMMITTEE ON APPROPRIATIONS**

**ON**

**FEDERAL BUREAU OF PRISONS**

**MARCH 18, 2010**

Chairman Mollohan, Ranking Member Wolf, and Members of the Subcommittee –

My name is Bryan Lowry. I am the President of the Council of Prison Locals, American Federation of Government Employees (AFGE). Here with me today is Phil Glover, who is the Legislative Coordinator for the Council of Prison Locals, AFGE. On behalf of the over 35,000 federal correctional workers who work at 115 Bureau of Prisons (BOP) correctional institutions, we want to thank you for the opportunity to testify today on various BOP issues that are critically important to the safety and security of federal correctional workers, federal prison inmates, and the local communities surrounding federal prisons.

### ***Summary***

BOP prisons have continued to be increasingly dangerous places to work primarily because of serious correctional worker understaffing and prison inmate overcrowding problems. Three hundred forty inmate-on-staff assaults have occurred at various BOP prisons since the brutal murder of Correctional Officer Jose Rivera on June 20, 2008, by two prison inmates at the United States Penitentiary in Atwater, CA. These aggressive acts by inmates against staff illustrate a common reality facing staff daily at their workplace.

In addition, BOP correctional workers have become increasingly demoralized because of: (1) the lack of necessary funding for correctional staff positions, staff training, warranted equipment, and programmatic tools that would improve the safety and security of BOP prisons, and (2) the adoption by BOP management beginning in 2005 of the Mission Critical Post policy, a cost reduction strategy involving substantial cuts in correctional worker positions. This policy resulted in decreased staff supervision of inmates, including decreasing staff supervision of inmate housing units, inmate recreation, and inmate work details, as well as unmanning prison towers.

At the same time, I sincerely hope that you and your staffers know how much we appreciate your active efforts on our behalf during the past few years. I particularly want to thank you all for your work in "bumping-up" the President's budget submissions for the BOP Salaries & Expenses account.

This year, AFGE strongly urges the House Appropriations Subcommittee on Commerce-Justice-Science (CJS) to:

1. Provide \$219,000,000 above the Obama FY 2011 budget submission for the BOP Salaries & Expenses account to allow BOP: (a) to hire an additional 1,826 correctional workers in FY 2011, thereby achieving a 95% base staffing level at existing institutions, and (b) to hire several hundred additional correctional workers to complete the



activation of FCI Mendota, CA, and FCI McDowell, WV, two new medium security facilities that will house approximately 2,400 prison inmates.

2. Provide \$230,000,000 above the Obama FY 2011 budget submission for the BOP Buildings & Facilities account to allow BOP to deal with the growing backlog of major modernization and repair projects at BOP's 115 prison facilities.
3. Continue the existing legislative prohibition against the use of federal funding for public-private competitions under OMB Circular A-76 for worker performed by federal employees of BOP and the Federal Prison Industries (FPI).
4. Direct BOP to adopt needed management policy changes for improving the safety and security of BOP correctional institutions.
5. Recognize the need for additional BOP staffing and staff training when considering new ways to foster the fair treatment of prison inmates and to improve the outcomes for inmates reentering our communities.
6. Support the Federal Prison Industries (FPI) prison inmate work program.
7. Prohibit BOP from meeting additional bed space needs by incarcerating federal prison inmates in private prisons.

### ***Discussion***

**1. AFGE strongly urges the House CJS Appropriations Subcommittee to provide \$219,000,000 above the Obama FY 2011 budget submission for the BOP Salaries & Expenses account to allow BOP: (a) to hire an additional 1,826 correctional workers in FY 2011, thereby achieving a 95% base staffing level at existing institutions, and (b) to hire several hundred additional correctional workers to complete the activation of FCI Mendota, CA, and FCI McDowell, WV, two new medium security facilities that will house approximately 2,400 prison inmates.**

More than 209,000 prison inmates are confined in the 115 BOP correctional institutions today, up from 25,000 in 1980, 58,000 in 1990, and 145,000 in 2000. By the end of 2010, it is expected there will be 216,000 inmates incarcerated in BOP institutions nationwide.

This explosion in the federal prison inmate population is the direct result of Congress approving stricter anti-drug enforcement laws involving mandatory minimum sentences in the 1980s, as documented in the *History of Mandatory Minimums*, a study produced by the Families Against Mandatory Minimums Foundation (FAMM).

- The Comprehensive Crime Control Act of 1984 created a mandatory 5-year sentence for using or carrying a gun during a crime of violence or a drug crime (on top of the sentence for the violence itself), and a mandatory 15-year sentence for simple possession of a firearm by a person with three previous state or federal convictions for burglary or robbery.
- The 1986 Anti-Drug Abuse Act established the bulk of drug-related mandatory minimums, including the five- and 10-year mandatory minimums for drug distribution or importation, tied to the quantity of any "mixture or substance" containing a "detectable amount" of the prohibited drugs most frequently used today.
- The Omnibus Anti-Drug Abuse Act of 1988 created more mandatory minimums that were targeted at different drug offences. At one end of the drug distribution chain, Congress created a mandatory minimum of five years for simple possession of more than five grams of "crack" cocaine. (Simple possession of any amount of other drugs – including powder cocaine and heroin – remained a misdemeanor with a mandatory 15-day sentence required only for a second offense.) At the other end, Congress doubled the existing 10-year mandatory minimum for anyone who engages in a continuing criminal enterprise, requiring a minimum 20-year sentence in such cases.

The number of federal correctional workers who work in BOP prisons, however, is failing to keep pace with this tremendous growth in the prison inmate population. By the end of FY 2010, the BOP system will be staffed at an 89% level (35,839 of 40,279 authorized positions will be filled), as contrasted with the 95% staffing levels in the mid-1990s. This 89% staffing level is *below* the 90% staffing level that BOP believes to be the minimum staffing level for maintaining the safety and security of BOP prisons. In addition, the BOP inmate-to-staff ratio in 2010 is 4.9 inmates to 1 staff member, as contrasted with the 1997 inmate-to-staff ratio of 3.7 to 1.

At the same time, prison inmate overcrowding is an increasing problem at BOP institutions despite the activation of new prisons over the past few years. The BOP prison system in 2010 is overcrowded by about 37%, up from 31.7% as of January 1, 2000.

This serious correctional officer understaffing problem, combined with the prison inmate overcrowding problem, is resulting in BOP prisons becoming increasingly dangerous places to work. The brutal stabbing murder of Correctional Officer Jose Rivera on June 20, 2008, by two prison inmates at the United States Penitentiary in Atwater, CA; the brutal stabbing of a correctional officer on November 1, 2009, by a prison inmate at the United States Penitentiary in Lewisburg, PA; and the 340 vicious inmate-on-worker assaults that have occurred at various BOP prisons since the murder of Correctional Officer Rivera illustrate that painful reality.

AFGE has long been concerned about the safety and security of the correctional workers who work at BOP prisons, But the increasing inmate-on-staff assaults has greatly intensified our concern – and desire to solve – the correctional worker understaffing problem.

**(a) AFGE urges the House CJS Appropriations Subcommittee to provide \$174,000,000 above the Obama FY 2011 budget submission to allow BOP to hire an additional 1,826 correctional workers in FY 2011, thereby achieving a 95% base staffing level at existing BOP prisons.**

Obama administration's FY 2011 Budget Submission

The Obama FY 2011 budget submission provides \$6,533,779,000 for the BOP Salaries & Expenses account - a \$447,548,000 increase above FY 2010. The BOP Salaries & Expenses account funds correctional worker staffing, as well as other management and administration activities, inmate care and programs, institution care and programs, and contract confinement activities.

However, AFGE estimates that of this \$447,548,000 increase, only about \$87,000,000 will be used to increase correctional worker staffing at existing institutions. (The remaining \$360,548,000 is for funding the other Salaries & Expenses activities.) In particular:

- \$29,000,000 – will be used to fully fund the cost of 575 correctional workers newly hired in late FY 2010.
- \$57,000,000 – will be used “to enable BOP to make significant further progress in increasing its on-board correctional worker staffing rate in FY 2011.” (quote from H.Rept. 111-366, page 672) BOP would like to hire 1,200 additional correctional workers in FY 2011. Unfortunately, the Obama FY 2011 budget submission provides funding for only 600 of the desired 1,200 correctional workers.

Needed Congressional “Bump-Up” in FY 2011 Appropriations for Salaries & Expenses Account

To achieve a 95% base correctional worker staffing level in FY 2011, BOP would have to hire 2,426 additional correctional workers. (38,265 correctional workers in FY 2011, or 95% of 40,279 authorized correctional worker positions, *minus* 35,839 correctional workers in FY 2010, or the correctional worker staffing level at the end of FY 2010 if BOP hires 925 new correctional workers *equals* 2,426.)

But given the fact that the FY 2011 Obama budget funds an additional 600 correctional workers, BOP would have to hire only an additional 1,826 correctional workers to meet the 95% base staffing level in FY 2011.

Therefore, AFGE urges the CJS appropriations subcommittee to provide \$174,000,000 above the Obama FY 2011 budget submission to allow BOP to hire an additional 1,826 correctional workers in FY 2011. In particular:

- \$57,000,000 to hire 600 additional correctional workers. – As discussed above, BOP would like to hire 1,200 additional correctional workers in FY 2011 but the Obama budget submission provides funding for only 600 additional workers. Congress should appropriate an additional \$57,000,000 to allow BOP to hire the remaining 600 correctional workers.
- \$117,000,000 to hire 1,226 additional correctional workers. – In addition to the 1,200 new correctional workers that BOP anticipates hiring in FY 2011 (600 new workers funded by the Obama FY 2011 budget and 600 funded – hopefully – by the Congress), BOP would need to hire 1,226 additional correctional workers to meet the 95% base staffing level in FY 2011. Congress should appropriate an additional \$117,000,000 in FY 2011 so BOP can hire these additional 1,226 correctional workers.

**(b) AFGE urges the House CJS Appropriations Subcommittee to provide \$45,000,000 above the Obama FY 2011 budget submission to allow BOP to hire several hundred additional correctional workers to complete the activation of FCI Mendota, CA, and FCI McDowell, WV, two new medium security facilities that will house approximately 2,400 prison inmates.**

Obama administration's FY 2011 Budget Submission

BOP anticipates hiring several hundred additional correctional workers to complete the activation of FCI Mendota, CA, and FCI McDowell, WV, two new medium security facilities that will house 2,400 prison inmates. However, the Obama FY 2011 budget submission does not provide any funding to hire these additional correctional workers.

Needed Congressional "Bump-Up" in FY 2011 Budget Submission

AFGE urges House CJS appropriators to provide \$45,000,000 above the Obama FY 2011 budget submission to allow BOP to hire several hundred additional correctional workers to complete the activation of the new FCI Mendota, CA, and FCI McDowell, WV.

**2. AFGE strongly urges the House CJS Appropriations Subcommittee to provide \$230,000,000 above the Obama FY 2011 budget submission for the BOP**

**Buildings & Facilities account to allow BOP to deal with the growing backlog of major modernization and repair projects at BOP's 115 prison facilities.**

Obama administration's FY 2011 Budget Submission

The Obama FY 2011 budget provides \$269,733,000 for the Buildings & Facilities account – a \$170,578,000 increase above FY 2010. The Buildings & Facilities account funds new prison construction and the modernization and repair of existing facilities.

But of this \$269,733,000, the Obama FY 2011 budget provides only \$74,210,000 for modernization and repair (M&R) projects. (The remaining \$195,523,000 is for funding new prison construction.) Interestingly, the House Appropriations Committee, in last year's House report (H.Rept.111-149) accompanying its version of the FY 2010 CJS appropriations bill (H.R. 2847), expressed great concern about the growing backlog of M&R projects at BOP correctional institutions:

*"Thirty-four (one-third) of BOP's 115 institutions are more than 50 years old, and most have not undergone major renovations since they were constructed or acquired by BOP. In addition, the BOP has a backlog of major modernization and repair (M&R) projects valued at nearly \$300,000,000. BOP's budget justification indicates that it "strives to follow" the Federal Facilities Council recommendation of budgeting annually for M&R needs equal to two percent of the asset value of its facilities, which in the case of BOP facilities totals more than \$400,000,000."*

Needed Congressional "Bump-Up" In FY 2011 Appropriations for Buildings & Facilities Account

AFGE urges the House CJS Appropriations Subcommittee to provide \$230,000,000 above the Obama FY 2011 budget submission for the BOP Buildings & Facilities account. This additional funding, combined with the Obama-proposed \$74,210,000, will allow BOP to spend over \$300,000,000 to deal with the growing backlog of M&R projects at BOP's 115 correctional institutions.

**3. AFGE strongly urges the House CJS Appropriations Subcommittee to continue the existing legislative prohibition against the use of federal funding for public-private competitions under OMB Circular A-76 for worker performed by federal employees of BOP and the Federal Prison Industries (FPI).**

The final FY 2010 Consolidated Appropriations Act (P.L. 111-117) includes a general provision (Section 212) providing that:

*"None of the funds appropriated by this Act may be used to plan for, begin, continue, finish, process, or approve a public-private competition under the Office of Management and Budget Circular A-76 or any*

*successor administrative regulation, directive, or policy for work performed by employees of the Bureau of Prisons or of Federal Prison Industries, Incorporated.”*

AFGE urges the House CJS Appropriations Subcommittee to include this Section 212 language in the FY 2011 CJS appropriations bill because:

(a) Competing these BOP and FPI employee positions would not promote the best interests or efficiency of the federal government with regard to ensuring the safety and security of federal BOP prisons. Federal correctional officers and other federal employees who work for BOP and FPI are performing at superior levels. It therefore would be ill-advised to compete their positions merely to meet the numerical quotas of any ideologically-driven privatization plan.

(b) Various studies comparing the costs of federally operated BOP prisons with those of privately operated prisons have concluded – using OMB Circular A-76 cost methodology – that the federally operated BOP prisons are more cost effective than their private counterparts. For example, a study comparing the contract costs of services provided by Wackenhut Corrections Corporation (now The Geo Group) at the Taft Correctional Institution in California with the cost of services provided in-house by federal employees at three comparable BOP prisons (Forrest City, AR; Yazoo City, MS; and Elkton, OH) found that “the expected cost of the current Wackenhut contract exceeds the expected cost of operating a Federal facility comparable to Taft...” (*Taft Prison Facility: Cost Scenarios*, Julianne Nelson, Ph.D, National Institute of Corrections, U.S. Department of Justice.)

**4. AFGE strongly urges the House CJS Appropriations Subcommittee to direct BOP to adopt needed management policy changes for improving the safety and security of BOP correctional institutions.**

A few days after the June 20, 2008, stabbing murder of Correctional Officer Jose Rivera at USP Atwater, John Gage, AFGE National President, and Bryan Lowry, President of the AFGE National Council of Prison Locals, met with BOP Director Harley Lappin to strongly urge that BOP adopt various policy changes for improving the safety and security of BOP institutions. Among other changes, they urged that:

(a) High security penitentiaries place two correctional officers in each housing unit, particularly during the evening watch shift (3:00 p.m. to 11:00 p.m.), and medium and low security institutions place at least one correctional officer in each housing unit on all shifts.

High security penitentiaries currently assign only one correctional officer to each housing unit. This unsound correctional practice is particularly dangerous during the

evening watch shift when only one officer is available to secure the cells for the 4:00 p.m. inmate count and the 11:00 p.m. inmate lockup. (Correctional Officer Jose Rivera was murdered while locking inmates into the cells for the 4:00 p.m. inmate count alone.)

Medium and low security institutions since 2005 are no longer required to assign one correctional officer in each housing unit. This policy change has resulted in an unsound correctional practice being implemented in which only one officer is assigned to supervise two – and in some cases three – housing units during the various shifts. This practice leaves housing units unsupervised for long periods of time, thereby providing violent inmates the time to make homemade weapons, to organize and plan gang activity, to carry out assaults on other inmates, and to move contraband undetected throughout the institution.

On July 15, 2008 BOP issued a directive that authorized two additional officers per high security penitentiary for evening watch (daily) and for day watch on the weekends and federal holidays. The officers working these posts are intended to function as “rovers” to provide assistance to housing unit staff. (The decision is made locally, at each facility, regarding how best to staff these positions, that is, whether the sick and annual roster can be used, overtime authorized, or whether new staff must be hired.) The July 15, 2008 directive was silent with regard to medium and low security institutions.

AFGE believes the July 15, 2008, BOP directive is totally inadequate. The safety of correctional officers and prison inmates, at the very least, requires two correctional officers in each housing unit on the evening watch shift in high security penitentiaries, and at least one officer per housing unit on all shifts in medium and low security institutions.

Indeed, AFGE strongly urges the CJS appropriations subcommittee to direct BOP to reinstitute the staffing practice of the 1990s and early 2000s: authorizing two correctional officers per housing unit *plus* three or four additional officers to function as “rovers” that provide assistance to the housing unit staff.

This staffing practice was standard until 2005 when BOP management instituted the Mission Critical Post policy, a cost reduction strategy under which certain correctional staff posts were deemed critical for the safe and secure operations of BOP institutions and were to be vacated only in rare circumstances. The Mission Critical Post initiative was intended (a) to eliminate the necessity for filling “non-mission critical” BOP posts, and (b) to reduce BOP institutions’ reliance on overtime and non-correctional staff, who had typically been used for temporary correctional post assignments.

Interestingly, a 2009 U.S. Government Accountability Office (GAO) report found that BOP has never conducted a systematic evaluation of the Mission Critical Post initiative, despite an internal directive from the Assistant Director of Correctional Programs and

the requirements of the *Standards for Internal Control in the Federal Government*. As a result, GAO has concluded that:

*“Without assessing its mission critical post initiative and data on temporary assignments, BOP does not know whether it is efficiently and effectively using staff for temporary assignments or achieving the desired cost savings. Also, without reviewing the effect of leaving mission critical posts unassigned, BOP cannot assess the effect, if any, of unassigned posts on the safety and security of its facilities.”* (Bureau of Prisons: Written Policies on Lateral Transfers and Assessment of Temporary Assignments Needed, GAO-09-141, February 2009.)

The GAO report recommends that BOP “systematically assess temporary assignments to ensure that BOP is meeting the objectives of the mission critical post initiative and effectively and efficiently using resources.” BOP, in response, has agreed with and plans to take action on this recommendation. But given the fact BOP officials could not explain to GAO why the original systematic evaluation was not conducted, AFGE strongly urges the CJS appropriations subcommittee to exert its oversight powers to ensure that BOP actually conducts this necessary evaluation.

(b) All correctional officers be issued protective vests that are stab-resistant and light-weight, and can be worn comfortably under a uniform.

In its July 15, 2008 directive, BOP announced that it will begin making protective vests available to staff – first at high-security penitentiaries, and then at all institutions. However, BOP has been markedly slow in providing these protective vests. Disputes also have arisen over the quality of these protective vests, with BOP correctional officers contending they should have vests that offer better protection.

In addition, BOP has adopted a somewhat overbroad implementation policy with regard to these protective vests. If a staff member orders a protective vest, he/she must wear that vest in *all* locations of the federal prison property – even those where it is obviously unnecessary. For example, some wardens are directing correctional staff to wear a stab resistant vest to annual refresher training at facilities that are sometimes a half mile away from the secure prison institution. This unreasonable policy is having the unfortunate effect of correctional staff returning their vests and not wearing them while in a housing unit, special housing unit, or compound officer post.

AFGE strongly urges the CJS appropriations subcommittee to direct BOP to continue making protective vests available to correctional staff, and to adopt a more reasonable implementation policy.

(c) Correctional officers working in housing units, compound posts, and high security areas of BOP prisons be equipped with and trained in the use of non-lethal weaponry,



such as batons, pepper spray, and/or TASER guns. Training should include the appropriate use of such non-lethal weaponry so they are not used as a "first strike" response before other protective tactics are considered or attempted.

Unfortunately, BOP opposed – and continues to oppose - providing correctional officers with batons, pepper spray, and/or TASER guns. BOP argues that it would send the wrong message to prison inmates, namely that such non-lethal weaponry is necessary because conditions at BOP institutions have significantly worsened.

But AFGE believes Officer Rivera's brutal murder and the increasing number of inmate assaults on officers are sending a strong message to BOP management: conditions at penitentiaries and other institutions *have* worsened. They are more violent than a few years ago because of serious correctional officer understaffing and prison inmate overcrowding – and because correctional officers are being forced to control more aggressively dangerous offenders, including more gang-affiliated inmates.

AFGE strongly urges the CJS appropriations subcommittee to direct BOP to institute a new non-lethal weaponry policy under which correctional officers in potentially dangerous situations are provided batons, pepper spray and/or TASER guns. Such non-lethal weapons are vitally necessary to help prevent further serious inmate-on-officer assaults.

Other management policy changes that are needed, but were not discussed at our June 2008 meeting with Director Lappin, include the following:

*(d) The funding for the so-called "stun lethal fences" should be eliminated because they are failing to work properly.*

The AFGE Council of Prison Locals have information from several BOP institutions that these stun lethal fences are failing for various periods of time, resulting in BOP management having to add correctional workers to the perimeter of these institutions. (We can provide the Subcommittee, privately, with the times and dates these fences have failed.)

However, even if these stun lethal fences were not failing for periods of time, the supplanting of manned towers by these fences makes little security sense. Federal prisons' towers were designed to be manned with the intent of protecting the lives of correctional workers inside the perimeter of the facility. Correctional workers were taught to move under the tower for protection when a riot or disturbance occurred at a prison. The tower personnel could then use less-than-lethal weapons to quell the riot or disturbance or lethal force if someone's life was threatened. Unfortunately, this security protection is gone now that the towers are no longer manned.

(e) The new BOP system called TRULINCs, which allows prison inmates to e-mail to the outside world, should be operated with caution.

The TRULINCs system's intent is to control prison inmates' ability to use the World Wide Web. However, it is producing huge numbers of e-mails between prison inmates and those outside BOP prisons – probably too much to adequately monitor. As with telephone calls and letters, this is one more communication system where inappropriate and/or dangerous messages could get through without complete monitoring.

**5. Recognize the need for additional BOP staffing and staff training when considering new ways to foster the fair treatment of prison inmates and to improve the outcomes for inmates reentering our communities.**

AFGE and its members who work at BOP institutions strongly believe in the fair treatment of prison inmates. We also believe that inmates should be better prepared to reenter – and remain in – our communities. Congress has passed laws in the past few years to help accomplish these tasks, such as the Prison Rape Elimination Act of 2003 (P.L. 108-79) and the Second Chance Act of 2008 (P.L. 110-199).

However, what continues to be left out of the picture are the additional staff positions and staff training that are necessary to accomplish these tasks. When one correctional officer (or non-correctional staff member) is required to supervise two or three housing areas at a time, it is virtually impossible to properly implement the Prison Rape Elimination Act of 2003. In addition, training is needed to fully explain to correctional employees how to implement this law – and currently this is not being done. While a cursory half hour to one hour per year is spent to highlight the Prison Rape Elimination Act of 2003 during annual refresher training, many of the procedural items in the law are not covered.

In the case of the Second Chance Act of 2008, Congress's intent is clear. But when teachers, vocational-technical instructors, mechanical services employees, case managers, and counselors are pulled repeatedly to work correctional officers posts because of funding shortfalls, then who will be responsible for the duties clearly outlined in the law? Correctional officers and staff take their jobs very seriously in federal prisons. But they simply can't accomplish two tasks at the same time.

AFGE, therefore, strongly urges the CJS appropriations subcommittee to recognize the need for additional BOP staffing and staff training when considering new ways to foster the fair treatment of prison inmates and to improve the outcomes for inmates reentering our communities. New laws would be additional workloads on BOP staff who are already handling more work with less staff than eight years ago.

**6. AFGE strongly urges the House CJS Appropriations Subcommittee to support the Federal Prison Industries (FPI) prison inmate work program.**

The increasingly violent and dangerous environment in which BOP correctional officers and staff work is the primary reason why AFGE strongly supports the FPI prison inmate work program.

The FPI prison inmate work program is an important management tool that federal correctional officers and staff use to deal with the huge increase in the BOP prison inmate population. It helps keep thousands of prison inmates productively occupied in labor-intensive activities, thereby reducing inmate idleness and the violence associated with that idleness. It also provides strong incentives to encourage good inmate behavior, as those who want to work in FPI factories must maintain a record of good behavior and must have completed high school or be making steady progress toward a General Education Degree (GED).

In addition, the FPI prison inmate work program is an important rehabilitation tool that provides federal inmates an opportunity to develop job skills and values that will allow them to reenter – and remain in – our communities as productive, law-abiding citizens. The Post-Release Employment Project (PREP), a multi-year study of the FPI prison inmate work program carried out and reported upon in 1996 by William Saylor and Gerald Gaes, found that the FPI prison inmate work program had a strongly positive effect on post-release employment and recidivism. Specifically, the study results demonstrated that:

- In the short run (i.e., one year after release from a BOP institution), federal prison inmates who had participated in the FPI work program (and related vocational training programs) were: (1) 35% *less likely* to recidivate than those who had not participated, and (2) 14% *more likely* to be employed than those who had not participated.
- In the long run (i.e., up to 12 years after release from a BOP institution), federal prison inmates who participated in the FPI work program were 24% *less likely* to recidivate than those who had not participated in the FPI work program. (*PREP: Training Inmates Through Industrial Work Participation, and Vocational and Apprenticeship Instruction*, by William Saylor and Gerald Gaes, Office of Research and Evaluation, Federal Bureau of Prisons, September 24, 1996.)

Later in 1999, Saylor and Gaes published a follow-up paper to report further analyses of the PREP data focusing on the differential effect of the FPI prison inmate work program on the post-release recidivism of four groups: (1) non-Hispanic whites, (2) non-Hispanic blacks, (3) Hispanic whites, and (4) Hispanic blacks. Their analyses revealed that the FPI prison inmate work program provides even greater benefit to the three minority groups that are at the greatest risk for recidivism (non-Hispanic blacks, Hispanic whites,

and Hispanic blacks) than it does for the non-Hispanic white group. In general, the recidivism improvement rates for minority inmates who participated in the FPI work program compared to those minority inmates who did not participate were between 37% and 147% higher than the recidivism improvement rates for non-Hispanic white inmates who participated in the FPI work program compared to those non-Hispanic white inmates who did not participate. As Saylor and Gaes concluded:

*“Regardless of whether a minority was defined on the basis of race or ethnicity, and despite their being at a higher risk of recidivism, minority groups benefited more from [FPI work program] participation than their lower risk non-minority counterparts. While the absolute differences may not appear that large, the relative improvements [in recidivism rates] indicate a much larger program effect for minority program participants who are otherwise more likely to be recommitted to prison.”* (The Differential Effect of Industries Vocational Training on Post-Release Outcome for Ethnic and Racial Groups, William Saylor and Gerald Gaes, Office of Research and Evaluation, Federal Bureau of Prisons, September 6, 1999.)

Unfortunately, over the past ten years the FPI prison inmate work program has experienced a significant decline in the percentage of eligible BOP inmates employed as a result of limitations imposed by Congress and the FPI Board of Directors on FPI's mandatory source authority relating to Department of Defense and federal civilian agencies' purchases from FPI. While the FPI program employed 25% of the eligible BOP inmate population in FY 2000, it is currently employing only 16% of that population. Indeed, 29,643 prison inmates would be employed now – not 18,972 – if the FPI program were currently employing 25% of the eligible BOP inmate population.

To make matters worse, Section 827 in the National Defense Authorization Act for FY 2008 (P.L. 110-181) is expected to create another substantial impediment to the FPI program's ability to keep BOP inmates productively occupied in labor-intensive work activities. Specifically, Section 827 will reduce the applicability of the FPI mandatory source authority with regard to Department of Defense purchases of FPI-made products. While the FPI Board of Directors in 2003 administratively ended the application of mandatory source authority for those products where FPI's share of the Federal market exceeded 20%, Section 827 will end the application of the mandatory source authority with regard to Department of Defense purchases of FPI-made products for those products where FPI's share of the Department of Defense market is only 5%. Initial analyses of the effect of this significant reduction from 20% to 5% estimated that it would result in a potential loss of up to \$241 million in FPI sales revenues and 6,500 FPI prison inmate jobs.

The latest indicator of this reduction's adverse effect on FPI is the July 15, 2009 announcement by Paul Laird, the FPI Chief Operating Officer, that FPI is closing factory operations at 14 BOP prisons: USP Coleman I & II, FCI Victorville II, USP Florence, FCI Talladega, FCI Big Spring, FCI Williamsburg, FCI Estill, FCI Sandstone, FCI Fairton, FCI Otisville, FCI Marianna, FCI Phoenix, and FCC Allenwood. In addition to these closings, FPI is also downsizing operations at four other BOP prisons: FCC Lompoc, FPC Alderson, FCC Butner, and USP Leavenworth. According to COO Laird, "these actions were necessary to reduce our excess production capacity and staffing to a level consistent with the current and forecasted business activity." (*Memorandum for All UNICOR Staff Regarding Factory Restructuring, July 15, 2009*)

**7. AFGE strongly urges the House CJS Appropriations Subcommittee to prohibit BOP from meeting additional bed space needs by incarcerating federal prison inmates in private prisons.**

In recent years, the federal government and some state and local governments have experimented with prison privatization as a way to solve the overcrowding of our nation's prisons – a crisis precipitated by increased incarceration rates and politicians' reluctance to provide more prison funding. But results of these experiments have demonstrated little evidence that prison privatization is a cost-effective or high-quality alternative to government-run prisons.

**(a) Private prisons are not more cost effective, according to academic and government-sponsored studies.**

Proponents of prison privatization claim that private contractors can operate prisons less expensively than federal and state correctional agencies. Promises of 20 percent savings are commonly offered. However, existing research fails to make a conclusive case that private prisons are substantially more cost effective than public prisons.

For example, in 1996, the U.S. General Accounting Office reviewed five academic studies of prison privatization deemed to have the strongest designs and methods among those published between 1991 and mid-1996. The GAO concluded that "because these studies reported little cost differences and/or mixed results in comparing private and public facilities, we could not conclude whether privatization saved money." (*Private and Public Prisons: Studies Comparing Operational Costs and/or Quality of Service*, GGD-96-158 August 16, 1996.)

Similarly, in 1998, the U.S. Department of Justice entered into a cooperative agreement with Abt Associates, Inc. to conduct a comparative analysis of the cost effectiveness of private and public sector operations of prisons. The report, which was released in July 1998, concluded that while proponents argue that evidence exists of substantial savings as a result of privatization, "our analysis of the existing data does not support such an

optimistic view.” Instead, “our conclusion regarding costs and savings is that available data do not provide strong evidence of any general pattern. Drawing conclusions about the inherent [cost-effective] superiority of [private prisons] is premature.” (*Private Prisons in the United States: An Assessment of Current Practice*, Abt Associates, Inc., July 16, 1998.)

Finally, a 2001 study commissioned by the U.S. Department of Justice concluded that “rather than the projected 20 percent savings, the average saving from privatization was only about one percent, and most of that was achieved through lower labor costs.” (*Emerging Issues on Privatized Prisons*, by James Austin, Ph.D. and Garry Coventry, Ph.D., February 2001.)

(b) Private prisons do not provide higher quality, safer services.

Proponents of prison privatization contend that private market pressures will necessarily produce higher quality, safer correctional services. They argue that private prison managers will develop and implement innovative correctional practices to enhance performance. However, emerging evidence suggests these managers are responding to market pressures not by innovating, but by slashing operating costs. In addition to cutting various prisoner programs, they are lowering employee wages, reducing employee benefits, and routinely operating with low, risky staff-to-prisoner ratios.

The impact of such reductions on the quality of prison operations has been obvious. Inferior wages and benefits contribute to a “degraded” workforce, with higher levels of turnover producing a less experienced, less trained prison staff. The existence of such under-qualified employees, when coupled with insufficient staffing levels, adversely impacts correctional service quality and prison safety.

Numerous newspaper accounts have documented alleged abuses, escapes and riots at prisons run by the Correctional Corporation of America (CCA), the nation's largest private prison company. In the last several years, a significant number of public safety lapses involving CCA have been reported by the media. The record of Wackenhut Corporation (now The Geo Group), the nation's second largest private prison company, is no better, with numerous lapses reported since 1999.

And these private prison problems are not isolated events, confined to a handful of “underperforming” prisons. Available evidence suggests the problems are structural and widespread. For example, an industry-wide survey conducted in 1997 by James Austin, a professor at George Washington University, found 49 percent more inmate-on-staff assaults and 65 percent more inmate-on-inmate assaults in medium- and minimum-security private prisons than in medium- and minimum-security government prisons. (referenced in “Bailing Out Private Jails,” by Judith Greene, in *The American Prospect*, September 10, 2001.)

(c) Lacking data, BOP is not able to evaluate whether confining inmates in private prisons is more cost-effective than federal government prisons.

Despite the academic and government-sponsored studies' negative results, BOP has continued to expand its efforts to meet additional bed space needs by incarcerating federal prison inmates in private prisons. Over a 10 year period, the costs to confine federal BOP inmates in non-BOP facilities nearly tripled from about \$250 million in FY 1996 to about \$700 million in FY 2006. To determine the cost-effectiveness of this expanded use of private prisons, Congress directed the U.S. Government Accountability Office (GAO) in the conference report accompanying the FY 2006 Science, State, Justice and Commerce Appropriations Act (P.L. 109-108) to compare the costs of confining federal prison inmates in the low and minimum security facilities of BOP and private contractors.

However, GAO determined in its October 2007 report that a methodologically sound cost comparison analysis of BOP and private low and medium security facilities was not feasible because BOP does not gather data from private facilities that are comparable to the data collected on BOP facilities. As a result, the GAO concluded that:

*"[W]ithout comparable data, BOP is not able to evaluate and justify whether confining inmates in private facilities is more cost-effective than other confinement alternatives such as building new BOP facilities."* (Cost of Prisons: Bureau of Prisons Needs Better Data to Assess Alternatives for Acquiring Low and Minimum Security Facilities, GAO-08-6, October 2007)

BOP officials told GAO that there are two reasons why they do not require such data from private contractors. First, federal regulations do not require these data as means of selecting among competing contractors. Second, BOP believes collecting such data could increase the cost of the private contracts. However, BOP officials did not provide evidentiary support to substantiate this concern.

BOP Director Harley Lappin gave two somewhat similar reasons in disagreeing with GAO's recommendation that the Attorney General direct the BOP Director to develop a cost-effective way to collect comparable data across BOP and private low and minimum security facilities:

- *"The Bureau does not own or operate facilities to house solely criminal aliens and will not be receiving funding [from Congress] to construct such low security facilities. Accordingly, there is no value in developing data collection methods in an attempt to determine the costs of housing this particular group of inmates in a Bureau facility."*
- *"The Bureau has been able to determine what it actually costs to contract out this particular population to private contractors via open competition. [And so]*

*we do not see the value of requiring existing private contractors to provide specific comparable data to aid in a cost comparison. This requirement would have the potential to increase current contract costs at a time when the Bureau is facing serious budget constraints."*

**(d) Congress should examine the adverse effects on the BOP prison contract award process of the "revolving door" of BOP management executives moving from BOP to private prison companies.**

The "revolving door" of BOP executives moving from BOP to private prison companies is becoming increasingly prevalent, presumably due to the disparities between the average executive pay packages of the federal government and the private sector. The top management executive at the BOP makes between \$119,554 and \$179,700. By contrast, the average salary for the top three officers at CCA is \$279,383.00 with the total compensation package average reported to be \$1,203,056.00. The top three officers at The GEO Group do better, reporting an average salary of \$651,795.00 with the total compensation package average reported to be \$2,316,167.33.

The question becomes: If many BOP top executives are moving to private prison companies, what is their incentive to reduce the number of private prison contracts? If one day they work for BOP as senior executives and the next day start work for a private company at double their salary and compensation, what is their incentive to confine federal criminal alien populations in more cost-effective BOP facilities?

One of the latest contracts awarded, according to the Fedbiz website, is a \$553,266,889 contract awarded to Cornell Corrections on January 12, 2010 to house low security criminal alien detainees. Are private prison awards such as this one being scrutinized? Is a federal BOP prison cheaper to house this type of inmate? When there is no programming required to rehabilitate prisoners, you need essentially four departments: corrections, food service, medical, and receiving and discharge. It seems to us that federal prisons could do this just as well as private prisons - and for less money.

In conclusion, AFGE strongly urges the House CJS Appropriations Subcommittee to prohibit BOP from meeting additional bed space needs by incarcerating federal prison inmates in private prisons. Prison privatization is not the panacea that its proponents would have us believe. Private prisons are not more cost effective than public prisons, nor do they provide higher quality, safer correctional services. Finally, without comparable data, BOP is not able to evaluate or justify whether confining inmates in private facilities is more cost-effective than building new BOP facilities.

This concludes my statement. I thank you for your attention and will be happy to answer any of your questions.



**BIOGRAPHY**

**BRYAN LOWRY, PRESIDENT**

**COUNCIL OF PRISON LOCALS, AFGE, AFL-CIO**

**SERVED FROM 1985-1990, U.S. AIR FORCE, SURVIVAL EQUIPMENT SPECIALIST. ASSIGNMENTS INCLUDED: LITTLE ROCK AIR FORCE BASE, AR. MILDENHALL AIR FORCE BASE, ENGLAND, HOWARD AIR FORCE BASE, PANAMA, BARKSDALE AIR FORCE BASE, LOUISIANA.**

**1990-1992 ARKANSAS DEPARTMENT OF CORRECTION. CORRECTIONAL OFFICER.**

**1992-1996, DEPARTMENT OF JUSTICE, BUREAU OF PRISONS, FEDERAL CORRECTIONAL INSTITUTION, TEXARKANA, TX. STARTED AS A GS-06 CORRECTIONAL OFFICER. RECEIVED SENIOR OFFICER STATUS JANUARY 1993.**

**1996-PRESENT, DEPARTMENT OF JUSTICE, BUREAU OF PRISONS, FEDERAL CORRECTIONAL INSTITUTION, FORREST CITY, AR. PROMOTED TO SENIOR OFFICER SPECIALIST GS-08.**

**1997-2000, A.F.G.E. LOCAL 0922, PRESIDENT**

**2001-2005, SOUTH CENTRAL REGIONAL VICE PRESIDENT, COUNCIL OF PRISON LOCALS 33, AFGE, AFL/CIO**

**2005-PRESENT, COUNCIL PRESIDENT, COUNCIL OF PRISON LOCALS 33, AFGE, AFL-CIO**

**45 YEARS OF AGE**

**MARRIED WITH 4 CHILDREN**

**CURRENTLY RESIDES IN BRINKLEY, ARKANSAS**

**BIOGRAPHY**

**PHILIP W. GLOVER, LEGISLATIVE DIRECTOR**

**COUNCIL OF PRISON LOCALS, AFGE, AFL-CIO**

**SERVED FROM 1982-1985, U.S. ARMY, 118<sup>TH</sup> MP CO (ABN), 18<sup>TH</sup> AIRBORNE CORPS**

**SERVED FROM 1986-1990, U.S. ARMY, 505 PARACHUTE INFANTRY REGIMENT, 82<sup>ND</sup> AIRBORNE DIVISION, 18<sup>TH</sup> AIRBORNE CORPS**

**1990-PRESENT, DEPARTMENT OF JUSTICE, BUREAU OF PRISONS, FEDERAL CORRECTIONAL INSTITUTION, LORETTO, PA, CURRENTLY SENIOR OFFICER SPECIALIST, GS-08**

**1991-1992, A.F.G.E. LOCAL 3951, VICE PRESIDENT**

**1992-1994, A.F.G.E. LOCAL 3951, LOCAL PRESIDENT**

**1994-1997, NORTHEAST REGIONAL VICE PRESIDENT, COUNCIL OF PRISON LOCALS, AFGE, AFL-CIO**

**1997-2005, COUNCIL PRESIDENT, COUNCIL OF PRISON LOCALS, AFGE, AFL-CIO**

**2005-PRESENT, COUNCIL NATIONAL LEGISLATIVE DIRECTOR, COUNCIL OF PRISON LOCALS, AFGE, AFL-CIO**

**46 YEARS OF AGE**

**MARRIED WITH 2 CHILDREN**

**CURRENTLY RESIDES IN JOHNSTOWN, PA**

Mr. MOLLOHAN. Mr. Glover.

Mr. GLOVER. Mr. Chairman and Ranking Member Wolf, again thank you for being here and thanks to your staff for working with us over the last few years to move staffing back in the right direction. Just a reminder, in 2005 and 2006 the Director cut 2,300 staff positions. So the discussion about the funding levels this year are only bringing us back to where we were in 2005 and 2006. But it certainly is moving us in a better direction.

The staff to inmate ratio is still 1 to 4.9 and will be at the end of fiscal year 2010. The 900 staff that are to be hired through this fiscal year will probably not actually be hired until the end of the fiscal year, and then annualized into the 2011 budget. So while they are bringing staff on, they are really bringing staff on at the last quarter. This happened last year, and then they are annualizing that amount of money necessary to pay for those staff.

We request \$219 million above the S and E amount, for a total of 1,826 more correctional worker positions, and \$230 million above the B and F request for the funding of construction and more M and R projects. As was relayed earlier in the testimony from the Director, the maintenance and repair accounts are seriously underfunded.

We hear, or we see, in the Director's testimony that we are at about an 89 percent staffing rate. And our question is, 89 percent of what? If you have cut 2,300 positions in '05 and '06, and you are not adding that back into the mix, then it is 89 percent of what amount?

The Obama budget is \$6.5 billion for S and E, and \$269 million for B and F. We certainly appreciated that there was a substantial increase. But obviously, as this Committee has said over the years, and even when Ranking Member Wolf was the Chairman he repeatedly put into report language, that the administration really needed to look at funding the prison system appropriately.

We do want to bring up the private prison issue. We have seen an increase from three private facilities in the year 2001 to fourteen now. The latest contract award, January 2010, was an award of \$553 million for a four-year base period, with possible two-year option periods, which I am sure will be renegotiated at that point. The thing that is getting to us with these private prison contracts is if you break that down over a four-year period, that \$553 million, I do not think we have a single facility at this point that per year would run on that amount of money. We would be far less. And they really only have to provide four departments: corrections, medical, receiving and discharge, food service, and some administrative positions. The private sector with the criminal alien population is not providing programming at all.

The other issue for us is the revolving door. The SES pay scale for BOP management is \$119,000 to \$179,000 per year. That is top rate for SESs. CCA's average salary to their top three officers is \$279,000, and total compensation is \$1.2 million over a year period. GEO Group is \$651,000 on average for the top three officers of the company, \$2.3 million in total compensation. And we have those documents.

The stun fences, we brought this up last year and we are going to bring it up this year. We do have specific dates and times when

fences have gone down at specific facilities. We do not feel we can give that to you in an open hearing, but we will provide it to the Committee staff after the hearing so that that information is not out in the public. These security fences only protect from escape and they do not protect for activities occurring on a recreation yard. It does not protect the safety of staff or inmates who are out on a recreation yard and have issues such as a disturbance out on that yard. Staff are taught to run underneath the towers for protection in the event of a riot. If the towers are not manned, those stun fences will do nothing to help the staff and that is one of our main concerns with the stun fences.

The Second Chance Act has been brought up repeatedly. We believe it needs to be fully funded. The issue that we are hearing back from our case management employees who are union employees is that there are not enough halfway houses. They are referring by management's directive all of the inmates that they can, but many of these inmates are being kicked back because of lack of bed space in the halfway houses. In addition, they are being told to submit inmates that normally would not be appropriate for halfway houses. Inmates who are child pedophiles, or have a history of assaults, violence. They are being told to send all of them forward for halfway houses to increase the numbers. And we think that is a waste of our staff's time. They should have more discretion to look at whether an inmate should be placed in a halfway house at a year or not, and at the six-month rate, which is our normal rate.

The Prison Rape Elimination Act, we talked about that last year as well. And until all the housing units are staffed, and the recreation areas are staffed, we cannot monitor what is going on in those housing units 24/7. We want to do it. Our staff want to do it. But it is just not possible.

The other issue is training. I heard the Director talk about training this morning. I can tell you that last year I received a half hour of training on the Prison Rape Elimination Act at my facility. I am an active correctional officer, and I can tell you that that was not a top priority.

FPI, their issues are well documented. We are concerned with the situation, with more inmates being laid off. It is not helpful to anyone. And it is certainly not helpful to the inmate population. How it affects the inmates is that they do not make very much money. You do not have them using the commissary as much. Now we are starting to see theft out of food service. We are seeing them bring food service items up to the housing units. It is just a bad situation the whole way around. So anything we can do to get inmates working again would be helpful. Thank you very much.

#### STAFFING LEVELS

Mr. MOLLOHAN. Well thank you both for your testimony. With regard to staffing levels, are you seeing that new staffing in the prisons? And is it being targeted in the right way?

Mr. LOWRY. I know there are increases that have occurred in some positions outside of correction, and I know that the correctional staffing levels have gone up some. But it has not added any new posts. In other words, assignments in certain areas that we had prior to this Mission Critical staffing, such as additional recre-

ation yard officers in the evening when the majority of your inmates would be out there. You could have at least half, a third to half of your population on the rec yard during the spring and summer months. And now what you basically have are one or two people, recreation specialists, and maybe an officer watching where, you know, ten years ago you would have four or five people out there, especially in the higher security level prisons. And they have not added these posts back on.

It is a matter of what do you do with the resources when you get them is our concern. We get the additional funding. But the initiatives that are put into place, in our opinions, are not sound. Where inmates are likely to congregate in large numbers, having those positions that we once had, we called them different things, compound officers that would be in open areas where inmates would be, having additional officers in some of these higher security prisons to partner up with one another, since the violence has increased in our prisons. More staffing in the evening time, although, you know, an institution may have on average 300 staff, those staff are all over the place.

Some of these prisons inside the fence are fifty-plus acres. And so you have people working in different areas. They are not supervising or watching the inmates. They are doing their functions that are assigned to them. But we are looking for staff to be put in these general areas. Because our main concern, to try to answer your question, is if you cannot properly supervise inmates to, number one, stop the manufacture of weapons; number two, stop the manufacture of contraband such as alcohol or moving drugs around in different ways, or them being able to hide it, you cannot stop the violence inside the prisons. And since our staffing has declined you can look at the numbers that have been put together by the agency or even the union. And our numbers would be less because we rely on the local unions from each institution to report directly to us. Now, whoever determines what is serious and what is less serious, we beg to differ if a correctional officer or a correctional worker is attacked by an inmate. But if you cannot stop the manufacture of weapons and that sort of thing, and then you are overcrowded to the point to where if it is an outright serious act that they deem serious, you have no place to lock these inmates up.

Our special housing unit, which is our jail inside the prison, is full. All these places are full. And our numbers in the high security prisons are something, unless you really know how the system operates. We have decreased the number of available beds for high security offenders. As the Director testified, the number of inmates being involved in gangs is probably higher than it has ever been before. And when you have that many inmates as part of gangs, you are going to have a little more violence. It may not always be directed towards the staff, but staff get injured when they respond, trying to break it up. Then the aggression turns towards the staff. The numbers are high, and they have increased every year the way we have calculated our numbers of assaults on staff.

But you have got to be able to supervise these inmates. And we do not have the overall supervision we once had to maintain real secure environments. Although we do the best we can, and we

think our staff are very professional, it has still gotten overwhelming.

If I can make one more point on that question? I visited two high security prisons this week before I came to D.C. One, United States Penitentiary in McCreary, Kentucky, and another, United States Penitentiary in Lee, Virginia. And when I went to the prison in Lee, Virginia there was an incident that I was not even aware of that occurred on January 25th where they had a disturbance on their recreation yard.

It was actually during the day watch hours, and because their staffing level is not at a great extent they were doing what is called annual refresher training. Which means in a three-week period you try to get all your staff in that institution trained, so you break it down by a third. The disturbance occurred, when most of the staff were down at the training and not up there at the general institution. And there was live round fire shot from the towers to quell the disturbance and to get the inmates on the ground. They resisted the warning shots, dispersionary rounds first, and then live fire rounds after that. They continued to riot out there. So an officer went out there. The last thing he remembered is an inmate had a weapon and he tried to tackle him. And the next thing he knew he was in the hospital, carried out in the ambulance.

Well, the union insisted I talk to this guy. So I went and talked to him yesterday. And when I went into the office what he said to me was, "I'm okay." And then he broke down and said, "But you know what? People don't understand my family suffers as much as I did through this whole thing." It's the stress everyday of not knowing what is going to occur, and not having the staff there to respond that is affecting the mental health of our staff as well. And that is something we wanted to make sure that we got across to you, the Committee. Thank you.

Mr. MOLLOHAN. No, thank you. What do you think is the appropriate baseline measurement for adequate staffing? We talked about that with the Director this morning a bit. What do you think ought to be the baseline off of which we work? And as I understand it, the Bureau goes through an exercise of determining need and then they generate an authorized number based on that. And it is off that authorized number that we measure percentages, and the adequacy of the personnel, the number of correctional officers and correctional staff otherwise. What is the right base? What is the right process to go through?

Mr. GLOVER. Mr. Chairman, we really believe that the ratio is the way to go. When we had a low ratio, 1 to 3.5 inmates in the late nineties, early two thousands, you did not have us up here screaming for staff, and you did not have us up here telling you about these horrific assaults and those kind of things.

Mr. MOLLOHAN. Would the ratio be different today than it was back then?

Mr. GLOVER. It actually probably should be lower.

Mr. MOLLOHAN. They say that with the modern prisons, the way they are designed, they should take less staff.

Mr. GLOVER. Our problem with that model is this. Yes, we have new, triangular-shaped units. And so what their theory was is you could put one person in the middle of that unit at a desk and he

or she could see the entire unit. And that's their theory on observation. That one person is dealing with inmates that are more violent than they were ten to fifteen years ago. I started in 1990, when there were a lot of white collar criminals, there were some RICO, those types of offenses. And now there are hard core drug dealers, gang inmates. It's a much different profile.

Our theory is is that the penitentiaries back then, if you walked through Lewisburg, or Atlanta, or Leavenworth back twenty years ago, or fifteen years ago, and you walked down into the units, they had the high range tiers. There was a tier, sometimes six deep, or six high. There was an officer on every tier, not on the unit. And now you have one person, or two, for that same unit and that tier system. And when they went to these triangle units where you can see everything their theory was, "Well, we will put one person in there and they can watch." And in some cases, I have to tell you, they vacate one side. They have a triangle unit here, they have a connector hallway, and they have a triangle unit here. And at night they will vacate one of those units. And so the officer goes from here, through there, through the hallway, and down into the other side. And they are supposed to monitor both sides all night long to make sure nobody gets hurt.

It's not working. Anybody can sit here and say, "Well, there's just a blip in assaults." Every time there's a blip in assaults that is one of us getting carried out the door. So when there is this little up tick, as they like to call it, an up tick in assaults, that means one of our guys just got carried out. And we do not appreciate it.

Last year we testified at the Judiciary Committee and we testified here that they really should at least go back to a model of having two officers per unit. And work as a team. Just like you do with Capitol Hill Police. Just like you do with other law enforcement.

Mr. MOLLOHAN. That kind of feeds into the need for modeling, a need based—

Mr. GLOVER. Right, but they are not looking at it that way.

Mr. MOLLOHAN. Well, what I am saying is, you can say, "Okay, you need actually during the night a correctional officer on both sides." So there would be disagreement about that need. But that is not a ratio guide to what your staffing needs are, your requirements are. That is a, "We need this, and we need that," and then you build up from that how many officers you need for a particular institution. That is the way I understand they get their authorized number, that "this is what we need" process, and then they make their request for funding based off that as it is impacted by OMB. And so that is how we get up to an on-board versus authorized staffing level of 92 percent.

Mr. GLOVER. Our issue with the ratios—

Mr. MOLLOHAN. And you are saying that that is not—

Mr. GLOVER. Well it is not working.

Mr. MOLLOHAN. You disagree with that?

Mr. GLOVER. We disagree with that. We believe that the ratio is the first step in bringing some sanity back to the process. Because like they told you today, and like you are hearing from us, you are going to add 14,000 inmates over the next two years. We told you that in 2005 and 2006 we cut 2,300 positions. This past year we added 700 at the end of the year, and we are going to add 900 at

the end of this year, and we did not add any the year before. So you are basically talking about 21,000 inmates that have been put into the system with about 1,600 staff added.

Mr. MOLLOHAN. I know, that is an impressive comparison when you get that on a chart.

Mr. GLOVER. That is the problem. I mean, the big states all look at the ratios. They are 1 to 3, 1 to 5 in California, Texas, Florida, Pennsylvania, the larger systems. So that is why we are staying with that model.

Mr. MOLLOHAN. Okay. Mr. Wolf.

Mr. WOLF. Thank you, Mr. Chairman. Thank you for your testimony. Were you here today when Mr. Lappin testified?

Mr. GLOVER. Yes, sir.

#### WORK OPPORTUNITIES FOR INMATES

Mr. WOLF. What do you see is the impact on the reduction with regard to the work opportunities?

Mr. GLOVER. Well I can tell you at our facility, FCI Loretto, we used to have a UNICOR factory that ran electronic cable. We had about 500 inmates that worked in that factory. We ran two full shifts. And now we are down to less than 300, 235 inmates working in that factory on one shift. Inmates have gotten in fistfights on who should have been laid off. So that causes a problem when you—

Mr. WOLF. They wanted to work?

Mr. GLOVER. Right. One inmate got laid off, the other inmate did not. And one inmate took offense as to why he was laid off and the other inmate was not, so they got in a fight. So both of them end up in our segregation unit, which does not help anybody. I think part of the assault issue is when the Defense Authorization Bill passed with that language. We told Chairman Levin at the time that this was going to cause a big problem in the system. He said, "Take it up with the Judiciary Committee."

Mr. WOLF. And I know Levin was a bit supporter of that.

Mr. GLOVER. And between him and Congressman Hoekstra at the time, there was no getting around it. And so we have eaten it ever since, frankly. Our staff, there is nothing that I know of that keeps the place humming like 300 or 400 inmates getting up in the morning, going to main line, eating, and heading to work. And then when they come back up at lunch, they head back down, they work some more. They come back. They all kind of program themselves. They do not want to lose their jobs. You do not see as many incident reports from those inmates. You do not see violence.

We had a riot at Bastrop, Texas one year where the inmates in UNICOR actually locked the doors and would not come out. The other inmates were egging them on to come out, and they would not cross, basically, out of the factory because they did not want to lose their factory jobs.

A lot of those inmates send money home. As I started to say before, what we are seeing is a big drop in commissary sales, the inmate trust funds. So there are not a lot of inmate programs that can be paid for out of the trust funds because the inmates do not have the funds to buy out of the commissaries. And so then you deal with theft out of main line, you know, stealing whatever they



can take out of there to go cook upstairs. And so you are dealing with that issue in the evenings.

Mr. WOLF. How much would a prisoner have been able to save, to take out? Let us say they were in for six or seven years. To take out when they left?

Mr. GLOVER. I can remember at least a couple of inmates releasing with up to probably \$500 or \$600 in the bank. Or they send it home ahead of time.

Mr. WOLF. And now in order to purchase at the canteen their family has to send money to them?

Mr. GLOVER. They would get basically \$5 a month, or \$5 a week. You could make a lot of money in UNICOR. But now what happens, they are put on base pay, or maintenance pay.

Mr. WOLF. And in UNICOR, what would a prisoner leave with, if he worked with UNICOR for five years?

Mr. LOWRY. An inmate can actually make somewhere between \$400 and \$500 a month. A lot of that money, if they are not paying restitution or something such as that, a lot of them send that money home monthly, almost like child support if they have children. I mean, that is a fact. And, let us say they spend \$30 to \$50 a month in the commissary just to buy some cokes and some chips or whatever else to have back at their cell. The rest of it is going to sit in that account, unless they spend some money, because they have to pay for their phone calls. And there is a new true link system for inmates to be able to email, and they have to pay some on that. But the rest of it is going to be savings. So if they worked in there five, six years, or however long, they are going to be able to take all that money with them, other than what they probably sent out to their family or spent in the commissary.

#### REENTRY AND RESTITUTION

Mr. WOLF. So Mr. Chairman, on the whole reentry issue and restitution, they were giving money to the individuals that they would give money to, their families, the email. It's pretty pathetic. I spoke to Senator Levin, too. I spoke to Mr. Hoekstra, too. I was not able to convince either of them.

The last issue, we discussed prisoner radicalization, the need to know the number of inmates with gang affiliations. As representative of the workforce, what do you see with regard to the gang issue in general? And what do you see with regard to the problems with radicalization?

#### GANGS

Mr. GLOVER. We have far more gangs than we had five or ten years ago, I can tell you that.

Mr. WOLF. Is it actually getting to the point, I have had people tell me that in some prisons, now this may be state prisons, but in some prisons they actually almost join the gang as sort of a form of self-defense before things get too far along?

Mr. GLOVER. Well they congregate, essentially together. If you watch the dining hall, the dining hall is your best example of who is in what. We have at our facility a number of sexual offenders. They all hang out together for self-protection, basically. They eat together. They move together. They recreate together. And you see

the same thing with the gangs. You see the different groups. D.C. sentenced offenders that we get will come in and congregate together. That is how the system works. Some of them are wannabes, they try to, they want to be something. We have some white pride guys that show up and they want to be an Aryan Brother, in the Aryan Brotherhood. So they will act tough, and they will want to go out and fight with somebody right away to prove that that is what group they should be with.

So, I mean, you see a lot of these gang groupings now a lot more than we used to see, I think, with the federalization of a lot of the state crimes. We have ended up with that mix. And as the Director mentioned, with the criminal alien portion, I think last year you had asked us about the MS-13s. And yes, we have groups of them that have formed inside. Now, the Bureau tries to ship them out to different places and keep them separated if possible. But it is a challenge. The gang issue is a challenge.

#### RADICALIZATION OF INMATES

Mr. WOLF. What about the issue of radicalization with terrorism recruitment? There was a Foreign Relations Committee report saying that a number of people who were radicalized in prisons, blond haired, blue eyed types, went to Yemen. And now they are living in Yemen and they are concerned.

Mr. GLOVER. Well I know we went through a process when, several years ago, there was a very lengthy process of looking at the imams and I know the Director took a lot of heat and so did the Bureau overall for some religious items that they wanted to take out of the libraries and the chapels. They tried to get a handle on that. I think they lost in the end and they had to put a lot of things back. But I think they are screening a lot of the religious leaders that come in to do volunteer work. They are screened, I think, a lot more than they used to be. But the one thing you cannot stop is inmate on inmate. I mean, inmates talking to inmates in the housing units, or going around together. That one is tough thing to stop. I do not know if we see that it is prevalent. I mean, it does not seem to be, we do not seem to be having sit downs of those inmates, or specific inmates from those types of inmates. I do not think we are seeing that. We see more of the gang activity, I think, than we do that part of it.

#### RAPE IN PRISONS

Mr. WOLF. Last issue, on the prison rape issue, the regulations were to go in effect with fed, state, and local, everybody else. But it has been delayed. How bad of a problem do you see the issue of prison rape? And you had mentioned you were only given a half an hour of training?

Mr. GLOVER. Last year we got I think a half hour of training on the Act last year. And so—

Mr. WOLF. And how bad of a problem do you see it in the feds but also overall knowing what you know about state and local?

Mr. GLOVER. I know this. When I was Council President at Dublin there were six or eight staff prosecuted for abusing female inmates.

Mr. WOLF. And that's prisoner on prisoner, too.

Mr. GLOVER. Well that is the problem, I think that is the harder nut to crack. The staff seem to get caught. The inmate on inmate part is difficult because inmates do not want to come forward on other inmates.

Mr. WOLF. How prevalent do you think it is?

Mr. GLOVER. I do not think in our system that it is huge. I do not think it is a large number in our system. I think the people that go down that road, Tallahassee, Florida we had some issues, there were at least four or five officers that went to jail over that.

Mr. WOLF. There was one that was involved in a shooting down there?

Mr. GLOVER. Yes.

Mr. WOLF. Had he been—

Mr. GLOVER. He was part of that indictment.

Mr. WOLF. And did the shooting have a bearing on that? Was that one of the reasons?

Mr. GLOVER. Yes.

Mr. WOLF. Did you follow this? Why do you not explain what that was.

Mr. GLOVER. Well, essentially what happened was they had sealed indictments on five staff. They allowed them to keep working, which we found out about after the fact and got pretty upset about. There was a disagreement, from our understanding, and I will just say our understanding because I was not in the room and Bryan was not either. There was a disagreement about when to pick these people up from work, or when to actually go get them. And it was decided, either by OIG, the FBI, or the Bureau, that they would wait until they were at work, and then they would come and get them. And we feel that it was part of a parade, that this was a show arrest. "Well, we are going to come in and we are going to take them off their posts in handcuffs, and show you not to do that." Well, unfortunately one of those staff had a firearm in a backpack.

Mr. WOLF. And he shot an OIG guy?

Mr. GLOVER. Yes. Yes, he fatally shot an OIG agent, and he was shot and fatally killed as well. It was a terrible incident. As a result of it, we now search our staff. We have metal detectors that we have to go through to go to work in the mornings that we in the Bureau of Prisons never had to have.

Mr. WOLF. And they were all involved in basically—

Mr. GLOVER. They were running some sort of ring with the female inmates at Tallahassee.

Mr. WOLF. Well, thank you both. Thank you, Mr. Chairman.

#### VIOLENCE IN PRISONS

Mr. MOLLOHAN. Thank you, Mr. Wolf. Just one follow up question to Mr. Wolf's coverage of prison violence. Does the BOP solicit input from the AFGC on policies related to protecting staff from assaults by inmates?

Mr. LOWRY. Our contract allows us to negotiate with the agency on any change in any policy, practice, or procedure. Whenever they are going to make a change to a policy or they are going to propose a new policy, it gets issued out to the field and then we do generally look at it. If we see concerns with it we invoke our rights

to negotiate. And at that point there is a time frame set up for us to get together. There was a lot of, I would say, back and forth on some of these over the last few years. But since there has been a change to the Chair of the FLRA, things have gotten a little better. But we do have a right to negotiate, to provide input and suggest changes, and to bargain in good faith. You know it works between both parties.

Mr. GLOVER. Can I add in just on that? The one thing that, well there are several things. The problem we have is that some things are considered internal security matters by law. And that is what they will rely on when they do not want to listen to us, is, "Well, that is internal security." If they like what we are saying, then that is fine.

The other issue for instance is, after the murder in Atwater, we had asked for pepper spray for the officers. Actually, we put pepper spray, batons, or tasers. Whatever the three that they wanted to work with. We were not hung up on any given one, but pepper spray seems to be about the easiest to train on and operate with. Many states and many local county jails carry it daily and there is not a huge issue with it. They have been completely resistant to add that to our ability to simply keep an inmate off of you. And I know you have heard from your folks at Hazelton. Over and over we have nothing to fight these guys off with. And in a perfect world they would not attack us. But that is not how it works. And so, all we have asked for is something simple that will keep an inmate off of you for a few more minutes to where you can get help there. We have brought that up to them repeatedly.

We had brought up the issue of stab vests. They bought stab vests for the people that wanted them. But then what they did is they created a policy that said if you request a stab vest you have to wear it everywhere. Even our officers who are on duty working at a training center being trained, and not inside the secure facility, are technically required by their policy to wear the vest. They made it so unworkable that the staff just turned them back in. I have no idea how much money was spent on that. But I bet you it is a lot, when you consider those vests are \$300 or \$400 apiece.

So there are things that we wanted, or that we have asked for for safety measures. The two officers per unit, we asked them to start at the high securities. There's only eighteen to twenty high security prisons in the system out of the 115, with an average of six to eight housing units per. So let us say for the 2 to 10 shift, one shift you wanted to have two people in there. You are adding about, you are adding six positions. Now in the whole scheme of the Bureau of Prisons, twenty institutions, six to eight positions plus a relief, two more days of relief. There has got to be a way to sort that number out. And we just have not gotten there, over all this time.

Mr. MOLLOHAN. So you can talk but you do not necessarily get satisfactory results. Let me ask you, the Bureau of Prisons seems to be developing this strategy of special management units to try to get out the most difficult inmates to handle. How is that working? And how do you think it might work when fully implemented with additional special management unit space?

Mr. LOWRY. I think we testified about some of that last year, and I have talked with you recently with the group from Hazelton about this. What the Bureau of Prisons did is over the course of probably the last five years, starting with United States Penitentiary Atlanta, and then United States Penitentiary Leavenworth, and then United States Penitentiary Marion, Illinois, United States Penitentiary in Beaumont, Texas, they changed their missions. All of those prisons now, even though the older ones for National Archive purposes were still called United States Penitentiary, they are medium security level prisons. We have only brought probably two to three brand new United States Penitentiaries on board but lost the mission of six or seven, probably, in the same time span.

The high-security type of population has not decreased in the Bureau. Now, Marion, Illinois was kind of like ADX Florence, the Supermax. Its mission was to house probably the most dangerous, most incorrigible inmate who could not be on an open compound at any security level, and they are locked down twenty-three hours a day. Marion had the same mission. When they changed Marion's mission, that was about 500-and something beds of those type of inmates. And they had no plan or initiative in place to replace it. What happened is, is the violence during that period of time, and you could see the spike even through the Director's testimony, that it greatly increased from 2006 probably on up to about 2009. Even last year when he testified, it was pretty much to the fact that the only security level he would say that really increased was the high security level. And their reaction was to take Lewisburg and get rid of the open compound high security inmates.

Now, we had not brought any more on recently. So those inmates, the probably 1,200, had to go get put in some security level, or their security level was decreased to medium to fit them into the system if probably over a number of years they had not been violent. And then they created two units, one in Oakdale, Louisiana and one in Talladega at medium security prisons, to just take units and turn them in to these special management units.

To me, the inmates that are in a special management unit, they want to call it programming. The officers that work in there, or the staff that work in there, will tell you there is really no programming. They themselves just judge the good time these inmates, and I am not talking about giving them good time. The good time they may have for the next two years in what they would call phase one, and then give them a little more time out of their cell in phase two over the next year, and then phase three a little more time. And then see if they could possibly put them back in an open compound. But they are the same inmates that because of the violence, or because of the riots they have been part of, or because of the type of assault with weapons on other inmates, or the types of assaults on staff, they belong in ADX Florence, Colorado. But there is no bed space available. So they started out with units, and when that was not enough they took one whole institution and then—

Mr. MOLLOHAN. Well, have we had experience with this long enough to know whether this strategy is beginning to work or not? Is it reducing violence in the other prisons?

Mr. LOWRY. I think the number is over probably 2008 and 2009, when you asked the question earlier, probably are about the same

numbers that have occurred. The only thing we do not know is when you determine how serious the violence is, you know, the disturbance on the yard, did they have to fire live round ammunition on the yard? And we would only do that, according to policy, to prevent the loss of life. Now, some of the things that occur with the weapons and that sort of thing, I do not think the violence has been deterred. I think what we did was at that period of time we took some of the most violent inmates that were already sitting in some of the special housing units, they were not even out in the open compound, they were locked down in our jail inside the prison and they moved them out. Well, now these places have filled back up.

It may have deterred it for a short period of time. But that type of inmate——

#### OVERCROWDING

Mr. MOLLOHAN. There are two different things here. Number one, is the space available in the special housing units and special management units, to be able to implement the program? And number two is, if you cannot implement the program, is it a sound strategy for reducing violence on officers in the prison system? And I guess what I am getting out of your testimony is that there is really not enough space. It is still too crowded, too overcrowded, and there are not enough management units in order to tell. Is that right?

Mr. LOWRY. That is exactly what I am saying. But as you see the population expand, anywhere from 5,000 to 7,000 inmates in the numbers we are giving to you, that means that type of offender is increasing in our system as well. And we had not made any adjustments for them, and now we are having to react to it. Before these special management units were put on line, and then Phil wants to say something, is that they created these modified, alternate lock down units to try to deal with them first. And there were many institutions, including Hazelton, that had one of them, and they were staffing them with one officer. And then they started putting in regular SMU inmates, and it just turned into a mess. That is when the SMUs were created because officers were getting assaulted in there when they would open a door up for an inmate. They did not want to call it a special housing unit, where you had all these restrictions about policies that you were mandated to follow. So it was a free for all, and none of the policies mirrored each other from one another, and that is how they dealt with it.

I think it is working at Lewisburg, but I think they are going to continue in another year to build another one, just like Thomson was testified to. We were thinking that would be open compound and alleviate some of maybe the overcrowding for the population at the highest security level. But if it is going to turn into an SMU, that does nothing for our really open compound United States penitentiaries.

Mr. MOLLOHAN. Well, except that it takes a lot of the most difficult inmates out of those populations and into another population. So it should have some benefits?

Mr. GLOVER. 1,600 beds.

Mr. LOWRY. One more thing about these SMUs is when you have more violent inmates like that locked down by themselves, they do not want a cell mate. In an open compound, where you say that you are going to have two in a cell or three, they are so violent you can not even house anybody so—

Mr. MOLLOHAN. They are going to use Thomson for that purpose. It actually is only 1,600.

Mr. GLOVER. There is not a real chance there to double bunk if you are going to go to an ADX environment at that facility. The only other thing I just wanted to add quickly, and I know our time is about up, Lewisburg was made an SMU. They had at least two stabbings in November, one with a spear out of a housing unit door. The officer was starting the feed and as he put the food slot down to put the food trays up, the inmate had crafted out of paper, rolled and rolled and rolled tight, and then he put a piece of the bedspring in the one end. And he actually stabbed an officer through that slot, it is on camera, into his thigh, and almost got his artery. So whether you are in an SMU, or whether you are in a regular SEG unit, at this point the way the population is going it is just not a good situation.

Are they working? They might make it a little better at one facility. But Lewisburg is not as good as it was. And again, like Bryan was saying, they are not staffing them up. The Supermax at one time had five officers per range. If you went down range you had five officers with batons before you moved an inmate and brought him out of a cell. They are trying to get away at these SMUs with maybe two, sometimes three. They will put a three-man hold on an inmate, where three have to go down. But it is still a staffing problem. It goes back to that.

Mr. MOLLOHAN. Well, do you all have anything else that you want to speak to before we bring the hearing to a close? This is your opportunity.

Mr. LOWRY. Sure. Our issues are not going to change much. Until the funding increases here, and then sound initiatives are put into place, there is going to be violence in prison. There has been a lot of issues talked about, whether it is on staff or our mission is to make sure that these inmates are safe and we treat them humanely and protect the public, and keep them incarcerated inside. Our staffing ratios have to improve. It is detrimental to our ability to manage the populations, as well as to keep ourselves as safe as possible. The numbers are responders. At any given time anything can happen in a prison setting. And just in my opinion, the higher security level the more dangerous the individuals are incarcerated there, and the more violent they probably could become. Not that incidents cannot occur at any level, because they most certainly have and they still do. But your numbers and your ratios are going to be at the higher levels. But the staffing ratios at every level right now, they have at camps almost got down to where you just have cameras watching inmates, which is very unsound to the communities they are in. At low security basically cameras and sometimes you have one correctional officer that used to work one unit, with 150 inmates to one on the off shifts. You may have some additional correctional workers there in the daytime, but that correctional officer is running the unit. And now you have this correc-

tional officer working two units. And in some places they have worked three by themselves. And you are talking 450, 500 inmates.

When you bring up things like the Prison Rape Elimination Act and other things about our concern to do that, I can as an officer only be in one place at one time. You have gotten me taking on more than anything I have ever done before as an officer moving around the unit.

Mr. MOLLOHAN. It sounds like a lot of territory to cover.

Mr. LOWRY. How do you expect me to watch it all? The inmates know where I am at any time, if they want to move contraband or even go further with more acts of violence against other inmates. They have got the ability to do it. We have lost our supervision. And I really believe we have lost our way inside the Bureau.

Now, I do not believe anybody, from the Director to anybody else, wants to see anybody get injured or hurt, especially staff. But if we can not supervise our population, we cannot stop them from manufacturing weapons, because they are doing it. From all kinds of means, as Mr. Glover said, but they have access to all kinds of plastic, all kinds of other things. Drugs, other contraband such as making homemade alcohol. I mean, this stuff is prevalent at almost every institution because we are not out where we are viewing everything like we did before when we had more staff.

But these staff are also, given us the ability in case an inmate aggressively attacks the staff or a disturbance occurs, our response time is quicker. Our response time is slower now with less staff. And there are some shifts where you just have a skeleton crew. Where in the daytime they will say, "Oh, our ratios are great." Because you have 200 staff on day watch. But you get to a low security prison, and you might have thirteen staff now at that institution with 1,700 inmates.

Mr. MOLLOHAN. Okay. Thank you. Thank you, Mr. Lowry. Mr. Glover, do you have anything you would like to add?

#### DRUG TREATMENT

Mr. GLOVER. Just a couple of things. I know what came up in the hearing this morning, there was a little bit about drug treatment. And I heard a ratio of 1 to 25.

Mr. MOLLOHAN. Mm-hmm.

Mr. GLOVER. We have 1,400 inmates at Loretto, and we have one drug treatment specialist. So I do not know if that is how many are supposed to be sitting in group together, or that is certainly not the ratio of drug treatment specialists to the inmate population, I do not think. I am not sure how it came out this morning. But I wrote that down because I know we—

Mr. MOLLOHAN. That is the way it came out in my mind.

Mr. GLOVER. Well, you know, like I said, it may be one and they run a group of twenty-five inmates at a time, maybe. I do not know. But that is certainly not the ratio.

Mr. MOLLOHAN. That would be a lot of groups.

Mr. GLOVER. I am trying to be kind.

Mr. MOLLOHAN. Well, you do not want to confuse the record. It is—

Mr. GLOVER. No, I am trying not to do that. Thank you, Mr. Chairman.



Mr. MOLLOHAN. I think you made it clear to begin with.

Mr. GLOVER. But that is a real question for us because I understood that originally to be funded out of a separate—

Mr. MOLLOHAN. But I think what he was saying, and this would be an extreme example. If he had 1,400 inmates and I do not know how many of those, what percent would need drug treatment. But what percent? Fifty percent?

Mr. GLOVER. I am going to say probably a majority with the population that we have with drugs and alcohol.

Mr. MOLLOHAN. Well, his point was that there would be a waiting list, but they would maintain that 1 to 25 ratio in the treatment environment. So they would not have anymore, so there would be—

Mr. GLOVER. I just think that is—

Mr. MOLLOHAN [continuing]. 1,375 people waiting for—

Mr. GLOVER. Yeah, there are a lot of people waiting—

Mr. MOLLOHAN [continuing]. The next class.

#### MONITORING OF INMATE COMMUNICATIONS

Mr. GLOVER [continuing]. For a little help. And the only other issue that I thought might need to be clarified, there was a discussion about communication issues and monitoring mail, telephone, and visits. Well I do not think we are doing that great on telephone monitoring. We have a telephone monitor at certain facilities. Sometimes that person is pulled to work housing units, other areas of the prison.

Mr. MOLLOHAN. Is it random monitoring? Is it random?

Mr. GLOVER. Yes, it is. Now there are some alert lists where you will get certain inmates that 100 percent of their calls have to be monitored. But that is not all the inmates. And so the rest of it is all scattered, scatter shot.

#### EMAILS OF INMATES

The other thing is, they just created here in the last year this true link system that is allowing inmates to use email. And we have heard, not in all cases, but we have heard from some of our locals that they have a concern over the security of the system. BOP is saying that it is a locked in, secured system where the inmates send the email, it sits for twenty-four hours, the computer, I guess, has words that will key, supposedly, although—

Mr. MOLLOHAN. Screen it?

Mr. GLOVER. I guess screen the mail, and then it will be sent. And then the message will come in. I have been told by at least three or four institutions that they are into the thousands on these emails. And so—

Mr. MOLLOHAN. Backlogged?

Mr. GLOVER. Well just not monitored. I mean, just, that are going to go out and who knows? Our only issue with bringing it up to the Committee is we just want it on the record because, as with the letters that came out of ADX and went to Spain, as with the phone calls that have occurred that Mr. Ruppertsberger and others were very concerned about last year with setting up hits on staff and other things that occur, you know, running criminal enterprises—

Mr. MOLLOHAN. Oh, we will follow up.

Mr. GLOVER [continuing]. Well, now we have this on top. And again, we have been telling you about the staffing levels for three years and we created a new system to give more communications. And I, you know, I understand what they are trying to do. You know? An inmate that communicates with their family members is supposed to be better at progressing back into society and all that, and that is great. But it does create at some level a management nightmare. So we thought we should at least bring that to the Committee's attention.

Mr. MOLLOHAN. Okay. Thank you. Well, thank you all very much for your appearance here. Thank you for the good work you do. I can tell you, it gives us an insightful perspective on the Bureau of Prisons and very much complements our oversight of the Bureau. And it also lets us know where we can be helpful to those who are really on the front line doing this job. And it is a tough job, you do a great job at it, and we appreciate your letting us know what your special needs are. So thank you very much for your testimony. The hearing is adjourned.

Mr. GLOVER. Thank you, Mr. Chairman.

THURSDAY, APRIL 22, 2010.

**OFFICE OF JUSTICE PROGRAMS (OJP) FY 2011 BUDGET**

**WITNESS**

**HON. LAURIE ROBINSON, ASSISTANT ATTORNEY GENERAL**

Mr. MOLLOHAN. The hearing will come to order, and we will all come together. Good morning. We are pleased to welcome the Honorable Laurie O. Robinson, the Assistant Attorney General for the Office of Justice Programs. Ms. Robinson, this is your first appearance here since your confirmation in November. But it is not your first time testifying before Congress on the Department of Justice grant programs. And you bring with you a wealth of experience from many years in the same position during the Clinton administration as well as other substantive positions related to the field of criminal justice. And the Department is lucky to have you back. Welcome, and we appreciate having you back.

The Subcommittee has made increasing investments in the Office of Justice Programs over the last few years, including \$2.77 billion through the American Recovery and Reinvestment Act, and \$3.35 billion in the fiscal year 2010 CJS bill, an increase of \$200 million, or 6.4 percent, above the prior year level. And we look forward to working with you to achieve significant progress in the areas that these increases represent.

Last year we held a series of hearings focused on prisoner re-entry and justice reinvestment with a focus on evidence-based practices that are helping to reduce incarceration and recidivism and that are giving people a second chance at a productive life. Two of the major lessons we learned from those hearings is first there is good evidence about what works and we should be doing more to disseminate that information to practitioners around the country and use federal funding to help leverage evidence-based approaches. And second, we need to keep investing in research that will help us further refine what works and help us discover new, even better strategies and approaches.

There are a number of new initiatives proposed in your budget that seem to be informed by these lessons and we will want to hear from you in more detail about how they would work. There are also proposed cuts to some existing programs and we will want to ask you about the rationale for that.

I now call on Mr. Wolf and your testimony will proceed after Mr. Wolf has an opportunity to make a statement. Mr. Wolf.

Mr. WOLF. Thank you, Mr. Chairman. Ms. Robinson, we want to welcome you and appreciate you being here today. We support a lot of your programs at DOJ that assist the state and local government.

I am concerned about the decision to divert funding away from some of the critical improvement programs. Prescription drug monitoring, this problem is growing unbelievably around the country. The prison rape prevention, I think Eric Holder when he leaves office will go away feeling great disappointment in himself in the fact that the failure for the administration to deal with the prison rape thing. Every day this issue is growing and growing, and yet the administration is just kind of almost walking away from it. The methamphetamine enforcement. So some of those concern me.

Finally, your budget actually reduces funding for victims of trafficking. I do not understand; this area, the Washington, D.C. area now is becoming actually a center for trafficking of victims. We think in terms of Thailand or Albania. But it's now Virginia and the District of Columbia. And so we will have a lot of questions that will get into that area. But I do not know why the administration would want to reduce the funding for victims of trafficking.

So, but anyway we look forward to your testimony and we will ask some questions. Thank you, Mr. Chairman.

#### FY 2011 BUDGET REQUEST

Ms. ROBINSON. Chairman Mollohan, Ranking Member Wolf, and certainly distinguished members of the Subcommittee as they arrive, I am very pleased to be here today to talk about the President's budget request for the Office of Justice Programs. I had the privilege of coming before this Subcommittee many times when I served as Assistant Attorney General in the nineties. And again as a private citizen, as you may recall, three years ago at your invitation. I am very pleased to be back at OJP and very honored, Mr. Chairman, to appear before you today.

OJP's mission is to help reduce crime and improve the administration of justice at the state and local level through innovation, research, and programs. The President's budget request for fiscal year 2011 includes almost \$3.1 billion to support OJP's activities. The request reflects four themes that I view as central: strengthening partnerships with state, local, and tribal stakeholders; restoring the role of research in criminal and juvenile justice policy and practice; promoting evidence-based approaches to crime and violence; and ensuring fairness, transparency, and effectiveness in grant administration.

To take the first of these, one of the reasons I was willing to return to OJP was to help the Department reestablish strong relationships with its state, local, and tribal partners. I view outreach by OJP to the field as crucial. And very early in my tenure last year I held a series of listening sessions with our constituents to hear from them what the agency was doing well and what we needed to be doing better. The centerpiece of our commitment to states and communities on the funding front in my view is the Byrne JAG program, a vital source of funding for state and local law enforcement. The President's budget request for fiscal year 2011 includes \$519 million for this critical program, the same amount Congress appropriated in the current fiscal year.

A second of my goals in returning to OJP was to help restore the role of science in our work in criminal and juvenile justice. In an era of limited financial resources it seems to me we have got to em-

ploy smart on crime approaches. This means learning as much as we can about what factors contribute to criminal behavior and what programs work in reducing crime. In short, we need a robust research program, as you mentioned, Mr. Chairman. And that is uniquely a federal role. To support that, the President's budget calls for a 3 percent set aside of all OJP grant and reimbursement funds. That is in addition to amounts requested for OJP's research evaluation and demonstration program and the criminal justice statistics program. All told, \$189 million is requested for research, evaluation, and statistical activities in fiscal year 2011.

Third, a corollary to OJP's role in providing basic social science research is helping states and localities put into place crime fighting strategies that work, that are based on evidence of effectiveness. That, in my view, is critical. The President's budget request thus dedicates funding to an evidence integration initiative that would assess our understanding about what works in reducing and preventing crime. It would also help us determine how to use that information to fight crime more effectively. Two important elements of that would be an online "what works" clearinghouse, that you may remember, Mr. Chairman, I suggested when I testified back in 2007, and a diagnostic center or help desk, as I call it, to assist jurisdictions in accessing OJP resources, technical assistance, training, and how to implement evidence-based approaches.

The President's budget also proposes a number of programs that would promote evidence-based practices. These include funds for smart policing and smart probation initiatives that link research to practice. \$37 million would go toward a comprehensive initiative to address children exposed to violence. \$12 million is also proposed for a gang and youth violence initiative.

Finally, as we work to support our state, local, and tribal partners we have a crucial responsibility to be good stewards of federal funds. Last year OJP made almost 3,000

[CLERK'S NOTE.—Later corrected to "3,900."] awards under the Recovery Act. I am proud that the Justice Department was the cabinet agency with the fastest rate of Recovery Act awards. We got 99 percent of our funds out the door in seven months. In spite of that significant increase in grant activity, OJP has improved its processes for ensuring open and fair competition. And I want to tell you I take that very, very seriously. In addition, I have insisted that we post information about all our grant awards on the Web.

#### FY 2011 BUDGET REQUEST

In conclusion, Mr. Chairman, with this budget OJP looks forward to working with Congress and this Subcommittee to ensure that public funds are used effectively and transparently to promote smart on crime policing. Tough choices needed to be made in this process in this tight budget year. I know there is not agreement on all the offsets proposed in this budget, but I am very pleased to have the chance to be here today to talk with you about it.

And I am now happy, of course, to answer your questions.

[The information follows:]

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STATEMENT

OF

**THE HONORABLE LAURIE ROBINSON  
ASSISTANT ATTORNEY GENERAL  
OFFICE OF JUSTICE PROGRAMS**

BEFORE THE

**SUBCOMMITTEE ON COMMERCE, JUSTICE, SCIENCE,  
AND RELATED AGENCIES  
COMMITTEE ON APPROPRIATIONS  
UNITED STATES HOUSE OF REPRESENTATIVES**

ON

**THURSDAY, April 22, 2010  
WASHINGTON, DC**

Chairman Mollohan, Ranking Member Wolf, and distinguished Members of the Subcommittee, I am pleased to have this opportunity to discuss the President's budget request for the Office of Justice Programs (OJP) for Fiscal Year (FY) 2011.

I had the privilege of coming before this Subcommittee many times while serving as Assistant Attorney General in the 1990s under President Clinton and Attorney General Reno and again, at your invitation, as a private citizen in 2007. I returned to OJP at President Obama's behest because I firmly believe that OJP should reestablish strong relationships with its state, local, and tribal partners. We have seen many innovations in criminal and juvenile justice over the last decade, and I want to use OJP's leadership role to get that information to the field and to help our partners put into place crime-fighting strategies that are based on evidence of effectiveness. I am honored to be serving under President Obama and Attorney General Holder, both of whom care deeply about our mission and the health and safety of America's communities. I know that their commitment is shared by the Members of this Subcommittee, and I commend you for your dedication to preventing and reducing crime.

OJP's mission is to increase public safety and improve the fair administration of justice across America through innovative leadership and programs. We do this by providing information, research and development, statistics, training, and support to help the state and local justice community build its capacity. We also do it by encouraging local innovation through national policy leadership. The President's FY 2011 request

includes a total of almost \$3.1 billion to support OJP activities. This represents a decrease of \$62.4 million from the level enacted in FY 2010.

I want to acknowledge up front that some of the changes you will see in our request are primarily the result of budget considerations. If we could fund every worthy program, we would. These were tough decisions. But I also want to assure you that decisions related to offsets were made carefully, and no changes were made that risked compromising the Department's public safety goals.

### **Partnerships**

I believe strongly that a central theme for OJP should be partnership – partnership with communities and partnership with our state, local, and tribal stakeholders. Rebuilding partnerships was a central reason I agreed to come back to OJP. It was this commitment to partnership that was behind our award of \$5.6 billion in grants last year to states, localities, tribal communities, and others. Almost half of that came from money appropriated by Congress under the American Recovery and Reinvestment Act (Recovery Act). And I am proud that the Department of Justice was the Cabinet department with the fastest rate of Recovery Act awards, awarding 99 percent of Recovery Act funds in 7 months.

Building state and local capacity is OJP's primary responsibility. By far, most of the work being done every day to enforce the law, prosecute criminals, run our



courtrooms, house prisoners, manage probationers and parolees, assist victims, and prevent juvenile delinquency is done by state and local criminal and juvenile justice practitioners. According to the latest data from our Bureau of Justice Statistics, criminal justice expenditures at the state and local levels amount to some 83 percent of all criminal justice expenditures; federal criminal justice operations consume the other 17 percent.<sup>1</sup> Ninety-four percent of all felony convictions are made in state, as opposed to federal, court, and almost 87 percent of prisoners are held in state facilities.<sup>2</sup> And that excludes the almost 800,000 people being held in local jails on a given day.<sup>3</sup>

The workload of our nation's law enforcement officers, prosecutors, judges, corrections officials, victim service providers, and juvenile justice practitioners continues to increase and intensify. To date, they have risen to, and met, the challenge. Thanks to their efforts, crime in many cities is at its lowest level in decades. But the state and municipal budgets that support their activities are shrinking, as you know too well, and public safety professionals now must deal with homeland security issues as well as more familiar neighborhood crime. Whether we can maintain our progress and continue to enjoy falling crime rates in light of these challenges is an open question – the answer to which depends on how wisely we invest our resources.

The Administration's commitment to supporting our state and local criminal and juvenile justice partners was reflected in the programs administered by OJP under the Recovery Act last year, particularly the Edward Byrne Memorial Justice Assistance

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<sup>1</sup> <http://bjs.ojp.usdoj.gov/content/glance/tables/expgovtab.cfm>.

<sup>2</sup> <http://bjs.ojp.usdoj.gov/content/pub/pdf/fssc06st.pdf> and <http://bjs.ojp.usdoj.gov/content/pub/pdf/p08.pdf>.

<sup>3</sup> <http://bjs.ojp.usdoj.gov/content/pub/press/pim07jim07pr.cfm>.

Grants (JAG) Program. Between the Recovery Act and our regular appropriations, OJP awarded \$2.5 billion in Byrne JAG funding in FY 2009 to support law enforcement operations and other criminal justice activities. Byrne JAG funding through the years has been critical in supporting a range of crime control and prevention activities, including law enforcement operations, prosecution and court programs, community corrections activities, education, and technology enhancements. In fact, I view Byrne JAG as our flagship program at OJP. The President's budget request for FY 2011 includes \$519 million for the Byrne JAG program. This is the same level of funding enacted in the FY 2010 appropriations, and I would like to express my appreciation for the Subcommittee's steadfast support of this vital program.

The budget also includes \$330 million for the State Criminal Alien and Assistance Program (SCAAP). SCAAP will continue to provide federal payments to states and localities that incur correctional officer salary costs for incarcerating illegal aliens. This program is another clear example of the important role the federal government plays in supporting state and local criminal justice efforts. And again, I want to acknowledge the support of Congress.

#### **Evidence-Based Programs**

Continued support of our criminal and juvenile justice stakeholders through programs such as Byrne JAG remains critical during these challenging economic times. Equally important is ensuring that the methods they use are based on evidence of

effectiveness. Our Byrne JAG program increasingly focuses on promoting evidence-based programs in law enforcement and other sectors of the justice system. The President's budget proposal continues that focus. Several of our programs require that applicants demonstrate they are proposing evidence based approaches in order to be eligible for funding, e.g., research grounded programs that have successful results such as reducing recidivism or lowering drug use among offenders. Our "Smart Policing: Evidence-Based Law Enforcement" program, to be administered by our Bureau of Justice Assistance (BJA), is one such example. The request includes \$10 million for this program. Its purpose is to take advantage of what we know about the effectiveness of approaches such as "hot spots" and intelligence-led policing. Grant recipients would work with research partners to identify a crime issue through rigorous analysis and develop strategies and tactics to address the problem. For example, in Philadelphia, police are working with Temple University to address crime in several micro-hot spots responsible for violent crime in the city. The result would be smarter, data-driven law enforcement practices.

Similarly, the President is requesting \$10 million for a program called "Smart Probation: Reducing Prison Populations, Saving Money, and Creating Safer Communities." I think most of us would agree that managing our corrections population is a critical challenge facing our justice system. Some 2.3 million men and women are held in the custody of prisons or jails – but an additional 5 million are under some form of community supervision, either probation or parole.<sup>4</sup> Those numbers are only expected to rise. Over the years, we have given remarkably little attention to probation and parole,

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<sup>4</sup> <http://bjs.ojp.usdoj.gov/content/pub/press/p08ppus08pr.cfm>.

and few resources. Yet it is offenders under community supervision, not those behind bars, who pose the greatest potential risk to public safety. Some states and communities have found effective ways of managing their probationers and parolees. The Smart Probation program would build on that progress by helping jurisdictions improve supervision strategies through better and more targeted data collection and analysis, better interagency coordination, and training and technical assistance. As an example of an evidence-based approach, the Hawaii HOPE program is a highly promising model in which high risk probationers go before a judge who issues a clear warning that any probation violation, including a failed drug test or a “no show” for probation appointments, will have swift and certain consequences. This can result in the offender going to jail within 48 hours. The jail sentence can be very short, but this intervention has reduced re-arrests by more than 50 percent, especially significant because many of the participants are methamphetamine users.

### **Research**

Another of my top priorities in returning to OJP has been to ensure not only that what we fund is based on evidence from research, but also that we do a better job of translating that research for the benefit of policymakers and practitioners in the field. Best evidence-based practices require sound data and quality research. In recent years, our National Institute of Justice (NIJ) has supported ground-breaking research on issues such as the use of DNA evidence to solve property crimes, the effectiveness of mapping crime “hot spots,” the role of sexual assault nurse examiners in improving criminal

investigations and aiding victims, and identifying forensic markers in elder abuse.

Meanwhile, our Bureau of Justice Statistics (BJS) has provided important data on topics ranging from prison rape and sexual victimization in juvenile facilities to intimate partner violence and school safety, and continues to provide data profiles of law enforcement agencies, prosecutors' offices, courts, and other sectors of the justice system.

The President's budget proposal envisions strengthening our capacity to generate credible data and research findings that can be used by practitioners in the field. In addition to the \$70.8 million being requested for NIJ and \$62.5 million requested for BJS, the President's budget would allow the Assistant Attorney General to set aside 3 percent of all funds available for OJP grant and reimbursement programs to be used for research, evaluation, and statistical purposes. This will give us the flexibility to devote our resources to grounding program activities in sound science and to address emerging issues in response to Administration and Congressional priorities.

We also are proposing specific research and data initiatives that can help better connect OJP's research to our state and local constituents. When I returned to OJP last year, I launched an agency-wide evidence integration initiative to assess the state of our understanding about what works in reducing and preventing crime and to determine how to use that information to help communities fight crime more effectively. To advance that effort, the President's budget request includes \$1 million for a new Evaluation Clearinghouse/What Works Repository, which we call a Crime Solutions Resource Center, that would provide practitioners and policymakers with a single, online source for

information about what works and what is promising in criminal and juvenile justice. Also as part of the initiative, \$6 million would go to establishing a State and Local Assistance Help Desk and Diagnostic Center, housed in BJA, to help jurisdictions diagnose public safety problems and develop evidence-based strategies to address them.

In addition, under a program entitled “Stopping Crime, Block by Block: Demonstration Field Experiments, Action Research, and Basic Research on Crime and Justice,” the budget requests \$10 million to allow NIJ to launch and rigorously test innovative crime-fighting efforts in targeted communities. This initiative would support multi-site demonstration field experiments, action research that allows researchers and practitioners to work together to address immediate problems, and basic research to build foundational knowledge about the causes and consequences of crime, delinquency, and violence.

### **Offender Reentry**

The President’s budget would also continue the Administration’s commitment to offender reentry programs. With the support of Congress, we have made substantial investments in reentry services under the Second Chance Act. Second Chance Act funding is providing employment assistance, substance abuse treatment, housing, mentoring, family programming, and a host of other services to help offenders reintegrate into their communities. In addition, we currently devote \$10 million to support an intra-agency research and evaluation initiative to rigorously study what works and what

doesn't work in the reentry field. Under this initiative, NIJ and BJA are collaborating in support of a multi-part research plan that will include evaluability assessments of Second Chance Act grantees, reentry courts, and multi-site demonstration field experiments. The President's budget proposal would continue our investments in these programs and research at the level appropriated by the Congress in FY 2010 – \$100 million.

### **Youth Violence**

One of the intractable issues facing criminal justice professionals and policymakers is the problem of youth violence, often emanating from a lack of stable and healthy models and too often finding resolution in gang involvement. The latest estimates from the National Youth Gang Survey indicate that almost 800,000 people belong to youth gangs, and their offenses range from burglary and drug sales to armed robbery, aggravated assault, and homicide.<sup>5</sup> Research sponsored by our Office of Juvenile Justice and Delinquency Prevention (OJJDP) has identified risk factors that increase the probability of gang involvement and delinquency. The "Gang and Youth Violence Prevention and Intervention Initiative" proposed in the President's budget seeks to take advantage of what we know about how to reduce the likelihood of joining gangs. The initiative will use the five strategies of OJJDP's Comprehensive Gang Model – community mobilization, social intervention, educational and vocational opportunities, suppression, and organization change – to support coordinated anti-gang strategies and to promote evidence-based services for at-risk and gang-involved youth. The President's budget proposes \$12 million for this program.

<sup>5</sup> <http://www.ncjrs.gov/pdffiles1/ojjdp/225185.pdf>.

The President's budget also includes \$25 million for a "Community-Based Violence Prevention Initiatives" program that will build on lessons learned from evidence-based violence reduction strategies that have been implemented in several cities, including public health approaches focused on proactive interventions to prevent retaliatory violence. This program will provide grants to community-based organizations to address violence through street-level outreach, conflict mediation, and the changing of community norms, among other approaches.

#### **Problem-Solving Courts**

Many young and adult offenders have been steered away from further offending by programs that use the coercive and monitoring power of the court in more creative capacities. Traditional court practices, which focus on imminent actions and legal precedent, are not particularly effective in addressing the underlying social and psychological issues that propel these individuals into involvement with the justice system. Problem-solving forums such as drug and mental health courts that rely on collaboration with social service, public health, and other criminal justice agencies have been shown to be effective in addressing these underlying problems and in reducing recidivism. We are proposing \$57 million to help state, local, and tribal governments develop and expand these problem-solving approaches. This program will consolidate separate funding streams for drug courts and mental health problem-solving courts to



allow for greater flexibility in funding innovative projects and supporting evidence-based strategies.

I have personally visited more than 12 drug courts around the country – including a number of drug court graduations – and I can attest to the power of problem-solving courts in changing offender behavior. Rigorous research backs these experiential observations, and this consolidation would demonstrate our strong support for these programs.

### **Community Innovation**

Encouraging innovation is one of OJP's many responsibilities. The Weed and Seed strategy employed in many neighborhoods across the country has been an important element in encouraging innovative, place-based community responses to crime. Building on the success of Weed and Seed, our Community Capacity Development Office would oversee a new "Byrne Criminal Justice Innovation Program." This competitive \$40 million program would model evidence-based, collaborative strategies for improving public safety, in partnership with stakeholders at the federal, state, local, and tribal levels. The program would support evidence-based approaches proven to work in the field and would place a renewed emphasis on place-based approaches that allow for the strategic targeting of resources to ensure significant impact. Increased program flexibility will support expanded collaboration with federal, state, local, and tribal partners and allow for the development of strategies tailored to local conditions. Consistent with the White

House's leadership on innovative, inter-agency approaches to place-based policies, we are currently exploring potential opportunities to partner with the Department of Education's Promise Neighborhoods program, as well as the Department of Housing and Urban Development's Choice Neighborhoods program.

### **Tribal Support**

Among the communities most in need of support are our nation's tribes and Alaska Native villages. Crime rates in many tribal communities are well above the national average, and resources often are scarce or nonexistent. The Attorney General has testified that the Department of Justice has both "a legal duty and a moral obligation to address violent crime in Indian country and to assist tribes in their efforts to provide for safe tribal communities."<sup>6</sup> OJP is committed to fulfilling our responsibilities to tribes. Last year, we awarded \$235 million for the construction and renovation of tribal correctional facilities and to improve tribal juvenile justice systems. We are continuing our support through a series of listening sessions and tribal consultations, which have allowed us to hear directly from tribal leaders and representatives about the challenges they face. We recently announced a flexible solicitation that will streamline the grant application process for tribes, making it easier for them to apply for funding that meets their needs. The President's budget request reflects our commitment in monetary terms, calling for a 7 percent set-aside, totaling \$139.5 million, in the OJP budget.

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<sup>6</sup> Statement of Eric H. Holder, Jr. before the Committee on the Judiciary, United States Senate, "Oversight of the Department of Justice," November 18, 2009.

**Transparency**

As we work to support our state, local, and tribal partners, I am very mindful of our responsibilities as stewards of federal funds. I take this responsibility seriously. My first duty in this regard is to make sure the process for soliciting and awarding grants is open and fair. As we know from recent past experience in OJP, a lack of transparency can cloud perceptions of fairness and call into question our fitness as public servants. One of my highest priorities in returning to OJP has been to ensure we are moving vigorously to restore the integrity of our review and awards process. In accordance with the Federal Grant and Cooperative Agreement Act, we are competing discretionary grant opportunities to the maximum extent possible. That emphasis on competition is reflected in the President's budget request.

Solicitations are posted on our Web site and on Grants.gov and remain open for a minimum of 45 days, providing clear descriptions of purpose, eligibility, and evaluation criteria. Likewise, the peer review process is structured in such a way as to reduce bias and help ensure objectivity. OJP's Office of Audit Assessment and Management and Office of the Chief Financial Officer, with the assistance of working groups dedicated to ensuring transparency and efficiency, provide rigorous oversight of all grant-making activities.

For the first time, awards are posted weekly on our Web site along with the names of grant recipients. We diligently monitor grants using both risk-based and random

sample factors, and we hold grant recipients strictly accountable for their use of funds, requiring them to report based on performance measures identified for their particular programs. We also work closely with grantees to help them meet their responsibilities. Last year, we trained 2,500 grantees on the proper use and reporting of grant funds, reflecting our position that we are here first and foremost to support our partners in the field.

All this work is done by staff who are singularly dedicated to the public safety mission of OJP. Last year, OJP saw a sudden and significant increase in workload as a result of the Recovery Act. OJP made almost 3,900 grants under the Recovery Act alone. We rose to the challenge with our regular staffing resources; however, these awards will have performance periods of three or four years, and the intensive monitoring that I have described will require increases in staffing. Moreover, 1,700 awards went to recipients that had never before received funding from OJP. They will require a higher level of support than experienced grantees. The President's budget request asks for more staff positions, but it is important to note that funding for administrative functions will still represent a net cost of only seven percent of OJP's total request, an extremely small amount to support the complex administrative requirements of our programs.

### **Conclusion**

With this budget, Mr. Chairman, the Office of Justice Programs will work with Congress to ensure that public funds are used effectively and transparently to support our

state, local, and tribal partners and keep our communities safe by promoting smart-on-crime approaches. I look forward to working with you and the Members of the Subcommittee toward these goals.

## THE PURPOSE OF JUSTICE GRANTS

Mr. MOLLOHAN. Thank you, Ms. Robinson. Just to help frame the questions that we will have about various existing and proposed grant programs, I would like first to ask you to elaborate on a more philosophical question about the basic purpose of the Justice grant programs. And I noticed you have implemented an OJP-wide evidence integration initiative. Let me ask you, other than to supplement the criminal justice budgets of state and local and tribal law enforcement, and the related budgets of nonprofit organizations, why do we need Department of Justice grants?

Ms. ROBINSON. Well, that is a very good question. And I think, stepping back, one needs to reflect on what the federal role is vis-à-vis state and local criminal justice. Because as a student of this area over many years, I think we can look back at the President's Crime Commission report in 1967 which talked about the federal role in leadership in this area. What it talked about and it is recognized that more than 90 percent of the criminal cases in this country, of course, are handled at the state and local level, not at the federal level. So what, it asked, is the federal role here? And what that Commission's report talked about more than thirty-five years ago is still true today. And that is that the federal role is really about promoting innovation. It is something that no one state or locality can do, but the federal government is uniquely capable of doing. And OJP's predecessor agency, LEAA, and OJP have done, I think, a tremendous job over the years in doing that.

Let me give you a couple of examples. The bullet proof vest came out of LEAA's research. The victim witness units that are now prevalent across the country came out of work from LEAA. So that would be one example. Developing knowledge about what causes crime and what interventions can help stop crime. That is something, again, no one locality can do, but funding research in other words. Diffusion of that research, the "what works" clearinghouse idea of spreading knowledge would be another area. Collecting and disseminating statistics about crime. No one city or state can do that on a national level, the federal government can. Another area is training and technical assistance. This is the best spent federal money, in my view, of anything we do at OJP, is that training and technical assistance. And it is a very tiny percentage of the overall budget, but it is some of the best spent federal funding. So these are unique federal roles.

## EVIDENCE-BASED APPROACHES

Mr. MOLLOHAN. Obviously you feel that we could better target funding to evidence-based approaches, and rely on that. I mean, your creation of the evidence integration initiative. Why do you not talk about that a little bit for the Committee and elaborate?

Ms. ROBINSON. Yes, I was pleased in your opening statement that you talked about the importance of building knowledge, and the research in the reentry area in particular. And I think in the last decade the criminal justice field has become far more sophisticated about understanding not just the academic side but that the practitioners in the field are enormously more sophisticated about understanding the need to know what works. And part of it is driv-

en by the tightening of resources, and part of it is driven by the much greater sophistication of practitioners many of whom, you see police chiefs for example across the country, including my colleague here who is the Director of the COPS office, who have advanced degrees. Who are here and bring tremendous knowledge to their work. And they know that data-driven approaches, research-based approaches can make the difference between being effective in addressing crime and not.

When I returned to OJP one of the reasons I was willing to do this is because I think it is so important to cross the divide between academia and practice and policy. And I thought there was much more that we could be doing in government and in OJP, in particular. What we are doing with the evidence integration initiative, or E2I as we call it, everything in government having an acronym, is to encourage greater research, yes. But also application of research into the programs that are funded at OJP and greater generation of knowledge. We also want to be distilling information from research and translating that better for the field. There is a lot of information that we have learned from research that is sitting in academic journal articles. Busy police chiefs and busy practitioners do not have time to read those journal articles. We have got to distill that information and get it out to the field, and that was my idea behind this "what works" clearinghouse.

Mr. MOLLOHAN. I would like for you to apply that in the real world, with this example. I have funded, or earmarked, I notice that was among your cuts, these earmarks. A program in Monongalia County, West Virginia which has migrated to some of the surrounding counties just because the law enforcement community has done it. But to achieve better interoperability of communication and therefore better policing. We have talked about communication and interoperability here for years. And it seems to be an elusive, and perhaps because it is very expensive, but an elusive goal.

But I visited with them over the district work period and it is clear that they are really moving forward. It is clear that they are really trying to reach out for all of the information, and through resources at their fingertips. But it is also clear that it is very difficult and it certainly falls short of being totally successful. And in sitting there talking with them, and this was a group, the principal fundee, the beneficiary of the grant which was the police chief of the City of Morgantown. And the sheriff and all the surrounding counties were there and even, I mean all the surrounding communities within Monongalia County were there. And then there was even a representative from, I had a meeting the next day and there were representatives from other communities.

But they had gone really far without someone who really had this technical capability and be able to pull it together. And some of the issues they were dealing with were incompatibility of systems, the failure of different systems to overcome that incompatibility with patching or whatever. And I was sitting here listening and I was thinking, "Well, there is some proprietary issues that are at play, here." There is, you know, some competitiveness at play, and our system is better than that system. And, you know, you cannot change the system, or you cannot patch the system without,

you know, all this. There just seemed to be a whole lot. And I was sitting there thinking, “Wow, these people technical assistance. They need somebody to define how to do this.”

Ms. ROBINSON. Right.

DIAGNOSTIC CENTER

Mr. MOLLOHAN. So how would what you are talking about here translate into the real world? And where do these kinds of folks plug into that kind of information?

Ms. ROBINSON. Well, that is a really good question. One of the things besides the “what works” clearinghouse that we have proposed is what we have called a diagnostic center, or help desk. So those folks could call the help desk, in which we would have a live person or set of persons, or they could come in via the web, via email, and ask, put their questions to them. And these individuals would not be, probably, skilled enough in those technical questions. But they would serve as an effective traffic cop to send them to the folks in NIJ, probably, in the part dealing with technology, who could either answer those questions or hook them up with the real experts—who probably would not be on staff but part of our technical assistance teams on contract or with a grantee who could either help them via telephone, or via email, or even go onsite to help. So it would really be that kind of handoff.

But it is exactly the kind of thing that the federal government, through the federal criminal justice assistance program, should be providing. If grant funds are going out there, but they cannot actually make it work, what is the point?

Mr. MOLLOHAN. Is this what you are talking about—

Ms. ROBINSON. Yes.

Mr. MOLLOHAN [continuing]. When you are talking about evidence-based approaches, and the help desk—

Ms. ROBINSON. Yes, to—

Mr. MOLLOHAN [continuing]. To transfer this information based on some determination of best practices and modeling and prototyping?

Ms. ROBINSON. Right. It may not be research-based per se, but more actually kind of technical assistance and best practices, yes.

Mr. MOLLOHAN. Well this communication area is really important and I am incredibly impressed with how far they have come on their own. The town of Grandview can go online and immediately access the sheriff's department records and determine if there is a history there with regard to an individual, for example, and is it a recent history, is it an old history? What kind of history is it? And it is really a powerful system. And they have connected with an adjoining county. It happens to be my home county, Marion County, with the sheriff's department. But visiting my county the next day, the sheriff's department was connected with a proprietary communications system. But the chief of police had another system and they could not communicate.

Ms. ROBINSON. Mm-hmm.

Mr. MOLLOHAN. And they talked about how difficult it would be to communicate. That is not a good thing.

Ms. ROBINSON. No, no, and—



Mr. MOLLOHAN. It is a good thing to have a lot of providers, I think, out there.

Ms. ROBINSON. Right.

Mr. MOLLOHAN. But it is not a good thing for them not to be able to communicate.

Ms. ROBINSON. No, absolutely not. And these interoperability issues have been such an obstacle in the criminal justice system. With new technology, and I am not the best person to describe that new technology.

Mr. MOLLOHAN. Yes, but you are the best person to talk about the processes to get at these issues.

Ms. ROBINSON. Yes, exactly. Right. I think you have to be under thirty to understand this stuff. But I do know on the process that we have ways of overcoming that. And I think some of these new proposals can help us get a long way there.

#### WHAT WORKS CLEARINGHOUSE

Mr. MOLLOHAN. Okay. Well elaborate on the clearinghouse—

Ms. ROBINSON. Yes.

Mr. MOLLOHAN [continuing]. And the help desk. Elaborate on that.

Ms. ROBINSON. The “what works” clearinghouse, as I said before, as I looked back on what we did with OJP in the 1990’s, after I left OJP I felt, and I think it is often easiest to be critical of oneself and what you did or did not do in a certain setting, I felt that one thing that I had not done sufficiently was work in this area to convey information from research. And in subsequent years, as you may recall, I went on and worked at the University of Pennsylvania in this area of evidence and best practices, and trying to translate for practitioners and policy makers. And I thought a great deal about what more the government could be doing here. And as I said during my testimony in 2007 I felt that one thing could be something like this clearinghouse.

So we have been thinking a great deal about this at OJP in our evidence integration initiative. And the way that it would work is to look for what scientifically rigorous evidence has been found in different topical areas. People could access this via the Web and we would have that information available. Then the diagnostic center would be a separate operation that would be staffed by individuals. And as I said before, it could be accessed either by telephone or by email.

And let us take a specific example. If I were the mayor of Des Moines and I had a problem with youth violence, I might first go to the clearinghouse, to the “what works” clearinghouse, to get some information more generally about what information I might access about programs. Once I had read that, though, I might say, “Well, I really want some help on how I would actually go about pursuing this.” I could then call the help desk and say, “Well, I would like to pursue some of these gang programs,” as an example. “How would I go about this?” The help desk, then, might give me advice on pulling together a strategic planning team within my jurisdiction, within my city, and suggest that I call some business leaders, criminal justice leaders, the head of probation, my police chief, maybe the faith based community, other folks to the table for

some planning sessions. They might also have somebody from OJJDP go out and sit down with that group. We might have a consultant go out. That consultant might be a peer kind of mentor help. Maybe Denver has undertaken something like this, and we would have somebody from Denver go in and say, "Here is how we did it out in Denver." So that would be more involvement than just a phone call.

Mr. MOLLOHAN. What is the scope of the topics that people could call in on? Would it be from how you deal with reentry issues and recidivism issues to the interoperability questions that I referenced?

Ms. ROBINSON. Yes, it could be a broad scope. And I also envision, I know people have asked how many inquiries could you handle? I think it could be a whole scope of things because I envision somebody might also call up and say, "When is your Second Chance solicitation coming out?" We will say it is coming out Tuesday. So some of these will be very simple questions and some of them will be very complex.

Mr. MOLLOHAN. Yes. Well surely the Department is getting these inquiries today?

Ms. ROBINSON. Of course.

Mr. MOLLOHAN. How are they handled today differently than what you are proposing?

Ms. ROBINSON. Well, the simple questions are handled all the time. We get calls, in fact dozens of calls everyday, "When is the Second Chance solicitation coming out?" Those calls are handled all the time. The other kinds of calls are handled in a variety of different ways. And many of them, for example, will call about, "Can you help on youth violence?" We will more readily say, "Here is a solicitation coming out." Or, "Here are applications that you could pursue." But we probably will not be able to get into it to this degree in an organized fashion of assistance in this way.

I also am hoping that the Help Desk can serve in a better way as a road map for that mayor about accessing the variety of different programs in the entire Justice Department. I think it is unfair to your constituents to have to know where the School Resource Officers programs are in the COPS office, where programs are in the Office on Violence Against Women, in OJJDP, in this part of the Office on Victims of Crime. It is a very complex set of programs.

#### EVIDENCE-BASED SOLUTIONS

Mr. MOLLOHAN. Well when you talk about evidence-based and developing programs, researching programs on the basis of evidence, does that imply that you are going to have evidence-based solutions to these inquiries? I have this community, we have a particular gang problem, or we have a particularly high volume of returning incarcerated people, we have a recidivism problem, we have a reentry problem. What are best practices? Is the person at your help desk going to turn around to the file cabinet and pull out, "Okay, in this situation well here is the best practices for that." Or if someone calls on the interoperability question and says, "How do we link this XYZ Company's communication and data program that the sheriff really likes with the ABC Program. How do

we link those together? Both of them are in love respectively with their own program, but their programs cannot communicate. Are you going to be able to turn around and say, "Well, we have researched that and here is where you get the patch." Or—

Ms. ROBINSON. That is definitely the goal. I would make this caveat. There are a number of areas where we do not yet have research. And so in some areas, I will give you an example: For truancy, we do not have a lot of evidence yet. So we will be very clear. "Here is what we know. We do not have a great deal yet in X area." But yes, that is definitely our goal.

Mr. MOLLOHAN. And your request is \$6 million—

Ms. ROBINSON. That is correct.

Mr. MOLLOHAN [continuing]. For this? And what is the \$6 million for?

Ms. ROBINSON. Well, the \$6 million would be for, part of it for the personnel to be staffing it and part of it would be for assembling the information.

Mr. MOLLOHAN. Okay. Personnel, it is the personnel costs?

Ms. ROBINSON. Yes.

Mr. MOLLOHAN. Okay. Mr. Wolf.

#### PROGRAM CUTS AND ELIMINATIONS

Mr. WOLF. I am a little suspicious when you talk about the evidence-based issue. When I, one of the questions here is your budget request includes an emphasis on evidence-based approach to fighting crime. Evidence-based? How has your evidence-based approach affected your decisions to eliminate or significantly reduce funding for these programs? The Prescription Drug Monitoring Program? My sense is the evidence that Congress was interested and the administration was not. You thought maybe Congress would put it back so you took it out. The next program, the same thing would hold true. The RISS Program, we have had a lot of law enforcement people, evidence-based, write us about this and yet you have reduced that. The Prison Rape Prevention and Prosecution Program, which was my bill with Bobby Scott and Senator Kennedy and Senator Sessions in the Senate. The evidence is so evidence-based it is unbelievable that prison rape is bad. And yet the administration, and I am going to have a question, is reducing that. So the evidence proves that it is bad, the evidence proves that it is a problem, and yet the evidence-based program means that you are reducing the problem. The National White Collar Crime Center, I guess the evidence-based is that Congress is interested in it but the administration is not and you think it might be put back in so we have reduced it. And you can just kind of go on.

#### PRISON RAPE ELIMINATION PROGRAM

Congress affirmed its duty to protect incarcerated individuals from sexual abuse when it enacted a prison rape program. Since then National Prison Rape Elimination Commission has studied and studied and studied and studied it. The cause of sexual abuse in confinement, the development of standards for reduction in sexual crimes. And set in motion a process once considered impossible, the elimination of prison rape. And now the Justice Department is cutting it. Why are you cutting the money for prison rape?

Ms. ROBINSON. Mr. Wolf, I actually share your concern about the sexual assault issue in our prisons. I served on the Vera Prisons Commission in 2005 and 2006. Pat Nolan was a member of our Commission.

Mr. WOLF. I work closely with Pat.

Ms. ROBINSON. Yes, and I know he served at that time on the PREA Commission. He and I have had many conversations about this. I actually admire your leadership on this issue and I wanted to fill you in on the work that OJP is doing in this area.

Mr. WOLF. But the reduction and the fact that the Attorney General is kicking this can down the road for another year, it is almost every time I heard a report, there is another rape somewhere in a prison—

Ms. ROBINSON. Mm-hmm, right.

Mr. WOLF [continuing]. Which happens more than a lot of people know. And I say, "What does the Attorney General think when somebody gives him a memo that says in Prison X in X state this took place to a young man or a young women." What does Justice think? Justice, Justice, Justice. It is called the Justice Department. That is not justice. And the fact is you ought to go back today and just say, "Hey, Mr. Holder, I think we made a mistake. Let us plus this thing up, get the regs out, and move this thing." Because the prison wardens will never want to do this. They will give you reasons over and over. And the Bureau of Prisons will give you the fifteen reasons why it is a problem. And the prison director in X state will give it to you, and the locality will give it to you. But during all that time, and there has even been stories of people that have been told if they do not cooperate they are going to be put in a cell with this big guy or something. And I just do not understand it. So I think the best thing you can do is just to go back and say, "We made a mistake. We had a hearing today and Mr. Wolf raised it again. And I think we have got to put those regs out, get them implemented. We do not care what the prisons say, the wardens say anymore. We are going to deal with this issue." And I just do not understand it.

The Attorney General dicked it the last time. But is that evidence-based? And you do not have to answer this, because it is not evidence-based. Because the evidence-based is that prison rape is a growing problem, a bigger problem, and yet this administration is doing nothing about it.

Ms. ROBINSON. Can I just share with you that today we are putting out from OJP a solicitation for a prison rape resource center, with our current year money. We are very committed to putting out resource guides and toolkits to provide the states with information about how to deal with this problem. We are very committed to working on this.

Mr. WOLF. Somebody once said if you really want to know a person's priorities, look at the checkbook. Not at their language, but look at the checkbook. And if you look at the checkbook, your checkbook is showing you are putting resources in money and other areas and not in this. Spin and good words and things like that and press releases, but you are reducing this. And your reduction, I forget what it was. It was fairly significant.

This administration will never live this one down. Never, ever will it ever live it down. And I tell you, every time it takes place, and Holder hears a story, and I assume you have got reports going into the Attorney General, he should know because of his inaction this is continuing to take place. Now these are defenseless and helpless people. I mean, they have no advocacy. Other than Pat Nolan, and Prison Fellowship, and a handful of other people, they do not have any advocacy. You should be their advocate. Holder should be their advocate. And frankly, I think the Justice Department and Holder is not. So every time I get a report and see, I think automatically I go to the fact, "Holder, Attorney General does nothing, it is his fault."

#### HUMAN TRAFFICKING

The second issue that I want to get to, this sort of is along the same lines with regard to the whole victim issue. Human trafficking, are you reducing funding for human sexual trafficking?

Ms. ROBINSON. There is a \$2.5 million reduction.

Mr. WOLF. Reduction?

Ms. ROBINSON. Yes, there is.

Mr. WOLF. People tell me that sometimes when you pick up the newspapers around the country and see some of the ads, they are basically brothels whereby people are sexually trafficked. Sexually trafficked by MS-13, by violent gangs. And probably in this area the reports that we get, and we just had a group come in the other day, in some of the embassies and some of the world banks and international groups, why would an administration reduce funding for human sexual trafficking?

Ms. ROBINSON. Well, Mr. Wolf, I will tell you that this does remain a strong priority. There was an increase last year and this does remain a very strong priority not only for the Justice Department, but for the State Department, and for the Department of Homeland Security. We are holding a major conference on this issue for front line prosecutors, law enforcement, and victim services just in two weeks. One of my chief aides, Marlene Beckman, is the chief planner for that conference. We have the Secretary of Labor, Eric Holder speaking at that conference, 600 people coming to that.

Mr. WOLF. But if Eric Holder is speaking, will the conferees be told that at the same time he is speaking he is also reducing the funding? Again, back to the checkbook issue. People can say what they want to say and give great speeches. But you really look to see where people put their money. Money is explaining something. And I read the report, Project Hope, we have 150,000 or more domestic women and young children the problem, and we are going to do something with regard to what I am getting, two groups came in last week, in this very, very region that is taking place that many people, you and others in the City, are going by, are passing by places whereby it has taken place. And the administration reduces the funding for it.

I mean, in the stimulus there was funding for green technology to build solar panels and they gave the money to China. Whereas American citizens that are being sexually trafficked, and I had a report of a young person out in Northern Virginia the other day.

And I do not know that when I talked to the FBI, I do not know it is a priority with the FBI because I do not think they have ever heard the Attorney General ever speak about it. I do not think it is a priority with U.S. attorneys around the country, because U.S. attorneys literally take their marching orders from the Attorney General. And when I chat with them I am not getting any message that coming out of Washington they are saying, "Sexual trafficking is a priority of the Justice Department, and we want you to prosecute and aggressively go after it." If you know these facilities are here, and here, and here, and young women are being trafficked in it, and if you know maybe that some World Bank people, and the administration does not do anything in its own region. And so they cut their money for that.

I mean so I do think, and I think there is a truth as people can say how interested they are in something. But I think you really want to see where the dollars go. Because without the dollars I do not think you really you really, what can be done immediately to institute a greater cooperation between state and local governments, the FBI, and U.S. attorneys to close down sites where trafficking is taking place, remove the victims of trafficking, and prosecute the offenders? What can be done?

Ms. ROBINSON. I actually do think that this is a strong priority. There is a great deal of attention that is being given to this issue in the Department. The Civil Rights Division has the lead on this but the Criminal Division is very involved. There are regular meetings. I see the coordination going on. There are regular sessions on this—

Mr. WOLF. But I have these groups come in to tell me the problem is flourishing unbelievably in this region. They said it is out of control.

Ms. ROBINSON. It is a very big problem and it requires—

#### HUMAN TRAFFICKING

Mr. WOLF. Well who is the one person responsible in the Justice Department for it?

Ms. ROBINSON. Well ultimately the Attorney General, of course.

Mr. WOLF. Well he is not doing much. So who is his person that he is saying, "I want you Mister or Misses to deal with this issue of sexual trafficking. I want to clean up the Washington, D.C. area, the Northern Virginia area, the Maryland area, the metropolitan area, so that we demonstrate here. And then I want it to be a priority for the FBI, the SACs all around that are involved, and I want it to be a priority with the U.S. attorneys." Who is the person to do that?

Ms. ROBINSON. I will get back to you because I do not know who that one person would be. But we will certainly get back to you about that.

[The information follows:]

#### WHO IS THE ONE PERSON TO HANDLE THE SEXUAL TRAFFICKING ISSUE IN THE DC AREA?

The Department has appointed a National Coordinator for Child Exploitation Prevention and Interdiction who is situated in the Office of the Deputy Attorney General, and who is tasked with overseeing all the Department's efforts with respect to the sexual exploitation of children. The Department has many resources directed

to attacking the problem of the forced domestic prostitution, or commercial sexual exploitation, of children, and the sex trafficking of adults, both foreign and domestic. With respect to the commercial sexual exploitation of children within the United States, the U.S. Attorney's Offices and the Child Exploitation and Obscenity Section in the Criminal Division take the lead on prosecuting these cases. They are investigated primarily by the FBI through the Innocence Lost Task Initiative. Cases of the sexual trafficking of adults, on the other hand, are prosecuted by the U.S. Attorney's Offices and the Criminal Section of the Civil Rights Division and its specialized Human Trafficking Prosecution Unit. These cases are investigated by FBI and/or ICE, although ICE frequently takes the lead on these cases involving foreign victims. There is a Task Force funded by the Department's Bureau of Justice Assistance and chaired by the U.S. Attorney's Office for the District of Columbia to combat human trafficking in the D.C. metropolitan area.

Mr. WOLF. Well I am going to hold you all accountable here. Because we are going to do something in this area. And even if we have to write the landlords who are running these businesses and begin to sort of, and put the pressure. But frankly, with the lack of funding that I see I find it hard to believe. Where is this conference going to be?

Ms. ROBINSON. It is going to be right here in Northern Virginia.

Mr. WOLF. Well you know, that is interesting, I am interested in the issue and nobody ever told me until just now. How long has it been planned?

Ms. ROBINSON. I think it has been in planning for a couple of months. We will be delighted to have you come.

Mr. WOLF. Well I will have a staff person go if I cannot go.

Ms. ROBINSON. Of course, of course.

Mr. WOLF. But we did not know about it.

Ms. ROBINSON. Well, that is not good. I apologize.

Mr. WOLF. It could not be because I am a Republican member on the other side?

Ms. ROBINSON. Of course not, of course not.

Mr. WOLF. I did not think so, and I know—

Ms. ROBINSON. I can assure that is not the reason.

Mr. WOLF. Interestingly enough you know when I was Chairman of this Committee we funded two conferences, an international conference and a domestic conference.

Ms. ROBINSON. Mm-hmm, mm-hmm. I do apologize. That is bad that we did not invite you.

Mr. WOLF. I will have someone go.

Ms. ROBINSON. I would love to have you come. Would you come?

Mr. WOLF. Well, I may or may not, I do not know what my schedule is. But I will have someone there.

Ms. ROBINSON. Okay, great.

Mr. WOLF. Mr. Chairman, I have other questions but I will just kind of yield back for now.

Mr. MOLLOHAN. Okay. Mr. Schiff.

Mr. SCHIFF. Thank you, Mr. Chairman. Thank you for being here.

Mr. MOLLOHAN. Good morning.

Mr. SCHIFF. I appreciate your work and your testimony. And at the outset I want to say you have a superb Director of the COPS Office in Chief Melekian. And I say that not just because we had a chance to work together in his previous capacity, but he is enormously well thought of and just a superb choice for that job.

## DNA RAPE KIT BACKLOG IN LOS ANGELES

I wanted to raise a couple of issues with you. One of the areas of my particular interest is in the use of DNA evidence. And as you, I am sure, are familiar we have a tremendous backlog problem in L.A. County and L.A. City. Thousands of rape kits that are still in the process of being analyzed, many of them bumping up or exceeding the statute of limitations. L.A. City and the County are struggling with their resources to get through that backlog. The Chairman has been very supportive in helping to provide funding to that region as well as the rest of the country in terms of DNA.

In L.A. City now there is a second backlog, and that is what the City has done, what the County is doing to some degree, is sending these rape kits out to private labs because they do not have the capacity necessarily to hire the people internally to do the work on short order. The labs have done their analysis. But before they can be uploaded into CODIS they have to have 100 percent technical review. So there is a second backlog as the second review is waited to be undertaken.

NIJ a couple of years ago, I think, recommended analyzing whether in some cases, or subcategory of cases, or all cases, to do away with the necessity of that second technical review. This is something I raised with the Attorney General as well as the Director of the FBI. I understand they are taking another look at this.

But I would urge the DOJ to strongly consider doing away with the necessity of this second technical review by the government lab of the work of the private lab. And here is how I think it ought to work. There has never yet been a case, that I am aware of, where the government review of the private lab has turned out a problem with the DNA analysis of the private lab. What I would suggest is therefore rather than require the expense and the continuing backlog of this second review, is allow these certified private labs that have been checked out by the government to, once they conclude their results, to have those samples uploaded into CODIS. When there is a match, then require the second review. So when there is a match and you are actually going to utilize the results for something, then require the second review. That in and of itself would do a lot, at no cost, to get rid of the backlog.

Now one of my colleagues in the Senate, I have seen from a hearing recently, has raised an issue with this as some effort by the private labs to, I do not know, if it is to get more work, or what the concern is. But this is not coming from the private labs. This is something that, in L.A. for example, is of great interest. With the L.A. Police Chief, with the Sheriff of L.A. County, this is something that will help law enforcement to get through their backlogs and also deal with their budgetary problems. So I would urge you to follow up on now a couple of year old, if not more, recommendation of NIJ, but also what we are hearing from law enforcement. And I wanted to begin by urging you to work with the FBI and see if we can do away with this unnecessary and expensive second review.

I do not know if you want to comment on that. I have some other topics I want to raise to you also.



Ms. ROBINSON. Okay. Well, first of all it is good to see you, Congressman. Actually, I do not think NIJ had ever made a formal recommendation on that. But we have been asked to work with the FBI as it is looking at this question and we are happy to do that. I know this is an issue that is under review and it is a question on the table. So we are happy to participate in that and I know it is an issue that is now being looked at. So we are very happy to participate in that review.

Mr. SCHIFF. And I just want to add a sense urgency to it, and I do not know how strong the language was at NIJ a couple of years ago. It may have been a suggestion rather than a formal recommendation. But, you know, as some of these cases are bumping up on the statute of limitations and the cities and counties are in no financial position right now, there is a real sense of urgency. The quicker those samples can be uploaded into CODIS the quicker we can take some dangerous people off the street.

Ms. ROBINSON. Oh, absolutely.

#### HOPE PROGRAM

Mr. SCHIFF. So if I could just encourage you to move expeditiously on that I would appreciate it.

The other issue I wanted to raise with you is a program that you are probably familiar with. It is the HOPE Program out of Hawaii, Steven Alm, Judge Alm out there, has done some great work in this program of graduated sanctions. I have introduced legislation to promote and expand this model to give a number of jurisdictions the opportunity to create this with a dedicated grant program. I introduced the legislation with one of my Republican colleagues, Ted Poe. And we would like to work with our Chairman and Ranking Member to see if we can address the issue in this CJS bill. Namely to create a dedicated pot of funding for grants for state and local courts to establish these kind of probation programs to reduce drug use, recidivism by requiring swift, predictable, and graduated sanctions. Would your office support such an effort? And will you take a look at this legislation and provide us with your feedback and the feedback of the Department?

Ms. ROBINSON. Well, first of all, let me say I am a great, great fan of the Hawaii HOPE program, so I am delighted to hear that you have introduced this. Of course the Administration has not taken a formal position but I will tell you we are very strong supporters of that program. And it is an evidence-based program, as you know. NIJ has evaluated that program and found that it has terrific results in reducing future arrests. And so we would be very supportive of that.

Mr. SCHIFF. Okay. Thank you very much. Thank you, Mr. Chairman.

#### COMPREHENSIVE PLANNING

Mr. MOLLOHAN. Thank you, Mr. Schiff. You have testified here that your Byrne JAG program is your kind of flagship program to help state, local, and tribal communities. And you are looking for planning, more planning. What are you looking for differently from local, state, tribal communities in your budget requests that is not happening now?

Ms. ROBINSON. Mr. Chairman, thinking back again on history, in the original LEAA program there was a requirement for comprehensive planning from the states under LEAA. And we think there is a lot of virtue in that, particularly in tighter fiscal times, to bringing all of the players to the table as states are thinking through how that money is spent. That there is a virtue in that, to have everyone sit down and think through kind of strategic planning with a comprehensive look at what the needs are. So there is just a virtue in that. And of course to think about, as they can, research-based approaches.

Mr. MOLLOHAN. Well, you know, we do not deal with this every day like you deal with it. So was that a success? Was the LEAA approach a success? And what are some examples of it being successful? And what are we doing differently today? Did we lose that? And is your recommendation, or your testimony here, reemphasizing it? Or reintroducing this comprehensive planning, fact-based approach?

Ms. ROBINSON. Yes, it was a success back in the seventies and eighties. And I think one reason for that, for those of us old enough to remember back that far, at that time there really was not a strong sense that there was a criminal justice system. So it was actually kind of an unusual concept at the time. I think we did lose some of that moving forward, when LEAA was abolished, and when there was less funding going to the states. So I think, that as budgets have become tighter, there is a more general recognition that there is a usefulness to doing this.

Our partner organization, the National Criminal Justice Association, which is the association of the state administering agencies, which has a representative here in the room, actually feels as we do, that this is a step in the right direction, to encourage the states to do this. Many of them already do it. So I think there is an opportunity here for peer-to-peer encouragement and learning.

Mr. MOLLOHAN. What federal assistance is available to state, local, and tribal communities to assist in this comprehensive planning process?

Ms. ROBINSON. Oh, we actually have given, late last year, at the end of the last fiscal year, a grant to the National Criminal Justice Association to provide technical assistance to the state agencies in this. And they are doing now regional training on a quarterly basis with those agencies along this line.

Mr. MOLLOHAN. Does that include every state in the nation? And to what extent are they assisting, and how comprehensively, tribal communities?

Ms. ROBINSON. Yes, they are assisting tribal communities, as well, in this. Some of this is done through webinars. So it is pretty cost effective.

Mr. MOLLOHAN. And is every state participating in this process?

Ms. ROBINSON. I know every state has been offered it. I do not know for sure if every state has taken advantage of it.

Mr. MOLLOHAN. What kind of information does OJP collect from grantees on how they actually use grant funding? And at what level of detail?

Ms. ROBINSON. We collect a lot of information from them, obviously some of it is financial. But we collect programmatic informa-

tion, as well. For example, BJA collects through a system information on performance measures in addition to more narrative information. So that we can see on a quarterly basis, for example with drug courts, how many offenders went through, what kind of drug tests came back, so that we have success measures from that.

Mr. MOLLOHAN. Just on that topic?

Ms. ROBINSON. Yes.

#### RECIDIVISM AND PRISONER REENTRY

Mr. MOLLOHAN. As I mentioned in opening comments, we have spent a good bit of time on this Committee with hearings, informational hearings on recidivism, reentry issues, and how to do that well. What progress are we making with regard to devising different models, and proofing those models, and testing the success of different approaches to the issue of recidivism and successful reentry in different geographical and demographic areas?

Ms. ROBINSON. I think we have a ways to go on it, to be candid. As I came back to OJP I asked for and was given briefings on what we now know about reentry. And I have to say, candidly, I was a little disappointed. I do not think that we have learned as much as I would have hoped we would have learned from the research today. I think from the generosity of what Congress has appropriated in the current fiscal year, with the \$10 million that you gave us under the Second Chance Act, we have the opportunity to learn a great deal more. And we now have four solicitations on the street under that \$10 million which will allow us to do some randomized controlled trials, which is the gold standard for research. This will help us to really learn much more definitively what really can make a difference in reintegrating offenders back into the community. Because I think, to date, we do not have the most definitive knowledge.

And one of the reasons for this is because, to be honest, this is a very messy business, to state it somewhat in the vernacular. We have offenders moving back in very, very different circumstances, with very, very different backgrounds, with very, very different kinds of problems. So you do not have one type of offender moving back into one setting with only one type of issue. And some of the research to date is very unclear about what kind of interventions make a difference.

Mr. MOLLOHAN. This solicitation, is it out?

Ms. ROBINSON. Yes, there are four of them.

Mr. MOLLOHAN. Just briefly describe what they are requesting?

Ms. ROBINSON. Of course. Well, one of them is an evaluation of the demonstration programs that went out this past year under the 2009 solicitation. One of them is an evaluation of the reentry courts solicitation. One of them is an evaluation of the National Institute of Corrections work that is now out there about reentry, which is a very good program. And then one is a field experiment, this randomized controlled trial, which is the most rigorous part of this. And that is the one that will be longer and yield the most information.

Mr. MOLLOHAN. How long will that be? Five years? Ten years?

Ms. ROBINSON. No, no, I think it is probably three to four years.

Mr. MOLLOHAN. Well, we would be interested in looking at that. I will look forward to following up with you on that.

Ms. ROBINSON. Excellent.  
[The information follows:]

WHAT IS THE ADMINISTRATION PREPARED TO DO WITH REGARD TO THE PRISON INDUSTRIES PROGRAM?

The Administration regards Federal Prisons Industries (FPI) as one of the Bureau of Prisons' (BOP) most important correctional programs, both because it reduces recidivism and because it assists in managing crowded federal prisons. The Administration is aware that FPI has suffered significant reductions in earnings over the past few years and, as a result has substantially reduced the number of inmate participants. To guard against future losses, the FPI began reorganizing operations in FY 2009 to further reduce overhead expenses, including: reducing inmate employment; delaying factory activations at new federal prison facilities; consolidating operations; and closing a few existing factories. Despite these efforts to create additional savings and efficiencies, it is possible that there may be additional measures taken. Currently, the FPI is assessing whether additional closures, reorganizations, or other measures are necessary. To ensure that FPI remains a viable and self-sustaining corrections program in the long-term that employs substantial numbers of federal inmates, FPI and BOP will be working with the Department of Justice to develop legislative proposals that would allow FPI to expand its market opportunities.

Mr. MOLLOHAN. Mr. Wolf.

WORK PROGRAMS IN PRISONS

Mr. WOLF. Thank you, Mr. Chairman. I think that the administration should be aggressive, and again it has not, on the issue of work in prisons. The failure to push aggressively the Congress to give prisoners work and dignity. Fewer than one in ten are now working. And, you know, we have had prisons for 234 years in the country. And I would urge you to be working with the Pew Foundation, too.

Ms. ROBINSON. Mm-hmm.

Mr. WOLF. And Mr. Schiff mentioned the HOPE Project. I think it is a great project. We had the judge in, and he was part of that conference that we had.

Ms. ROBINSON. Mm-hmm, right.

Mr. WOLF. But work. I have a proposal we are going to try to put on this bill, if we can. I talked to Mr. Conyers, he led me to believe that he was in support of it, that reinstitutes a significant work program in the prisons whereby prisoners are allowed to work on products that are no longer made in the United States. It is kind of a repatriation, if you will. If we no longer make televisions, and I am not sure television is the place to go. But if we no longer make televisions we would start making televisions in prisons. But I would urge you, and if you could get back to us, what is the administration prepared to do with regard to the prison industries program?

Because you can study the reentries, and the problems, but everyone will tell you if a man or a woman is not given work, both dignity, skill, money that they earn whereby they can send some money to their family while they are in prison to maintain that continuity. And lastly, when they get out. I talked to a young prisoner who was released from a federal halfway house in Southeast Washington at 10 on a Saturday night with almost no money in his pocket. Now to be released in that neighborhood at 10 at night

with almost no money and no skills, having never worked a day, and he was in two different federal prisons. So I think if you really want to do something dramatic it would be to use the political influence of the administration to push a work program, and work with the Chairman and others, to sort of get it in this bill. Because I do not think you are going to be able to solve the reentry problem. You cannot put a man or a woman in jail for ten years and not give him any skills, work, money, and then release him or her and have, and the continuity of the family, and everything else.

So I would hope if you could give us some sense of what the administration would do, and if they would support. I was surprised, you know, you told Mr. Schiff you support Project HOPE, the HOPE Project. In the previous administration people were told never to tell what the administration's position was. And you were very open. That was very courageous, I commend that.

Ms. ROBINSON. Yeah, no, remember I said the Administration—

Mr. WOLF. No, I thought you endorsed it and I thought that was very commendable. I was very impressed.

Ms. ROBINSON. Well I said the Administration did not support it but I liked it.

Mr. WOLF. Well you are very courageous, so I would hope that you would tell me the same thing. That while you do not know if the administration supports it you do support—

Ms. ROBINSON. Yes, well I will tell you on the prison work thing I have visited a lot of prisons and I can, I, Laurie Robinson, completely agree with you. I do not know what the Administration's position is on this. But I completely agree with you because it absolutely restores an individual's sense of their own self-worth. And it also gives them a sense that they are going to contribute to their own family, which builds that family tie. Which, as you know from the work that you personally have done I know, can build their own tie with their own roots. And that is so critical.

Mr. WOLF. Well we will get you the language, then, if you could take a look at it and see. And we will see where the Chairman is. And I did have a conversation with Mr. Conyers on the floor about a month ago, and he seemed to be supportive of the idea.

Ms. ROBINSON. Now you may have to help me when I go back to the Department. They may not like me after I am sitting up here endorsing these things!

Mr. WOLF. No I think the Bureau of Prisons, though, really would like this. I think the problem has been with the chamber of commerce and organized labor.

Ms. ROBINSON. Right.

Mr. WOLF. And where they have been. But yet everyone is concerned with the recidivism issue. And I do not think this would be a threat, I mean I can understand how a company or a union would be concerned that you have prisoners competing with people outside. But if you are not competing with any current company, or any workers here in the United States, you are actually creating the jobs. For instance, the teamsters would drop the wire off at the factory so you would be creating a job for a labor union member or you would be creating a job for the private sector. Because who is going to manufacture that wire, would have to give it to the

teamster to drop by, or whatever the equipment. So you are really not completing with the furniture manufacturers or anybody else because you would only be working on a product that is no longer made in the U.S. And that would almost be the defining thing. If there was competition in the U.S. you would not do it. But if it was something that was not being made, and then a wiring skill, we had once asked Emerson to look at coming in the D.C. prison, Lorton, and then there was opposition and they pushed back. They were interested. Now there are not American television manufacturers now. Emerson went south of the border and everybody else is gone.

#### DRUG, MENTAL HEALTH AND PROBLEM-SOLVING COURTS

Following up on that, you propose combining funding for drug courts, mental health courts, and other problem solving courts. The problem with that is that it could dilute the funding. Former Congressman Jim Ramstad was by yesterday to explain, and I think the Chairman has been a great supporter of the drug courts, and I think everybody on the Committee is. But are you concerned, and I remember the Attorney General, I guess she was the Chief Justice of the Alabama Supreme Court? Yeah. She had, she had been at the Pew conference, too. She had expressed concern that the language would dilute and take away from the drug courts. And Congressman Ramstad really made a compelling case on you may have need for these other courts, but if you dilute the funding and the funding stays about the same, does it? Does it stay the same? So if it stays about the same, and there is not enough for drug courts now, I think he said something like 20 percent of the population is in areas whereby they are, that you could just toss this thing up dramatically. And our governor, who is a good strong, strong supporter of it.

You may, as commendable as it may be for the mental health courts and other courts, I think there is a legitimate concern that if you have the same funding and you are adding in you are going to be in essence taking away from the drug courts. And I do not know if you want to comment about that?

Ms. ROBINSON. Yes, well first of all let me just say from my own background I am an incredibly strong supporter, as is the Department of Justice, of drug courts. I was the person who set up the initial Drug Court Program Office at the Department of Justice in 1994 when the Crime Bill passed Congress back then and was instrumental in helping fund the initial National Association of Drug Court Professionals. So I go way back with that group and have visited more than a dozen drug courts around the country, probably many more than that. So the last thing that I or we at OJP want to do in any way is harm drug courts.

I think the effort here, or the thought, was simply to provide more flexibility to jurisdictions if they wanted to do a community court, a mental health court, or something else. And that was our only thought. We do not in any way want to undercut drug courts.

Mr. WOLF. But you can see their concern is if the level of funding is about the same and you add in that they were concerned that they would be taken away.

Ms. ROBINSON. Yes, I can understand their concern.

Mr. WOLF. And you might take a look at the testimony of the Chief Justice of the Alabama Supreme Court. And she was also on the program at, where the Chairman spoke at the Pew conference.

Ms. ROBINSON. Right, I remember meeting her there. She is very impressive.

#### PRESCRIPTION DRUG MONITORING

Mr. WOLF. The last question is according to the National Drug Threat Assessment for 2010, it says, "an increasing number of law enforcement agencies are reporting that pharmaceutical diversion and abuse pose the greatest drug threat to their areas, in part because of increases in associated crime and gang involvement." Because this puts an additional strain on agency budgets and assets it is critical that we help increase the capacity of law enforcement agencies to collect and analyze controlled substance prescription data. Thirty-four states have prescription drug monitoring programs and ten more are in the process of establishing them. Yet the administration's budget proposes to eliminate funding that assists these efforts.

Ms. ROBINSON. Shall I comment?

Mr. WOLF. Yes, ma'am.

Ms. ROBINSON. Yes, well Mr. Wolf, as you see the budget includes a number of offsets. And it was a tight budget year. There are a number of things in here that have been proposed I know people are, many of you, unhappy about. And all I can say is that these were very tough decisions to make. They are not areas that any of us were particularly happy about the Administration having to make. And it does not mean that they were not priorities, because obviously they have been funded and supported for a number of years. But they were areas that were proposed by the Administration for cuts.

Mr. WOLF. Well that, that does create a problem, as you know. And now you are finding down in Broward County and places like that that people are just chartering airplanes and flying down there, and going to all these pain clinics, and getting all of this. And we are hearing these stories. And I think the federal government is really the only one that can be the solution here because each state, it is kind of fragmented. And I think the program, I think it began, I was not on the Committee then I think, but I think it began in this Committee.

Ms. ROBINSON. Yes, that is correct, with Harold Rogers. Because I remember it was a couple of years after I left. He had talked about it, actually, when he was Chair of the Committee.

Mr. WOLF. And so, okay. Okay, Mr. Chairman. Thank you, Mr. Chairman.

Mr. MOLLOHAN. Mr. Schiff.

#### JUSTICE REINVESTMENT PROGRAM

Mr. SCHIFF. Thank you, Mr. Chairman. A recent Pew study shows that one in thirty-one adults is currently under correctional control, up from one in seventy-seven back in 1982. Over the last two decades corrections have been the second fastest growing area of state expenditure, second only to Medicaid. State corrections now cost over \$50 billion, consuming one in every fifteen discretionary

dollars. Budget cuts and prison overcrowding are creating a crisis in many states. In my home State of California prisons house over 170,000 inmates, nearly twice their operating capacity. State spending on corrections accounts for over \$10 billion annually, almost 10 percent of the general fund, greater than average for the nation. And we are now faced with a judicial order to release about a quarter of our prison population and recidivism numbers are going to go up dramatically because they are being effectively released without supervision.

Despite these increasing corrections expenditures recidivism rates remain very high. We are not making much progress on it. I have also introduced legislation on this subject, justice reinvestment legislation. We found that policy makers often have insufficient access to detailed, data-driven explanations for changes in crime, arrest, conviction, and prison and jail population trends.

These reinvestment strategies recognize that in every state there are a handful of high stakes communities into which most people released from prisons and jails return. State community agencies, however, often lack the, or provide uncoordinated, often costly services to these same neighborhoods and families without successful outcomes. Justice reinvestment experts work closely with state policy makers to advance fiscally sound, data-driven criminal justice policies to break the cycle of recidivism, avert prison expenditures, and make communities safer. We have seen promising results from these kind of strategies in Texas, Kansas, and other jurisdictions where they have been implemented.

Our Chairman, Mr. Mollohan, and Ranking Member Mr. Wolf have been really ahead of the game on this issue. It was the focus of Subcommittee hearings, as Mr. Wolf pointed out, and I hope to work with them to promote and expand this work. Mr. Mollohan's and Mr. Wolf's leadership on the issue culminated in provided \$10 million in fiscal year 2010 for activities related to criminal justice reform and recidivism reduction by states.

The administration's budget for this year, though, requests no funding for this program for the upcoming year. I just wanted to find out, are you familiar with the reinvestment efforts? What are your thoughts on them? What is your current plan with regard to the fiscal year 2010 funds that were provided? And can you shed some thoughts on why the administration has not asked for funds in fiscal year 2011?

Ms. ROBINSON. Yes. Of course, Mr. Schiff. First of all, let me congratulate you and the Chairman and Mr. Wolf for your leadership on this. I think it is tremendous. The Attorney General and I are very familiar with justice reinvestment, very strong support of your leadership on this, and are very supportive of the efforts going forward on this.

BJA, as you probably know, has been supportive of this work and I congratulate the Council of State Governments, and the Pew Trust, and others for the work that has gone forward in the states. It is tremendously promising. I think we will look back in ten years and see this as one of the breakthrough movements in criminal justice in this country.

I think to zero in on your question as to why this was not in the budget, speaking very candidly it is a question of the cycle of how



budgets are put together. Right now we are putting together the 2012 budget at the OJP level. This was added fairly late in the budget cycle. And so at the time that this was put into your budget for fiscal year 2010 our budget had long since left the OJP/DOJ level and was already at OMB. That is the candid answer. So if we could have put it in we would have, but it had long since left our hands.

Mr. SCHIFF. Can you share with us a little bit about how you are using the 2010 funds?

Ms. ROBINSON. Of course. Our plan is to follow the model that you all have set here. And so we have been consulting with the groups that are already working in this area and we are putting together a solicitation that we will be issuing that will follow that model of the data-driven assessment, and then the implementation, and the way that the states are already moving forward on this. We are looking to have a solicitation that would look for an organization to do overall coordination, and then to have funding for state participation, implementation work, and then also for localities and tribes. So it will be a three-part solicitation.

Mr. SCHIFF. Thank you. And I take it from your comments that it will receive at least a favorable recommendation from Justice to OMB for the 2012 budget?

Ms. ROBINSON. Well, of course, I cannot comment on the 2012 budget. But let us just say the Attorney General and I are very favorably disposed toward working on justice reinvestment.

#### INTELLECTUAL PROPERTY ENFORCEMENT

Mr. SCHIFF. One other issue I just wanted to mention quickly is, I just wanted to express appreciation for the work that you have been doing with the funds we provided on intellectual property enforcement.

Ms. ROBINSON. Oh, wonderful.

Mr. SCHIFF. So we look forward to continuing our work together on that. I am very pleased that \$4 million was made available for the program in 2010, and I want to work with you to ensure that the program is funded, and administered effectively. This is a key issue to many of the people I represent in California.

#### REAUTHORIZATION OF COPS AND OJJDP

And finally, you know, I just want to put on your radar screen something that I have been working on regarding the reauthorization of OJJDP and related programs, as well as the COPS program. This may be a long term project. But I would love to see us at the federal level do what we did in California, which I would love to see us do a joint reauthorization of OJJDP as well as COPS, and try to provide equivalent funding in both programs. So that we make an equal investment in prevention as we do in suppression. And so I am working with the Chairs of Education and Labor, as well as the Judiciary Committee, to investigate this concept. I have introduced it in legislative form, but I think it will take a while to congeal. But I wanted to put that on your radar screen.

Ms. ROBINSON. Wonderful. Thank you so much.

Mr. SCHIFF. Thank you. Thank you, Mr. Chairman.

## TRIBAL GRANTS

Mr. MOLLOHAN. I would like to ask you some questions with regard to tribal grants. This Subcommittee doubled OJP's Tribal Assistance Grant Program from \$25 million to \$50 million in 2010. And so I am very happy to see the attention that the Department has been giving to Indian country in the last several months, including the establishment of the Tribal Nations Leadership Council and the release of the Coordinated Travel Assistance solicitation in March. I know the Attorney General was personally interested and involved in this and I think that is tremendous. And he knows and I want to reaffirm here today that we are very supportive of paying attention to this in specific ways, which I want to get to in a second.

But how does the coordinated grant solicitation work? And how are you collaborating with the COPS program and the Office of Violence Against Women to ensure that the most important needs, the most focused needs, of the tribes are being addressed?

Ms. ROBINSON. Of course. Well Mr. Chairman, as you alluded to, this is very high priority for the Attorney General, and also for the Associate Attorney General to whom I directly report. And for this coordinated solicitation, the Associate Attorney General has one of his deputies working directly with the Director of the COPS Office, with me, and with the Director of the Office on Violence Against Women. So our staff have worked hand in hand in putting together this coordinated solicitation. With that we have ten separate programs, all of the tribal programs, combined underneath that. That will allow the tribes, and the solicitation is, as I think your staff knows, is now on the street, due in May. It will allow the tribes to have one application rather than ten separate applications. They can file one problem statement, one description of their tribal needs, and then, in essence, just make a check mark for the areas where they need funding. They can then have one budget submission. And it greatly streamlines their application process.

We have had very favorable response to this. And we did a great deal of outreach to the tribes, both to let them know about this and also to answer questions. Because there were a lot of questions. It is a very different process for them. There were some concerns about it at first, because any time you start doing something in a different way, you know, they wanted to know whether this was going to disadvantage them in some way, whether there were going to be some issues or problems. So we answered those questions, we did a lot of consultation, and it seems to be going smoothly.

Mr. MOLLOHAN. Were they consulted in fashioning the structure of this, and the changes, and making recommendations—

Ms. ROBINSON. Yes.

Mr. MOLLOHAN [continuing]. At the front end of it?

Ms. ROBINSON. Yes, they were. The idea came from Tom Perrelli, the Associate Attorney General—the overall idea. And then we consulted with the tribal representatives about exactly how we might do it. The technical sides of it we had to come up with. But then we bounced those ideas off of them. So it seems to be going pretty well.

Mr. MOLLOHAN. Well we want to work with you and work together on making this as effective as possible.

Ms. ROBINSON. Thank you.

Mr. MOLLOHAN. And I know from the Attorney General on down you are really leaning forward on this and that is tremendous.

The Bureau of Indian Affairs provides money in a lot of these areas. To what extent are they involved or not involved in the process that you just described?

Ms. ROBINSON. Well, especially BJA works very closely with them on a number of these areas. For example, anything relating to the correctional detention facilities, those kinds of things. So we have kept in close touch with them.

Mr. MOLLOHAN. But in this process you are talking about, the grants process, the needs process?

Ms. ROBINSON. Oh, yes.

Mr. MOLLOHAN. I would not think you could actually, and maybe you cannot, I do not know. Maybe there are two separate processes and they achieved two separate goals. I will learn more about that and understand that better in the future. But were they consulted in this solicitation work that you are doing, and setting up the Tribal Nations Leadership Council, for example?

#### TRIBAL GRANTS

Ms. ROBINSON. Oh, yes.

Mr. MOLLOHAN. Will they be participating—

Ms. ROBINSON. Yes, they have certainly been consulted about that. I thought you meant more specifically about the process of the solicitation. That I do not know. But certainly on the substantive side—

Mr. MOLLOHAN. In coordinating needs and resource applications—

Ms. ROBINSON. Correct.

Mr. MOLLOHAN [continuing]. Is more of what I am talking about, I think.

Ms. ROBINSON. Correct. Yes, indeed. Yes, they have.

Mr. MOLLOHAN. Okay. Well, we will learn more about that. What kind of feedback are you getting from the tribes on the solicitation so far?

Ms. ROBINSON. Oh, very good. Very good feedback. We had some questions early on about, you know, I would say some questions, a little wariness because it was different, and it was new. But we scheduled a number of conference calls with tribal leaders. We scheduled separate individual conference calls, and—

Mr. MOLLOHAN. Any unresolved concerns coming from any direction?

Ms. ROBINSON. No, not at this point.

Mr. MOLLOHAN. When do you anticipate awards being made?

Ms. ROBINSON. By the end of the fiscal year.

Mr. MOLLOHAN. In your request, you have proposed a carve out from OJP programs across the board rather than funding tribal programs separately.

Ms. ROBINSON. Right.

Mr. MOLLOHAN. I want to give you an opportunity to talk about that, to justify your request and the approach, and tell us how you think it is better.

Ms. ROBINSON. Our thinking there, Mr. Chairman, was as follows: That first of all, that this, as I have said before, was such a high priority for the Attorney General from the standpoint that this is an area that has long been neglected by the federal government, and where it is clear that crime is such a serious problem in Indian country, and a long neglected problem. And that some areas such as sexual assault and crime against Indian women are just incredibly severe. And that the way to do this would be to look across OJP programs broadly rather than to look at them individually. To look broadly across OJP programs and in a tight fiscal year to do it as a set aside. So that was our thinking.

Mr. MOLLOHAN. Have you done the math as to what would be the—

Ms. ROBINSON. The bottom line?

Mr. MOLLOHAN. Yes, the bottom line outcome?

Ms. ROBINSON. Yes. \$139 million.

Mr. MOLLOHAN. I mean what is the comparison to what we funded in 2010?

Ms. ROBINSON. I do not remember that figure offhand. I think it was around \$50 million.

Mr. MOLLOHAN. \$50 million in additional resources for Indian country?

Ms. ROBINSON. I am just thinking that that was the amount that we had funded last year.

Mr. MOLLOHAN. No, I am asking you does this result in more resources going for Indian programs? Or less resources and how much? Have you done that math?

Ms. ROBINSON. Oh, well I think it is about \$80 million.

Mr. MOLLOHAN. Mr. Wolf.

Mr. WOLF. I have no questions.

#### SEX OFFENDER REGISTRATION NOTIFICATION ACT

Mr. MOLLOHAN. I do. Let me talk a little bit about the Sex Offender Registration Notification Act. OJP's Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking, SMART, is responsible for administering the national standards for sex offender registration and notification under the Sex Offender Registration and Notification Act, or SORNA. SMART also provides assistance to state, local, tribal, and territorial jurisdictions in implementing those standards. The original deadline for jurisdictions to comply with the standards, July 27, 2009, was extended by the Attorney General to July 27, 2010. Congress provided \$11 million for sex offender management assistance in 2010 along with \$1 million for the National Sex Offender Website. For fiscal year 2011, OJP has proposed \$25 million for SMART office activities, along with one million for continued operation of the National Sex Offender Website. How are all these jurisdictions progressing in their compliance with the requirements of SORNA?

Ms. ROBINSON. Mr. Chairman, as you know to date only three jurisdictions have complied. One is Ohio and two are Indian tribes, the Umatilla and the Yakama Confederated Tribes. Approximately

five more are close to compliance. But we are not certain that any additional jurisdictions will be in full compliance by this summer.

However, the Department is offering an additional extension, which by law we can, to any jurisdictions that are requesting it beyond this July. And that is available by law. So they have until July of 2011 to comply.

Mr. MOLLOHAN. What is causing the delays?

Ms. ROBINSON. There are really two reasons. One is implementation costs, because it takes time and effort and money to set up registration and notification systems. And the second are a variety of policy issues, which include the juvenile registration and notification issues, issues about substantial implementation and what that really means, retroactivity questions, and the issue about risk assessment versus offense tier issues. So it is a variety of pretty technical questions about what is required under SORNA.

When I came to OJP, Mr. Chairman, I had worked on the Obama transition in the fall of 2008 and I heard a great deal during the outreach that we did to the groups during the transition about the difficulties in complying with Adam Walsh and SORNA. So when I came to OJP I met right away with our SMART Office staff. And I said to them, "Let us do everything that we can to make the Adam Walsh Act a success. Let us work with the states in every way that we can to be as flexible as we can within the four corners of the SORNA statute to work and see where we can help the states in complying." The SORNA staff have been terrific in that. And they have issued better, I think, and more clarity in their guidance now.

We are also working on some additional guidelines that are going through clearance at OMB now. And I am optimistic that we will get there.

Mr. MOLLOHAN. Well, jurisdictions that are unable to meet the extended deadline, will they have the opportunity to have additional extensions?

Ms. ROBINSON. Tribes by law will be able to have an additional extension. But under the statute states will not so they will be penalized. However, they can use that money, it can go back to the state to work on implementing the SORNA guidelines.

#### ICACS

Mr. MOLLOHAN. The Committee last year provided \$70 million for the Missing and Exploited Children Program and \$30 million was culled out for the ICACs. You do not do that in your request?

Ms. ROBINSON. No, we did not.

Mr. MOLLOHAN. I am not asking you why, exactly. But what I would like for you to do is really just talk about the ICACs, what you think about them, how they are working. Give us some sense of the resources we would need if we were to address this problem adequately.

Ms. ROBINSON. Yes, I think actually that the ICACs are tremendously important. And the funding last year under the Recovery Act, the \$50 million, was tremendously helpful to them. We met recently in something called the Executive Working Group with representatives from the state attorneys general and they talked to us extensively about the important work of the ICACs.

Mr. MOLLOHAN. And successful.

Ms. ROBINSON. Successful, absolutely. For the Deputy Attorney General, for Gary Grindler, the Acting Deputy, we are meeting next week on child exploitation issues. The ICAC work is, if we could with—again, this is the question of the limited budget. If we could quadruple that money, I am speaking only in the hypothetical here, but it is extremely well spent funding. Because there is tremendous need here. And the work that they do is heroic. It is tremendously important. And the state AGs just underscored that tremendously.

Mr. MOLLOHAN. It is so easy to get into all these issues that the Subcommittee funds and that your Department deals with, and want to have all the resources in the world to get out there and fix all these problems.

Ms. ROBINSON. Yes, and that is why I say only hypothetically.

Mr. MOLLOHAN. No, it is true. You know, and we work against a countervailing effort here. You know, as Mr. Wolf raises questions about the benefit of incarcerated persons having work experiences, not only just to have a useful experience while incarcerated but also to develop skills and capabilities necessary to be successful when they get out. We all recognize that works on recidivism. But at the same time we all say that, well we do not all say that is a good, is the truth about it. There are a lot of people that say just lock them up and forget about them. Throw the key away and forget about them. But at the same time we have elements within the Congress that really work against that. And I think that we need to work within the Congress, Frank. And I certainly would be pleased to work together on that within the Congress on our colleagues, and to achieve some progress because I think that is extremely important. Equally with Missing and Exploited Children.

But I think there is some real promise on the technology horizons with regard to ICAC. I do not know if, you are probably very familiar with that. But to what extent are you looking at that? The computer capability of identifying and apprehending perpetrators of these kinds of horrible crimes?

Ms. ROBINSON. Yes, again I am not the technology person at all. But we have some very, very capable staff and people within the investigative parts of the Department that are extremely expert at that and looking at those very questions.

Mr. MOLLOHAN. Yes, it would seem like almost by definition that would be an area where resources would have a real payoff.

Well we are extremely supportive of that. And perhaps when you work in your 2012 budget you will cull it out. There is a lot of support in the Congress—

Ms. ROBINSON. Excellent.

Mr. MOLLOHAN [continuing]. For that program and we would certainly be receptive to that.

I have a number of other questions that I will submit for the record in a number of other important areas. Mr. Wolf has no additional questions. I think the majority of the Committee recognizes the excellent work you are doing and the attitude that you are bringing to the job, not to mention the experience. And we are especially pleased to work with you. I appreciate your testimony here today. And we will, as this process moves forward, get down to the

detail and see how we can support your work the best we can. Thank you very much for your testimony. Thank you, Ms. Robinson.

Ms. ROBINSON. Thank you so much.

Mr. MOLLOHAN. The hearing is adjourned.

**Chairman Alan Mollohan**  
Questions for the Record

**1. What are the current strategic planning requirements that guide the expenditure of funds by recipients of Byrne-JAG grants?**

**Answer:** Although the Byrne-Justice Assistance Grant (JAG) statute does not authorize the Office of Justice Programs (OJP) to *require* states to develop strategic plans as a pre-condition of receiving their Byrne-JAG formula funds, OJP's Bureau of Justice Assistance (BJA) does strongly *encourage* jurisdictions to use data and research to engage in strategic assessment and planning, thereby enhancing decision-making concerning JAG program spending, implementation, and performance. In Fiscal Year (FY) 2010, BJA added language to Byrne-JAG solicitations emphasizing that strategic planning is a priority, stating that:

In these challenging times, all of DOJ, and especially OJP and BJA, wish to ensure that State Administering Agencies (SAAs) and local JAG recipients are aware of several areas of national focus and priority for DOJ that may be of help in maximizing the effectiveness of the Byrne/JAG funding at the state and local level.

As an overall framework for success, we encourage both state and local comprehensive justice planning, bringing all of the system stakeholders together, including law enforcement, courts, prosecutors, defenders, corrections officials, and other stakeholders to create a comprehensive and strategic justice plan to ensure coordination and a more effective justice system.

As a part of this strategic planning process, we strongly encourage state and local planners to consider programs that are evidence-based and have been proven effective; in a difficult budgetary climate, it is critical that dollars are spent on programs whose effectiveness is proven. However, we recognize that state and local programs can also be wonderful laboratories for innovative programs that can be models for other states and localities addressing difficult problems. BJA has made resources available to SAAs and others to provide training and technical assistance in identifying and using evidence-based practices as the outcome of a comprehensive and strategic justice plan in the state or local community.



**2. Are Byrne-JAG strategic plans required to incorporate evidence-based strategies and approaches?**

**Answer:** As noted above, BJA cannot require states to develop strategic plans, but we strongly support and encourage the use of evidence-based strategies and approaches. In FY 2010, as described above, BJA added language to Byrne-JAG solicitations emphasizing the importance of using research to build strategies, stating that:

As a part of this strategic planning process, we strongly encourage state and local planners to consider programs that are evidence-based and have been proven effective; in a difficult budgetary climate, it is critical that dollars are spent on programs whose effectiveness is proven. BJA has made resources available to SAAs and others to provide training and technical assistance in identifying and using evidence-based practices as the outcome of a comprehensive and strategic justice plan in the state or local community.

The FY 2010 Byrne-JAG solicitations also state:

Recognizing that state and local programs can also be wonderful laboratories for innovative programs that can be models for other states and localities addressing difficult problems, BJA has made resources available to provide training and technical assistance in identifying and using evidence-based practices, web based information which summarizes the research on criminal justice issues and training and technical assistance in developing and collecting performance measure data.

**3. What federal assistance is available to State, local, and tribal governments in developing comprehensive strategic plans?**

**Answer:** BJA has partnered with the National Criminal Justice Association (NCJA) to provide intensive training and technical assistance to State Administering Agencies to support strategic planning. This training also encourages implementation of research and evidence-based strategies such as data collection and analysis; use of research knowledge; and logic models to develop new programs and supporting program evaluation.

Specifically, a series of four regional trainings in FY 2010 are being provided to Justice Assistance Grant (JAG) State Administering Agencies (SAAs) and local jurisdictions. SAAs are encouraged to partner with their State Analytical Centers to support these strategies and to assist local jurisdictions. Intensive technical assistance is also available to states to develop new strategic plans, data is collected and shared about promising practices, and a tool kit will be prepared to assist a broader audience interested in strategic planning.

Tribal justice systems face particular challenges in building and enhancing efforts, due to limited resources and capacity and the patchwork of legal rules governing whether a particular crime in Indian Country falls within the jurisdiction of federal, state, tribal and/or local justice agencies. As a result, BJA has made planning a critical element of its tribal programs, in the form of planning grants, training and technical assistance. In FY 2009, BJA launched the Tribal Justice Capacity Building Training and Technical Assistance Program to provide national training and technical assistance to tribes in strategic planning related to tribal justice systems. OJP developed a new approach to tribal grant funding for FY 2010 by instituting a new competitive grant solicitation entitled: Coordinated Tribal Assistance Solicitation (CTAS). This solicitation enables federally-recognized Indian tribal governments and tribal consortia to submit a single application for all available tribal government-specific grant programs offered by DOJ. Within the CTAS, there is an emphasis on strategic justice system planning in which tribes are strongly encouraged to participate in their own strategic planning before submitting applications.

**4. What data does OJP collect from grantees on how they actually use their grant funding, and at what level of detail?**

**Answer:** OJP regularly collects information from grantees on how they use their grant funding. In order to fully understand grantee spending, program managers look to both the financial and programmatic activities of the grantee. The following is a list of the reports and activities used to collect information from grantees:

Semi-Annual Progress Reports. In these reports, OJP grantees provide information regarding progress achieved by the grantee in relation to project milestones. Grantees must also report on quantitative performance measures.

Quarterly Financial Status Reports. In these reports, OJP grantees provide financial information regarding their grants, including receipts, disbursements, cash on hand, funds authorized, expenditures, unliquidated obligations, unobligated balances, and program income.

FederalReporting.gov – Recovery Act data. In addition to normal reporting requirements, grantees receiving Recovery Act funding submit additional quarterly reports, which require both programmatic and financial data. Reporting elements include jobs funded with Recovery Act dollars, timecards and payroll records, and employee activity reports. This is important information in determining how grantees spent their grant funds, particularly since a primary goal of Recovery Act funding is the creation and retention of jobs.

Grant Monitoring. In addition to the reports above, OJP also conducts on-site monitoring to gain additional financial, administrative and programmatic information concerning grantee performance.

**5. What are the reporting mechanisms used for tracking Byrne JAG expenditures?**

**Answer:** In addition to the quarterly financial status reports described in the previous response, all Byrne-JAG grantees are required to submit quarterly performance reports (including expenditure data) through the BJA Performance Measurement Tool. The 56 states and territories also submit annual Byrne-JAG subgrantee reports listing all sub-awards made in a given fiscal year. Further, Recovery Act Byrne-JAG grantees are required to submit quarterly OMB Section 1512 reports. Section 1512 of the Recovery Act requires that recipients report on the use of Recovery Act funding no later than the 10th day after the end of each quarter (beginning the quarter ending September 30, 2009). Finally, BJA staff complete annual desk monitoring and periodic on-site monitoring of all Byrne-JAG grantees.

**6. Would the collection of more detailed information about the expenditure of Byrne-JAG funds be useful in assessing the performance of Byrne-JAG grants? If so, what steps is OJP taking to collect such additional information?**

**Answer:** OJP believes that more detailed information about the expenditure of Byrne-JAG funds would be useful in assessing the performance of those grants. To that end, BJA has applied its Performance Measurement Tool to its FY 2009 Byrne-JAG grants in order to collect performance data in a more structured format. BJA has also funded NCJA to conduct a survey of SAAs about planned uses for state Byrne-JAG funding (prospectively) and to use reporting data to assist with strategic planning and evidence-based practice integration.

**7. Does the Department of Justice make available to the public a detailed state-by-state accounting of Byrne JAG expenditures? If so, how does the public gain access to this information?**

**Answer:** The Department of Justice does not make available to the public a detailed state-by-state accounting of Byrne-JAG formula grant expenditures because such information is not readily accessible. Recognizing the desire for more transparency and data, the Bureau of Justice Assistance will be releasing summary information about Byrne-JAG expenditures very soon and is considering a number of other efforts to improve this type of reporting.

**8. Are indigent defense programs an appropriate use of Byrne-JAG funds? If so, under what Byrne-JAG purpose area is indigent defense categorized and to what extent do Byrne JAG formula grants actually support state indigent defense programs?**

**Answer:** Yes, support for indigent defense programs is an appropriate use of JAG funds. Such funding would be categorized under the "Prosecution & Courts" JAG purpose area in the authorizing statute.

As part of a strategic effort to determine how states are spending Byrne-JAG funding, BJA partnered with the National Criminal Justice Association (NCJA) to track and survey State Administering Agencies (SAAs) JAG sub-grants. While not all states participated in the survey, data showed that \$3.2 million (out of \$1.2 billion including the Recovery Act) was spent directly on indigent defense programs.

In FY 2010, new BJA solicitation language encourages SAAs to formulate comprehensive strategic justice plans that emphasize ensuring fairness in the criminal justice system as a key priority and point out that indigent defense is an authorized use of JAG funding under the "Prosecution and Courts" purpose area in the underlying statute. BJA has also worked extensively with the NCJA to encourage public defenders to cultivate relationships with SAAs in order to leverage greater collaboration.

**9. Are there any other grant programs for which support of state indigent defense programs is an eligible purpose? If so, what are they?**

**Answer:** Yes. Despite the lack of a direct funding stream for indigent defense programs, BJA has worked creatively to leverage resources to support these critical functions. BJA has several specialized programs that assist indigent defense providers. BJA also leverages Byrne Competitive and Recovery Act resources to support grants, training and technical assistance to indigent defender programs. Examples include the following:

Wrongful Conviction Review Program. In FY 2009, BJA implemented a new Congressionally created grant program whose purpose is to provide high quality and efficient representation for defendants with post-conviction claims of innocence. In addition to providing funds for post-conviction claims, this initiative also provides funding for a national training and technical assistance partner, the National Association of Criminal Defense Lawyers, to provide support and assistance to the field.

Capital Case Litigation Initiative (CCLI). The CCLI program is designed to provide high-quality training and technical assistance on death penalty issues to judges, defense attorneys, and prosecutors.

Indigent Defense Hiring Pilot Project. Under the FY 2009 National Initiatives: Adjudication Grant Program, BJA solicited applications from state, local, or not-for-profit agencies and organizations to hire trained public defenders and demonstrate how these positions will assist with quality representation and alleviate the large caseload. As a result, BJA funded 10 jurisdictions to hire additional public defenders to reduce the stress of large caseloads on public defense offices and improve the quality of representation. For FY 2010, BJA is funding four additional jurisdictions.

Encouraging Innovation: Field-Initiated Programs. In FY 2009, under an annual solicitation seeking proposals that demonstrate innovation in criminal justice, BJA funded the Bronx Defenders to build a national pilot of a new holistic defense model which is being documented and will be shared with the field as a new model and resource for defenders.

**10. Has OJP collected data on state expenditures of federal formula grants to support indigent defense programs in the past, either directly or through outside organizations? If so, at what levels have grants been used to support such programs? Does OJP plan to collect such data in the future? If so, when?**

**Answer:** OJP has not in the past collected data on expenditures for indigent defense. As described above, Byrne-JAG funding is used to support indigent defense programs in some states. Examples include:

Minnesota is using its Byrne-JAG Recovery Act grant to employ 7.5 public defenders, helping to offset a cut in state funding that eliminated 53 public defender positions.

Using its Byrne-JAG Recovery Act grant, Delaware will fund vacancies in the public defender's office for case processing needs. These positions will be funded for 24 months.

In New York, Byrne-JAG funds will be used to improve case outcomes by expediting the flow of offenders through the criminal justice system by enhancing defense services.

In addition, Byrne-JAG SAAs report that:

Eight states have funded a public defender position or indigent defense program, such as a post-conviction DNA or capital litigation training program.

Seven states support public defender training, and five award grants for equipment.

Of the more than half of SAAs governed by a board or commission, 39 percent include a representative from public defense. In one state, a practicing criminal defense attorney is the commission chair.

Lastly, BJA and NCJA will begin this month to analyze the annual state/territory Byrne-JAG subgrantee reports submitted by SAAs to glean additional detail regarding programs funded by Byrne-JAG funds, including indigent defense projects.

**11. How is the \$10 million provided for Second Chance Act research being integrated with the \$90 million provided for Second Chance Act grant programs?**

**Answer:** BJA has collaborated closely with OJP's National Institute of Justice (NIJ) to develop plans and solicitations to fund research efforts in reentry that will inform the practical work of managing offenders as they reenter society. The evidence produced by this research will also help guide policy choices that reduce re-offending, enhance public safety, and minimize correctional costs.

The \$10 million will be used to fund awards under four active solicitations from NIJ:

Evaluation of the Bureau of Justice Assistance Second Chance Act Adult Demonstration Projects. NIJ recently issued a solicitation to measure the processes, outcomes, costs, and impacts of demonstration projects funded under the Second Chance Act.

Evaluation of the National Institute of Corrections Evidence-Based Decision Making Framework for Local Criminal Justice Systems. NIJ recently issued a solicitation to assess the connections between evidence-based court decisions and supervision options that break the cycle of criminal recidivism, protect the public, and assist offenders reentering the community from incarceration.

Evaluation of the Bureau of Justice Assistance Second Chance Act FY 2010 State, Tribal, and Local Reentry Courts Program. NIJ recently issued a solicitation to document the implementation of reentry courts that receive BJA funding and to examine program processes and outcomes observed during and after participation among adult offenders.

Evaluation of the Multi-site Demonstration Field Experiment: What Works in Reentry Research. NIJ recently issued a solicitation that will support a single award for evaluation activities related to a multi-site demonstration field experiment (DFE) which will provide a rigorous test of a specific reentry program

or model and its causal relationship to desired outcomes, including reoffending and reincarceration. The DFE will consist of up to six sites that will be funded and managed by BJA. This solicitation is particularly significant because—as a randomized controlled trial—it will add significantly to our knowledge about “what works” in reintegrating offenders back into society.

**12. Is OJP's proposal for Second Chance Act funding in fiscal year (FY) 2011 based on stakeholder feedback on where resources are most needed?**

**Answer:** The FY 2011 Second Chance Act funding request is based on previous funding history and the extraordinary number of applications received in 2009 for grants under Section 101—demonstration projects—and Section 211—mentoring grants to non-profit organizations. BJA has received feedback from the field expressing strong support for the full funding of all sections of the Second Chance Act. Consequently, even in these austere fiscal times, the President's Budget request of \$100 million remains the same as in FY 2010.

**13. What would be the process, under OJP's proposed FY 2011 funding allocation, for determining how the rest of the Second Chance Act funding would be allocated? Would OJP consult with stakeholder groups?**

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

\$ 9.0 million: Section 111 — Reentry Courts

\$10.0 million: Section 112 — Prosecution Drug Treatment Alternatives to Prison (DTAP)

\$ 1.7 million: Section 245 — Reentry Research (for reentry and recidivism statistics)

The FY 2011 President's Budget request leaves \$79.3 million unallocated. OJP would consult with stakeholder groups on priorities under the Second Chance Act to determine the allocation of these funds.

**14. Did OJP consult with tribes in developing the Flexible Tribal Grant Program, or does OJP intend to consult with them? What is the mechanism or forum for such consultation?**

**Answer:** Yes. This proposal results from consultation with tribal governments. That consultation has focused on the barriers tribes encounter accessing resources through the federal grant-making process.

The consultation and process developed with tribes is documented in the brief chronology provided below:

In April, 2006, the Department of Health and Human Services (DHHS) published a multi-year study entitled, "Barriers to American Indian and Alaska Native Access to DHHS Grants." This study included numerous strategies, detailing findings and recommendations to improve the grant-making process, involving focus group and extensive consultation with tribes at strategic points of its development. OJP used this study as a key document for consultation sessions held with tribes in March, 2007 and June, 2007, which were held to seek tribal leader recommendations for the development of an OJP Tribal Grants Policy. OJP addressed these consultation matters in accordance with DOJ's long-standing Sovereignty Policy signed by former Attorney General Janet Reno in June, 1996, and the intent of Executive Order 13175, Consultation and Coordination with American Indian Tribal Governments.

Subsequently, an OJP Tribal Grants policy was developed and implemented on September 19, 2007, to respond to a number of recommendations in the DHHS report and from field consultation OJP conducted with the tribes in 2007.

OJP also enlisted further and regular assistance from tribal leaders through the establishment of a Tribal Justice Advisory Group (TJAG) in September, 2007, to solicit their advice and assistance on OJP matters, including the grant-making process. Since then, TJAG has convened on numerous occasions during the past several years to advise and assist the Assistant Attorney General for OJP.

The Department, led by Attorney General Eric H. Holder, Jr., held a national listening session in October, 2009, in St. Paul, Minnesota. This session underscored for the Department's new leadership that more needed to be done to improve the grant-making process for tribal justice systems.

The Department developed a proposal and convened two national tribal teleconference consultation calls on December 18 and 23, 2009 to receive tribal views on the proposal for the Coordinated Tribal Assistance Solicitation (CTAS), and modified the proposal to address several recommendations and comments made by participants.

The National Congress of American Indians (NCAI) recommended by resolution to consolidate and streamline federal law enforcement funding to tribes. Additionally, the NCAI Indian Country FY 2011 budget request recommends that DOJ combine all tribal specific grant programs into a single solicitation and application.

During the CTAS pre-application and solicitation process, the Department conducted webinars, national weekly teleconference calls, sent letters directly to Tribal leaders, and prepared frequent email broadcast updates with technical tips and points of contact for assistance. DOJ has also launched a dedicated website rich with all the detailed information contained and required for the CTAS initiative at [www.tribaljusticeandsafety.gov](http://www.tribaljusticeandsafety.gov).



Since December, 2006, OJP has engaged in regular tribal consultation with tribes at interdepartmental training and technical assistance sessions. The Department also recognizes that the FY 2010 CTAS application initiative is but a first step for DOJ to be more responsive to these long-standing tribal concerns. OJP plans to move forward in partnership with the tribes to find the best solutions.

The Department has also submitted a plan to OMB in response to President Obama's November 5, 2009, Executive Memorandum on Tribal Consultation. The plan includes annual consultation with tribes from the DOJ grant-making agencies to ensure ongoing and regular consultation with tribal governments. This plan is currently the subject of tribal consultation, as well.

[A copy of the plan follows.]



U.S. Department of Justice

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*Washington, D.C. 20530***January 27, 2010****Department Of Justice Plan To Develop A Tribal Consultation and Coordination Policy Implementing Executive Order 13175**

**PURPOSE:** President Obama's Memorandum on Tribal Consultation ("Presidential Memorandum"), signed November 5, 2009 pronounces tribal consultations "a critical ingredient of a sound and productive Federal-tribal relationship." The Presidential Memorandum directs all federal agencies to develop a detailed plan of the actions they will take to fully implement President Clinton's Executive Order 13175 on "Consultation and Coordination with Indian Tribal Governments" within ninety days, and to provide a progress report on implementation and any updates to the plan within 270 days and annually thereafter. Executive Order 13175 sets forth criteria "to establish regular and meaningful consultation and collaboration with tribal officials in the development of Federal policies that have tribal implications."

The Justice Department embraces this responsibility and the principles of tribal sovereignty and Indian self-determination. The Department, at all levels, is committed to developing a comprehensive communication and coordination policy with tribes that is predicated on robust tribal input.

The following report outlines the Department's plan of actions for developing a consultation and coordination policy (hereinafter, "consultation policy") that not only implements Executive Order 13175, but identifies other ways in which the Department shall ensure ongoing and effective communication and coordination with tribes.

**GUIDING PRINCIPLES:** The Justice Department is committed to developing a comprehensive consultation policy with tribes after robust tribal input. In developing such a policy, the Department's efforts will be guided by three principles:

- The Department must engage with tribal nations on a government-to-government basis.
- Tribal sovereignty and Indian self-determination are now, and must always be, the foundations of every policy or program.
- Communication and coordination — with our tribal partners, among federal agencies, and with our state and local counterparts — are essential to accountability and thus to success.

**NARRATIVE:** In October 2009, the Attorney General convened a Tribal Nations Listening Session on Public Safety and Law Enforcement. This was the first time that all three principals of the Justice Department engaged in dialogue with tribal nations on the pressing public safety challenges confronting their communities. Over 300 tribal leaders, approximately 85 Department of Justice officials, and six federal agencies participated in the two-day session. The insights shared by tribal leaders during the listening session will inform the efforts the Justice Department will undertake, in close partnership with tribes, to improve public safety in tribal communities.

To commence the process for developing a consultation policy, the Attorney General addressed a letter dated November 13, 2009 to leaders of all federally recognized tribes to solicit their input on the key criteria for a DOJ policy. In particular, the Attorney General identified five questions at the core of the consultation process:

- what actions or events should trigger consultation;
- what procedures best ensure meaningful, timely consultation;
- who should participate in consultation;
- how should follow-up after consultation be documented and communicated; and
- when are alternatives to consultation, such as conferences, workshop sessions or task forces, appropriate to improve communication and coordination with tribal nations?

The Attorney General invited tribes to submit written comments to the Justice Department, and to participate in regional consultation conference calls.

On December 1 through December 8, 2009, the Office of Tribal Justice -- the Department's primary point of contact and liaison with tribal nations, and a key advisor on all tribal policies for the Department -- conducted a series of regional consultation conference calls to solicit input from tribal leaders on the elements of a consultation policy. To facilitate more centralized opportunities for tribes to provide comments to multiple agencies, the Justice Department invited other agencies to participate in these consultation calls.

**PLAN OF ACTIONS:**

1. **Office of Tribal Justice Role.** The Department plans to reorganize the Office of Tribal Justice into a separate component, an organizational status that appropriately conveys its prominence and important functions. The Office of Tribal Justice serves as a single point of contact for tribal nations within the Justice Department, and is the Department's principal liaison with all federally recognized tribes. In this capacity, the Office of Tribal Justice advises the Department as a whole on all policies affecting tribes. It ensures a central source of communication and coordination between the Department and tribal nations. The Office of Tribal Justice reports to the Deputy Attorney General. The Director of the Office of Tribal Justice is designated as the official with coordinating and implementing responsibility for the plan of

actions that follows and the progress reports required by the Presidential Memorandum.

2. **Creation of Tribal Nations Leadership Council.** To ensure ongoing communication and collaboration with tribal leaders, the Department is creating a Tribal Nations Leadership Council. This Council will be composed of a tribal representative of each of the twelve BIA tribal regions, to be selected by the tribes of that region, and will meet biannually.
3. **Consultation Policy Development.**
  - a. **Review of Tribal Comments.** The Justice Department will review all comments from tribes or tribal organizations provided in writing or during the consultation conference calls detailed above, as well as the comments and recommendations currently being prepared by the Office of Justice Programs' Tribal Justice Advisory Group. In addition, the Department plans to solicit comments on the consultation policy at Department forums and inter-tribal organization sessions including the National Congress of American Indians conference in March 2010.
  - b. **Draft Consultation Policy.** After considering tribal input, the Justice Department will prepare a draft consultation policy within 270 days of the Presidential Memorandum, and report to OMB on the draft policy in its next progress report.
  - c. **Tribal Nations Leadership Council Review.** The Department will then ask the Tribal Nations Leadership Council to review the draft consultation policy and provide additional comments.
  - d. **Federal Register Publication.** The Department also will publish the draft consultation policy in the Federal Register, and provide for a 60-day comment period. In addition, the Department will e-mail the draft consultation policy to all tribal leaders, and make it available for comment on the Office of Tribal Justice website.
  - e. **Final Publication.** Within 90 days of the close of the comment period on the draft consultation policy, the Department will issue a final policy. The final consultation policy will be published in the Federal Register and posted on the Justice Department website.
4. **United States Attorneys Actions.** Every United States Attorney with primary jurisdiction over major crimes on tribal reservations will convene a consultation with the tribes located within his or her district to develop an operational plan to improve public safety for those tribes. These district-based consultations will enable United States Attorneys, in partnership with the tribes in their districts, to develop

communication protocols and action plans uniquely tailored to the needs of the tribes in their districts.

5. **Combating Violence Against Women.** The Department recognizes that combating violence against women is a critical issue for many tribal communities. Accordingly, the Department undertakes the following efforts:
  - a. **VAWA Consultation.** The Department has expanded the annual tribal consultation required by the Violence Against Women Act of 2005 (“VAWA 2005”) to include representatives from the leadership offices and other components with responsibilities to address violence against women in tribal communities.
  - b. **Section 904 Violence Against Women in Indian Country Task Force.** The Department’s Section 904 Violence Against Women in Indian Country Task Force, which was created pursuant to section 904(a)(3) of VAWA 2005 and is composed of a diverse cross section of national tribal domestic violence and sexual assault organizations, tribal governments, and national tribal organizations, continues to advise the Department’s National Institute of Justice on a program of research on violence against Indian women in Indian Country.
  - c. **New Federal-Tribal Task Force.** At the suggestion of tribal leaders, the Department will create a new federal-tribal task force to develop strategies and guidance for federal and tribal prosecutions of crimes of violence against women in tribal communities.
6. **Federal Bureau of Investigation Efforts.** The Federal Bureau of Investigation will continue to manage and fund Safe Trails Task Forces, which provide important opportunities for tribal law enforcement to coordinate and collaborate with federal, state, and local law enforcement to fight crime in tribal communities.
7. **Grant Opportunities.** Each of the Department’s three grant-making components will ensure that it meets, on an annual basis, with tribal governments or their designees to discuss resource needs, grants policy development, and grant funding priorities of tribal governments.
8. **Multi-Agency Approach.** The Department will continue to invite other federal agencies to coordinate and collaborate on tribal public safety priorities.
9. **Ongoing Evaluation.** The Department is evaluating additional ways to ensure effective and consistent consultation and coordination with tribes, and will report on those efforts within 270 days of the Presidential Memorandum and in annual progress reports thereafter.

- 15. The Mentally Ill Offender Act appropriation supports drug courts and non-court efforts to divert mentally ill offenders from the criminal justice system into treatment. Under OJP's problem solving court proposal, would funding be available to support non-court activities that are currently supported by the Mentally Ill Offender Act program?**

**Answer:** While this funding would be restricted to court-affiliated programs, the intention is to support collaborative efforts intended to work through and with the courts to divert offenders from the criminal justice system. Many of today's court cases involve individuals with medical, psychological, and social problems such as poor housing, addiction, or lack of access to mental health treatment, all of which can drive criminal behavior. This program will assist state, local, and tribal courts in developing evidence-based strategies that bring courts together with other criminal justice, social services, and public health agencies to develop system-wide responses to offenders affected by problems described above. The initiative will encourage communities to focus on increasing training and information dissemination for staff; increasing engagement with the community; increasing collaboration not only within courts, but with other components of the criminal justice system; improving accountability for offenders; and effectively demonstrating outcomes.

- 16. What role does the Regional Information Sharing System (RISS) currently play for Federal, State, local and tribal law enforcement agencies, and how would the proposed cut to the regional information sharing appropriation affect the availability of services RISS currently provides?**

**Answer:** The Regional Information Sharing System (RISS) Program plays a role in connecting federal, state and local (including tribal) law enforcement across the United States, enabling them to share criminal intelligence information and access resources not otherwise available.

The RISS program provides a secure network (RISSNET) and a series of services to state, local, and tribal public safety agencies. RISS has 95 local, state, federal, and regional systems (data sources) connected to RISSNET, providing a link that allows law enforcement agencies and other public safety entities such as corrections, prosecutors, and other agencies holding investigatory intelligence information, to share information through a secure network.

RISS also provides some services designed to augment agencies' investigation abilities. These services include: investigative and intelligence analysis support, computer forensics and video and audio enhancements, equipment loan program, investigative funds support, criminal activity bulletins and publications, training, and technical assistance.

Decisions as to funding levels in the President's FY 2011 budget reflect very difficult choices that had to be made. It was in this context that the Administration, given the significant investments in RISS in recent years—more than \$335 million in the last decade alone—decided to recommend more limited funding for RISS in FY 2011, although we recognize that the cut would impact the level of services RISS would likely be able to provide in the future.

The recommendation included in the President's Budget reflects a shifting of the financial burden to the primary beneficiaries of the RISS program. The Administration is committed to streamlining and reducing unnecessary redundancies in information sharing networks. As you know, the FBI's Law Enforcement Online (LEO) system and DHS' Homeland Security Information Network (HSIN) also provide related forms of information exchange. RISS, LEO, and HSIN are now deploying single sign-on capability, an effort coordinated by the Office of the Director of National Intelligence. This capability greatly eases access by state and local law enforcement into all of the Department of Justice's law enforcement content, regardless of the database distributing it. While we recognize that RISS may be more familiar to some state and local agencies, the Federal Government is exploring options to fully justify the number and functionality of these multiple, related systems.

If the FY 2011 request is enacted, the Department also would be looking at a number of additional options to make sure regionals information sharing programs continued, including, but not necessarily limited to: (a) ways that Byrne JAG funding might be appropriately be used to help fund state or regulation law enforcement information sharing centers; and (b) working with information sharing centers about user fee structures and possible modifications.

**17. OJP has proposed a \$100 million carve-out from the Crime Victims Fund for a new initiative to benefit victims of violence against women. How would this new initiative be distinct from existing Office on Violence Against Women programs?**

**Answer:** OJP's Office for Victims of Crime (OVC) will coordinate with the Office on Violence Against Women (OVW) and with state Victims of Crime Act (VOCA) grant administrators to ensure that activities funded under this set-aside do not duplicate OVW resources and are used to address priority needs.

OVC works closely with the Executive Directors of the National Association of VOCA Assistance Administrators (NAVAA) and the National Association of Crime Victim Compensation Boards (NACVCB) to ensure the smooth operation of its grant programs. OVC representatives meet quarterly with VOCA administrators to discuss important issues and the victim assistance priorities of the states.

OJP plans to give the states some latitude in directing this set-aside funding to areas of critical need.

**18. How would the new initiative be targeted differently than the federally-funded crime victim assistance programs administered by the States?**

**Answer:** OJP anticipates attaching a discretionary grant to Violence Against Women Act (VAWA) initiatives to each state's Crime Victims Fund Victim Assistance formula grant.

This discretionary grant would be used for VAWA initiatives identified by the states as critical needs and the amount of funding allocated to each state would be determined on the same basis as the formula grants.

**19. Assuming the proposed increases in the Crime Victims Fund allocations for Victim/Witness Coordinators at U.S. Attorneys Offices and FBI Victim Assistance Specialists, along with the \$100 million carve-out for victims of violence against women, funding for victim compensation formula grants and victim assistance formula grants would be reduced by \$20 million. Has OJP consulted with the State agencies that administer the victim compensation and assistance programs, and are they supportive of carving out \$100 million for victims of violence against women?**

**Answer:** OJP has not formally consulted with the state VOCA grant administrators regarding this set-aside and its implementation.

It is unlikely that implementation of this set-aside would affect the level of support for victims compensation programs due to the statutory formula used to distribute funds from the Crime Victims Fund and the fact that compensation is based on certified pay-outs to crime victims.

Between 60 and 70 percent of all formula-based state victim assistance funding is already allocated by the states to serving victims of domestic violence and sexual assault, it is possible that instead of a decrease in funding available to the states for victims assistance programs, this set-aside might increase the funding available for these programs.

**20. The victims of violence against women initiative would require new statutory authority. Has OJP consulted with the authorizing committees in the House and Senate, and are they supportive of the funding mechanism proposed by OJP?**

**Answer:** OJP is proposing to fund this initiative through a supplement using the formula prescribed in the VOCA Act. This distribution approach does not require any new legislative changes to the VOCA statute, but does require enactment of the appropriations language submitted for the Crime Victims Fund. Therefore, the Department has not formally consulted with its House and Senate authorizing committees. As written, the \$100 million is for a discretionary grant, with specific purposes attached to those funds. Accordingly, OVC, using its discretion under



existing authorities, plans to distribute these funds in a method similar to that used for distribution of existing OVC assistance funds to the states. However, OVC would ensure that as the states further distribute grants, these grants would be used for "temporary shelter, transitional housing, and other assistance for victims of violence against women," consistent with the purpose areas of the funds.

**21. Congress provided \$12.5 million for Victims of Trafficking grants in FY 2010, an increase of \$2.5 million above the FY 2009 level. At this funding level, will the victim service providers and task forces be able to maintain or increase the number of victims identified and served annually?**

**Answer:** The \$12.5 million enacted in FY 2010 will maintain existing task force/victim service support and fund a pilot for up to four additional task forces using an enhanced model focusing on all forms of human trafficking. This pilot is based on an assessment of, and lessons learned from, the current task force model and input from practitioners in the field.

**22. To what extent are the victim service providers currently able to meet the needs of trafficking victims that are referred to them by the task forces? How does OJP measure the ability of service providers to meet the needs of identified victims?**

**Answer:** OVC currently funds 34 victim service providers to support the needs of trafficking victims referred to them by law enforcement task forces. The providers assist foreign national victims of trafficking who have not yet been "certified" by the Department of Health and Human Services (DHHS). A "certified" victim is an adult who has been designated by DHHS as "a victim of a severe form of human trafficking" as defined by the Trafficking Victims Protection Act, allowing the victim to receive certain federally funded benefits and services, such as case assistance, medical care, food stamps, and housing. On average, each provider has a budget of \$150,000 per year to address the varying needs of their clients, which may include: intensive case management; medical care; dental care; mental health treatment; sustenance and shelter; translation/interpretation; legal/immigration assistance; transportation; and other services deemed necessary.

OVC also funds 5 providers in various capacities to address the needs of domestic minor victims of trafficking. While these 5 programs are not formally partnered with the task forces, they have the capacity to assist victims who are referred by law enforcement.

In determining a provider's ability to meet the needs of trafficking victims, OVC, upon making a grant award, requires each provider to thoroughly document their organizational capacity to provide, directly or indirectly, a comprehensive response to victims of trafficking referred to them by a law enforcement task

force or any other entity, such as a nongovernmental community partner. Additionally, OVC's trafficking funding is awarded as cooperative agreements, which require substantial involvement on the part of OVC throughout the duration of the award. OVC also conducts desk and on-site monitoring activities to monitor the provider's administration of the grant as well as the quality of services provided to victims.

Finally, OVC is also able to measure the ability of service providers to meet the needs of victims through its Trafficking Information Management System (TIMS). TIMS collects detailed information on the number and type of victims served every 6 months, as well as the types of services victims receive.

**23. What would be the impact on task forces and service providers of reducing Victims of Trafficking funding in FY 2011, as proposed? What level of resources would be required to more fully address the needs of trafficking victims?**

**Answer:** A number of variables determine which task forces receive continuation funding – the level of the appropriation is only one such variable. Other variables include grant compliance, as well as task force overall performance. Likewise, funding is only one part of the equation in determining what resources are required to more fully address the needs of trafficking victims. Enhanced training, the ability to work cooperatively with all of the partners, including federal and local law enforcement, and victim service providers, also play a key role in addressing the needs of trafficking victims.

BJA and OVC have partnered to develop a work plan to deliver critical training and technical assistance to the task forces. This work plan includes the development and dissemination of an online Anti-Human Trafficking Task Force Operations e-Guide designed to address the current and future challenges faced by law enforcement and services providers in forming and sustaining viable task forces. The plan also includes hosting a series of regional training forums individually designed to address the specific needs of task forces in various regions of the country. The first regional training forum was held in Tampa, Florida in December 2009. Additional forums will be held in fall 2010.

BJA also funded 12 "Immersion Learning" trainings where three high performing task forces provided peer-to-peer training to provide best practices that would enable the selected low performing task forces to investigate, identify, and rescue victims of human trafficking. Further, BJA is currently piloting "Advanced Human Trafficking Investigators" training. Finally, OVC and BJA plan to expand their specialized training and technical assistance efforts beyond the federally-funded task forces and victim service providers to include the larger trafficking field.

**24. A 2008 report from the Department's Office of Inspector General (I-2008-001) found that OJP did not ensure that each applicant for Paul Coverdell Forensic Science Improvement Grants had identified a qualified, independent entity to investigate allegations of serious negligence or misconduct involving the applicant's forensic laboratories, and failed to establish guidance and processes to ensure that applicants would refer allegations to such an entity. What steps has OJP taken to comply with the three recommendations identified in the OIG report?**

**Answer:** Since FY 2007, OJP has required Coverdell grant applicants, prior to receiving funds, to provide the name of the government entity (or entities) with a process in place to conduct independent external investigations into allegations of serious negligence or misconduct.

In its FY 2008, FY 2009 and FY 2010 Coverdell solicitations, OJP reinforced the serious legal implications of the certification by modifying the certification form to include these statements: "I personally read and reviewed the section entitled 'Eligibility' in the Program, and I acknowledge that a false statement in this certification or in the grant application that it supports may be subject to criminal prosecution, including under 18 U.S.C. § 1001."

In its FY 2009 and FY 2010 Coverdell program solicitations, OJP further modified the certification form to include the sentence, "I also acknowledge that Office of Justice Programs grants, including certifications provided in connection with such grants, are subject to review by the Office of Justice Programs and/or by the Department of Justice's Office of the Inspector General."

In the FY 2009 and FY 2010 Coverdell Program solicitations, under the heading "Important Note on Referrals in Connections with Allegations of Serious Negligence or Misconduct," OJP added the following statement:

The highest standards of integrity in the practice of forensic science are critical to the enhancement of the administration of justice. We assume that recipients (and sub-recipients) of Coverdell funds will make use of the process referenced in their certification as to external investigations and will refer allegations of serious negligence or misconduct substantially affecting the integrity of forensic results to government entities with an appropriate process in place to conduct independent external investigations, such as the government entities identified in the grant application.

For each fiscal year of an award, recipients will be required to report to NIJ on an annual basis:

the number and nature of any such allegations;  
information on the referrals of such allegations (e.g., the government entity or entities to which referred, the date of referral);  
the outcome of such referrals (if known as of the date of the report); and  
if any such allegations were not referred, the reason(s) for the non-referral.

Grant funding to recipients (including payments under future awards) may be withheld if the required information is not submitted on a timely basis.

So prospective grant recipients may prepare to implement mechanisms to gather the information necessary to make the report on the FY 2009 award (and future awards), OJP's NIJ sent an email to all recipients of FY 2008 Coverdell Program awards to remind them to submit the required information.

Additionally, as has been the practice since FY 2007, OJP will review certifications to ensure they are filled out completely and follow the language of the certification. OJP will document that external investigation certifications are received for each state or unit of local government that receives a grant. In addition, OJP has provided the Department's Office of Inspector General with written program management guidelines for the Coverdell Program that encompass the review of applications for the external investigation certification as well as other requirements of the program.

**25. How much FY 2009 funding was targeted by OJP to research and evaluation specifically related to prevention and intervention approaches directed at individuals under the age of 18? What percentage of OJP's total research and evaluation budget for FY 2009 does this amount represent?**

**Answer:** In FY 2009, \$19.1 million was targeted by OJP for research and evaluation specifically related to prevention and intervention approaches directed at individuals under the age of 18. This represents approximately 28 percent of OJP's total FY 2009 research and evaluation budget.

**26. What are OJP's estimated expenditures for FY 2010 for research and evaluation specifically related to prevention and intervention approaches directed at individuals under the age of 18? What percentage of OJP's total research and evaluation budget for FY 2010 would this represent?**

**Answer:** In FY 2010, \$18.2 million was targeted by OJP for research and evaluation specifically related to prevention and intervention approaches directed at individuals under the age of 18. This represents approximately 22 percent of OJP's total FY 2010 research and evaluation budget.

**27. The Department's Office of Inspector General (OIG) issued a report in April 2009 (Audit Report 09-24) criticizing the Office of Juvenile Justice and Delinquency Prevention for the process it used to award Juvenile Justice demonstration grants and mentoring grants for FY 2007. Last September, the OIG issued another report (Audit Report 09-38) criticizing the grant and contract award process of the National Institute of Justice for FY 2005 through FY 2007. What is the status of OJP's efforts to implement the recommendations contained in each audit report?**

**Answer:** OIG Audit Report 09-24 focuses on ensuring fairness in the solicitation and administration of grants made by OJP's Office for Juvenile Justice and Delinquency Prevention (OJJDP). OJP agrees with the audit findings and is working to address these findings.

OJJDP has already completed actions to address seven of the audit's nine recommendations. Most of these issues were addressed by revising and updating OJJDP's grant management policies, which were released to all OJP staff in April, 2010 as part of the new *OJJDP Manual*. OJP staff is continuing to work with the OIG audit staff to resolve the remaining recommendations as promptly as possible.

OIG Audit Report 09-38 focused on: (1) evaluating whether competitive NIJ grants and contracts were awarded based on fair and open processes; (2) determining whether non-competitive NIJ grants and contracts awarded in those fiscal years were properly justified; and (3) identifying costs related to NIJ grants and contracts that were administrative in nature and how those costs were determined.

The audits identified deficiencies in administrative practices and controls that prevented NIJ from demonstrating that grant award practices were based on fair and open competition for those awards tested. OJP agrees with the audit findings and is working to resolve them.

In February, 2010, NIJ developed and distributed to all NIJ staff members guidelines on the administration and management of NIJ grant programs, including new policies and procedures addressing several audit findings and recommendations. In addition, NIJ developed and posted on its website a policy on making non-competitive awards.

All NIJ employees involved in grant administration activities completed mandatory ethics training and were briefed on the audit findings and new grants management policies and procedures in March, 2010. These guidelines include a process to help NIJ staff participating in pre-award evaluations identify potential conflicts of interest and empowers supervisors to address potential conflicts by

requiring employees to recuse themselves from dealing with applicants or solicitations which may trigger conflicts of interest.

All NIJ FY 2010 research solicitations require applicants' proposals to demonstrate research independence, including appropriate safeguards to ensure research objectivity and integrity.

- 28. OJP requested and received funding to support 638 FTE in FY 2010. In documents submitted to the Committee, OJP indicated that it had 680 staff or 667 FTE on board as of the end of FY 2009. For FY 2011, OJP has proposed \$9.5 million to "support the restoration of 64 FTE to return OJP's FTE ceiling to its FY 2007 position level." Of these 64 FTE, 42 are currently on-board. What is the cause of the discrepancy between the staffing level proposed in the FY 2010 Budget request and the FY 2009 on-board staff level?**

**Answer:** Since FY 2007, OJP has seen a steady growth in its responsibilities. Several significant new programs have been added to OJP's portfolio, including the Byrne Competitive, John R. Justice Loan Repayment Grant, Community-Based Violence Prevention, Safe Start, and Second Chance Act programs. Some existing programs, such as the Residential Substance Abuse Treatment (RSAT) and Youth Mentoring programs, have also grown. On top of these new responsibilities, OJP staff administers almost \$2.8 billion in Recovery Act funds. OJP can no longer absorb the effects of its growing workload without additional resources.

In addition to new programs, there are existing grants management and oversight responsibilities that must be resourced, including monitoring and enforcement responsibilities for the billions of dollars in open grants that are awarded each year. OJP currently has over 14,000 active grants totaling almost \$6 billion, and approximately \$3 billion in FY 2010 grants that have not yet been awarded. As programmatic requirements and financial responsibilities have increased over the past seven years, OJP has received minimal increases in its administrative budget.

From FY 2004 – FY 2006, OJP operated under a hiring freeze, due to a Congressionally mandated competitive sourcing review. The hiring freeze artificially decreased the number of OJP staff. Because a considerable number of positions went unfilled for several years due to the hiring freeze, OJP's FTE execution was correspondingly low, with insufficient FTE to accomplish the complex management and oversight responsibilities associated with a multi-billion dollar annual grants program.

In the FY 2009 President's Budget, OJP's FTE estimate was 633, not as an indicator of lack of need, rather as a result of the artificially low FTE execution of previous years. Therefore, in the FTE levels of recent years do not reflect on the

current need for staff to manage and oversee OJP's important programs.

To the contrary, since 2000, 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 to maintain 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. 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 dollars of taxpayers' dollars that OJP awards in grants each fiscal year. It is important to note that, while the Inspector General believes 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."

To summarize, the FTE request represents a minimum increase required to effectively administer OJP's programs. Without funds for additional staff to assist with its grants and financial management functions and additional administrative resources for critical support functions such as financial management systems and legal review, OJP will have difficulty meeting the high standards of accountability, transparency, and efficiency set by the current Administration and the Congress.

- 29. OJP's FY 2011 budget submission includes an additional \$9 million to "ensure OJP has the necessary management and administrative structure and resources needed to accomplish Administrative and Congressional priorities and ensure sound stewardship of OJP's multi-billion dollar annual grants programs. These funds will allow OJP to fulfill its mission and essential tasks, including grants management, financial management, informational technology (including the operations and maintenance of OJP's Grants Management System (GMS) required of OAAM), legislative communications and public affairs, and general administrative functions." Why is additional funding needed for Essential Management and Administrative Resources? What has changed since the last fiscal year to justify the increase?**

**Answer:** In FY 2011, \$9.047 million is requested to address critical S&E requirements for OJP. In general, OJP has not been resourced to support the Congressionally enacted level, which has been significantly higher than OJP's President's Budget Request. This became significantly more difficult during FY

2009, with enactment of \$2.7 billion in ARRA funds in addition to OJP's annual appropriation. This was literally almost double OJP's average annual appropriation. The post award workload and systems impact of the ARRA will continue through FY 2014; the full life-cycle of ARRA grants and resources are needed to address these requirements. This "post award" work is fundamental to preventing fraudulent, wasteful, or inappropriate use of the billions of taxpayers' dollars that OJP awards in grants each fiscal year.

The Department's 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. Doing so requires funding.

In addition, the transition from no-year funding to one-year funding resulted in an initial underestimation of total requirements for contractual services in FY 2009 and FY 2010. There were some contracts funded in FY 2008 or prior with no-year funds, which had end-of-FY 2008 balances available for use into FY 2009. Some contractual services incurred during FY 2009 in these areas were paid against balances on the no-year contracts entered into in FY 2008 or prior. Thus, analyzing FY 2009 obligations as a basis for determining FY 2010 requirements resulted in underestimating FY 2010 requirements.

The \$9.047 million requested will help to fund requirements including operations and maintenance of OJP's Grants Management System (GMS) and other IT systems, providing additional financial management seminars for grantees, contractual support for various financial/audit and administrative services, including audit and A-123 internal control support services, and monitoring activity/program assessment. Without this funding, the critical oversight required to detect and prevent fraud, waste, and misuse of funds, and to properly mitigate identified risks would be severely compromised.

**30. When did OJP last conduct an analysis of its workload and associated staffing needs? Please provide the results of that analysis?**

**Answer:** While OJP has not conducted a formal workforce analysis to address its staffing needs, it has examined its staffing over the past several years. Beginning in late FY 2003, OJP participated in a Department-wide Workforce Analysis and Planning Initiative. OJP's commitment was launched in support of the Department's Human Capital Strategy to design and administer an effective workforce analysis and planning process. Components of that initiative included a workforce and skills/competency gap analysis in core occupations and the development of a strategy for recruiting and succession planning.

In preparation for a Congressionally mandated competitive sourcing review in 2004 and 2005, OJP identified inherently governmental and commercial activities



and included an assessment of what an efficiently-staffed organization would look like. OJP initiated a supplemental agency-wide study of its overall structure and staffing to ensure that work operations would interface properly with the performing entity, with the added objective of eliminating duplication and overlapping work issues. This comprehensive review, which included work load and grade structure analyses, resulted in an agency-wide realignment of OJP functions and operations that standardized the occupational series of positions performing grants management functions which were being performed in four different occupational series.

OJP's Human Capital Workforce Plan comprehensively outlines our direction for addressing strategic human capital issues, workforce demographics, retirement and retention impact areas, diversity and recruitment, mission critical occupations and continued skill gaps analyses, and leadership perspectives. The Human Capital Management Branch, created in 2009, will continue, with additional dedicated resources, to assess leadership and employee competencies; recommend comprehensive technical training for all employees to meet mission requirements; and strategically administer a human capital management program that responds to the recruitment, retention, performance management, and succession planning challenges that every viable work force faces.

OJP's performance management policies have been reviewed, and a re-defined performance management structure will soon be in place. The next phase of this improved performance management program is a phased-in review of all position descriptions that will define and update the major duties of each position, articulate the knowledge required for the position, and provide an opportunity to address current and future competencies. As part of the review, OJP envisions using contractual dollars to support the data collection and review of duties, workload, and competencies, as well as an analysis of the numbers, titles, and grades of positions at OJP.

**31. Does OJP budget for staff positions by appropriation and program, based on workload? If not, does OJP have any future plans to develop a staffing model that estimates staffing needs by appropriation and program?**

**Answer:** OJP has not conducted a formal workforce analysis to assess staffing needs by appropriation and program in connection with the FY 2011 budget request. This is partially attributable to the hiring freeze that OJP operated under from FY 2004 – FY 2006, which resulted from a Congressionally-mandated competitive sourcing review. The hiring freeze artificially decreased the number of OJP staff. Because a considerable number of positions went unfilled for several years due to the hiring freeze, OJP's FTE execution was correspondingly low. OJP first focused on filling existing positions that had been kept vacant during the hiring freeze. As a result, OJP did not request new positions in its budget request until the FY 2010 President's budget.

Moving forward, OJP has requested an FTE in its FY 2011 budget request for a Workforce Management Specialist. If provided, a core responsibility of this position will be to perform analysis of positions, management structures, numbers and types of positions, grade structures, and identification of future skills sets for mission critical positions. The individual hired for this position also will be responsible for developing a standard business process for position identification and resource allocation, and will consult with senior officials of the organization to determine the best use of current and future human capital resources.

- 32. The DOJ Office of Inspector General issued an audit report in March 2010 on reimbursements to local governments under the Southwest Border Prosecutor Initiative (SWBPI) from FY 2002 through FY 2007. The audit, which reviewed reimbursements to nine counties, found that 85 percent of the reimbursements were unallowable or unsupported. The OIG recommended that OJP "implement procedures to analyze SWBPI reimbursements to identify anomalies that may indicate unallowable or unsupported payments to specific jurisdictions." What is the status of OJP's efforts to implement such procedures?**

**Answer:** OJP takes very seriously the problems highlighted in the OIG audit and has been aggressively addressing them. Specifically, BJA has taken the following actions to improve the application and review process. These changes have substantially improved the accountability of the SWBPI Program, and will reduce the potential for future issues such as those identified in the audit report.

Added a New Certification to be Acknowledged by the Chief Executive of the Requesting Entity: In FY 2009, BJA provided a certification for SWBPI applicants to acknowledge that they accepted the terms and conditions of the program and that their requests were accurate. This certification, which was not in place at the time of the audit, reads as follows: "As the chief executive officer of this jurisdiction, my submission of this application for funding under the Southwest Border Prosecution Initiative represents my legally binding acceptance of the terms set forth on this form, my statement as to the truthfulness and accuracy of representations made on this form, and my acceptance of the program's terms and conditions."

Expanded Data Collection for SWBPI Reimbursement Requests: Prior to reimbursement, BJA now requires SWBPI applicants to provide the following information for each case: case number, defendant name, arrest date, disposition date, and referring federal agency. Additionally, for pre-trial detention reimbursements, case data must include the defendant booking date, release date, and daily per diem rate of the corrections facility. The collection of this data

enables BJA to conduct more thorough and detailed reviews of applicant reimbursement requests to ensure allowability.

Implemented Additional Fiscal Controls: BJA is in the process of changing the application period from quarterly to yearly. This will provide BJA with more time to review case data and other documentation submitted by applicants, as well as to request additional documentation from grantees to verify the eligibility of the cases. The FY 2010 applications will be based on case data from FY 2009.

The change to an annual application period will also reduce the risk of jurisdictions submitting eligible cases for reimbursement in the wrong quarter, one of the audit findings identified by the OIG for multiple jurisdictions.

Modified the SWBPI Award Calculation Methodology: Beginning with FY 2009, BJA began basing the award calculation process on the actual costs incurred by a jurisdiction, rather than the length of time a case remained open, which was the previous criterion. Additionally, BJA has been working with prosecutors in the Southwest Border states to create an award calculation methodology that more accurately captures actual costs.

For the FY 2010 applications, BJA will use the percentage of federally declined cases of a jurisdiction's total case load to create a percentage reimbursement rate. This rate will be applied to the reported salaries of judges, prosecutors, and public defenders to determine the award amounts.

Enhanced Monitoring and Review Efforts: BJA has taken a number of steps to enhance monitoring and review efforts. A summary of the efforts are described below.

Beginning in FY 2009, BJA began reviewing the average prosecutor salary of each jurisdiction, and comparing it to the salaries claimed on SWBPI applications, to identify any anomalies. Additionally, BJA began examining the case data for duplicate records and similar names, to avoid the potential for excess payments. As appropriate, BJA conducts outreach to jurisdictions where high salary rates or similar case data need to be explained, changed, or omitted.

In FY 2009, OJP's Office of the Chief Financial Officer (OCFO), with BJA's programmatic assistance, conducted on-site visits of two SWBPI recipients to review eight SWBPI awards. BJA and OCFO will continue these joint financial and programmatic site visits in the future.

By September 30, 2010, BJA anticipates establishing a payment analysis and review unit that will conduct both random and non-random reviews of payment

requests and disbursements to ensure the necessary documentation is in place and the payments are justified. These reviews will take place in the form of pre-award verification and post-award monitoring.

BJA leadership has also proactively discussed the SWBPI Program with OIG senior staff, and has requested their support in strengthening the program structure. Specifically, BJA, OJP, and the OIG have agreed to work together to prevent and detect fraudulent and erroneous reimbursement requests and associated payments.

Since the March 2008, SWBPI program audit, OJP has implemented application changes and review procedures to enhance the SWBPI system and address the OIG audit findings. OJP successfully implemented the 13 OIG audit recommendations in February 2009, and will continue to identify ways to further strengthen internal controls for the program. Finally, BJA has committed to increasing staff support to conduct recurring reviews and analyses of SWBPI submissions.

**Ranking Member Frank R. Wolf**  
Questions for the Record

**Regional Information Sharing Systems (RISS) Program**

**Last year, you and I discussed concerns I have heard regarding the interoperability of law enforcement databases. This subcommittee has funded a number of efforts to facilitate information sharing among law enforcement, such as the RISS network.**

- 1. Could you discuss efforts taken by OJP to ensure that these databases are interoperable?**

**Answer:** The Office of Justice Programs (OJP) continues to support not only interoperability between federal, state, local, and tribal databases, but also bringing together the Secure But Unclassified (SBU) networks/portals to ensure the ability for federal, state, local, and tribal agencies to traverse through these networks/portals with the ultimate goal of achieving a single sign-on/federated search and services capability. OJP is doing this by supporting several key information sharing initiatives that provide interoperability between data systems and by requiring, along with other DOJ funding programs and the funding programs of the Department of Homeland Security (DHS), the use of a common data model (i.e., the DOJ-developed National Information Exchange Model (NIEM)) in federally-funded systems to enable interoperability.

The Regional Information Sharing Systems (RISS) continues to provide a secure SBU network (RISSNET) which currently has 95 local, state, federal, and regional systems (data sources) connected. In this endeavor RISS provides a secure network for anyone having a resource/database they would like to share and be accessible to all vetted users in the RISS Program. Currently RISS provides the ability for over 8,600 agencies to share information securely.

The users of the multiple available SBU networks/portals have voiced concerns that they want to be able to move from one network/portal to another using the same username/password and have the ability to utilize resources unique to those locations. To address these concerns and the need for interoperability between data systems, the Bureau of Justice Assistance (BJA), through the Global Justice Information Sharing Advisory Committee, has supported the development of the Global Federated Identity and Privilege Management (GFPIM) solution – a process for allowing users to access multiple systems with a single sign on. The development of an identity management process is the foundation to making interoperability work; one data source needs to know who a potential user is to ensure safety and security of the data. This creates what one may call a “passport” allowing a user to transverse through networks, portals, systems, and resources showing their credentials and only be permitted to see what is permissible based on those credentials.

Finally, OJP has been integrally involved in bringing the SBU networks/portals together along with the Program Manager for the Information Sharing Environment to ensure SBUs like RISS, Law Enforcement Online (LEO), Homeland Security Information Network (HSIN), and Intellink-U, are working together to provide services and resources across the realm allowing each of their respected users to utilize their username/password and take advantage of each other's services to include federated search for information (i.e., one search that queries multiple databases at the same time).

#### **Prison Rape Prevention & Prosecution Program**

**Congress affirmed its duty to protect incarcerated individuals from sexual abuse when it enacted the Prison Rape Elimination Act. Since then, the National Prison Rape Elimination Commission has studied the causes of sexual abuse in confinement, developed standards for the reduction such crimes, and set in motion a process once considered impossible: the elimination of prison rape. On March 10, 2010, the Department of Justice opened a comment period on national standards addressing sexual abuse in detention.**

**2. When do you expect that DOJ will complete its promulgation of these standards?**

**Answer:** The Department of Justice is firmly dedicated to addressing sexual abuse in the nation's correctional facilities, and views this as a serious issue requiring serious attention. The Department has stated that the timing of the final rule is difficult to estimate given the inherent uncertainty of the regulatory clearance process under the Prison Rape Elimination Act of 2003 (PREA) (P.L. 108-79). To respond to the Commission's recommendation that the Attorney General establish an advisory committee to assist in the promulgation of standards under PREA, the Attorney General formed a PREA Working Group comprised of representatives from thirteen Department offices, as well as the Department of Homeland Security. To better evaluate potential costs, OJP awarded a contract in September to an independent consulting firm, Booz Allen Hamilton, to assess the costs of each of the recommendations. We expect Booz Allen to submit cost estimates in June 2010. To make best use of the intervening time until this study is completed, the Department issued an Advanced Notice of Proposed Rulemaking (ANPRM) on March 10 to solicit public comment on the Commission's recommendations and to seek input on specific questions posed by the PREA Working Group.

After the Working Group analyzes the cost study and reviews the public comments received in response to the ANPRM, it will draft a proposed rule for the Attorney General's approval. The Department will then submit its proposed rule to the Office of Management and Budget (OMB) for clearance. Following such clearance, the Department will publish the proposed rule in the Federal Register. After receiving and reviewing public comments on its proposed rule, the

Department will submit to OMB a final rule, which will be published upon OMB clearance.

In sum, although the Department will not be able to meet Congress's one-year deadline, we can assure you that the Department is working expeditiously to promulgate national standards that will prevent, detect, and punish the unacceptable crime of prison rape.

**3. What will be the significance of the cost study that is due to be completed this summer?**

**Answer:** PREA prohibits the Department from promulgating "a national standard that would impose substantial additional costs compared to the costs presently expended by Federal, State, or local prison authorities." As noted in the response to the preceding question, OJP awarded a contract to assess the costs of each of the Commission's recommendations. The Department will use the report from the study, as well as information contained in the public comments submitted to the Department in response to the ANPRM, to inform the standards promulgation process.

**4. Once the standards have been promulgated, how will OJP help state and local governments meet the new standards? To what extent will OJP be deploying its resources to get the necessary reforms under way?**

**Answer:** The Consolidated Appropriations Act, 2010 (Pub. L. 111-117), authorized BJA to provide continued funding for prison rape prevention and prosecution as authorized by PREA. In anticipation of a final PREA rule, it is important that correctional agencies be made aware of existing resources and provided with training, technical assistance, and program implementation resources. The Department is uniquely positioned to serve as a force multiplier, enabling best practices to gain recognition and enabling correctional systems - especially those with limited experience at developing practices and procedures to detect, prevent and punish prison rape - to benefit from the prior efforts of other jurisdictions.

In April 2010, BJA issued a solicitation for a Resource Center for the Elimination of Prison Rape to provide these services and resources to the corrections field to assist in the implementation of the standards. BJA will make one award of up to \$13 million for a 36-month project period. This award amount is in consideration of the need for a highly coordinated and collaborative national effort, with a substantial portion of the funding to be allocated to partner organizations and local recipients to address the detection, prevention, reduction, and punishment of prison rape. It will be a high priority of OJP and BJA to work collaboratively

with state and local governments to provide resources, training, and technical assistance to support these reforms in every way that we can.

In addition, OJP's Office of Juvenile Justice and Delinquency Prevention (OJJDP) will soon issue a solicitation for a National Center for Youth in Custody. The Center will serve as a resource for the range of facilities that hold youth and, among other activities, will identify and replicate data-driven approaches to identify, monitor, and improve conditions of confinement and treatment services. OJJDP recognizes the substantial need for detention and correctional facilities to receive high-quality training and technical assistance on a range of critical issues, including the prevention of sexual assault and the implementation of the forthcoming PREA standards. OJJDP will, therefore, through the establishment of a National Center for Youth in Custody, target training and technical assistance towards ensuring the safety, security and rehabilitation of youth in detention and correctional facilities.

Furthermore, pursuant to an Interagency Agreement entered into in FY 2009, OJJDP is partnering with the National Institute of Corrections (NIC) to provide a range of additional services to the juvenile justice field, including training for juvenile facilities to prevent sexual assault and to intervene effectively when a sexual assault occurs. Pursuant to this agreement, NIC is surveying the juvenile detention and corrections field on needs and gaps in services, and will catalogue and update resources and tools available in terms of "best practice" guides for juvenile detention and corrections. It is anticipated that NIC will work closely with the entity selected by OJJDP to operate the National Center for Youth in Custody.

**5. Will the budget request for FY 2011 be sufficient to cover the commencement of such assistance to state and local governments?**

**Answer:** With the funding requested for FY 2011, OJP can build on the substantial work already undertaken in prior fiscal years, including \$31.2 million previously awarded to states under the Protecting Inmates and Safeguarding Communities Program. Requested FY 2011 funding will also build on the FY 2010 award of \$13 million (Q#4 supra), which is for a Resource Center to operate for 36 months, providing help to both states and localities.



### Human Trafficking

**You note the Department's renewed commitment to research and evidence-based initiatives. DOJ recently published a grant solicitation for research and evaluation of human trafficking.**

**6. Can you describe the research and evaluation that will be conducted?**

**Answer:** The National Institute of Justice (NIJ) is seeking applications for funding for research and evaluation projects to address the knowledge gaps related to trafficking in persons in the United States. The FY 2010 solicitation focuses on two main areas:

Research that describes and estimates the unlawful commercial sex economy in the United States, and

Evaluations of programs that operate demand reduction interventions for sex trafficking and commercial sex acts.

NIJ seeks applications for research and evaluation with direct, immediate, and practical implications for policy and practice in the United States. The FY 2010 solicitation closed on May 2, 2010.

**7. Will this be the kind of robust study that was called for in the Trafficking Victims Protection Reauthorization Act and which the advocacy community has long been urging the DOJ to undertake?**

**Answer:** NIJ has an active portfolio of human trafficking research. Over the past 10 years, 23 studies have been completed or are currently underway. NIJ's portfolio has focused on improving our knowledge of the scope of human trafficking, what works in investigating and prosecuting trafficking, and how best to care for the victims of trafficking. In recent years, NIJ has turned its focus to evaluating the efficacy of state and local efforts against human trafficking, including the formation of state laws on trafficking and their use in conjunction with federal laws, and increasing our knowledge of demand reduction efforts across the country. In FY 2009, NIJ sponsored two studies of labor trafficking within U.S. communities in an attempt to better understand how this form of trafficking operates.

The research that will result from NIJ's FY 2010 solicitation on human trafficking will continue to grow this portfolio. The outcome of this research, like other projects currently underway under NIJ's sponsorship, will serve numerous ends. First and foremost, the research will continue to provide the critical information that state, local, tribal and federal criminal justice agencies require to expand their knowledge of human trafficking. The projects will also contribute to the

biennial update of the report Congress mandated that the Department prepare in the 2005 Trafficking Victims Protection Reauthorization Act.

**8. What will the research be designed to find out?**

**Answer:** NIJ expects to make one or more awards in FY 2010, depending on funds available, the number of high-quality applications, and other pertinent factors. NIJ seeks to fund studies that will:

Build on previous findings or explore areas not previously funded that offer insights into sex trafficking, prostitution, and commercial sex act demand reduction programs in the United States. NIJ hopes to receive applications that propose multisite evaluations of demand reduction programs. The successful applicant(s) will propose studies that examine the criteria for program participation; variations in content and implementation; the use of program-generated funds to support victim services; the nature and extent of coordination between nongovernmental organizations, law enforcement, and other community partners; and criminal justice outcomes related to program participation.

Estimate the size of the unlawful commercial sex economy in the United States, with a focus on the ties between the unlawful sex economy, commercial sex acts, and sex trafficking. NIJ is interested in studies that will propose and implement scientifically rigorous methods with defensible estimates of the size of the unlawful commercial sex economy in the U.S. NIJ is also interested in studies that describe how the unlawful commercial sex economy is tied to sex trafficking, such as increasing the demand for sex trafficking or facilitating the transport of sex trafficking victims.

While NIJ would like to fund a study that provides a national estimate of the commercial sex economy, this may not be possible given the resources needed for a study of that scope. Accordingly, NIJ has provided guidance that applicants may limit their estimates to specific geographical areas and use this information to provide a statistical estimate of the problem on a national level.

**The Trafficking Victims Protection Reauthorization Act required DOJ to create a new model state law to further a “comprehensive approach” to investigating and prosecuting human trafficking, and to do so by drafting provisions that criminalize sex trafficking without proof of force, fraud or coercion, and whether or not the victim is a minor.**

**9. Where is the DOJ in the process of drafting this model legislation?**

**Answer:** OJP is not involved in DOJ's efforts to draft model legislation for states on human trafficking. However, NIJ has sponsored studies that examine the efficacy of state laws on human trafficking. While still in progress, the research will help the DOJ understand the breadth of coverage of state laws, how they are employed, their strengths and weaknesses, and how they mesh with the federal laws on human trafficking.

**10. Are you working with NGOs and other service providers who had serious concerns about the earlier model law?**

**Answer:** OJP regularly seeks input from non-governmental organizations and service providers to develop its research and evaluation portfolio. Most recently, NIJ held an expert working group on “Investigating Trafficking in Persons: Learning from the Experience of State, Local and Tribal Law Enforcement” (January, 2010). For this meeting, NIJ brought experts from state, local and tribal criminal justice agencies not affiliated with federal task forces, non-governmental organizations and practitioners, academic researchers and federal partners from across the Department of Justice to discuss the issues and needs associated with the investigation of sex and labor trafficking in areas of the country not served by federal task forces. NIJ is currently revising the notes from this meeting based on feedback from attendees and plans to disseminate this information broadly this summer.

**Gangs & Youth Violence Prevention**

**Gangs and youth violence are nationwide problems and they are growing. What are the best program models DOJ can use to help address this?**

**11. What specific needs do states have that the proposed “Gang and Youth Violence Prevention and Intervention Initiative” could help meet?**

**Answer:** DOJ has long supported a combination of primary prevention, secondary prevention, intervention, and suppression strategies and programs, as described in the Office of Juvenile Justice and Delinquency Prevention's (OJJDP) Comprehensive Gang Model. This combination of anti-gang strategies has been applied in settings across the country, often under different names. For

example, as you know, the Northern Virginia Gang Task Force has worked in multiple counties to coordinate gang problem assessments, strategy development, and operations across a range of activities in prevention, intervention, and suppression (including intelligence and targeted enforcement). DOJ has found that through a combination of strategies and the use of multi-disciplinary coordination mechanisms, localities can shift from a reactive to a more proactive posture in counteracting the influence of gangs at multiple levels. DOJ program models that support these strategic, multi-strategy approaches have a greater impact than those that support singular programmatic efforts operating in isolation, whether they are designed for prevention or enforcement.

The Gang and Youth Violence Prevention and Intervention Initiative will provide financial support, training, and technical assistance to states and local jurisdictions to assess and intervene with their gang and youth violence issues. Specific interventions include, but are not limited to: creation and support for Intervention Teams to screen and manage high-risk and gang involved youth, hiring of street outreach workers to work in high gang violence communities, hiring of coordinators to oversee comprehensive community-based anti-gang efforts, and implementation of proven-effective prevention and intervention programs to provide services in communities with high rates of gang crime and violence. Additional support for gang prevention and intervention activities within broader comprehensive anti-gang efforts is important because these are frequently the most difficult to fund at the local level. In difficult economic times, prevention and intervention programs are particularly hard hit in state and local budgets.

**12. How would you distinguish the Gang and Youth Violence Prevention and Intervention Initiative from the program known as the Gang Resistance Education and Training Program?**

**Answer:** The Gang Resistance Education and Training Program (G.R.E.A.T.) is a specific school-based, primary prevention program that has shown promise at reducing the likelihood that youth will become involved in gangs. The Gang and Youth Violence Prevention and Intervention Initiative will support a combination of primary prevention, secondary prevention, intervention, and suppression strategies and programs; this has been proven to be the most effective way of reducing gang-related crimes and violence.

**Second Chance Act**

**For FY 2010, Second Chance Act grants programs received a significant increase in funding (from \$14 million to \$85 million). The Budget request proposes another substantial increase (\$15 million over FY 2010).**

**13. Can you tell us what progress is being made through these grants?**

**Answer:** Second Chance Act funding increased from \$25 million in FY 2009 to \$100 million in FY 2010 and remained level in the FY 2011 request.

The FY 2009 Second Chance grantees for demonstration and mentoring programs received their grant awards in late September, 2009. During the past six months, the grantees have begun the start up of their projects, including planning activities and hiring of staff. As a result, the grantees have just begun the implementation of grant activities.

To support grantee implementation, the Second Chance Resource Center has begun outreach to the sites to assess their progress. These assessments will be used to inform planning for training and technical assistance strategies and to assist in a national evaluation of the Second Chance demonstration sites. The Resource Center has also launched a new website with resource materials for implementation. The website is located at <http://www.nationalreentryresourcecenter.org/>. Resources include a podcast that was recently posted that provides guidance on strategic planning, and media stories highlighting programs funded under the FY 2009 Second Chance grants.

BJA is also hosting a grantee meeting on May 26-27, 2010 to bring together the Second Chance grantees and provide training and technical advice to assist them in implementing their grants.

**14. What kinds of results are you looking for in terms of prisoner reentry?**

**Answer:** The long-term goal for OJP's Second Chance funding is to reduce the overall recidivism rate for people released from prisons and jails. For youth populations, we are looking not only to reduce recidivism and protect public safety, but also to build protective factors and provide meaningful and life-lasting services and resources while a youth is confined and upon release to the community. Reentry is viewed as a "process" and not just a program. To develop effective reentry strategies, OJP must invest in both evidenced-based and promising practices which have the potential to address the barriers to reentry—housing, jobs, drug treatment, mental health treatment and family counseling—and provide coordinated service delivery that is "customized" to the needs of the returning offenders. At the same time, these prisoners return in disproportionate

numbers to certain communities, so these investments also assist in building the capacity for community based resources to support these returning offenders.

**State Criminal Alien Assistance Program (SCAAP)**

**The State Criminal Alien Assistance Program provides federal payments to states and localities to reimburse them for incarcerating undocumented criminal aliens. I notice that, unlike last year, when you proposed to eliminate the program, your budget request this year includes \$330 million, the current year level. Also, this year you are proposing that Congress prohibit states from requesting compensation for any cost greater than the *actual* cost for the detention of criminal aliens housed in State and local facilities.**

**15. What effect would this new limitation have on reimbursements to the states, and why was it necessary to request this language?**

**Answer:** Changes are proposed for SCAAP to assist DOJ in managing the detention population. Under the proposed changes, localities that receive SCAAP funding and who also house Federal detainees may not charge the Federal government more than the actual cost of providing detention services, regardless of previously negotiated rates.

This requirement would not change a state or local jurisdiction's eligibility for reimbursement; as long as it can demonstrate that an offender is an illegal alien and meet the program's other requirements, the jurisdiction can still claim reimbursement.

**Civil immigration enforcement is a federal responsibility, yet the SCAAP program only reimburses a fraction of states' costs for the arrest and incarceration of criminal aliens.**

**16. Do you have a recent estimate of the total cost to States and localities for the incarceration of criminal aliens?**

**Answer:** In FY 2009, the total eligible cost claimed by all qualifying SCAAP jurisdictions was approximately \$1.1 billion. OJP does not have a total estimated cost, as that information would come from the Department of Homeland Security.

**Representative Jo Bonner**  
**Questions for the Record**

**My District, and hundreds of districts like it, needs federal funding to create and expand Drug Courts to address non-violent prison-bound, addicted offenders. The Chief Justice of my state Supreme Court testified last week before this Committee. She urged that we restore and expand funding to the proven Drug Court Discretionary Grant Program. In fact, every Chief Justice of every state Supreme Court agrees that Drug Courts should be fully funded and expanded before any other "problem-solving court" is established.**

**It was my understanding the Administration initially promised to expand Drug Courts, an idea which I believe would garner strong bipartisan support on this subcommittee and in Congress.**

**1. Why then does the President's budget not specifically fund this highly effective federal program at OJP?**

**Answer:** The Office of Justice Programs (OJP) has funded drug courts since 1995 and the President's fiscal year (FY) 2011 Budget proposes to consolidate the Mentally Ill Offender Act and Drug Court programs into a new Drug, Mental Health, and Problem Solving Courts program that will provide greater flexibility in using these funds. The FY 2011 Budget request for the consolidated program equals the FY 2010 enacted level for the two separate programs.

OJP's Bureau of Justice Assistance (BJA) has made a total of 2,583 drug court awards to 1,787 different drug court programs. In the last two fiscal years, BJA has been able to fund over 50% of all eligible applicants, which represents a very high funding rate. Of the drug court programs funded under OJP, 95 percent are still operational today.

In FY 2010, BJA has placed a priority on building the capacity of existing drug courts to increase participation rates and plans to fund 81 drug courts programs. OJP also allows state and local jurisdictions to use JAG formula funding to support drug courts. In addition, we have seen many state legislators take the initiative by appropriating state dollars specifically for drug courts. For example, Alabama appropriated \$5.1 million and New Jersey appropriated \$31.4 million to support drug courts in their state in recent years. For this reason, within these states and the other 34 states with state appropriations, local jurisdictions may want the flexibility to implement other types of problem solving initiatives in addition to operating drug courts. The Problem Solving Courts Program will allow state, local and tribal grantees increased flexibility to fund evidence-based strategies that address unique local needs and expand collaboration between drug courts, mental health, and substance abuse providers. Programs funded under the new Problem Solving Courts Initiative may serve as models to other courts nationwide.

**2. Why is the Administration asking for a problem-solving court initiative that, at the end of the day, takes funding away from the successful Drug Courts?**

**Answer:** The President's FY 2011 Budget proposes to consolidate the Mentally Ill Offender Act and Drug Court programs into a new Drug, Mental Health, and Problem Solving Courts program that will provide greater flexibility in using these funds. The FY 2011 Budget request for the consolidated program equals the FY 2010 enacted level for the two separate programs. The Problem Solving Courts Initiative does not take funding away from drug courts; it includes funding for drug courts as well as other successful problem solving court approaches. Drug courts are an effective part of the Problem Solving Courts Initiative, and it is OJP's intent to expand upon the lessons learned from drug courts through this new program while also continuing to aggressively support drug courts. Many of today's court cases involve individuals with medical, psychological, and social problems such as addiction, homelessness, or lack of access to mental health treatment, all of which can drive criminal behavior. The Problem Solving Courts Initiative will allow state, tribal and local governments to develop evidence-based, system-wide responses to their unique criminal justice issues based on an assessment of their offender populations. In some jurisdictions, offenders' problems go beyond substance abuse or mental health issues. Problem solving courts can address many different issues, including child welfare, domestic violence, truancy and issues specific to returning veterans. This new funding stream will allow jurisdictions to create programs that effectively address their unique offenders' needs, leading to increased program effectiveness and reduced criminal recidivism, while building upon the successes of BJA's Drug Court Program.

The goal of the Problem-Solving Court Initiative is to help state and local jurisdictions to plan, implement, sustain, and evaluate problem-solving initiatives (including drug courts) based on the most pressing needs of the community. Taking into consideration problem solving principles, a jurisdiction can more effectively respond to the most pressing needs in their community which could entail implementing or expanding on a drug or mental health court.



WEDNESDAY, FEBRUARY 24, 2010.

**LEGAL SERVICES CORPORATION**

**WITNESSES**

**VICTOR M. FORTUÑO, LSC INTERIM PRESIDENT AND GENERAL COUNSEL**

**FRANK B. STRICKLAND, CHAIRMAN, LSC BOARD OF DIRECTORS**

**OPENING REMARKS**

Mr. MOLLOHAN. The hearing will come to order. Good morning.

The Subcommittee would like to welcome Victor Fortuno, Interim President of the Legal Services Corporation, and Frank Strickland, the current Chairman of the LSC Board of Directors, to discuss LSC's 2011 budget request and other issues relating to civil legal aid.

We are pleased to have you both. Thank you for your appearance here today and your good work for this cause.

LSC is now in its 35th year of existence and in many ways, this will be one of your most challenging years. More than 53 million Americans, including more than 18 million children, are now eligible for LSC's services.

That is an increase of three million over previous estimates, and the number of eligible clients will only increase as we continue to receive data on 2009, when the impacts of the recession were being felt by many.

I think it is important that we not forget what it means to be eligible for LSC's services. It means that you are living at or below 125 percent of the poverty rate, which was \$27,563 for a family of four in 2009.

The idea of trying to support a family of four on less than \$28,000 is challenging enough. When you throw in the burden of dealing with an unexpected and significant legal crisis, it is easy to see what a crucial life line LSC extends by providing high-quality, free legal assistance.

Unfortunately, the availability of that life line to many has been challenged by budget problems at all levels. Federal and state support for legal services have not kept pace with the demand, and the recession and its related effects have severely reduced charitable donations and other sources of legal aid funds.

The inadequacy of funding has led to a situation in which one out of every two people seeking assistance from an LSC-funded program is turned away and left to deal with their divorce or their foreclosure-related eviction or their appeal for disability benefits on their own.

With this as context, I would like to use this hearing to discuss your proposed budget for fiscal year 2011 and to hear your

thoughts on how that budget will help to alleviate the severe shortage of legal services available to LSC clients.

I also hope to use this hearing to address some criticisms of LSC that have become perennial favorites of the small group of members who do not support your program.

I firmly and enthusiastically support any efforts that will improve your program management and reduce instances of waste or abuse, and I will continue to hold you to a high standard in both of these areas. However, I want to make sure that our consideration of those issues is fair, accurate, and, most importantly, productive.

Before we invite you to begin with your prepared remarks, I would like to turn to our Ranking Member, Mr. Wolf, for his opening statement.

Mr. Wolf.

Mr. WOLF. Thank you, Mr. Chairman.

Welcome, welcome to the hearing. I want to join the Chairman in welcoming both of you today testifying before the Subcommittee regarding your 2011 budget.

The Act that created the Legal Services Corporation provided you with a pass-through budget authority and, therefore, you can provide the Appropriations Committee with an independent assessment of your funding needs without OMB approval.

You are requesting \$516.6 million, which is \$96.6 million or 23 percent above the fiscal year 2010 enacted level. However, the President's budget requested a lower amount of \$435 million, which is \$15 million above the fiscal year 2010. I think you can see the potential problem.

With that, I will just yield back.

Mr. MOLLOHAN. Gentlemen, your written statements will be made a part of the record. If you would summarize them for us, we will proceed.

Mr. Strickland, please.

Mr. STRICKLAND. Thank you, sir.

#### STATEMENT OF LSC BOARD CHAIRMAN FRANK STRICKLAND

Chairman Mollohan, Congressman Wolf, and other members of the Subcommittee, I want to begin by thanking you for holding this important hearing today.

The Legal Services Corporation is on the front lines of ensuring equal justice under law in this country. And I consider it an honor to have served as the Board's Chairman since being confirmed in 2003.

I also want to thank you for providing our programs with a \$30 million increase this year. At a time when there is a substantial increase in the demand for services and a crisis in non-federal sources of funding, this increase will go a long way in keeping our programs afloat.

We expect this crisis to continue and more funding is required to support the critical work of LSC programs. For fiscal year 2011, we are requesting a total of \$516½ million.

I am joined today by Victor Fortuño, the long-time General Counsel at LSC, who is now also serving as the corporation's interim

President. Mr. Fortuño has been with the Corporation in various capacities for 27 years.

The Board greatly appreciates the counsel and support he provides to the Board and LSC management. He will speak directly on our 2011 budget request.

2009 was an eventful year for the corporation and LSC programs across the nation that strived to meet the challenge of providing civil legal assistance to the poor.

In July, LSC celebrated its 35th anniversary and was honored with commemorative statements from Congress and the President.

In September, LSC released a new report on the justice gap showing that LSC programs, because of insufficient resources, continue to turn away about one million low-income Americans each year.

2009 also marked the beginning of a leadership transition for the corporation. President Helaine Barnett stepped down after serving six years, leading to the appointment of Mr. Fortuño as our interim President.

We are awaiting the completion of the appointment and confirmation process of a new Board and it will be their responsibility to select a new LSC President.

Ensuring a smooth Board transition has been one of my priorities as the outgoing Board Chairman. So far, we have held two orientation sessions, the last on January 28, for the White House nominees. To use a time-honored phrase, I believe these nominees will hit the ground running.

One of the core responsibilities of the Board is good stewardship of the funds that you provide each year. Prompted by two reports from the Government Accountability Office, we have taken steps to more sharply focus Board oversight on LSC's financial and compliance responsibilities and to focus the corporation's attention on improved internal cooperation and better management practices.

We are making great progress. All 17 of the recommendations made in those two reports were accepted by the Board and LSC management.

Last year, the Board's Vice Chairman testified about our progress. And since then, the GAO has asked for additional information in five areas and the LSC staff is at work responding to these more recent requests. I am fully confident that LSC will carry through on the completion of the GAO recommendations.

I believe strongly in the obligation of attorneys to volunteer their services to legal aid programs. I have done that as a lawyer in Atlanta.

Three years ago, the Board adopted a resolution in support of increasing pro bono services. And today 109 of our 136 programs have adopted similar resolutions.

Private lawyers who volunteer their time are an invaluable resource for LSC programs and an important part of the overall effort to provide equal access to justice for the nation's poor.

LSC also is reaching out to judges, the private bar, law schools, businesses, state access to justice commissions, other funders and other supporters of legal aid, but pro bono efforts alone cannot meet the legal needs of the poor. Government has a vital role to

provide the funding, the leadership, and the oversight to fulfill our national pledge of equal justice for all.

I know that LSC can count on this Subcommittee as we strive to close the justice gap in our nation. I am happy to answer any questions you have at the appropriate time. Thank you.

[The information follows:]

Frank B. Strickland  
Chairman of the Board of Directors  
Legal Services Corporation

Testimony Before the  
Subcommittee on Commerce, Justice, Science and Related Agencies  
Committee on Appropriations  
U.S. House of Representatives

February 24, 2010

Chairman Mollohan, Congressman Wolf and Members of the Subcommittee, it is my privilege to appear at this hearing on the Fiscal Year 2011 Budget Request of the Legal Services Corporation. Thank you for your interest in civil legal assistance for low-income Americans and for your bipartisan support.

LSC was established by Congress as a Section 501(c)(3) nonprofit corporation to promote equal access to justice and to provide grants for high-quality civil legal assistance to low-income Americans. LSC distributes more than 95 percent of its total funding to 136 independent nonprofit legal aid programs in every state and in the District of Columbia, Guam, Micronesia, Puerto Rico and the Virgin Islands. These programs operate more than 900 legal aid offices.

I have practiced law in Atlanta for more than 40 years and have served as a director of the Georgia Legal Services Program, the Atlanta Legal Aid Society and the Federal Defender Program. In the mid-1980s, while serving as president of the Atlanta Bar Association, I helped the Atlanta Legal Aid Society lead a *pro bono* effort to provide representation to hundreds of Cuban detainees held in the Atlanta Federal Penitentiary.

Since April 2003, I have served as Chairman of the LSC Board, and it has been one of the most rewarding experiences of my legal career. Our Board has made it a practice to hold meetings in different parts of the country, and that has given us the opportunity to learn first-hand about the essential work of LSC programs and to meet with clients that the programs serve.

One of the highlights of these Board meetings is recognizing and honoring *pro bono* services provided by lawyers to legal aid clients. These private lawyers are an invaluable resource for LSC programs and an important part of LSC efforts to provide equal access to justice for the nation's poor. Three years ago, the Board adopted a resolution in support of increasing *pro bono* services, and 109 of our 136 legal aid programs have adopted similar resolutions.

I am joined today by Victor M. Fortuno, the longtime general counsel at LSC who is now also serving as the Corporation's interim president. Vic grew up in the New York neighborhood known as Hell's Kitchen, long before it became fashionable, and received his law degree from Columbia University. After law school, he worked as a staff attorney for a legal aid program in Philadelphia, and then served as an assistant district attorney for the city and county of Philadelphia. He joined LSC in 1983 as an attorney in the then-Office of Compliance and Review. Vic is a great resource for the Board of Directors and we greatly appreciate the counsel and support he provides to the Board and LSC management. Vic has the Board's full support in his new position.

Let me also say a few words about 2009. It was an eventful year for the Corporation and LSC programs across the nation that strive to meet the challenge of providing high-quality civil legal assistance to the poor. In July, LSC celebrated its 35<sup>th</sup> anniversary and was honored with commemorative statements from Members of Congress and a Presidential Proclamation. In September, LSC released a new report on the "justice gap," showing that LSC programs, because of insufficient resources, continue to turn away about one million low-income Americans each year. 2009 also marked the beginning of a leadership transition for the Corporation—nine presidential nominees for the LSC Board of Directors were announced and president Helaine Barnett stepped down after serving six years (making her the longest serving president in LSC's history), leading to the appointment of Vic as interim president. One nominee was seated in July 2009 and we are awaiting Senate confirmation of the remaining eight presidential nominees. Two additional nominees have not yet been announced.

Ensuring a smooth Board transition has been one of my priorities as the outgoing Board chairman. We held two orientation sessions—the last on January 28—for the Obama Administration nominees, and LSC created an internet library to provide them easy access to materials used in the orientations. The LSC Inspector General provided separate briefings to the nominees.

The Fiscal Year 2011 Budget Request by the Corporation and the September 2009 report on the justice gap in America underscore the importance of legal aid and why LSC programs are in need of resources from government and private sources. Equally important is the proper use of the funds that Congress has entrusted to our stewardship. We consider good stewardship to be a core responsibility of the Board and the Corporation, and I would like to outline what the Board and LSC have done to improve accountability.

Two reports by the Government Accountability Office (GAO) prompted the Board and the Corporation to focus on the Board's oversight of the Corporation's financial and compliance responsibilities and to focus the Corporation's attention on improved internal cooperation and good management practices. We are making great progress. All 17 of the recommendations made in those two reports were accepted by LSC management and the Board. Nine have been judged by GAO to be fully implemented; eight have been judged to be partially implemented, and on three of those eight, management has recently

submitted documentation of full implementation. The GAO is currently reviewing the most recently submitted documents.

GAO testified about our progress in addressing governance and accountability issues at a hearing of the House Subcommittee on Commercial and Administrative Law, held on October 27, 2009. In her statement to the Subcommittee, GAO representative Susan Ragland said that LSC has built a “good foundation for completing implementation of the elements needed for a strong program of governance and internal controls.” I am confident that LSC will carry through on the implementation of GAO recommendations as quickly as the procedures permit for documenting and vetting these kinds of changes. We are in agreement with GAO that it needs to be able to fully assess how the changes in LSC procedures and processes are working.

LSC management believes it has implemented all of the GAO recommendations and met the spirit of those recommendations. As you will recall, the GAO recommendations were discussed at last year’s Subcommittee hearing. I will not go over the ground covered then by Lillian R. BeVier, who was the Board’s vice chairman at that time. Still, as I said earlier, there are recommendations where we continue to work closely with GAO on additional documentation, and I want to update you on those areas. These include:

- **Periodic Self-Assessment of Board Members and Committee Performance.** The Board and individual self-assessments were completed for 2008 and 2009. Evaluations of the performance of Board committees are expected to be completed this year.
- **Periodic Evaluations of Key Management Processes.** These include, at a minimum, the processes for risk assessment and mitigation, internal controls and financial reporting. The Corporation has a risk assessment plan in place. The Board’s Audit Committee, which has responsibility for financial and management controls, will discuss options for ensuring periodic evaluations of management processes at the Board’s next meeting, scheduled for April.
- **Risk-based criteria for selecting grantees for internal control and compliance program visits.** LSC has risk-based criteria that is used to select grantees for internal control and compliance visits. GAO has requested additional documentation on how LSC management applies the risk-based criteria for the various types of oversight conducted during program visits. LSC is in discussions with GAO on this issue.
- **Implement procedures to improve the effectiveness of the current LSC fiscal compliance reviews by revising LSC current guidelines.** GAO recommended revising the guidelines to provide a direct link of results from Office of Program Performance reviews and other audit findings, guidance for performing follow-up responses during interviews, and examples of fiscal and internal control review procedures related to risk factors and circumstances at grantee programs. LSC has

responded to these recommendations, and GAO has requested additional documentation related to specific follow-up questions used during grantee interviews. LSC is preparing material to include in office procedure manuals and will be training staff.

- **Clear delineation of organizational roles and responsibilities for grantee oversight and monitoring including grantee internal controls and compliance.** Following the GAO report, the Board approved a resolution defining organizational roles and responsibilities for grantee oversight and monitoring, and LSC put additional financial accountability procedures in place. LSC also has revised its accounting guide for grantees and has issued the draft for comment. Before closing out this recommendation, GAO has asked LSC to provide a comprehensive statement on grantee operational and other internal controls, to show that our focus goes beyond fiscal internal controls. Management is in the process of responding to that request.

Our collaboration with GAO is ongoing. Auditors are currently at LSC conducting reviews of the Office of Program Performance, the Office of Compliance and Enforcement and other functions. We expect to receive a report from GAO this spring.

As I said earlier, stewardship is a central mission of the Board and the Corporation. Each day, the vast majority of LSC grantee programs do a good job, but we also know that effective management requires attention to detail and a commitment to continuous improvement. The Corporation will adhere to best practices and continue to tighten up financial and management controls as appropriate.

Mr. Chairman and members of the Subcommittee, let me say again in closing what an honor it is to be here today. It also is a privilege to work with my Board colleagues to support the mission of the Legal Services Corporation. It is a pleasure to work with so many committed professionals in our programs across the country and at LSC headquarters.

LSC programs keep the spotlight on the importance of civil legal aid and on the great challenges of these times, when millions of Americans are at risk of losing their jobs, their homes and their health care. We turn away far too many people who are desperate for legal assistance because we lack the resources. We are reaching out to judges, the private bar, law schools, businesses, state Access to Justice Commissions, other funders and other supporters of legal aid for help in closing the justice gap. As in the past, it is comforting to know that LSC can count on this Subcommittee as we strive to fulfill our national pledge of equal justice for all.

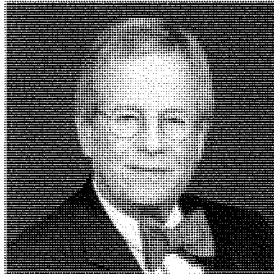
Again, thank you. I would be happy to answer any questions that you might have at the appropriate time.





Legal Services Corporation  
America's Partner For Equal Justice

### Frank B. Strickland, Chairman of the Board of Directors



Frank B. Strickland of Georgia is Chairman of the Legal Services Corporation and a partner in the Atlanta firm of Strickland Brockington Lewis LLP. President Bush nominated Mr. Strickland to the Board of Directors of the Legal Services Corporation in 2002. He was sworn in as a member of the Board and elected Board Chairman in April 2003.

Mr. Strickland's distinguished legal career includes extensive involvement with the legal services community and a variety of public service groups. He has served as a director and member of the executive committee of the Georgia Legal Services Program and a director of both the Atlanta Legal Aid Society and the Federal Defender Program, Inc. When Mr. Strickland was President of the Atlanta Bar Association from 1985-1986, he led the effort to assist the Atlanta Legal Aid Society in providing representation to Cuban detainees held at the Atlanta Federal Penitentiary. More than 400 volunteer lawyers were recruited who provided pro bono representation to more than 800 detainees in administrative parole proceedings. In 1987, the Atlanta Bar received both the State Bar of Georgia's William B. Spann Award and the American Bar Association's Harrison Tweed Award, recognizing the Cuban detainee project as the year's outstanding pro bono effort.

Mr. Strickland has been a member of the Board of Governors of the State Bar of Georgia since 1985 and has served as a member of the House of Delegates of the American Bar Association. He is a former member and chairman of the Georgia State Ethics Commission.

Mr. Strickland has served as general counsel of the Georgia Republican Party and is a member of the Board of Governors of the Republican National Lawyers Association. He is Chairman of the Atlanta Lawyers Chapter of the Federalist Society.

Mr. Strickland was previously a shareholder in Wilson Strickland & Benson PC and a partner in Holland & Knight LLP in Atlanta.

Mr. Strickland earned his undergraduate education at Vanderbilt University and his law degree from Emory University. He served in the U.S. Coast Guard and is a Commander, U.S. Coast Guard Reserve (retired).

Mr. MOLLOHAN. Thank you, Mr. Strickland.  
Mr. Fortuño.

STATEMENT OF LSC INTERIM PRESIDENT VICTOR FORTUÑO

Mr. FORTUÑO. Chairman Mollohan, Mr. Wolf, thank you for holding this hearing and giving us an opportunity to testify on the fiscal year 2011 budget request.

First I want to convey my deep appreciation to the Subcommittee for the bipartisan support provided to the corporation and its mission of ensuring that our nation's poor are provided equal access to justice.

The Corporation is most grateful for the \$30-million funding increase in fiscal year 2010 and for the increased funding provided over the last four years.

It is my privilege to appear here before you today with Chairman Strickland who is a long-time champion of pro bono legal services for low-income Americans and is a champion for the legal rights of the poor. It has been an honor to know him and to work with him.

Mr. Chairman, while the legal aid community understands the difficult funding choices that the Subcommittee faces, the justice gap is a harsh reality in our nation and the downturn in our economy has dramatically increased the number of people needing civil legal services.

Millions of Americans are at risk of falling deeper into poverty and many are in danger of slipping into poverty for the first time. The numbers of people coming to our offices seeking help with foreclosures and unemployment benefits have understandably increased across the country.

We have 54 million Americans who are eligible for LSC funded civil legal assistance. Eighteen million and a half of them are children.

For low-income Americans, legal aid greatly improves their chances of keeping their homes rather than moving into a shelter, holding jobs rather than going on to public assistance, retaining custody of their children rather than losing them to foster care, receiving early medical care rather than costly hospitalization, and escaping abusive relationships rather than suffering injury and even death.

Nearly three out of four of our clients are women, many of them struggling to keep their families together and their children safe.

Just as the weak economy has severely impacted our clients, it has placed a great strain on the resources that support legal aid programs. Our programs are concerned about their ability to provide increased services in 2010 and 2011.

For years, interest on lawyers' trust accounts—or IOLTA—was a growing and significant part of the non-federal funding received by LSC programs. That funding is tied to short-term interest rates, which are now at unprecedented lows.

At the same time, most state and local governments have experienced revenue shortfalls and they, too, are likely to reduce their support of legal aid.

For fiscal year 2011, LSC requests an appropriation of \$516.5 million. This is a request that clearly and aggressively reflects the

Board's view that the need is critical and has to be communicated in any way possible, but especially in our request for funding.

The request is the result of a determined effort by our bipartisan Board of Directors to help eliminate the justice gap in four years.

Ninety-four percent of our requested appropriation—or \$485 million—would be distributed directly to the LSC programs as basic field grants to fund civil legal aid to the poor.

Our request also provides for a continuation of our student loan repayment assistance program, which helps our programs recruit and retain talented lawyers, and it includes a proposal to expand our program of technology initiative grants to leverage the federal investment in civil legal aid.

We are also requesting additional funding for management and grants oversight. The additional funds would help us deliver new web-based training on compliance, governance, fiscal operations, and best practices.

In particular, we want to ensure the ability of LSC programs and their Boards of Directors to fully meet requirements and strictly comply with restrictions.

In the past, management and grants oversight has represented approximately four percent of our appropriation. This year, we are in line with that. The request would be just under four percent. Our budget would also provide for some additional funding for the Office of Inspector General. These oversight efforts will help us be faithful stewards of federal funds.

Chairman Strickland provided you with an update of our work with the Government Accountability Office, so I will not repeat the points made by him.

But I do want to underscore that I fully share his sentiments on improving governance and operations, and our sincere commitment to implementing the recommendations to GAO.

And at this point, I have concluded my prepared remarks and would be happy to answer any questions you might have.

[The information follows:]

Victor M. Fortuno  
Interim President  
and General Counsel  
Legal Services Corporation

Testimony Before the  
Subcommittee on Commerce, Justice, Science, and Related Agencies  
Committee on Appropriations  
U.S. House of Representatives

February 24, 2010

Chairman Mollohan, Congressman Wolf, and Members of the Subcommittee, thank you for holding this hearing and for giving me the opportunity to testify on the Fiscal Year 2011 Budget Request of the Legal Services Corporation. I also want to convey my deep appreciation to the Subcommittee for the bipartisan support provided to LSC and its mission.

The Corporation greatly appreciates the \$30 million funding increase in Fiscal Year 2010. The \$420 million appropriation came at a time when increasing numbers of families were falling into poverty and when many needed assistance with pressing civil legal aid problems. It also has helped offset funding cutbacks at the state and local levels and helped most legal aid programs avoid large-scale layoffs of attorneys and paralegals that serve the poor.

Mr. Chairman, please be assured that the legal aid community understands the difficult funding choices the Subcommittee faces in this tough budget environment. The legal aid community also is profoundly grateful for your steadfast support through the years, especially your leadership last year in achieving a higher appropriation for LSC.

The “justice gap,” however, is still a harsh reality in this country. There are at least 54 million Americans who are eligible for free civil legal assistance, and 18.5 million of them are children. The distance between the promise of equal justice for all and the reality of an inadequate supply of legal services is what the nation’s judges see in their courtrooms every day.

The Corporation today confronts the same key challenges we brought before you a year ago—a weak economy and inadequate resources for legal aid programs. I want to assure you that the nonprofit legal aid programs out there, on the ground, in our communities, are delivering legal services to people in need, to people who have exhausted most, if not all, of their options and come to us as a last resort. LSC, for its part, will continue to focus on the indigent and how we can better support our programs as they strive to meet the needs of our nation’s poor and most vulnerable.

Today, requests for help with foreclosures, unemployment benefits and consumer issues are on the rise at many LSC programs. The programs also report that their non-federal resources are shrinking. Most states have experienced revenue shortfalls because of the economic slowdown and cannot be counted on to support legal aid at the same levels as in the past. In particular, funding from Interest on Lawyers' Trust Accounts (IOLTA), a significant source of income for many programs, is plummeting. Donors also will be unlikely to contribute as much to legal aid as in the past because of the weak economy. Bar association contributions to LSC programs dropped by more than half from 2007 to 2008, and, according to surveys, charitable donations are declining nationwide.

For low-income Americans, legal aid greatly improves their chances of keeping their homes rather than moving into a shelter, holding jobs rather than going onto public assistance, retaining custody and support of their children rather than losing them to foster care, receiving early medical care rather than costly hospitalizations, and escaping an abusive relationship rather than suffering further injury or even death.

In these times of high unemployment and uncertain economic conditions, the work of LSC and its programs is more critical than ever before. Legal aid programs ensure that the poor are properly represented in the civil legal system. That greatly improves their chances of keeping or securing basic necessities—food, shelter and income—and helps breathe life into our society's commitment to fair and impartial treatment for all who enter our courts.

#### **Impact of Weak Economy on Legal Aid Services**

Legal aid programs continually seek new grants, increases in state funding and higher levels of support from the organized bar and other sources. As noted above, however, the economic downturn has placed an even greater strain on the resources that support legal services. Almost all programs are concerned about their financial prospects for 2010 and 2011.

IOLTA, for example, is an important source of non-federal funding for legal aid programs. While IOLTA funding varies by state and grant cycle, making it difficult for LSC to forecast how much support grantees will receive, we do know that many programs expect to see sharp drops in their IOLTA grants, in large part because short-term interest rates remain near zero. For 2009, the National Association of IOLTA Programs estimated funding nationwide was about \$93 million, a 67 percent decline from 2008.

Because of the nation's weak economy, many LSC programs this year have expressed uncertainty about their funding. The Legal Aid Foundation of Los Angeles, North Mississippi Rural Legal Services, Legal Services of Greater Miami and numerous other legal aid programs anticipate significant cuts in IOLTA funding.

For many smaller legal aid programs, IOLTA funding is critical. North Mississippi Rural Legal Services saw its IOLTA funding drop from \$700,000 in the 2008-2009 fiscal year to \$80,000 in the 2009-2010 fiscal year. That caused program reorganization and the layoffs of 10 staff members, including attorneys. The program, which at its height in the 1980s had 118 employees, today has a staff of only 30.

Against this bleak backdrop, demand for services by low-income people is increasing at North Mississippi and at other LSC programs, including those in large states such as California, Florida, Ohio and New York. In one category—foreclosures—LSC estimates that its programs, because of inadequate resources, turned away more than 21,000 low-income applicants seeking help in 2009.

LSC programs, in these troubled economic times, facilitate solutions and help clients who have nowhere else to turn. Last year, Legal Services NYC helped a tenant in Brooklyn, who had rented an apartment for 13 years, in a dispute with her landlord. At the same time that she was being sued in housing court, she was laid off from work. The tenant found her way to Legal Services NYC, which took her case, challenged an affidavit submitted in the case, and won a judge's ruling that stopped her eviction.

"If I had not found out about Legal Services, I am certain that my family would have become homeless. I would never have been able to understand the court process and I would never have been able to find out, let alone raise, the defense that won my case," she said in testimony for the New York State Senate hearings on the funding crisis facing legal aid programs.

Like Legal Services NYC and other LSC programs, the Legal Aid Foundation of Los Angeles sees clients who have been severely impacted by job loss and the weak economy. Program officials report an increase in individuals seeking assistance with unemployment issues, such as wage claims involving their last paycheck, and staff attorneys increasingly help with applications for benefits and answer general questions. The program's eviction practice also is changing because an increasing number of cases involve nonpayment of rent, leading the program to create a homeless prevention project to help individuals pay their rent.

Blue Ridge Legal Services in Virginia last year helped a family who sought assistance after the husband had been out of work for several months. He was laid off from his job and, at about that time, became ill and had to seek medical care. His health problems stemmed from an accident from several years earlier, when he was run over by a bulldozer and suffered back injuries and continuous problems with blood clots, leading to large medical bills. Even though he received unemployment compensation and his wife worked full time, they began falling behind on their bills. Creditors, usually seeking payment for medical bills, issued garnishments against the wife's wages, making it more difficult for the family to get out of debt. At times, they had no money for food and relied on food stamps. After determining the family's legal needs and eligibility, Blue Ridge Legal Services was able to refer the family to a volunteer attorney participating in its Pro Bono Referral Program. With the help of a *pro bono* lawyer who donated his time, the

couple filed for bankruptcy protection to get a fresh start. The husband's health improved and he has returned to work, and the family now has health insurance through the wife's employer. They are rebuilding their lives and those of their two young children.

Other programs, such as Legal Services Alabama, Legal Aid Bureau of Maryland, Legal Services of Greater Miami, Neighborhood Legal Services Association in Pittsburgh and Rhode Island Legal Services, report increased demand for legal assistance because of unemployment and foreclosures. Legal Services of Greater Miami, for example, reports a 15 percent increase in demand for services because of high unemployment and foreclosures.

Even before the 2008 recession and the high unemployment rates that marked 2009 and the start of this year, LSC programs were confronting a "justice gap"—the difference between the level of civil legal assistance available to low-income Americans and the level that is necessary to meet their needs. In 2005, the Corporation released a report on the justice gap that found LSC programs serve only half of those seeking legal assistance. That finding was reaffirmed in last year's justice gap study.

In preparing the justice gap reports, LSC collected data on the number of people seeking help from LSC programs who cannot be served because of insufficient program resources. The data shows that LSC programs are turning away about one million poor Americans each year.

In a very real sense, the need for civil legal services is too large to measure. Survey-based studies conducted in seven states since 2005 found that only a small fraction of the legal problems experienced by the poor—less than one in five—is addressed with the assistance of a private or legal aid lawyer.

The data cited earlier—that approximately 54 million Americans are eligible for assistance from our legal aid programs—was collected by the U.S. Census Bureau in 2008 and is the most recent official count. For 2010, LSC staff estimates the client-eligible population will be 21 percent greater than it was in 2008—an additional 11.5 million people.

Numbers alone do not fully describe those in need of legal assistance. The clients of LSC-funded programs are of all races and ethnicities, young and old, the working poor, people with disabilities, military veterans and victims of domestic violence. Seventy-three percent of the people served are women, many of whom are struggling to keep their families together. The clients of LSC programs live at or below 125 percent of the federal poverty level—an income of \$27,563 for a family of four.

To better serve the poor, LSC programs work in partnerships with community and state organizations and provide a framework so that *pro bono* services may be effectively delivered by private lawyers. Legal Aid of West Virginia, for example, recently helped a mother and two children escape from her abusive husband, a father who essentially held his family as hostages and tormented them by using home appliances to let natural gas

leak into their house. A legal aid attorney helped the woman obtain a divorce and Supplemental Security Income (SSI) on the grounds that she suffered Post-Traumatic Stress Disorder. The client came to Legal Aid of West Virginia through a referral from the West Virginia Works Legal Support Project, which focuses on supporting people in their move from public assistance to self-sufficiency. In this particular case, some of the abuse came after the divorce. *Pro bono* lawyers worked with the client twice in filing for emergency protective orders and legal aid attorneys subsequently filed for two more orders before the abuse finally stopped.

Until the nation's economy fully recovers and unemployment rates come down, millions of Americans are at risk of falling deeper into poverty or slipping into poverty for the first time. Congressional appropriations to LSC represent the largest, single source of funding for civil legal services to the poor of our nation. Sustained federal funding for LSC's mission has never been more critical.

#### **Fiscal Year 2011 Budget Request**

For Fiscal Year 2011, the LSC Board of Directors voted to request \$484,900,000 for basic field grants, part of a four-year plan approved by the Board for closing the justice gap. The requested increase will fall far short of what is needed to make up for the anticipated loss of non-federal dollars and the projected increase in the client-eligible population. It is crucial for the Congress to fund, as fully as reasonably possible, civil legal services across the country at a time when poor Americans are at risk of losing jobs, homes and health insurance.

The following chart shows LSC's FY 2009 and FY 2010 appropriations and the funding request for FY 2011.

Budget Category	FY 2009 Appropriation	FY 2010 Appropriation	FY 2011 Request
<b>Basic Field Grants</b>	\$365,800,000	\$394,400,000	\$484,900,000
<b>Technology Initiative Grants Program</b>	\$3,000,000	\$3,400,000	\$6,800,000
<b>Loan Repayment Assistance Program</b>	\$1,000,000	\$1,000,000	\$1,000,000
<b>Management &amp; Grants Oversight</b>	\$16,000,000	\$17,000,000	\$19,500,000
<b>Office of Inspector General</b>	\$4,200,000	\$4,200,000	\$4,350,000
<b>TOTAL</b>	<b>\$390,000,000</b>	<b>\$420,000,000</b>	<b>\$516,550,000</b>

In addition to recommending increased funding for basic field grants, LSC also requests:

- \$6,800,000 for Technology Initiative Grants (TIG). With this funding, TIG would expand the use of automated statewide court forms, which help low-income Americans who do not have a lawyer; develop online intake systems, which



reduce the time spent by programs on assessing requests for legal assistance, and create web-based systems to help low-income Americans find information and solutions to their legal problems. TIG also will continue to oversee the creation of a national website that will provide information and online tools designed to address specific civil legal needs of veterans, military personnel and individuals with a military connection, such as family members. TIG funding also helps grantee programs use technology to improve their operations and accountability.

- \$1,000,000 for the Corporation's Loan Repayment Assistance Program (LRAP). Legal aid salaries have failed to keep pace with other public service salaries, and LSC programs have found that helping lawyers reduce their student debt substantially increases the likelihood that they will stay with their programs. It also makes it easier for programs to recruit new attorneys.
- \$19,500,000 for Management and Grants Oversight (MGO). This proposed increase would permit LSC to increase the number of oversight visits to programs by 17 percent, from an estimated 76 in 2010 to a projected 89 in 2011. Training is a crucial component of oversight, and the MGO request proposes a training initiative for 2011. The MGO request represents an administrative cost of less than 4 percent when compared to the total request, in line with our 4 percent average in recent years.

The Office of Inspector General request of \$4,350,000 is included in the LSC total, but made separately by the Inspector General through the LSC Board of Directors.

#### **2011 Training Initiative**

This MGO initiative will focus on creating a capacity within the Corporation to produce and deliver training on compliance, fiscal operations and best practices. The initiative's projected cost for FY 2011 is \$500,000.

Four primary goals of the initiative are to:

- Enhance local board governance and program oversight by local boards.
- Improve the ability of LSC programs to meet LSC requirements and comply with LSC restrictions.
- Enhance the engagement of private attorneys in providing legal services.
- Encourage best use and leveraging of technology to deliver services to those who seek self-help options.

In FY 2011, LSC would hire two staff members to create the core of a training unit within LSC, expand training provided to local board members, expand staff training at programs on fiscal oversight and management best practices and address other training needs.

**Update on Attorneys' Fees**

Since FY 1996, Congress has included a number of funding restrictions in our appropriations. Last year, at the initiative of this Subcommittee, Congress removed the statutory restriction on funding programs that claimed, collected and retained such fees.

Shortly after President Obama signed the Fiscal Year 2010 appropriations bill that included LSC funding, the LSC Board of Directors suspended enforcement of the regulatory restriction on claiming, collecting and retaining attorneys' fees, pending action to revise or repeal the regulation. LSC had promulgated regulations in 1996 and 1997 that implemented the statutory attorneys' fees restriction. In keeping with the intent of Congress, at its January meeting, the LSC Board approved the publication of an Interim Final Rule, effective March 15, repealing the Corporation's regulatory prohibition on attorneys' fees.

As of the effective date of the regulation, grant recipients will be permitted to make claims for attorneys' fees in any case in which the award of fees is permitted by law. LSC grant recipients also will be permitted to collect and retain attorneys' fees whenever such fees are awarded to them. The Corporation will collect information on this revenue and report it as non-LSC funding as we do with other sources of income.

**Conclusion**

Through these efforts, Mr. Chairman, and with the continued support of this Subcommittee, LSC will work to provide civil legal services to our nation's poor and ensure the effective use of grant funds by our programs.

During a time when the nation's economy is weak and unemployment is high, the support of Congress and this Subcommittee's appropriation is even more vital. Legal aid saves lives, legal aid makes a meaningful difference in the lives of clients, and legal aid underscores the nation's commitment to equal justice for all.

The Chairman and the Members of this Subcommittee have provided critical support for legal aid in past years, and all of us at LSC and in LSC-funded programs are deeply grateful to you for that support. For Fiscal 2011, we urge the Subcommittee to help us close the justice gap by approving the LSC Board's request for \$516,550,000. This request is the result of a determined effort to help eliminate the justice gap within four years by the Corporation's bipartisan Board of Directors. Still, this requested increase would fall short of what is needed to make up for the anticipated loss of non-federal dollars and the projected increase in the client-eligible population. We come to you with this request because we feel that it is crucial when poor Americans are at greater risk of losing jobs, homes and health care.

Thank you very much.



Legal Services Corporation  
America's Partner For Equal Justice

### Victor M. Fortuno, Interim President and General Counsel



Victor M. Fortuno was appointed Interim President of the Legal Services Corporation, effective January 1, 2010. He was selected by the LSC Board of Directors for the position on December 22, 2009.

Mr. Fortuno was appointed General Counsel of the Legal Services Corporation in 1991 and has since also been appointed to the offices of Corporate Secretary and Vice President for Legal Affairs. While serving as Interim President, he continues as LSC's General Counsel and Vice President for Legal Affairs. He is, however, taking temporary leave from the position of Corporate Secretary while serving as Interim President.

He received both his B.A. (1974) and J.D. (1977) from Columbia University and spent his first year after law school as a staff attorney with Community Legal Services in Philadelphia. He then served for five years as an Assistant District Attorney for the City and County of Philadelphia. His work in the District Attorney's Office included assignments to its Trial and Appellate Divisions and its Organized Crime Unit.

In August 1983, Mr. Fortuno joined LSC as an attorney in its Office of Compliance and Review. During his LSC tenure, he has also served as Acting Director of Compliance and Review, Assistant General Counsel, Senior Litigation Counsel and Deputy General Counsel.

Mr. Fortuno is licensed to practice law in the District of Columbia and Pennsylvania, and he is a member of the bars of the U.S. District Courts for the District of Columbia, the Eastern District of Pennsylvania and the District of Arizona, as well as the U.S. Court of Appeals for the Third, Fourth and District of Columbia Circuits. Since 1980, he has also been a member of the bar of the Supreme Court of the United States.

He is a native of New York City, is married to the former Vicki Ann Clark and has five children. Among his civic activities, Mr. Fortuno currently serves on the board of directors of Ayuda, Inc. and has served on the boards of directors of the Philadelphia Health Plan and the Columbia College Alumni Association. He also was one of the founding directors and a board member of the Friends of Legal Services Corporation.

## UPDATING THE JUSTICE GAP REPORT

Mr. MOLLOHAN. I would like to start by again commending the Legal Services Corporation for its good work and by reaffirming this Subcommittee's support. I can certainly speak for a good majority of the Subcommittee, and we support funding for Legal Services to provide legal aid to those who need it and are disappointed that there are so many people out there who make up this justice gap that we all talk about.

I would like to point out that last year the House funded Legal Services at five million dollars above the President's request. That was considerably below your request, but five million dollars above the President's request.

We also removed one of the restrictions having to do with fees, which may or may not help you in regard to your financing.

We thought that we were in as good a position as we could be going into conference, whatever the Senate decided to do. The Senate, of course, came in with a number considerably lower. And it turned out that because of some of the issues with regard to the restrictions, we really were not in as good a position. That put us in a compromising position.

Perhaps as we move into this year, we will be equally well positioned and we hope that it can move forward in a different way. My goal would be to preserve our funding level regardless of what the Senate's happens to be, which would create a base off of which we would be in a better position to help you in future years. The Administration would also be, I think, working off a different baseline.

If our funding had been put in place, you would be working off a baseline of \$440 million, and hopefully the Administration would have come in with some increase above that, which would have put you in a better position. If you do that year after year, it amounts to real money.

LSC is not close to the funding levels and real services that it had at its high point. While that might be a reach, certainly in the short term and in the kind of budgetary environment we find ourselves, this path forward would at least put us in a better position to achieve the funding levels on the federal level that we would like to achieve. Just a comment as we begin our hearing.

As you have described in your testimony, LSC recently updated its justice gap report to measure changes since 2005 in the unmet need for legal aid services. Given the state of the economy, pressures on grantee budgets and the fact that the eligible client population has increased by three million people, I would have expected to see the gap widening significantly. Instead, findings of your new 2009 report are extremely consistent with the findings of both your 2005 report and a 1994 report by the American Bar Association.

Why do you think that the documented gap did not increase despite such anecdotal evidence that implies a greater unmet need?

Mr. FORTUÑO. We, too, were surprised that the report did not show higher numbers being turned away. We were certainly aware of a number of very compelling state legal need studies that suggest that our justice gap report represents a significant undercount.

We, however, thought it was best to take a very conservative approach.

And while we believe that, in fact, it is an undercount and have the state legal need studies that indicate that, in fact, the unmet legal need is much greater, possibly as high as 90 percent. But in the case of our justice gap report, any number of factors could have gone into that.

One of the things that we have learned anecdotally is that our grantees reach full capacity. And once they reach full capacity and are unable to take on any additional cases, that then results in folks not getting in and being processed unless, of course, it is an emergency case.

What normally happens is someone walks in, program has reached capacity and is unable to take on any new cases, those folks would not go through the intake process and would be told to come back. So there would be no determination as to eligibility at that point, so they would not be factored into our numbers. And only emergency cases would be picked up at that point.

Mr. MOLLOHAN. Well, the numbers are meaningless. If I understand you correctly, because you are at capacity and just cannot handle any more folks, you turn them away at the door and you do not count them. Unless you process them for eligibility, how would you know how many people you are actually turning away?

Mr. FORTUÑO. And it would vary from program to program. But I respectfully submit that the numbers would not be meaningless. They are certainly not as meaningful as they could be, but they give us at the very least a low-end number of what the gap is.

And that is what I meant by I think we have taken a conservative approach and that is why the state legal need studies that have been published come in at so much higher a figure in terms of individuals who are in need of a lawyer being unable to get one.

Mr. MOLLOHAN. Say that again. That is why the state studies comes in with a higher number of unmet needs?

Mr. FORTUÑO. Yes. The state legal need studies suggest that the actual need is greater than is reflected in our justice gap report which has the one turned away for every one represented.

Mr. MOLLOHAN. What is the difference in their methodology that makes them more accurate?

Mr. FORTUÑO. It is going to vary from state to state and survey to survey. I think that they are not necessarily as conservative as we are. They are not limiting their count to the number of people who actually make it in the door and are screened for purposes of determining eligibility.

What we are looking at in our survey is the number of individuals who are eligible for services and would be represented but for the lack of resources.

That screening may not have occurred in some of the studies. There are different methodologies. They come to different results. The one thing that seems to be consistent is they all come in with results of higher unmet need.

I think that the numbers in 2009 justice gap report remain consistent with those of the 2005 report and reflect that we still have a one-to-one.

We also have another factor to consider which is that when our programs do reach capacity and are unable to take any new cases, we have anecdotal information from our grantees that the word in the legal services community spreads and folks are discouraged from coming in. When they learn that the program is unable to take new cases, folks do not even attempt to be seen.

But we do have, again referring to anecdotal information from our grantees, that, for example, our Tennessee programs turned away 75 percent. Our Arizona program turned away 38 and a half percent.

Mr. MOLLOHAN. So they had a process. Was that a more careful process?

Mr. FORTUÑO. In addition to the information they provide to us for our survey, grantees do measure the need in their own ways. They may have a different methodology. They do so because it is important for their individual—

Mr. MOLLOHAN. So the justice gap is based on information, but it is also based on a lot of intuition and extrapolation and maybe a little bit of lag here and there.

Mr. FORTUÑO. Well, in our case, I think some of the—some other studies maybe—I think ours does not involve much speculation. It involves hard and fast numbers, that is people who actually get through the door who are screened for eligibility, who are found to be eligible, they are not disqualified on the basis of—

Mr. MOLLOHAN. But just to be clear, that is inconsistent from program to program. It also does not include folks that come to the door and are told, “we cannot handle any more people and we are not even screening you?”

Mr. FORTUÑO. That is right.

Mr. MOLLOHAN. So it is definitely a low number.

Mr. FORTUÑO. Yes.

Mr. STRICKLAND. It is also—

Mr. MOLLOHAN. I must say that I always assumed it was little more rigorous process to achieve that gap number.

Mr. STRICKLAND. I was going to say it is also very hard to measure, following on Mr. Fortuno’s point about when the word gets around that a program is at capacity and a person simply does not come forward, it is very hard to measure the number of people who do not come forward and, therefore, will not be surveyed under any methodology.

Mr. MOLLOHAN. It is an important number because you use it pretty effectively to inform appropriators and policymakers as to what the need is out there. But you have been reassuring that whatever you are coming forward with is conservative.

Thank you.

Mr. Wolf.

Mr. WOLF. Thank you, Mr. Chairman.

#### PRIVATE ATTORNEY INVOLVEMENT

With respect to the justice gap, what activity is LSC currently undertaking in order to increase the involvement of private attorneys in pro bono efforts aimed at serving a greater number of lower-income Americans? Just what are the overall efforts and how successful and how deep is the pool? What percentage do you have

participating? What is the potential percentage if all the law firms were to participate?

Mr. FORTUÑO. Currently ten percent of the cases closed by LSC programs are closed by attorneys participating in the PAI Program of individual programs. So we do have a figure as to current involvement. We—

Mr. WOLF. What is the number of attorneys around the country?

Mr. FORTUÑO. I do not have but we can certainly get that information for you and provide it to the Committee. I do not know the number of individual attorneys participating in PAI programs off-hand. I only know that ten percent of the 900,000 cases a year that we close—

Mr. WOLF. But that is not the question. The question is, how many attorneys are participating and—

Mr. FORTUÑO. And what percentage of the legal profession?

Mr. WOLF [continuing]. And what percentage of the pool are you now being successful with?

Mr. FORTUÑO. I do not have those figures on hand. I can certainly check to see if we have those and provide them to the Committee.

[The information follows:]

#### NUMBER OF PRIVATE ATTORNEYS PARTICIPATING IN LSC ACTIVITIES

In 2009, 34,000 private attorneys handled 103,753 cases for LSC-funded programs—an increase of 11 percent from the previous year and over 11 percent of the total cases closed in 2009. We do not have any information about how many pro bono attorneys provide assistance at non-LSC programs, state bar projects, law school clinics, church and other non-profit pro-bono assistance, and other areas of pro bono assistance.

Mr. WOLF. How aggressive are you out there asking others? Coming in today—

Mr. FORTUÑO. We—

Mr. WOLF [continuing]. Listening to the news, the story broke that at the Justice Department, there are a number of lawyers in the Administration, some with political jobs, others not, who were with very good law firms around the country and the pro bono work they were doing—one was the lawyer for Osama bin Laden's driver. And I just wondered maybe if that lawyer's time could have been to help people from the United States that really need the help.

And I just wonder how aggressive are you and I would I would like to see the Committee ask for, if we can, Mr. Chairman, an in-depth analysis.

Do you have a formal program? Have you hired people to go out and to encourage the Bar? I think most lawyers if asked and presented—it is sort of like I remember once hearing or reading the story about Tip O'Neill. He said that a lady across the street had voted for the other person and he said to her, Mrs. McGillicuddy, or whatever her name was, why did you vote for the other person. And she said Tip, he asked, he asked me for the vote.

And I think sometimes you have to ask. And if you actually ask the average lawyer who I think would probably say yes, and I just wondered how aggressive is it and what formal program do you have? Have you gone outside to perhaps hire some people to actu-

ally—do you have a formal program with people on the staff that actually—

Mr. FORTUÑO. We—

Mr. WOLF [continuing]. Go out and encourage—

Mr. FORTUÑO. Actually, what we have is, among other things, we have a requirement, a formal requirement that our grantees expend at least 12 and a half percent of their LSC funds or an amount equal to 12 and a half percent of their LSC grant on private attorney involvement which would involve recruitment, training, oversight.

So there is a fairly substantial program out there that is mandated by regulation.

Mr. WOLF. But is there a best practices that you have?

Mr. FORTUÑO. We are—

Mr. WOLF. The Memphis office has done the greatest job whereas the Nashville office has not? Do you have best practice?

Mr. FORTUÑO. We are providing resources of that type, where information on best practices is made available so that successful experiences that some grantees have and can serve as—

Mr. WOLF. Should it not be a formal best practices that you go out to every Director of every office saying here is what was done around the country and we know this has been successful, they did this type of program, they had a Saturday morning training program, they did a letter to every law firm? Should it not be a formal best practices? Would you submit that for the record what you do have?

Mr. FORTUÑO. Oh, certainly.

Mr. WOLF. But should that not be sort of standard?

Mr. FORTUÑO. And I think a good deal of that, in fact maybe most of that is, but we would be glad to submit detailed information on the program that we have and how our grantees use that information and how they go about enlisting the aid of private attorneys.

[The information follows:]



### LSC's Efforts to Encourage Pro Bono Assistance

LSC requires all of its 136 grantees to spend an amount equal to 12.5 percent of their LSC grant to involve private attorneys in the delivery of civil legal assistance to eligible clients, including, for example, recruiting and training private attorneys and screening and referring cases to them. This is an area of regular review on LSC program and compliance visits to grantees.

In addition, the LSC Board has taken a leadership role in this area and is using its national voice to encourage a culture of private attorney involvement as an effective tool for providing legal services to more persons in need. In April 2007, the LSC Board of Directors issued an action plan for private attorney involvement and to date, the Boards of 109 of the 136 LSC grantees have adopted resolutions modeled after LSC's plan. Urging programs to adopt local resolutions is a key element of LSC's private attorney involvement action plan, entitled "Help Close the Justice Gap, Unleash the Power of *Pro Bono*."

In December 2007, LSC issued a program letter to all of our grantees with guidance on how they might enhance their private attorney initiatives through adoption of best practices and innovative techniques developed by some LSC grantees. LSC recommended that grantees develop long-term relationships with large law firms, corporate and government attorneys and offer support to small firms, solo practitioners and judicare attorneys so that they may more effectively provide services. In addition, the American Bar Association has for many years sought to stimulate and support *pro bono* contributions by private lawyers.

In addition to the routine use of *pro bono* attorneys, LSC-funded programs reach out to the private bar to bolster legal assistance in times of crisis. For example:

- Legal aid programs in Ohio are partners in the Save the Dream Ohio! Project that helps Ohio families facing foreclosure actions and have helped train and organize hundreds of private attorneys for that initiative.
- LSC programs partner with the Young Lawyers Division of the American Bar Association to provide legal services after hurricanes and other major disasters.
- Legal Services NYC has partnered with an initiative to provide comprehensive training and supervision services to a new NYC program aimed at providing free legal support to New Yorkers at risk of losing their homes to foreclosure. The new program, NYC Service Legal Outreach, seeks to recruit 300 volunteer attorneys to expand legal services for those facing foreclosures and provide homeowners legal assistance during the mandatory settlement conference stage.
- About 40 programs participate in 43 medical-legal partnerships in more than 25 states to improve the lives of vulnerable people and help improve health outcomes. Many of these medical-legal projects recruit *pro bono* attorneys and are able to give them engagement opportunities that are often more stimulating than some other aspects of *pro bono* work.

I know that our Board of Directors, in fact, has become very involved in that. And I do not know if the Chairman would like to speak to that or—

Mr. STRICKLAND. I would like to address that just briefly, Mr. Wolf.

In 2007, the Board of Directors adopted a concept called help close the justice gap, unleash the power of pro bono. And we encouraged all of our grantee programs, we currently have 136 grantee programs, we encouraged every one of those programs to adopt a similar resolution that is modeled after the one that our Board adopted in April of 2007.

And to date, we are pleased to say that 109 out of 136 programs have adopted a similar resolution that is designed to stimulate activity at the program level to encourage more pro bono work.

That is more of a subjective approach as opposed to objective as we were not looking for particular numbers. We were just trying to stir the pot, if you will.

Mr. WOLF. But should not—excuse me.

Mr. FORTUÑO. And LSC does recognize its responsibility to use its national voice to further encourage a culture of private attorney involvement.

I think that following up on what the Chairman was referring to, the Board of Directors when it meets away from Washington makes it a point of, at every away meeting, having the local grantees identify the leading pro bono providers so that they can be formally and publicly acknowledged and thanked. We prepare certificates of appreciation that are distributed at formal public events.

Mr. WOLF. I understood. The question is, what number are participating and how does the participation level differ now both up or down than it was, say, five years ago and ten years ago?

We are in a tight budget situation and when I was Chairman of this Committee, we always supported the legal services at the good rate, so we did not have in a sense a controversy. I think the poor need this. It is very, very necessary.

We are also faced with a situation in the country, this Congress is somewhat numb to it on both sides of the aisle, but we have a situation that we have \$37 trillion of unfunded obligations. We have \$12 trillion of debt.

And on that same news show, it said that the Chinese are ready to move its paper around. Moody says we lose our Triple A bond rating perhaps in 2013. We see the government agrees this is on the edge having lost its Triple A rating and the Government of Dubai in the same category, the government of Portugal, the government of Spain, and the government of Ireland, and there are people on both sides of the aisle that believe we are facing a fundamental crisis.

And Dietrich Bonhoeffer who was the Lutheran pastor who stood up to the Nazis made the comment that a test of a moral society is how it treats its future generation. I have five children. My wife and I have a large sum of grandchildren. What are we transferring? And so this important.

I stipulate the legal services, if my memory serves me right, the Congressman that I used to work for, Congressman Biester, Pete Biester, was very active with regard to in setting it up.

But I just think from a reality point of view, the figures that I heard today were that in the year 2028, but the number was dropping, so it could be 2026, 2025, that every dollar that comes into the federal government will go out for four things, Medicare, Medicaid, Social Security, and interest on the debt. That does not cover legal services. It does not cover something that I think is important, to find a cure for cancer or to find a cure for autism or to find a cure for Alzheimer's or to find a cure for Parkinson's or to have the best education system in the country.

And I appreciate the Chairman. Math and science and physics and chemistry and biology, none of them are entitlements. And so I am not really differing with what you are doing. God bless you. I think it is very, very important.

But I think this has to be an area that is not just kind of a—I am disappointed. Even the number. The number ought to be right up here. You need to know Memphis has the best job. They have been out there. They have every lawyer in DeKalb County or whatever that is over there or in Atlanta. Every lawyer is participating.

We have contacted every lawyer. We put in 15 different sessions because to bring them in—and I really believe, and to say something kind about lawyers, I believe that if asked to participate to be there, not just with a flyer, but with a visit and everything else, I think a large number will participate. So I think that is really where you are going to have to go in order that you can meet what is a necessary need.

But when I look at the numbers that you have asked for here, there would be some that were saying this Administration is spending too much. The deficit this year will be \$1.6 trillion. You are actually asking \$516 million which is \$96.6 million or 23 percent above fiscal year 2010 enacted level. And the President's budget is \$435 million which is \$15 million above.

So you are above this Administration's request that many people believe is high—so I think you really have to make a major effort to reach out to the legal community and I believe if challenged and asked, I think they will participate.

So I would like to know what you are really going to do rather than just say you have a resolution or—

Mr. FORTUÑO. Well, certainly. And we will get back to you with concrete numbers and information.

I think that what you will find is that a good deal of that 12 and a half percent that grantees are required to expend on generating pro bono involvement goes to outreach, goes to that kind of making the ask.

I think that because of the economic downturn, lawyers like everyone else have been impacted and so we may be seeing less of that, but we will have some specific numbers for you. We certainly believe—

Mr. WOLF. You could contact some of the lawyers that are representing Osama bin Laden's driver and people who helped kill Americans in the 9/11 attack.

And, I mean, the Administration was actually going to bring Khalid Sheikh Mohammed to New York City. The cost of trying Khalid Sheikh Mohammed in New York City would be over a cost of four to four and a half years, about a billion dollars.

## RESTRICTIONS ON FUNDS

So let me ask you this other question here. The restrictions on LSC grantees, the Administration's budget request proposes to lift the restrictions on the use of LSC funds for involvement in class action lawsuits.

One common problem with class action lawsuits is that personal injury class actions, which are often settled, for example, offer lawyers huge fees while individual class members get only a few dollars each. As a result, lifting the restriction on fee collection while permitting the LSC funded attorneys to pursue class action cases could be very controversial.

What are your comments about that?

Mr. FORTUÑO. The Corporation has consistently expressed the view that we do not take positions—substantive positions—on restrictions. We simply implement the will of the Congress. We recognize that there are arguments that can be made for and against. Our Board has not authorized us to take any substantive position other than, as I said, enforcement of the will of Congress.

And that is seen as recently as when the attorneys' fees' restriction was lifted. That occurred with our appropriation in the middle of December and the Board, within days, met to discuss the issue and then at its annual meeting in January proceeded with instructions that we publish an interim final regulation which brings our regulation in compliance with the rollback of that restriction.

But whatever the requirement or restriction may be at any point in time, our position is that we faithfully implement the will of Congress.

Mr. WOLF. And you are not seeking to change?

Mr. FORTUÑO. We are here asking for funding. We are focused on the appropriation amount, not on specific restrictions, no.

Mr. WOLF. I think that is important because John Erlenborn, who I thought was a fine person, did a great job in taking this whole issue out of the political involvement to see that LSC get back into the political involvement and some of things, I think, takes away, for instance, the controversy.

So you are not asking the Committee to lift anything?

Mr. FORTUÑO. No. We are not making any request with respect to restrictions, only as to funding.

Mr. WOLF. What about the Administration's request here with regard to participating in class action suits? Do you have—

Mr. FORTUÑO. We do not take a position as to that, no.

Mr. WOLF. Thank you.

Mr. MOLLOHAN. Thank you, Mr. Wolf.

Mr. Schiff.

Mr. SCHIFF. Thank you, Mr. Chairman.

And I know you are, I think, precluded from taking a position, but that does not mean you do not have an opinion. And I may ask you about that opinion in a little bit.

Mr. FORTUÑO. My one concern about that, though, is that if I express a personal opinion that—sitting here in my official capacity as I do today—that that can be confused for the institutional view and so there is, I think, an overriding danger, whatever my opinion

may be. So I would respectfully seek to answer the question without taking a position.

Mr. SCHIFF. And you can do that, you know, by discussing the impact of the policies. And let me start by asking you about the policy that has just changed in terms of the attorney fees.

Do you have any sense yet, have there been any analysis about what kind of additional revenue that may bring into the LSCs? And the second part of that question is, because there will be revenues coming in via attorney fees, will that create a pressure to take on more cases which can result in attorney fees as opposed to other cases which have a lesser capability of doing that?

Mr. STRICKLAND. Let me make a comment on that.

Mr. Schiff, I want to give you some information I gleaned from the Executive Director of the Atlanta Legal Aid Society on the point of the lifting of the attorneys' fees' restriction. And he has been in his job for 25 years and in my view is one of the best Executive Directors of any of our programs.

What he told me was this, that the dollars are not as important as the leverage. In other words, if you file a case and you have the right to claim attorneys' fees and you can put that in your complaint, that is a leverage factor that has been missing in terms of representation of the poor. Now it is back in play.

In other words, his view was the leverage factor was considerably more important than dollars. So we do not have any numbers on what dollars might be at play, but leverage was his main interest.

Mr. SCHIFF. Are you going to undertake an analysis to figure out what this will mean revenue-wise?

Mr. FORTUÑO. Yes. Well, it is too early to say. We do not have numbers on which to base any kind of assessment. We are collecting that information and do hope to have that kind of information and assessment and analysis available come this time next year.

Mr. SCHIFF. The only thing I would also suggest, and I think it is a positive change and one that I supported, is I think we do need to keep an eye on making sure that it does not distort the type of cases that LSCs take on given the financially strapped times so that there is a movement towards taking on the cases where you can get fees and shying away from others where you cannot, where there may be a more pressing need.

I wanted to ask you about one of the other restrictions bearing in mind your caveat. This is one that I think I differ from Mr. Wolf on and that is the restrictions on the use of state and private funds.

And I would be happy to defer to my colleague because I am surprised really that there is as much opposition to this as there is given that those that are usually very solicitous of the rights of states I would think would want, more want to have states decide how state funds can be used. But I want to understand the issue a little better.

Mr. WOLF. Would the gentleman yield?

Mr. SCHIFF. I would be happy to yield.

Mr. WOLF. That was kind of a cheap shot to a certain extent. I have been a strong supporter of legal services. As legal services

gets into these controversial issues, it begins to weaken it here in this body.

As you begin to weaken—and when I was Chairman of this Committee, we protected legal services and I went against my party to make sure we brought it out with integrity. And so as you begin to add these controversies, and I do favor the states' rights. It was sort of an elbow there and I personally took it that way.

That is not the purpose. The purpose is to help legal services and to remove all the controversy—there was a lot of controversy before you were even elected to Congress. So what we are trying to do is to go back whereby it is a noncontroversial, a good program that really helps the poor.

Mr. SCHIFF. Reclaiming my time, Mr. Wolf, I do not consider it a cheap shot to say that there is inconsistency with people who advocate for states' rights when it is convenient and do not when it is not convenient. And that, I think, is the issue here. I have the time right now, Mr. Wolf. That, I think, is the issue here because we can disagree on a policy and that is fine, but do not claim that you are consistently a state right supporter here and that you are doing this to protect legal services because you can protect legal services in your state if your state legislator does not want these funds used in a certain way. So that is, I think, where we disagree.

So what I would like to ask is how you see these state restrictions affecting the resources available to you to do your work?

Mr. FORTUÑO. We can only speak to what we hear anecdotally from our grantees and it is what you would expect to hear which is that restrictions on non-LSC funds have an impact, have a tendency to depress private contributions because the funders may not want to have their contributions, their grants, their donations so limited.

So what we hear anecdotally, we have not done any systematic study, but what we hear anecdotally and do not have any reason to question is that it has a suppressing impact on private and other non-government—well, actually, even government contributions.

We have certainly seen the issue you are referring to. We have litigated against the state of Oregon. I personally have been deeply involved in the defense of the challenges against the restrictions since 1996. So we have had to defend these challenges coast to coast, with success coast to coast, including interestingly a challenge by a state, the state of Oregon, which was litigated and resolved in our favor—in our favor meaning in defense of the restriction.

Mr. SCHIFF. Well, let me ask you this in an effort to see if there is a way to bridge the gulf between Mr. Wolf and myself.

As I understand it now, all of the federal restrictions apply regardless of what the state of California says, regardless of what the state of Virginia says. They apply to the funds that the states put in and they apply to the funds that private parties put in.

Are you aware of any circumstance in which states have imposed greater restrictions than the federal government has?

Mr. FORTUÑO. Different may be greater. I do not know. We could certainly check and get back to you once we have looked for that. Offhand I do not happen to know of instances where the state restrictions have been greater than the federal.

Mr. SCHIFF. And are there some states that have put in parallel restrictions, in other words, that have said that in this particular state, the funds that were provided LSCs cannot be used for any of the purposes for which the federal law prohibits federal contributions?

Mr. FORTUÑO. I think there is not a need for them to do that because by federal law, that is, in fact, the case. And it may be that it is just because it is unnecessary, they have not been crafted that way.

In fact, we have a regulation which is intended to create avenues for that alternative use, that is affiliated organizations, and that is where we get into the question of program integrity and whether there is sufficient separation.

But you can have an LSC grantee, for example, in Oregon and an affiliate that does work that would not be permitted with LSC grant funds and that our grantee would not be permitted to undertake because they do receive LSC grant funds and so the restrictions apply to all their other funds.

But there is that possibility. The dispute there focuses around whether that is a cost effective, efficient way of doing it. But there are means through which the state can tap some of the expertise and resources that are available out there in the legal services community to accomplish what they want to do.

It is just that currently, under the existing structure, they cannot just funnel all the money into the grantee and expect that the grantee is going to be able to do everything, including things that are prohibited to the federal funds.

Mr. SCHIFF. Would it put us on any better legal ground as well as help the financial situation of the LSCs if by way of bridging this difference in opinion we gave states the authority to impose whatever restrictions they deemed on the use of state as well as private funds so the federal restrictions would apply to the use of federal funds, but they would not apply to the state or private funds, but the state would be—each state would be empowered to set its own restrictions on the use of its funds as well as private funds?

Mr. FORTUÑO. I think that is a matter of policy and drafting. I think it can certainly be accomplished, but it is not something that we would take a position on in terms of should it or should it not be—

Mr. SCHIFF. But the impact of that, if I am articulating correctly, is if you repeal the prohibition on state and local, state and private funds, then the states would be empowered to set whatever restrictions they want on state funds, right? They would still retain that power—

Mr. FORTUÑO. Yes.

Mr. SCHIFF [continuing]. As long as you did not preclude them from doing that? So the additional impact, the sort of bridging of the divide here would be you could empower states to control private funds as well as their own state public funds; could you not? In other words, if you—

Mr. FORTUÑO. LSC could not, but the Congress certainly could and we would implement that. But certainly something could be

done. Again, it is a matter of policy and drafting and the legislation.

But whether it is—the states having final say on what can be done with their funds or on LSC limiting the reach of our restrictions to federal and private funds but not state—those, again, are policy issues that we have not been authorized by our Board to address. But certainly it seems from a standpoint of can it be done, yes, it can be done.

Mr. SCHIFF. The last question is, given the changes in the economy, what type of cases in particular have escalated? You probably have across-the-board increases, but has it been more in the area of foreclosure or in what areas have you seen the greatest rise?

Mr. FORTUÑO. We have seen the justice gap report, the 2009 report, while it shows to one-to-one, in the area of foreclosure is showing two persons who are qualified—that is financially and otherwise qualified for services by a grantee—who have to be turned away because of no other reason but lack of resources. So we are turning away two for every one that is represented. Clearly that is a significant increase.

And in the employment area, we see more of that. So there are increases. But I think the more pronounced has been in the area of foreclosures and predatory lending.

Mr. SCHIFF. Thank you.

I yield back, Mr. Chairman.

Mr. MOLLOHAN. Thank you, Mr. Schiff.

Mr. Honda.

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

Again, welcome. Good to see you guys. You do good work and—

Mr. FORTUÑO. Thank you.

Mr. HONDA [continuing]. I think that the state of California has benefitted by your work, but I think that the state of California and perhaps other states have suffered because of the impositions that Congress has placed upon you.

I just want to state for the record that I recognize the position that sometimes we place you in with our questions. So I think, I am not an attorney, I am just a simple school teacher, and so I think I have to rephrase my questions in a way that would, you know, reflect our desires for you to do the kind of work that we see that is necessary.

And so in my humble opinion, some of the restrictions that we have placed upon LSC has been counterproductive in terms of us being able to provide services that some of the folks and many of the folks in California has needed in the past.

And I guess it is going to be dependent upon our judgment and our leadership and our direction to you in order for us to be able to articulate that which needs to be done and then cover it with the appropriate amount of money.

And so having said that, my sense is that we need to allow the LSC to operate on behalf of Congress with the understanding that—I have the trust that you would do so with the full spirit of what we define as justice for all and that folks need representation as part of our value system regardless of their standing in our society. And so I would be working in that direction.



I think that the ability of what I have seen in the past what our folks were able to do to leverage certain kinds of folks that are already in the community that wants to help and leverage on behalf of our clients that you are helping by lifting some of the restrictions, I think, does make sense because I do not want to send a gunfighter into a gunfight with a muzzle loading rifle when everybody else has automatic weapons. And I think that it does not set up things for a fair fight where justice needs to be served.

So I really do appreciate this. I think I know how to answer my own questions. But just to express, and it took me a couple years to understand, the frustration I had when I was asking a lot of questions and I was trying to elicit, you know, responses from you that I wanted to hear, but you consistently say, you know, whatever you guys say.

Mr. FORTUÑO. And I think we are here in our official capacities, so we present the institutional view. I know that——

Mr. HONDA. Yes.

Mr. FORTUÑO [continuing]. You know, we all have personal views, although my wife tells me what mine are. But we do have our own personal views. But when we sit here, we sit here as representatives of the institution-presenting their views.

And as I said earlier, my concern is that the expression of a personal view, whatever it may be, might be mistaken for the view of the institution. And if we had not been authorized to communicate that, I think it would be inappropriate for us to answer.

Mr. HONDA. Yeah. And I appreciate your high level of professionalism and self-discipline.

Mr. FORTUÑO. Thank you.

Mr. HONDA. And I guess it really tells me that I have to tell you what I really want and why. And so I guess I met the enemy and it was me.

Mr. Chairman, thank you very much for this opportunity.

Mr. FORTUÑO. Thank you.

Mr. MOLLOHAN. Thank you, Mr. Honda.

Mr. Fattah.

Mr. FATTAH. Thank you, Mr. Chairman.

Let me welcome both of you before the Committee. And to the Chairman, I know through your information provided, you are a former Commander in the United States Coast Guard and you were formerly involved in a lot of activities, including General Counsel to the Republican party in Georgia and head of the Republican Lawyers Association.

So it is good to see that there are Republicans and Democrats alike who find it appropriate under our Constitution to work to ensure that everyone has the opportunity to seek justice under our legal system.

And to our Director here, Philadelphia, I mean, I think the best place to find people to lead major——

Mr. FORTUÑO. I could not agree more.

Mr. FATTAH [continuing]. You look to Philadelphia.

Mr. FORTUÑO. I could not agree more.

Mr. FATTAH. And so Community Legal Services is where you got your start in the District Attorney's Office. And I am glad my col-

league who is actually a former Philadelphian has returned to the room, Chairman Wolf, Representative Wolf.

And I just want to clear up some things that were said and I have no intentions of throwing any elbows. I do want to get the record straight.

Legal Services Corporation is not providing any lawyers on behalf of drivers, cooks, bottle watchers for Osama bin Laden under any circumstances, right?

Mr. FORTUÑO. That is my understanding, yes.

Mr. FATTAH. Put that on the record because sometimes you hear this, you know, a lot of what is said around here, and people who are not paying attention can get the wrong impression, right? So we can clarify that in no way, shape, or form.

Secondly, as a former Assistant District Attorney in Philadelphia, I do want to say something. There is going to be an announcement apparently today that the Administration has worked something out and there is not going to be this big trial in New York of Khalid Sheikh Mohammed. If someone had conducted a crime of such a horrendous nature in Philadelphia and thousands of our citizens were killed, we would be proud to host a trial to go and make sure that justice was served, assuming the guy could live long enough to get to trial. All right?

So this notion that America should be afraid of putting people on trial or hosting a trial somewhere to get a bad guy I think is nonsense. And it is a disservice to many, many people in our country who are not afraid to—you know, and I'm glad this Administration is killing and capturing bad guys all over the world. And we shouldn't be afraid to use our judicial system as one of the tools to go after them.

But I do want to thank Legal Services for the work that you are doing on behalf of millions of Americans. You know, when Dr. King had the great march on Washington he said that, you know, "Let us not be told that there are insufficient in the vaults of justice in this country."

And what he was really saying in the Poor People's Campaign was that poor people need to have access to the court. And class actions is a good example. If you have an entity that is—you know, we had this problem with proprietary on higher education institutions ripping off poor people all over the country with false educational opportunities, accessing millions of dollars of federally guaranteed student loans. If you couldn't go in on a class action, you would have to go upon each individual student and go after each individual situation.

So class actions have an—you know, both can provide the taxpayers a protection when Legal Services operates and also help many, many more people.

#### MANAGEMENT AND ADMINISTRATION OF PROGRAMS

So I just want to thank you for what you are doing. I do have some particular questions. The costs in your budget now, Legal Services, can you tell us a little bit about healthcare and what is happening with your premiums over the last 12 to 24 months?

Mr. FORTUÑO. Meaning the premiums of our grantees? I don't have specific information here at hand but can provide that. I think

that what—I would be surprised if it was anything other than increasing. I know that there has been an increase in the premiums for our own staff. That is, the staff at the corporation.

Mr. FATTAH. Right.

Mr. FORTUÑO. But I don't have the specific numbers on what it is across the country in our various programs. But we should be able to acquire that information for you.

Mr. FATTAH. Okay. Now your request this year is—and the Chairman worked very hard. And I do want to compliment our former Chair, Congressman Wolf. I was on the Committee when he chaired this. And he worked very hard against a lot of obstacles in his own party who didn't see the wisdom of continuing to support Legal Services. So I do want to thank him.

But in your request for an increase, I noticed a significant amount is in the management and oversight area, which is, you know, obviously you get—most of our interest is in your management and oversight. And you need to find an ability, because grantees are operating as independent agents all over the country.

So this 80-plus million in increases is the most significant part thereof of your request; is that correct?

Mr. FORTUÑO. The most significant increase would be to basic field. In terms of management and grants administration, we are asking for an increase of over \$2 million over what we got for 2010.

That is for purposes of increasing and stepping up oversight. The board of directors has authorized a hiring of 15 persons to go into that part of the operation—that is, grantee oversight.

The two-plus million would be salary to accommodate that—annualize it—and account for corresponding increased costs. But the largest component of the increase is clearly oversight. It is to step up and improve oversight of and guidance to grantees.

But we also have a training component there where we talk about having web-based training that would provide training to grantees and to their boards of directors with a focus on the boards being oversight, internal controls, and proper oversight of grantees.

Mr. FATTAH. Okay. Well let me thank you, and let me thank the Chairman for the time. And I think that you know, given the work of this Committee and the leadership of our Chairman, that we are very interested in trying to make sure that Legal Services can continue and improve to close this justice gap.

And, again, with the leadership of someone from the greatest city anywhere in the world at the helm, I am feeling even more confident that we are going to find room to be favorable about working towards your requests.

So thank you, Mr. Chairman.

Mr. MOLLOHAN. Thank you, Mr. Fattah.

#### TRENDS IN FEDERAL AND NON-FEDERAL SUPPORT

Gentlemen, I would like to walk through your funding file and understand more clearly where your money actually comes from and how much of it is contributed by the federal government, recognizing that in every program and every state it is different.

But give us some idea of where dollars are coming from and at the end of the day how much of the resources used by Legal Serv-

ices across the country come from the federal government. Could you do that for me, please?

Mr. FORTUÑO. I can certainly give you some of that information. I think that non-LSC funding has steadily increased from 1996 through 2008. We went from 41 percent to almost 60 percent.

Mr. MOLLOHAN. Forty-one percent of what? Sixty percent of what?

Mr. FORTUÑO. That is our grantee's funding back in 1996 was 41 percent non-LSC nationwide. We are talking national averages. So 41 percent of what our grantees—the funding they had—was from non-LSC sources.

That was in 1996. In 2008, we were up to just under 60 percent. I am told it was 59.8 in 2008. Now, as might be expected because of the economic downturn, we have seen a dramatic decrease in those non-federal funds.

Mr. MOLLOHAN. That trend you just described would have as much to do with the decrease in the federal funding as it would with an increase of the non-federal funding?

Mr. FORTUÑO. I think that if federal funding were to go down, then certainly that would impact on the percentage.

Mr. MOLLOHAN. Right. It surely did between 1996 and 2008. Based on the fact that you are going down, one could conclude that LSC funding remained constant, maybe in real dollars.

But you had a real increase in non-LSC contributions. Is that the case, or did you have both? Did you have a decrease in LSC funding and an increase in outside funding? That is quite a dramatic shift, actually, from 40 to 60 percent. Maybe it was both.

Mr. FORTUÑO. Yes. And I think that—this from our 2008 book. I was just handed a page that has some figures on funding type, amount, and percentage. I think that, again, this wouldn't respond to the question of—since LSC funding is not a constant, since there are variations there, it is difficult to glean terribly much from the percentage rise in non-LSC funding.

Mr. MOLLOHAN. Well, we are going to get to the current time period. I just want to understand a little bit more about the 1996 to 2008 history.

Let me lead you through it a little bit.

Mr. FORTUÑO. Okay.

Mr. MOLLOHAN. Then you tell me where I am leading in the wrong direction. In 1996, you say non-LSC funding was 41 percent of your overall—legal services programming funding. And LSC funding decreased pretty dramatically from 1996 to 2008; did it not?

Mr. FORTUÑO. Yes. There were decreases. The last four years have certainly been better. But prior to that there were decreases.

Mr. MOLLOHAN. Well in 2006 then maybe, sir. So now 60 percent of the resources are non-LSC funding, correct?

Mr. FORTUÑO. That was as of 2008. The percentage has decreased since then.

Mr. MOLLOHAN. Is that because federal funding has increased, or outside funding has decreased, or both?

Mr. FORTUÑO. I think it is a combination of both. I think that federal funding has increased. And that would impact on the relative percentages.

Mr. MOLLOHAN. Well then let us take them one at a time. LSC funding has increased. We know that. What is happening to non-LSC funding?

Mr. FORTUÑO. Non-LSC funding—

Mr. MOLLOHAN. In real dollars.

Mr. FORTUÑO [continuing]. We have, for example, IOLTA. We don't yet have the final numbers. But from the figures we do have, one thing that is clear is that there is a very sharp decline. We estimate that there will be a drop from 33 to 50 percent in IOLTA and similar drops in—

Mr. MOLLOHAN. You already had a drop in IOLTA. Do you mean a further drop?

Mr. FORTUÑO. A further drop. That is between—from 2009—from 2008 to 2009, there was this drop we are estimating to be 33 to 50 percent. And we are expecting a like decline in 2010–2011.

There had been a similar decline in local government funding.

Mr. MOLLOHAN. You mean another 50 percent decline?

Mr. FORTUÑO. Yes.

Mr. MOLLOHAN. On top of the first 50 percent?

Mr. FORTUÑO. That is correct.

The state government support has not suffered as much as the local government and IOLTA. But those two are major sources of non-LSC funding. And they clearly have been impacted adversely.

Mr. MOLLOHAN. So state government support is going down.

Mr. FORTUÑO. Yes.

Mr. MOLLOHAN. Okay.

Mr. FORTUÑO. All three, state less than local. But certainly local going down about as much as IOLTA.

Mr. MOLLOHAN. Well no matter what the federal government does then it doesn't look—

Mr. FORTUÑO. It doesn't look good.

Mr. MOLLOHAN [continuing]. Sanguine.

Mr. FORTUÑO. Which is why we have come to you with an aggressive budget request. It's because I think that when our nation encounters a hardship, I think it is the poor that are generally the first and worst affected by it. And I think this one has been no different. I think that the poor have been disproportionately impacted by it. I think that the need is increasing.

And so we have an increasing need. And at the same time these other sources of funding are dwindling. So that is why we have come to you with what clearly is an aggressive funding request.

Mr. MOLLOHAN. Yes, and you should. You should be aggressive. You are aggressive here today with us. What are you doing outside of LSC funding to try to correct this or to check this trend, if not to reverse it?

Mr. FORTUÑO. What is LSC doing outside of its request to the federal government?

Mr. MOLLOHAN. Absolutely.

Mr. FORTUÑO. We certainly are encouraging our grantees to be aggressive about fundraising. We are trying to help them with information that can be valuable to them, that can be used by them, with guidance, with best practices.

Mr. MOLLOHAN. Well I hear you saying all those things. I want to understand how much energy is behind them. How much real

effort is out there? Do you have a program out there to encourage your grantees to develop other sources of funding or to be more successful in their conventional sources of funding?

Mr. FORTUÑO. We don't have—we don't have a program—

Mr. MOLLOHAN. Should you?

Mr. FORTUÑO [continuing]. That is specifically staffed for that purpose. The same way that we don't have a PAI office that is staffed exclusively for that purpose.

Mr. MOLLOHAN. Yes.

Mr. FORTUÑO. Some of our grantees do. And that is part of what they use to—

Mr. MOLLOHAN. Yes, I know. But nationally should you be ringing the bell? Tell me what you should be doing, or could you be doing more in this area?

Mr. FORTUÑO. We recognize that this is a complex issue and that funding has to involve a multi-faceted approach. So we certainly recognize that there are a number of different dimensions to this that need to be explored and that are not fully exploited right now.

But we are doing things along the lines that have been asked about here. Maybe not in the structured, have a specific unit set aside to come up with innovation, to generate innovation, to do more in the way of communicating best practices and to develop the—

Mr. MOLLOHAN. Well, the Committee would like for you to submit for the record in a reasonable time frame, which you can work out with staff, a plan that addresses enhancing your non-LSC resources.

Mr. FORTUÑO. We would be happy to.

Mr. MOLLOHAN. If you would.

Mr. FORTUÑO. Yes.

Mr. MOLLOHAN. I would think if you needed someone to take on that mission full time, we would want an estimate of whether that would be money well spent.

Mr. FORTUÑO. Mm-hmm.  
[The information follows:]

### LSC Efforts to Boost Non-LSC Funding

The 136 LSC-funded grantees are private, 501(c) (3) corporations managed by independent boards with locally set priorities. Since 1996 when federal funding was cut by over 30 percent, local programs have conducted aggressive fund-raising strategies and they have been successful. Today, LSC funding represents 40 percent of all funding LSC programs receive, in contrast to 1995 when it was 60 percent.

LSC can provide direction and leadership for these grantees, and encouraging resource development at the state and local level is a priority for the Corporation. LSC uses partnerships and other approaches to develop and expand non-LSC resources.

LSC programs pursue fundraising initiatives in such areas as: lawyer fund drives, attorney dues, bar grants, foundation and corporate grants, matching grants, United Way donations, fellowship programs, cy pres, individual gifts, and capital campaigns.

In 2007, LSC issued revised Performance Criteria, which serves as a planning document to guide programs in their ongoing efforts to ensure high-quality civil legal services. One part of the Performance Criteria directs LSC programs to provide for effective governance, leadership and administration, including "general resource development and maintenance."

Under this criterion, each program "seeks to maintain and expand its base of funding, with the goal of increasing the quality and quantity of the program's services to eligible clients." This is an area of both self-evaluation and regular review by LSC in program visits to the grantees. Programs are judged and evaluated on these criteria and the Corporation sees them as key measurements of the grantee's delivery of quality legal services.

In addition, when programs apply for LSC funding, the evaluations of their grant proposals include program plans for fundraising from non-LSC sources.

One of LSC's partners in ensuring best practices in fundraising is the Management Information Exchange (MIE), based in Boston. Many LSC programs attend training sessions on fundraising conducted by the MIE and LSC contributes instructors in courses on public affairs, unified fundraising messages, and the role of electronic newsletters in program outreach to the community. Over the last three years, an average of 56 professionals from LSC programs have attended the annual MIE fundraising conference, which helps programs diversify and improve their fundraising efforts.

LSC programs also benefit from their collaborations with the National Association of IOLTA Programs, which seeks to enhance legal services for the poor, and the American Bar Association Project to Expand Resources for Legal Services, which collects and disseminates information about fundraising initiatives to legal services and *pro bono* programs.

LSC will continue these leadership efforts and will work with their incoming Board to examine new methods to encourage local programs to diversify their funding strategies.

Mr. MOLLOHAN. There is an irony here, a couple of them. However hard Chairman Wolf fought for LSC during the time he was Chairman, he was still up against a less favorable political and philosophical environment.

You are in a very favorable political environment from the executives through the Congress but what I am hearing is you are actually going to have less resources to address legal needs of the poor than we have had in the past, during a time when those needs are increasing because of the economic circumstances.

I don't think when the President asked two years in a row for the same requests, and I would like for him to have been working off another baseline, just to put that in there again, that doesn't look really encouraging. Especially given the overall budgetary situation we are facing.

So wanting to do as much as we can to get those resources, I would like to see how you are working harder outside LSC funding to achieve that with the programs across the country.

#### ACTIVITIES OF AFFILIATE ORGANIZATION

With respect to your activities and the activities of your grantees, am I correct to some extent, and tell me if I am not, that a lot of the things that the restrictions address are being done in separately stood up organizations? Is that correct or incorrect?

Mr. FORTUÑO. Yes. Affiliate organizations are, as are organizations that are not affiliated. But, yes, there are other channels through which those activities can be undertaken.

Mr. MOLLOHAN. Well it can be, but I'm asking are they? That is my question.

Mr. FORTUÑO. Yes.

Mr. MOLLOHAN. I know it could be. Could you give us an example or two? How does that work?

Mr. FORTUÑO. We receive requests for guidance from grantees on a periodic basis where they ask whether there is sufficient separation between them and an affiliate. I can certainly put together numbers as to how many of those we are aware of. There may be any number that we are unaware of. But we can certainly share with you the information concerning any of those that we are aware of and provide some detail on that.

[The information follows:]

#### USE OF AFFILIATE ORGANIZATIONS

At present, LSC is aware of approximately 30 affiliate organizations. For LSC purposes, affiliate organizations are entities that closely coordinate with an LSC grantee in a variety of ways. These include: sharing overlapping board members and part-time staff, and providing other services such as intake, advice and transfer of non-LSC funds to the affiliate. Affiliated entities usually work outside of the restrictions, but LSC has strict requirements that grantees maintain Part 1610 program integrity—objective integrity and independence—from any entity engaging in restricted activities. Program integrity requires legal, physical and financial separation, and no provision of LSC funds to the other entity or subsidiaries of restricted activities.

Mr. MOLLOHAN. Well I guess my point is that, in an imperfect world, this activity would appropriately be undertaken by LSC grantees if it were not for these restrictions. But those desires are actually being met by organizations, however inefficient it might



be, by setting up a fire walled sort of arrangement or structure; is that not correct?

Mr. FORTUÑO. Yes. I think it is largely not an issue of whether the work can be undertaken. It is an issue of by whom and whether it is efficient.

Mr. MOLLOHAN. Yes. Democracy and conflicting philosophies sometimes are inefficient. We pay a price through the inefficiency to accommodate all of those interests and to achieve the consensus goal, which Mr. Wolf represents, of getting funding for LSC up. So those are the choices sometimes we have to make.

#### GOVERNANCE AND MANAGEMENT

I would like to try to update the record with regard to the governance and management issues that GAO raised. First of all, let me compliment you on working on them.

I understood that it was represented here last year that everything was okay. But I learned this year that perhaps, and maybe it is a technicality, while significant progress has been made, all of these issues have not been completed.

So just one more time for the record, if you will: Could you clarify for us how many of the GAO recommendations you have completed, how many have already been submitted to GAO for final review, and how many might be outstanding?

Mr. FORTUÑO. I believe there were two in recent years, two GAO reports. The first was on governance. The second was on grants oversight. I think we had a total of 17—if I'm not mistaken, 17 recommendations of which nine have been fully—the Corporation has accepted all of them—the recommendations as to nine have been fully implemented.

What remains is the other eight now. My understanding is that as to three of those eight, it is a matter of whether sufficient documentation is available so that the Corporation is confident that the documentation that is being made available will satisfy the GAO. That at least those three have also been fully implemented, which would take us to 12.

Leaving five yet to be implemented. They revolve around things like oversight of management processes. So what is happening is at the April board of directors meeting, one of the items that is going to be taken up is how to do that. We have a part-time board that meets four to six times a year.

So how do they accomplish this oversight of management processes—whether they delegate that to a committee, whether someone on that committee spends a couple of days at the corporation every six months or so, whether they hire a consultant? Whatever the process may be, that is what will be discussed by the board in April.

So steps are being taken to implement the remaining recommendations. As I said, nine of the seventeen. GAO, in fact, has already testified before our Senate Subcommittee, the Judiciary Committee, that they have been implemented. And that we have made real progress. And that we are on the road to resolving the others.

In addition to those nine, we think we have another three done for a total of twelve. And then what remains are five, which we are still working on.

Mr. MOLLOHAN. Do you have an estimate of when you might be finished implementing?

Mr. FORTUÑO. I don't know that—

Mr. CONSTANCE. All will be done this year.

Mr. FORTUÑO. I think we are confident that—

Mr. MOLLOHAN. This calendar year, fiscal year?

Mr. FORTUÑO. Calendar year.

Mr. MOLLOHAN. Okay. Understand that these questions are in the spirit of trying to get these things off the table, so we take away any criticisms of those who might be less supportive of the program.

Mr. FORTUÑO. And I might add that the recommendations have been taken very seriously. It is not just paying lip service.

You know, examples the board—GAO recommended the adoption of specific charters, something more substantial than in fact was in place up until then. The board has done that and, in fact, started looking at whether things like the requirement of an audit committee. The board established an audit committee, which it didn't have heretofore. And is actually looking at whether that is advisable in the context of our grantees and has had some discussion about that.

So clearly the recommendations made by GAO have not only been accepted but have been embraced. And in addition to implementing them for LSC, LSC is looking at how else they can be of value and used, because I think LSC's experience has been that those were good, helpful recommendations.

Mr. MOLLOHAN. Okay. Can you formally respond to the separate allegations that were made in the Washington Times last summer about improper expenditures by grantees? Have you finished your investigations? Do you have recommendations?

Mr. FORTUÑO. That may be. If I am not mistaken, that is probably what has sometimes been referred to as the natural stone on one of our grantees building.

A grantee in Texas built an office. And there was some imported natural stone that was used. The matter was investigated by our OIG. They reported to management. Management initiated—questioned cost proceedings. In fact, succeeded in having—the program agreed, I should say, to having the cost of that born by some other source so that no LSC funds were used.

In fact, it is actually an example of how the system works and can work, which is as you might expect. We are all human, and we are talking about a lot of people in the program. On occasion mistakes in judgement are made.

We like to think that we have a system in place that will help not just deter but when mistakes in judgement occur, identify them and then trigger the system as it did in this case. And ultimately what happened was no LSC funds went into the purchase of that stone that was used on the exterior of the building.

That is the one I can think of from last summer. I am not sure if there is another.

Mr. CONSTANCE. We can respond on the record for the rest.

Mr. FORTUÑO. We would be happy to respond.

[The information follows:]

### Follow-Up on Allegations from the Washington Times

The subject of the article from the Washington Times in July 2009 contained a number of allegations. At LSC all allegations of improper use of taxpayer dollars are referred to the LSC Office of Inspector General and investigated. When the OIG makes recommendations, LSC follows up with corrective action. If federal funds are improperly used, LSC recovers that money and redirects it to provide civil legal assistance to the nation's poor. What follows is the status of all allegations contained in the article.

GAO Recommendations: LSC and the LSC Board of Directors accepted all 17 of the recommendations of GAO from two reports issued in 2007 and all recommendations have at least been partially implemented and 11 have been fully implemented and closed by GAO. Of the remaining 6 recommendations, documentation for one has already been submitted to GAO and documentation for the other 5 is being prepared by LSC at this time.

Natural Stone Wall: LSC raised concerns about Legal Aid of Northwest Texas financial issues with the Inspector General in late 2008 and the IG initiated an audit in February 2009. LSC received a report from the IG in August 2009. The report raised concerns about the use of natural stone on the facing of a new building that had been constructed in Ft. Worth to replace its old building, which the program described as being unsafe (substandard mechanical, electrical and plumbing systems) and lacked adequate free parking for the poor. LSC immediately reviewed the recommendation from the IG, issued a questioned cost determination, and enforced a reallocation of funds that would ensure that no federal funds were used for the decorative facing detail.

Unused Hotel Rooms: In 2007, California Indian Legal Services sponsored a statewide Tribal Court Conference and overestimated attendance. Prompted by an IG report issued in March, 2009, LSC initiated a questioned cost proceeding and all related expenditures were moved to non-LSC funding.

Contracts for Consultants: This is about job classifications for individual consultants who join LSC staff on program visits to assess quality and compliance with grant rules. Over the last 20 years, LSC has debated internally whether these experts should be classified as consultants or as temporary employees, and the issue was taken up again last year after it was raised by LSC's outside independent auditor. LSC has retained outside counsel and requested a determination from the IRS on proper classification of these individuals. We are awaiting a response at the present time.

Contract Procedures at the Corporation: After an audit recommendation from the Inspector General in July 2009 that LSC strengthen internal controls over contracting, all relevant contracting procedures of the Corporation were updated and training for all managers was held.

Double Dipping: The allegation is simply wrong. "Double dipping" is not allowed and has not occurred. Consultants hired from LSC grantees must take unpaid leave from their nonprofit while contracting with LSC—they cannot take vacation or any other form of compensation. The prohibition on double dipping was inadvertently left out of contracts with two individuals but there were no actual instances of double dipping.

Capitol Hill Reception: After an investigation by the Inspector General and a recommendation that the Board maintain oversight over any private fundraising by the Corporation, the Board passed a resolution that established a protocol for collection of private funds and prohibited the use of the Corporation's credit in advance of receipt of private donations.

Mr. MOLLOHAN. That is fine. Respond for the record.

Mr. FORTUÑO. Yes.

Mr. MOLLOHAN. Yes. Do you feel scrutinized?

Mr. FORTUÑO. No. I think it is appropriate.

Mr. MOLLOHAN. I didn't say it was inappropriate. I said do you feel scrutinized?

Mr. FORTUÑO. Yes. But I would expect no less.

Mr. WOLF. Thank you, Mr. Chairman.

Before I get into a couple of questions, and my good friend Mr. Fattah, I just want to kind of respond back. I am from Philadelphia. You are from Philly. I was out there with some constituents.

Mr. FORTUÑO. Yes. I was with a Legal Services program, an LSC funded program in Philadelphia and then with the DA's office back when—

Mr. WOLF. Where in Philadelphia?

Mr. FORTUÑO. Where in Philadelphia? I lived in Center City. I am originally from New York. I was born and raised in Hell's Kitchen. But I spent my first seven-eight years practicing law in Philadelphia.

Mr. WOLF. I was born in South Philadelphia and raised in South Philadelphia.

Mr. FORTUÑO. I know South Philly well.

Mr. WOLF. But the comment that Mr. Fattah made, what I was inferring to was the report today and not inferring that Legal Services was involved in that.

But there was the comment that the person who was representing Osama bin Laden's driver was working in the Justice Department. And 35 of the top 50 law firms in the country have done pro bono work representing Guantanamo Bay people. And I would be interested if you would, for the record, let me know if these 50 law firms are also participating in the Legal Services. So if we could get that answer.

[The information follows:]

PRO BONO WORK BY FIRMS WHO REPRESENTED GUANTANAMO BAY DETAINEES

LSC does not have any information on the national law firms who have represented Guantanamo detainees and if they have also done pro bono work at LSC grantees. While many LSC grantees have relationships with large law firms in their state to encourage private attorney assistance, we do not know whether they have also represented detainees at Guantanamo.

The other question that he was raising about not being afraid, and I feel an obligation on behalf of the families, there were 30 people from my District who died in the attack on 9/11.

In 1998, I had come back from Algeria where 175,000 people were killed. And I introduced a bill to create the National Commission on Terror. Both sides of the aisle ridiculed me, my side and the other side.

I said when I introduced the bill that Osama bin Laden lived in Sudan where I had been a number of times for five years. In the end we passed the bill. It was the Bremer Commission. And both the Bush Administration ignored the recommendations, as did the Clinton Administration.

No one is afraid of this trial. The reasons the concern about—particularly many of the families who have lost loved ones is they see the cost of trying Khalid Sheikh Mohammed in New York City

would be roughly a billion dollars. The City of New York was asking for \$206 million a year.

And Moussaoui was tried, if you recall—the 20th hijacker was tried in Alexandria. Tried before there was the Patent Trademark Office, before there was the hotel across the street, before the condominium, and it tied up the area. He was there for four and a half years.

So if Khalid Sheikh Mohammed is in New York City for four and a half years, the cost would be over a billion dollars.

Secondly, Khalid Sheikh Mohammed is not an American citizen. If you are in the military, as you know, and you do something wrong, you go through the military system. I think to give Khalid Sheikh Mohammed greater rights than we give an American man or woman who serves in the military is wrong.

Thirdly, he acknowledged that Khalid Sheikh Mohammed beheaded Daniel Pearl. I mean, does anyone care about the pain and agony of Daniel Pearl's wife and his family? He has acknowledged too that he was the mastermind of the 9/11, which resulted in death for a number of people from my area.

Fourth, no one is afraid of course. But Sheikh Rahman, who was convicted for the 1993 World Trade Center attack, was sending things out through his lawyer if you recall. And she was later prosecuted. Also incarcerate terrorists stabbed Officer Pepe in the eye. And there are many other ramifications. And if you talk to people who were guards down in Guantanamo Bay, they wear a blank name tag over their name tags so their names are not there. And so the ramifications, and then you can take it into traffic and take it into many other areas.

So I have the bill in the House; Lindsay Graham has it in the Senate. There are Democratic members on the bill that I have that says basically do not try him in a civilian court. Try him in a military court, either in Guantanamo Bay or a military base in a remote area somewhere in the United States.

I just felt an obligation to kind of put that into perspective. And also lastly, to think of the pain, and the suffering, and the agony of those policemen. My dad was a Philadelphia policeman, the policemen, the firemen, Deborah Burlingame who is the sister of a fellow from my District who was the pilot of the airplane that went into the Pentagon. And the hurt and the pain that they have gone through. I wanted to put it into context of what my concerns are.

#### WORKING WITH BAR ASSOCIATIONS

The two questions in addition to the list of the top 50 firms, there are two questions. I will ask them together. One, when you are paying your bar dues, does any of that go to Legal Services? I think that would be a very appropriate thing. I pay my bar dues. I am not practicing, but I have kept a portion of it. Does any of that go?

Secondly, I had a bill in that gives a tax credit for doctors who participate in helping people who don't have healthcare. We have some free clinics in my area. We encourage doctors to come in. And so we put it in such a way that if you are a doctor and you participate in the free clinic, you will get a tax credit because your time, and as a lawyer your time is valuable.

And so the two questions are, one, has that ever been looked at with regard to a tax credit for a lawyer or an individual who participates and gives his or her time. Although fitting it to the IRS regulations that obviously that they have.

And secondly, does any of the money that goes into the bar dues, for instance, when you pay into the D.C. Bar or the Virginia Bar, whatever bar it is, is there any that goes to Legal Services?

Mr. FORTUÑO. I can maybe take that in reverse order. Whether the tax credit approach has been explored, not to my knowledge. Although I like the idea and—certainly keep lawyers in mind when exploring that kind of approach.

As to the bar dues, obviously that is a matter of local control, and it can vary. It does vary from state to state and the purposes to which they put the dues. In some instances, it is to the regulation of the lawyers in that jurisdiction. But whether any portion of dues goes to Legal Services, I don't know that there is a specific set-aside.

Although in some instances they do have—the Bar Association may have a foundation which provides funding. We certainly do receive funding from the organized bar. There has been a significant drop this past year along with all the other sources of non-LSC funding. There has been a significant drop in contributions from the Bar.

But whether any given state devotes any of the revenue received from bar dues to Legal Services would be a matter of local control.

Mr. STRICKLAND. Let me comment. May I comment on that also, Mr. Wolf?

In many states, as you know, you have what is called a mandatory bar and Georgia being one of those states. And there was a case coming out of California known generally as the Keller case, having to do with what you can do with dues derived from a mandatory bar. For example, you can't do any legislative lobbying with mandatory bar dues.

I say that just to comment on your question. There are some limitations on what can be done with mandatory bar dues.

Mr. WOLF. Could there be a possibility of in the Bar Associations of having a check that you can add \$5.00, \$10.00, whatever the case may be, to Legal Services?

Mr. STRICKLAND. We had an experience on that in Georgia. We had both good and bad results. But I need to tell the whole story.

One year the Board of Governors, on which I have served for 25 years, voted to do a checkoff such as you are describing for the Georgia Legal Services Program. And it generated \$800,000. So the following year—but it did so at the expense of another checkoff program for the legislative fund.

As I said a moment ago, you can't use mandatory bar dues for legislative lobbying. Well the following year, a proposal came before the Board of Governors to flip that. In other words, it was such an overwhelming success and at the same time a penalty if you will to the legislative work.

I thought it was really a sorry day for the Board of Governors for the State Bar of Georgia, which voted exactly that way. In my view, in favor of legislative lobbying and to the detriment of the following years raise for Georgia Legal Services.



I don't remember the precise numbers. I do remember the 800,000 number, because it was more than twice as much as had ever been raised for Georgia Legal Services in a fundraising effort as opposed to a dues checkoff.

So that has been—I don't want to leave you with a completely negative impression of the State Bar of Georgia. However, there is a Bar Foundation, as Mr. Fortuño mentioned, that people do contribute to on a voluntary basis that generated probably in the neighborhood of a half million dollars a year for direct allocation to Legal Services in our state.

Mr. WOLF. Well I think it would be a good idea. My sense is that if perhaps we could approach, you know, maybe the different Bar Associations to see if you could do a pilot program that way, because there are many attorneys. I think it is sort of never asked. I am not really quite sure what way to go. But if given the opportunity, they may very well be anxious to participate.

And you would like the idea with regard to the tax credit? Is that what you were saying?

Mr. STRICKLAND. I think that is a real interesting concept that we should look into.

Mr. FORTUÑO. I think both are good ideas. You know, there are any number of others. I know I have always been particularly partial to, although I am not sure how well it would be received, to a set-aside from punitive damages. You know, that is sometimes done at the federal level or the state level by state law. I don't think it exists at the federal level. But I have always been interested in that. Although it is not something we have formally explored, and it may not have anything to offer.

Mr. WOLF. Well, let us look at these, and we will see. And, again, thank you.

Mr. MOLLOHAN. Okay. Thank you, Mr. Wolf.

Mr. STRICKLAND. One more thing for the record—

Mr. MOLLOHAN. Yes, sir.

Mr. STRICKLAND [continuing]. On my comments on the State Bar of Georgia.

Mr. WOLF. You are running for presidency of that Bar.

Mr. MOLLOHAN. We are moving up to votes.

Mr. STRICKLAND. Okay, I'm sorry. I was just going to say my law firm stopped contributing to the legislative program. That is all. Thank you.

Mr. MOLLOHAN. Okay. That is commendable.

Mr. Schiff.

Mr. SCHIFF. Thank you, Mr. Chairman.

A couple of questions. But I, you know, want to put one last coat on the private funds, state funds, issue. And that is express the view of my constituents in California who put up half the funds for LSC. We are big supporters of LSC.

You know, our constituents of California don't support the restrictions. They can't understand the restrictions on the use of federal funds. It is a national body. They can understand a national Congress deciding on how federal funds ought to be used. But they have a very difficult time understanding why the Congress is deciding how they should do state funds or how that is somehow to their advantage.

And as you point out, and as they have pointed out to me repeatedly, it has a real effect on their fundraising, notwithstanding the separate entities that have been set up. They have a lot of donors who will not give to them because of the restrictions. So I do want to take the opportunity to let you know how my constituents feel about it.

And I think the idea of looking for other sources of revenue that are more stable is a good one. I don't know whether the bar dues or a checkoff is. I have some experience with that as well and see the feast or famine quality of the checkoff.

But the IOLTA funds I know are running very low because of interest rates, and that is not ideal either. I was curious about how the IOLTA fund provision was established. Is that a state by state thing, or is that a—it is a state by state thing. I see some nodding heads.

I don't know if there is a mechanism like that, which has been a relatively consistent source of funding, just not in a consistent amount. If there is something—a mechanism like that that might have a more consistent revenue stream.

#### CONFIRMATION OF A NEW BOARD OF DIRECTORS

I would like to get your thoughts on that. And the only other question I had was on the board itself, through your testimony, written testimony, I gather there is still eight nominees that are sort of in the wings? And I am curious to how long they have been waiting for confirmation, and how you are handling that when you have sort of a current board and a shadow board. I know you have been doing orientations. But are they more involved in the decision making than just sort of being kept in the loop?

Mr. STRICKLAND. One of the nominees for the new board was seated in July to fill a vacancy, so Laurie Mikva of Chicago is already serving on the board. Leaving five Democrat nominees who have—my understanding is have cleared the committee. Three of the five Republican nominees are before the committee but are not out of the committee at this point. And that leaves two Republican nominees who have not yet been announced.

But in response to your question about involvement, thinking back to my own time as a nominee, I don't mean this critically, but we didn't really have any orientation. We were nominees for a year. I don't know that we were controversial. I think there was some disagreement on some of the other nominees. So until we were all together as a group, no one was confirmed.

By contrast, early on I made a direct contact with a member of the group of nominees who may well be the next board chairman to talk about a transition. And that led to the orientation program that you heard described a few moments ago in January. And we have immediately and continuously invited the nominees to attend our meetings. And they do have to do that as observers however.

So far though we have had I think a very good working relationship with the group of nominees that have already been identified.

#### IOLTA FUNDING

Mr. SCHIFF. Thank you. Any other thoughts? I don't know if there is a way to—within IOLTA to float as a percentage of—well

to float with interest rates in a way that keeps it a more consistent source of funds or whether there are other mechanisms like IOLTA that would be a better candidate.

Mr. FORTUÑO. We do work with the local—with the State IOLTA commissions and the national body. So there is a flow of information back and forth. And certainly we would like to have a more consistent revenue streams, so that it is not as dependent on interest rates.

But, unfortunately, it is the interest on lawyer's trust accounts. So long as we are talking interest rates, they are going to fluctuate.

Mr. SCHIFF. I wonder though. I mean, this may not be workable at all. But you could have a situation where when interest rates go above a certain point, that a, for lack of a better term, rainy day fund is created.

Mr. FORTUÑO. In fact, they do have reserves, which is why the—in 2008—in part in 2008 we didn't feel as big a pinch. I think that the reserves were tapped. And now what concerns us is that not only are the rates down, but the reserves have been depleted.

But they do establish reserves so that when they need to tap into them, those rainy day funds are available.

Mr. SCHIFF. Thank you, Mr. Chairman.

Mr. MOLLOHAN. Thank you, Mr. Schiff.

Gentlemen, thank you very much for your testimony here today. I am going to submit a few questions for the record. There may be some questions other members might wish to submit for the record.

I would like to get some cost effectiveness information in the record justifying Legal Services in economic terms. I think you probably can address that effectively.

I want to thank you very much for your appearance here today, for the expertise, for the time that you have given the program.

And, Mr. Strickland, if you are not going to be here next year, we very much appreciate your service.

Mr. STRICKLAND. This may very well be my final appearance before your Committee. Thank you very much, Mr. Chairman.

Mr. MOLLOHAN. Thank you.

Hearing is adjourned.

**Chairman Alan Mollohan**

## Questions for the Record

1. **There have been a few state studies indicating that effective legal aid services pay for themselves in terms of reduced costs in other parts of the economy. Have you reviewed any of these studies? If so, how do you interpret their findings?**

**Answer:** The LSC staff has read the state studies and they show that spending on legal aid opens doors for the poor, providing them with access to justice, including protection from violence, and to benefits to which they are entitled. Some examples:

Pennsylvania

- \$8 million savings in emergency shelter costs. In 2004-08, 670 low-income families successfully avoided homelessness because of legal aid.
- \$23 million savings in costs of domestic abuse. Legal aid lawyers protected 7,700 families from domestic violence in 2004-08. Studies indicate savings in the cost of medical care for injured victims, targeted education and counseling for affected children, police resources and incarceration of abusers.  
--*Results of the Pennsylvania Access to Justice Act: A Report on the Filing-Fee Surcharge Law, FY 2004-2008,* Pennsylvania IOLTA Board, February 2009.

Missouri

- \$1.5 million savings in emergency shelter costs. In 2008, 130 low-income families (with 350 family members) successfully avoided homelessness because of legal aid.
- \$2.2 million savings in costs related to domestic abuse.  
--*Investing in Justice, Strengthening Communities: How Everyone in Missouri Benefits from Funding for Legal Aid: A Report by the Missouri Legal Aid Network,* Fall 2009.

New York

- \$49 million savings in emergency shelter costs in 2008, with 8,722 people avoiding homelessness. For the period 2004-08, estimated savings to taxpayers were \$189.7 million and estimated number of people avoiding homelessness was 37,535.

- \$7 million in savings from the representation and protection afforded to 5,800 victims of domestic abuse in 2008. In 2004-08, total savings were \$35.7 million, with protection to domestic violence provided to 27,806.  
*–Testimony of Christopher B. O'Malley, executive director, Interest on Lawyer Account Fund of the State of New York, to Assembly Committee on Ways and Means, February 8, 2010*

### Texas

- "The typical contribution to economic well-being per dollar of legal aid spending is approximately \$2.65 per dollar expended. Based on the average resources devoted to matters in Texas, the social value per legal aid case is about \$1,514."
- "It should be noted that this measure likely understates the true benefit in several respects:
  - First, because attorneys and others providing services to the indigent are compensated at levels well below the average in the private sector, the cost per case (and, hence, the measured benefit) is likely to be well below the levels observed in the market as a whole.
  - Second, because of the limited resources available for indigent legal aid relative to that in the population as a whole, it is likely that there is greater social value per dollar expended (since only a small fraction of needs can be met, services would tend to be allocated toward the most serious matters).
  - Third, the measured effects are based on market data which only measures private returns and does not capture externalities. In many instances, litigation merely brings a transfer of resources from one entity to another. Because of the critical nature of many legal aid cases in the lives of individuals, they would generally reflect positive social benefits to a greater degree than the norm for all matters."  
*–Excerpts from "The Impact of Legal Aid Services on Economic Activity in Texas: An Analysis of Current Efforts and Expansion Potential," The Perryman Group, February 2009.*

In general, these studies on the benefits of legal aid look at how many federal dollars are brought into states that would have been otherwise lost to local economies, and how the federal funds are spent on food, rent and other necessities for families.

They do not quantify savings from law enforcement, keeping children in school, efficiencies in courts made possible by legal assistance to clients and self-represented litigants or the additional tax revenues from jobs preserved as a result of legal aid employment cases.

A key concept assumed in the state studies is that when families are more stable, they are likely to be more self-sustaining and able to contribute to their communities.

Due to limited resources, LSC has not conducted research in this area, analyzed the economic models used or attempted to interpret their findings. The Corporation is in the process of exploring partnerships that could result in national economic studies to expand on these state-based models.

- 2. LSC is in talks with the Department of Justice about conducting some national level research on the cost effectiveness of legal aid. Can you elaborate on this initiative?**

**Answer:** On November 3, 2009, President Helaine Barnett and her senior staff held a meeting at the Department of Justice with Assistant Attorney General Tony West and his senior staff to discuss areas of mutual interest and possible collaboration. As a part of that discussion, LSC raised the possibility of receiving assistance from the National Institute of Justice (NIJ) to study the economic impact of civil legal aid and in particular the cost benefit to federal, state, and local entities of the provision of civil legal assistance. Mr. West felt that the matter could be pursued and we added it to the list of follow-up items. We have had two discussions since the initial meeting and have a formal meeting arranged for early April with Mr. West, Lawrence Tribe, and representatives of our incoming Board to further explore a collaboration.

- 3. When OMB submitted the Administration's budget request for LSC, not only was the total number different, but the proportional spread of funds between LSC's programs was also different. How would LSC choose to distribute \$435 million in funding between basic field grants, LRAP, management and oversight, TIG and the Inspector General's office?**

**Answer:** While the LSC budget request does not require Office of Management and Budget approval, it is approved each year by the LSC Board of Directors through a formal resolution. Therefore, LSC management does not have the flexibility to change the decision of the Board after the President's budget is released. Absent further direction from the LSC Board, a \$435 million appropriation would likely be distributed as follows: \$403.35 million for Basic Field, \$1 million for Loan Repayment Assistance, \$6.8 million for Technology Improvement Grants, and \$19.5 million for Management and Grants Oversight. LSC management will continue to work with the Committee and the incoming Board of Directors on this matter for any recommended modifications that could provide additional funding for Basic Field grants.

**4. LSC has provided anecdotal evidence that Federal legal aid funds have helped to prevent significant lay-offs in grantee offices across the country. Have you done any systematic data collection on this issue? Can you quantify the job savings associated with LSC support?**

**Answer:** While we have not done any systematic data collection on the layoffs that have been avoided through the recent increases in Federal legal aid funds, more anecdotal evidence of this fact has come to our attention in recent weeks.

- In spite of increases in state and LSC funding, LSC-funded programs in New Jersey have laid off 75 staff members since 2007 due in large part to drastic cuts in IOLTA funds. While these numbers are daunting, they would have been higher without state and LSC help.
- Northwest Justice Project in Washington State reports that the 2009 and 2010 Federal increases helped them retain 15 attorneys that would otherwise have been lost due to decreases in state funding.
- Center of Arkansas Legal Services informs us that they were able to preserve three staff attorney positions with the 2010 funding increase, which is equivalent to the entire legal staff of one of their branch offices.
- Southeast Louisiana Legal Services Corporation also reported that the funding had saved three attorney positions.
- Neighborhood Legal Services of Los Angeles County laid off four employees effective February 8<sup>th</sup> and also eliminated three open positions. Without the LSC increase, other employees would have also been laid off.
- The State of New Mexico cut appropriated funding to legal services by 25 percent for 2009. Without the LSC increases for 2009 and 2010, New Mexico Legal Aid would have closed a rural office funded by the program with the loss of two attorneys, a paralegal, and a secretary.

Kansas Legal Services, Inc. reports that a 20 percent cut in state support for the 2010 fiscal year. The LSC increase and a layoff of six staff positions was what kept the program operating.

- 5. Which programs, projects, or activities proposed in the budget are unauthorized? For each such unauthorized PPA, what was the last authorization (public law reference); the last fiscal year of authorization; and the authorized funding level in the last fiscal year of authorization? What was the amount of the appropriation provided for each such PPA for the last fiscal year in which it was authorized?**

**Answer:** LSC was authorized in 1974 (Pub.L. 88-452) through FY 1980. The authorization for FY 1978 was \$205 million with authorizations for the next two years to be "such sums as may be necessary." The actual appropriation in FY 1980 was \$300 million.

- 6. Provide for each appropriation and by major program element, the actual obligation rates by quarter for each of the last three fiscal years. Provide planned obligation rates for fiscal years 2010 and 2011, also by quarter.**

**Answer:** The Department of Treasury obligates LSC's entire appropriation in the second quarter of each fiscal year. LSC then draws down funds on an as-needed basis. Based on our agreement with Treasury, LSC does not complete quarterly apportionments.

- 7. Provide end-of-year FTE data for each office component for each of the last five fiscal years. For fiscal year 2010, provide the current on-board FTE level and end of year (EOY) planned levels. For fiscal year 2011, provide anticipated EOY proposed FTE levels.**

**Answer:**

[The chart follows.]



**LEGAL SERVICES CORPORATION**  
**FY 2011 and FY 2010 End of Year Proposed Staffing, and Actual Staffing 1/31/2010 and 9/30 for Each of Past 5 Years, By Office**

	Appropriation Request Staffing FY 2011	Expected EOY Staffing FY 2010	Actual Staffing 1/31/2010	Actual Staffing 9/30/2009	Actual Staffing 9/30/2008	Actual Staffing 9/30/2007	Actual Staffing 9/30/2006	Actual Staffing 9/30/2005
Executive Office	5	5	5	5	5	5	6	3
Office of Legal Affairs	8	8	5	6	6	7	6	6
Office of Government Relations and Public Affairs	6	6	6	6	6	6	6	7
Office of Human Resources	5	5	5	5	5	5	5	5
Office of Financial and Administrative Services	9	9	10	9	9	9	8	9
Office of Information Technology	8	8	8	8	8	7	6	5
Office of Program Performance	31	29	25	25	23	23	22	22
Office of Information Management	6	6	6	6	6	7	8	10
Office of Compliance and Enforcement	26	26	21	19	16	16	16	15
<b>SUBTOTAL</b>	<b>104</b>	<b>102</b>	<b>91</b>	<b>89</b>	<b>84</b>	<b>85</b>	<b>83</b>	<b>82</b>
Office of Inspector General	30	24	25	25	19	20	17	18
<b>TOTAL</b>	<b>134</b>	<b>126</b>	<b>116</b>	<b>114</b>	<b>103</b>	<b>105</b>	<b>100</b>	<b>100</b>

- 8. Provide similar FTE data as requested above for all political appointee positions.**

**Answer:** LSC has no political appointees.

- 9. What is the annual average cost of a fully-loaded FTE in fiscal years 2010 and 2011?**

**Answer:** The average annual cost for positions at LSC, including salaries and benefits, are as follows:

	<u>FY 2010</u>	<u>FY 2011</u>
Management & Grants Oversight	\$131,341	\$139,811
Office of Inspector General	\$141,220	\$146,632

**Ranking Member Frank R. Wolf**  
Questions for the Record

**Basic Field Grants**

- 1. Which types of cases require the greatest amount of resources? Does the amount of resources generally needed to close a particular type of case factor into decisions about whether to take on certain cases?**

**Answer:** All LSC-funded programs are required by law to set program priorities based on consideration of the needs of eligible clients in their own communities. In addition, all programs have adopted case acceptance policies and procedures that match those program priorities and specifically govern the acceptance of cases. Prior to case acceptance for extended representation, programs generally perform an analysis of the case to establish that there is sufficient merit to proceed, that there is a legal remedy that will benefit the client and that the program has sufficient personnel and other resources to handle the case. For cases that require a particular expertise or that may require more extended representation, grantees often seek private pro bono counsel. Because of the volume of cases, some programs have placed restrictions on the hours they are open to accept new applications or close intake (no new applications accepted) after a certain number of cases are accepted. This occurs most often in the highest volume practice areas, such as family law.

It is clear that LSC grantees across the nation are seeing an increasing number of people seeking assistance with foreclosure cases. Many of these have a predatory lending aspect as a disproportionate number of subprime loans were targeted to minority homeowners in poor, disadvantaged neighborhoods. Oftentimes these cases require significant resources because foreclosures involve complex state and federal laws and tracing predatory lending schemes is time consuming and resource intensive. Despite these complexities, LSC grantees are well suited to assist low-income homeowners and renters.

**Reduced IOLTA Funding**

- 2. Do you have a reliable estimate of what the IOLTA funding will be for 2010?**

**Answer:** Based on preliminary estimates collected from LSC programs, IOLTA funding for LSC grantees is projected to decline from \$85 million to \$72 million for 2010. This represents an estimated 15 percent drop in funding.

LSC has collected funding data from grantees for 2009 and, based on that information, IOLTA funding for LSC grantees has dropped from \$112.8 million in 2008 to \$85 million in 2009, a 24 percent decrease.

Also, according to the National Association of IOLTA Programs, the total funds available for IOLTA grants, on a nationwide basis, dropped sharply in 2009. That year, IOLTA revenues were about \$93 million, which was a drop of \$191 million from the previous year, or a 67 percent decrease.

### **Technology Initiative Grants Program**

#### **3. Can you estimate the effect that your proposal to double funds for the Technology Initiative Grants Program would have on the number of unserved, but eligible, individuals seeking legal assistance?**

**Answer:** Increasing funds for LSC's Technology Initiative Grants program would help legal aid programs work more efficiently and would lead indirectly to an increase in eligible persons served by the programs. In addition, an increase in TIG funding expands the capacity of our programs to help low-income Americans.

While not a substitute for an attorney, the legal education material posted on our programs' websites also expands the reach of our programs. In 2008 (most recent data), programs reported 10 million page views of legal education material. In addition, self-represented litigants produced more than 147,000 court forms using TIG-funded systems in 2009, a five-fold increase from 2005.

Still, it is difficult to translate improved capacities at LSC programs into exact numbers on a national level. But some local examples are illustrative:

- Technology upgrades enabled Legal Aid of Nebraska to increase calls handled through its state hotline by nearly one-third, with no increase in staffing.
- Montana Legal Services Association developed a new case management system that helped the program maintain intake levels and increase extended representation by more than a third despite a one-fourth reduction in intake staff.
- Bay Area Legal Aid in Oakland, California installed a Legal Advice Line that allowed the program to increase the number of intakes by 93 percent over a four-year period, with no increase in intake staffing.
- Legal Aid of West Virginia installed a new data network and phone system that increased the number of intakes by 13 percent in its first year of operation.
- Legal Aid of Orange County, Calif., through the program's I-CAN! E-file system, helped about 40,000 client-eligible households receive federal income tax returns of about \$68 million for the 2008 tax year. The I-CAN! E-File project permits low-income working families and individuals to claim the Earned Income Tax Credit. The amount of state and federal income tax

returns received by I-CAN! E-File users increased 17-fold from the 2005 tax year to the 2008 tax year.

#### **Foreclosure Crisis/Unemployment**

**4. To what extent has the burden of requests for foreclosure-related services been alleviated by other federal programs targeted toward helping individuals affected by the foreclosure crisis?**

**Answer:** In general, the NeighborWorks Initiative, the Protecting Tenants at Foreclosure Act, the Emergency Economic Stabilization Act and the Housing Affordable Modification Program create the potential for favorable resolution of foreclosure actions and sometimes encourage access to legal assistance. While they may provide an attorney with tools to help threatened homeowners, these programs and laws do not usually reduce the number of cases that legal services programs receive.

It is important to note that funding provided through NeighborWorks and the HUD counseling program does not provide for litigation on behalf of a mortgagor or renter. Legal assistance allocations under the National Foreclosure Mitigation Program, Round 2, cannot be used for litigation. In states with judicial foreclosures, funding cannot be used for litigation if notice of foreclosure has been sent to the mortgagor. Funding through the HUD counseling program provides for more extensive services, but those funds are not sufficient to meet demand.

Foreclosure cases handled by LSC grantees doubled from nearly 10,000 in 2008 to almost 20,000 in 2009. LSC's 2009 Justice Gap study demonstrated that in the category of foreclosure cases, programs are turning away two applicants for every client they serve because of inadequate resources.

**5. What percentage of LSC work do requests for assistance related to unemployment compensation currently comprise?**

**Answer:** Nationwide, employment and consumer related cases represent nearly 28 percent of all cases LSC grantees close annually. In 2009, unemployment compensation cases increased by more than 60 percent from the previous year, the second largest increase in all cases closed. LSC expects that requests for assistance related to unemployment compensation will continue to rise in 2010 and 2011. In addition to a rise in unemployment compensation cases, grantees saw increases in other related categories in 2009:

- Bankruptcy and debt relief increased by almost 20 percent.
- Predatory Lending practices increased by 24 percent.
- Employee rights increased by 25 percent.
- Food stamps increased by 37 percent.
- State and local income maintenance increased by 34 percent.

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##### **Witness: Kenneth Melson, Deputy Director, Bureau of Alcohol, Tobacco, Firearms, and Explosives**

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**American Federation of Government Employees—Council of Prison  
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